

Vietnam

*Kien Trung Trinh, Annika Svanberg
and Tu Ngoc Trinh
Tilleke & Gibbins
Vietnam*

Introduction

The Labor Code of Vietnam¹ promises that the government will facilitate activities that create jobs and promote employment in Vietnam.² However, the complexities of Vietnamese history prove that it has often been difficult to regulate employment in Vietnam.

Vietnam's Labor Code was originally created based on the foundations of the Constitution reflecting the many policies of a centrally planned economy. The first Labor Code was created in 1994, several years after the *Doi Moi* economic reforms were introduced in the country, and its main focus was on regulating State-controlled enterprises.

Nearly two decades later, the Vietnamese economy has changed significantly. Accession to the World Trade Organization (WTO) in 2007 resulted in trade regulations loosening up and a sizable influx of foreign direct investment. By 2012, 3.3 per cent of the working population worked for foreign enterprises and 8.5 per cent worked for private domestic enterprises, while only 10.4 per cent worked for State-owned enterprises.³ (More than 75 per cent of Vietnamese workers are self-employed or work for household enterprises.) As these sectors grow year by year, employment law is becoming more relevant. The government must strive to strike a balance between protecting the basic rights of workers and ensuring stable economic growth through a flexible labor market.

The current Labor Code, passed by the National Assembly of Vietnam on 18 June 2012, provides a major overhaul of Vietnam employment law. The new Labor Code came into force on 1 May 2013.

1 Law Number 10-2012-QH13, passed by the National Assembly of Vietnam on 18 June 2012 ("Labor Code").

2 Labor Code, art 4(3).

3 Labor Force Survey 2012, General Statistics Office of Vietnam, Total: Occupied population, published in Hanoi 2013.

Legal Relationship of Employer and Employee

Employment

Employment is broadly defined in the Labor Code as “any labor activity which creates income and which is not prohibited by law”.⁴ In Vietnam, it is difficult to draw a distinction between formal employment relationships and independent contracting relationships.

Contract of Employment

The Labor Code defines a labor contract as an agreement between the employer and employee on a paid job and on working conditions, rights, and obligations of the parties to the labor relationship.⁵ A labor contract must be entered into directly between the employee and the employer.⁶ For seasonal work or a specific job with a duration of less than 12 months, however, the labor contract may be signed by the employer and an employee who is legally authorized to represent a group of employees. The latter contract is enforceable and effective as if it were entered into with each employee.⁷

Parties

Capacity

As defined by the Labor Code, an employee must be a person of at least 15 years of age with the ability to work, who works pursuant to a labor contract, who is paid wages, and who is subject to management by the employer.⁸ (Employees under the age of 15 are permitted for certain types of work; see “Junior Employees” and “Apprentices”, below.)

If the employee is from 15 years to 18 years of age, the employee’s legal representative (e.g., a parent) must consent to the entry into the labor contract.⁹ If the employee is less than 15 years of age, the labor contract must be signed by the employee’s legal representative with the consent of such employee.¹⁰

An employer must be an enterprise, body, organization, co-operative, business household, or individual who has full legal capacity for civil acts.¹¹

4 Labor Code, art 9(1).

5 Labor Code, art 15.

6 Labor Code, art 18(1).

7 Labor Code, art 18(2).

8 Labor Code, art 3(1).

9 Labor Code, art 18(1).

10 Labor Code, art 164.

11 Labor Code, art 3(2).

Special Categories

In General. The law recognizes various types of employees and provides detailed regulations for each category. This includes junior employees, apprentices, senior employees, disabled employees, foreign employees, and domestic servants.

Junior Employees. A junior employee is an employee under the age of 18.¹² Employment of any person under the age of 13 is prohibited in Vietnam, with exceptions listed by the Ministry of Labor, War Invalids, and Social Affairs (“MOLISA”).¹³

An employer is only permitted to employ a junior employee in jobs that are suitable for the health of the junior employee to ensure the development and growth of the worker’s body, mind, and personality.¹⁴ An employer has the responsibility of looking after the interests of the junior employee in respect of labor, wages, health, and training during the period of their work.¹⁵ It is prohibited to employ junior employees in heavy or dangerous work, work requiring contact with toxic substances, or in workplaces which have adverse effects on their personality.¹⁶ The normal working hours may not exceed eight hours per day or 40 hours per week for a junior employee from the age of 15 to below 18; or 4 hours per day or 20 hours per week for a junior employee below 15.¹⁷

Apprentices. Apprentices and practice trainees must be at least 14 years of age and be in good health, sufficient to satisfy the requirements of the particular trade, except for certain sectors stipulated by the MOLISA.¹⁸

Senior Employees. Senior employees are male employees over the age of 60 and female employees over the age of 55.¹⁹ Senior employees are entitled to negotiate with the employer to extend or to enter a new labor contract and are still entitled to enjoy the benefits under the retirement scheme.²⁰

Disabled Employees. The government recognizes the right of disabled persons to employment and encourages business to employ disabled workers.²¹ The government may regulate the policy on providing low-interest loans from the Job Creation Fund to employers employing disabled employees.²²

12 Labor Code, art 161.

13 Labor Code, art 164(3).

14 Labor Code, art 162(1).

15 Labor Code, art 162(1).

16 Labor Code, art 163(1).

17 Labor Code, art 163(2).

18 Labor Code, art 61(1).

19 Labor Code, art 166 and 187(1).

20 Labor Code, art 167.

21 Labor Code, art 176(1).

22 Labor Code, art 176(2).

The Labor Code prohibits allowing a disabled person whose ability to work has been reduced by 51 per cent or more to work overtime or at night.²³ In addition, an employer is prohibited from assigning disabled workers to heavy, toxic or dangerous work, or work requiring contact with toxic substances as stipulated by the MOLISA.²⁴

Foreign Employees. Except for definite exemptions, foreign citizens working in Vietnam must have a work permit, regardless of the length of time they intend to work in Vietnam.²⁵ The maximum term of work permits for foreign employees is two years.²⁶ However, pursuant to a new decree on foreign workers (Decree 102²⁷), foreign nationals with expiring work permits may apply for reissuance of the work permit.²⁸ The duration of a reissued work permit is, again, a maximum of two years.²⁹

For direct hire by Vietnamese employers, only managers, executives, experts, and those working in technical positions for which Vietnamese workers are not sufficiently qualified are permitted to work in Vietnam.³⁰ For internal transfers (e.g., cases where a foreign parent company assigns its employee to work at its Vietnam-based subsidiary or representative office), the law also requires that the seconded or appointed foreign employee has been previously employed by his or her parent company for at least 12 months before the effective date of the secondment or appointment.³¹ In addition, foreign employees must satisfy the following conditions:

- They must have full legal capacity for civil acts;
- They must have good health appropriate for the work requirements; and
- They must not have been convicted for a crime or be subject to investigation for a criminal offense in accordance with the laws of Vietnam or foreign laws.³²

Employers (with some exceptions) must annually report their demand for foreign employees in respect of positions for which qualified Vietnamese employees cannot be found.³³ The reports must be sent to the competent State

23 Labor Code, art 178(1).

24 Labor Code, art 178(2).

25 Labor Code, art 169(1)(d) and art 172.

26 Labor Code, art 173.

27 Decree Number 102-2013-ND-CP of 5 September 2013, implementing the Labor Code on Foreign Workers in Vietnam (“Decree 102”).

28 Decree 102, art 13(2).

29 Decree 102, art 16.

30 Labor Code, art 170(1).

31 Decree 102, art 3(1).

32 Labor Code, art 169.

33 Labor Code, art 170(2); Decree 102, art 4(1).

authority for approval.³⁴ The approval must be submitted along with the work permit application for each foreign employee.³⁵

Transfers of Business. If organizational restructuring/technological changes or economic reasons adversely affect the jobs of many employees, the employer must formulate and implement a labor usage plan³⁶ that contains the following basic details:

- List and number of employees who will continue to be employed, and of employees to undergo retraining for further employment;
- List and number of employees who will retire;
- List and number of employees who will be transferred to work part-time, and of employees whose labor contract will be terminated; and
- Measures and financial funding for ensuring implementation of the plan.³⁷

The trade union must participate in the formulation of the labor usage plan.³⁸ If the employer is unable to resolve new jobs but must retrench employees, who have been regularly working for the employer at least 12 months, the employer must pay an allowance for loss of work equivalent to the aggregate amount of one month's wages for each year of employment, and no less than two months' wages.³⁹ The length of service excludes months of unemployment insurance contribution.⁴⁰ For the period of unemployment insurance contribution, the job-loss allowance shall be paid by the social insurance fund, not the employer.

In cases where an enterprise merges, consolidates, divides, or separates, the succeeding employer must continue to employ the current number of employees and amend and supplement their labor contracts.⁴¹ If the succeeding employer is unable to utilize all current employees, that employer must prepare a labor usage plan in accordance with the details set out above.⁴² On transfer of ownership or right to use assets of an enterprise, the former and new employers must prepare a labor usage plan with the foregoing particulars.⁴³

An employee whose labor contract is terminated under such circumstances is entitled to the same allowance for loss of work as outlined above.⁴⁴

34 Decree 102, art 4.

35 Decree 102, art 10(5).

36 Labor Code, art 44(1) and (2).

37 Labor Code, art 46(1).

38 Labor Code, art 46(2).

39 Labor Code, art 49(1).

40 Labor Code, art 49(2).

41 Labor Code, art 45(1).

42 Labor Code, art 45(1).

43 Labor Code, art 45(2).

44 Labor Code, art 45(3).

Terms and Conditions of Employment

In General

A labor contract must be written and made in two copies, with each party to retain one copy.⁴⁵ Contracts for temporary jobs lasting less than three months can be oral.⁴⁶ The Labor Code requires that a labor contract must include the following particulars:

- Name and address of the employer or the employer's legal representative;
- Full name, date of birth, gender, residential address, and number of ID card or other legal document of the employee;
- Job description and workplace;
- Term of the labor contract;
- Wage rate, method and time of payment of wages, allowances, and other additional payments;
- Regime for wage increases and promotion;
- Working hours and holidays;
- Personal protective equipment of the employee;
- Social insurance and health insurance; and
- Training and skill improvement.⁴⁷

In practice, statutory material terms are used for standard labor contracts for simple work only. Employers and employees are free to agree on any other terms in addition to the compulsory provisions, provided that these terms are not contrary to law, to the collective labor agreement (if any), or to social morals.⁴⁸ The Labor Code recognizes three types of labor contracts, namely:

- An indefinite-term labor contract;
- A fixed-term labor contract with duration of 12 to 36 months; and
- A labor contract for a specific or seasonal job of less than 12 months.⁴⁹

There is no obligation to provide probation periods when engaging new employees, but it is common practice to do so.⁵⁰ (It is not permitted, however, to require an employee who is working pursuant to a seasonal labor contract to undergo a probation period.⁵¹)

45 Labor Code, art 16(1).

46 Labor Code, art 16(2).

47 Labor Code, art 23(1).

48 Labor Code, art 17(2).

49 Labor Code, art 22(1).

50 Labor Code, art 26(1).

51 Labor Code, art 26(2).

A probation period may not exceed 60 days for work that requires high-level specialized or highly technical skills, or 30 days for intermediate-level specialized or technical expertise, or six days for other types of work.⁵² There may only be probation on one occasion for one job, and the wage of an employee who is on probation must be at least 85 per cent of the wage for the relevant position.⁵³ The employer and the employee may (but are not required to) enter into a specific probationary contract which must include the following details:

- Name and address of the employer or the employer's legal representative;
- Full name, date of birth, gender, residential address, and number of ID card or other legal document of the employee;
- Job description and workplace;
- Term/probation period;
- Wage rate, method and time of payment of wages, allowances, and other additional payments;
- Working hours and holidays; and
- Personal protective equipment of the employee.⁵⁴

Remuneration

The Labor Code stipulates that wages are the amount of money which the employer pays to the employee in order to undertake the work as agreed upon and paid in consideration of the rate of production and quality of the work completed.⁵⁵ Wages include wage rates for the work or position plus wage allowances and other additional items.⁵⁶ Employees may not earn an amount below the minimum salary level stipulated by the government.⁵⁷

The minimum rate is fixed on a monthly, daily, and/or hourly basis that varies with regions and industries.⁵⁸ Depending on the minimum living conditions of employees and family households, socio-economic conditions, and wage rates on the labor market, the Vietnamese government will announce minimum regional wage rates on the basis of recommendations from the National Wage Council.⁵⁹

The current (2014) minimum salary applicable to all employers ranges from VND 1,9-million to VND 2,7-million (approximately USD 90 to USD 130) per month depending on the geographical area.⁶⁰

52 Labor Code, art 27.

53 Labor Code, art 28.

54 Labor Code, art 26(1) and art 23(1).

55 Labor Code, art 90(1) and (2).

56 Labor Code, art 90(1).

57 Labor Code, art 90(1).

58 Labor Code, art 91(1).

59 Labor Code, art 91(2).

60 Decree Number 182/2013/ND-CP.

Overtime work must be remunerated at 150 per cent of the wage rate for overtime work during business working days, 200 per cent of the wage rate for overtime work performed during weekly days off (e.g., weekends), and 300 per cent of the wage rate for overtime work performed during holidays and paid leave days.⁶¹ Employees working at night will be paid an additional minimum 30 per cent of the wage rate.⁶² In addition to the remuneration for overtime work set out above, employees working overtime at night shall receive an additional 20 per cent of the wage rate for work conducted during the day.⁶³

Working Hours and Holidays

The maximum regular working hours are eight hours per day or 48 hours per week for employees working under normal working conditions.⁶⁴ Working hours may be on an hourly, daily, or weekly basis, depending on the employer's needs. If on a weekly basis, the maximum working hours may not exceed 10 hours in one day and 48 hours a week.⁶⁵ Daily working hours must not exceed six hours in one day for employees working in extremely heavy, dangerous, or toxic working conditions.⁶⁶

Overtime work is strictly regulated by the Labor Code and requires consent from the employees in advance.⁶⁷ The employer must also ensure that the amount of overtime does not exceed 50 per cent of the regular working hours per day, 30 hours per month, or 200 hours per year, except in special circumstances where 300 hours a year is permitted.⁶⁸ For employers stipulating the regular working hours on a weekly basis, the combined number of regular working hours and overtime hours may not exceed 12 hours a day.⁶⁹

Employees are also entitled to fully paid days off on public holidays, paid annual leave, personal leave, sick leave, and maternity leave. Sick leave and maternity leave for Vietnamese nationals are covered by the social insurance fund and are not paid by the employer.

There are currently 10 statutory public holidays in Vietnam.⁷⁰ Foreign employees are, in addition to the 10 Vietnamese statutory public holidays, entitled to one traditional public holiday and one national day of their country.⁷¹ If a public holiday falls on a weekly day off, the employee is entitled to take the

61 Labor Code, art 97(1).

62 Labor Code, art 97(2).

63 Labor Code, art 97(3).

64 Labor Code, art 104(1).

65 Labor Code, art 104(2).

66 Labor Code, art 104 (3).

67 Labor Code, art 106(2).

68 Labor Code, art 106(2).

69 Labor Code, art 106(2).

70 Labor Code, art 115(1).

71 Labor Code, art 115(2).

following day off also.⁷² The minimum number of annual leave days varies by industry, with 12 days off for standard industry; 14 days off for heavy, dangerous, and toxic work; and 16 days for extremely heavy and dangerous and toxic work.⁷³

A female employee (who works in normal working conditions) is entitled to take six months' maternity leave.⁷⁴ If she gives birth to more than one child at one time, she is entitled to take an additional one month's leave for every additional child calculated from the second child onwards.⁷⁵

Healthcare Coverage

There is no uniform mandatory healthcare coverage in Vietnam. Instead, there are some provisions that impose certain financial obligations on the employer in relation to the health of the employees.

The Labor Code requires that employers and employees must participate in compulsory social insurance and compulsory health insurance.⁷⁶ During the period when an employee on leave receives social insurance, the employer is not obliged to pay wages to such employee.⁷⁷

Employers must arrange health examinations for their employees annually.⁷⁸ Female employees, workers performing extremely heavy or toxic work, disabled employees, junior employees, and senior employees, however, shall be offered health examinations at least once every six months.⁷⁹

Vocational Training

The Labor Code requires employers to have annual plans for and devote budget to training and improving job and professional skills of employees.⁸⁰ In addition, employers are also obliged to provide a report regarding the results of training to the provincial administrative authority for labor.⁸¹

The employer and employee must sign a professional training contract if the employee is provided with training, job and professional skills improvement, or re-training in Vietnam or overseas with funding provided by the employer.⁸² A professional training contract must include the following details:

72 Labor Code, art 115(3).

73 Labor Code, art 111(1).

74 Labor Code, art 157(1).

75 Labor Code, art 157(1).

76 Labor Code, art 186(1).

77 Labor Code, art 186(2).

78 Labor Code, art 152(2).

79 Labor Code, art 152(2).

80 Labor Code, art 60(1).

81 Labor Code, art 60(2).

82 Labor Code, art 62(1).

- The profession in which training is provided;
- Training location and training period;
- Training fees;
- Period for which the employee undertakes to work for the employer after training;
- Responsibility to refund training fees; and
- Responsibilities of the employer.⁸³

Directors

In addition to the Labor Code, some high-ranking employees, such as general directors and members of the board, are also governed by the Investment Law⁸⁴ and the Enterprise Law⁸⁵, as well as the company charter (articles of association). The term for the above positions may not exceed five years, but it is renewable.⁸⁶ The company has the right to pay remuneration, salary, and bonus to members of the board, director, or general director and other managers in accordance with its business results and efficiency.⁸⁷

In addition to the job description (which may be stipulated in a labor contract), the functions, duties, obligations, rights, and authorities of these employees may be provided by the relevant law and the company charter and/or decisions assigned by general shareholding meetings, members' councils, and boards.⁸⁸

Discrimination

In General

Discrimination on the basis of gender, race, color, social class, beliefs, religion, HIV infection, or disability is strictly prohibited under the Labor Code.⁸⁹

Gender

The Labor Code requires the State to grant equal rights to women as those granted to men.⁹⁰ In addition, the State shall encourage creating favorable

83 Labor Code, art 62 (2).

84 Law Number 60/2005/QH11, adopted by the National Assembly of Vietnam on 29 November 2005.

85 Law Number 59/2005/QH11, adopted by the National Assembly of Vietnam on 29 November 2005.

86 Enterprise Law, arts 109 and 116.

87 Enterprise Law, art 58.

88 Enterprise Law, art 58.

89 Labor Code, art 8(1).

90 Labor Code, art 153(1).

conditions for women in regard to employment conditions.⁹¹ Employers are strictly prohibited from discriminatory behavior toward female employees or conduct that degrades female employees' dignity and honor. Employers must implement the principle of gender equality in regard to recruitment, utilization, training, working hours, rest breaks and holidays, and wage rates.⁹²

Age

There is no specific provision of the Labor Code addressing discrimination based on age. The Labor Code restricts the age of an employee to be at least 15 years of age.⁹³ Employees under 15, however, are permitted for certain types of jobs (please see "Junior Employees", above).⁹⁴ The retirement age is 60 years of age for men and 55 years of age for women.⁹⁵ However, an employer may reach an agreement with an employee who has reached his/her retirement age to extend his/her labor contract or enter into a new one (please see "Senior Employees" above).⁹⁶

Disability

Vietnamese law provides specific discrimination prohibitions in regard to disabled employees, as well as certain provisions suggesting preferential treatment for such employees. The government recognizes the right of disabled persons to employment and encourages business to employ disabled workers in accordance with the Law on Disabled Persons.⁹⁷ In addition, the government shall regulate the policy on providing low-interest loans from the Job Creation Fund to employers employing disabled employees.⁹⁸

The Labor Code prohibits allowing a disabled person whose ability to work has been reduced by 51 per cent or more to work overtime or at night.⁹⁹ In addition, an employer is prohibited from assigning disabled workers to heavy, toxic or dangerous work, or work requiring contact with toxic substances as stipulated by the MOLISA.¹⁰⁰

Race

The Labor Code holds that employees are entitled to work without being discriminated against on the basis of their gender, race, color, social class,

91 Labor Code, art 153.

92 Labor Code, art 154(1).

93 Labor Code, art 3(1).

94 Labor Code, art 164.

95 Labor Code, art 187(1).

96 Labor Code, art 167(1).

97 Labor Code, art 176(1).

98 Labor Code, art 176(2)

99 Labor Code, art 178(1).

100 Labor Code, art 178(2).

beliefs, religion, HIV infection, or disability.¹⁰¹ Other than this general provision, however, there is no specific provision providing additional details on discrimination based on race.

Religion

The Labor Code holds that employees are entitled to work without being discriminated against on the basis of their gender, race, color, social class, beliefs, religion, HIV infection, or disability.¹⁰² Other than this general provision, however, there is no specific provision providing additional details on discrimination based on religion.

Collective Bargaining and Worker Participation in Management

Employer and Employee Rights and Duties under Collective Bargaining

In Vietnam, the State encourages employers and employees to sign a collective labor agreement through a collective bargaining process, where such an agreement would provide employees with more favorable conditions than those stipulated in the labor law.¹⁰³ Under the Labor Code, collective bargaining means debate and negotiation between the labor collective representative and the employer with the following objectives:

- Formulating a harmonious, stable, and progressive labor relationship;
- Establishing new working conditions to provide a basis for signing a collective labor agreement; and
- Resolving problems and difficulties in the exercising of rights and implementation of obligations of each party to the labor relationship.¹⁰⁴

The collective labor agreement should include the following details:

- Wages, bonuses, allowances, and pay raises;
- Working hours and rest breaks, overtime, and rest breaks between shifts;
- Job security for employees;
- Ensuring occupational safety and hygiene;
- Implementation of internal labor rules; and
- Other matters in which the parties are interested.¹⁰⁵

101 Labor Code, art 8(1).

102 Labor Code, art 8(1).

103 Labor Code, art 73.

104 Labor Code, art 66.

105 Labor Code, art 70.

The representative of the labor group must be the grassroots trade union of the enterprise and the other party must be the employer or legal representative of the employer.¹⁰⁶ If a grassroots trade union has not (yet) been established within the employer's organization, the Local Union Federation (district-level trade union) is responsible for undertaking the responsibilities of the grassroots trade union.¹⁰⁷ When collective bargaining comes into effect, all employers and employees must be responsible for full implementation of the terms and conditions of the collective agreement.¹⁰⁸

If the rights that are stipulated in the signed labor contract of an employee are less favorable than those provided for in the collective labor agreement, the respective terms of the collective labor agreement take precedence.¹⁰⁹ The employer must amend the internal labor regulations/policies to comply with the collective agreements within 15 days after the effective date of the collective agreement.¹¹⁰ The parties have the right to request full compliance with the agreement. If any breach of the agreement occurs, each party has the right to request a resolution of the collective labor dispute in accordance with the procedure stipulated by law.¹¹¹ The employer bears all expenses of negotiation, signing, registration, change, and announcement of the collective labor agreement.¹¹²

Employer Obligations to Implement Worker Participation Schemes

The employer has the responsibility to facilitate employees to establish or join trade unions and to participate in their activities.¹¹³ The employers must also guarantee operational conditions for trade unions.¹¹⁴ In addition, the Labor Code strictly prohibits employers from hindering or causing difficulty for employees to establish or join a trade union.¹¹⁵

Health and Safety Protection in the Workplace

Under Vietnamese labor law, employers are required to carry out appropriate measures to ensure occupational safety and hygiene.¹¹⁶ The employers must rely on standards, national technical regulations, and local technical regulations in

106 Labor Code, art 69(1).

107 Labor Code, arts 188(3) and 191(3).

108 Labor Code, art 84(1).

109 Labor Code, art 84(2).

110 Labor Code, art 84(2).

111 Labor Code, art 84(3).

112 Labor Code, art 82.

113 Labor Code, art 192(1).

114 Labor Code, arts 192 (3) and 193.

115 Labor Code, art 190.

116 Labor Code, art 138.

order to formulate their own internal rules and working procedures to ensure occupational safety and hygiene as appropriate for each type of machinery, equipment, and workplace.¹¹⁷ Moreover, employers also have the obligation to inspect and evaluate dangerous and harmful factors in workplaces, and to periodically check and maintain machinery, equipment, workshops, and warehouses.¹¹⁸ Employees are also required to comply with these regulations and internal labor rules of employers and to promptly report to the employer the discovery of work-related accidents, occupational diseases, dangerous toxicity, or breakdown.¹¹⁹

Workers' Compensation

Under Vietnamese labor law, work-related accidents are defined as accidents which injure any body parts or functions of the body of an employee, or cause an employee's death during the process of working and closely related work performance or labor task.¹²⁰ An employee who is injured in a work-related accident must be immediately treated and fully attended to.

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 to the employee and cover expenses (that are not paid by insurance funds) for the treatment.¹²¹

Dispute Resolution

In General

There are strict regulations on resolution of disputes arising from labor agreements. The regulations differ depending on whether the dispute is individual or collective.

Procedures for Individual Employees

Individual labor disputes with an employee are handled by labor conciliators or the People's Court.¹²² Within five working days from the date of receipt of the request for conciliation, the labor conciliator must complete the conciliation.¹²³ The labor conciliator must put forward a settlement proposal for consideration by the two parties.¹²⁴

117 Labor Code, art 136(2).

118 Labor Code, art 138(1).

119 Labor Code, art 138(2).

120 Labor Code, art 142(1).

121 Labor Code, art 144.

122 Labor Code, art 200.

123 Labor Code, art 201(2).

124 Labor Code, art 201(3).

If the two parties agree to the settlement proposal, the labor conciliator must prepare the minutes of settlement. Both parties are obliged to comply with the agreements recorded in the minutes of settlement. If the two parties do not agree to the settlement proposal or if one of the disputing parties is not present for a second time without proper reason after being validly summonsed, the labor conciliator must prepare the minutes of unsuccessful conciliation.¹²⁵ In the event of an unsuccessful conciliation, or if one of the parties fails to implement the minutes of settlement, or if the labor conciliator has not resolved the matter on expiry of the time limit for resolution, each disputing party has the right to bring the dispute to court in Vietnam.¹²⁶ An individual labor dispute must pass through conciliation procedures prior to petition to a court, except for the following labor disputes:

- A dispute relating to the disciplinary measure of dismissal for breach of the law on labor, or a dispute arising from unilateral termination of a labor contract;
- A dispute relating to payment of compensation for loss and damage of payment of allowances upon termination of a labor contract;
- A dispute between a domestic servant and an employer;
- A dispute relating to social insurance or health insurance; and
- A dispute relating to payment of compensation for loss and damage pursuant to a contract between an employee and a labor export enterprise or professional labor export enterprise.¹²⁷

Procedures for Groups of Employees

In General

Collective labor disputes may involve either rights or benefits.¹²⁸ The procedure for settling collective labor disputes is the same as the procedure for settling the labor disputes with an individual employee.¹²⁹

Collective Labor Dispute Concerning Rights

The employees and the employer may select a labor conciliator, the Chairman of a district People's Committee, or the People's Court to settle a collective labor dispute concerning rights.¹³⁰

In the event of an unsuccessful conciliation or if either of the parties fails to implement the minutes of settlement, each party has the right to petition the

125 Labor Code, art 201(3).

126 Labor Code, art 201(4).

127 Labor Code, art 201(1).

128 Labor Code, art 203.

129 Labor Code, art 204 (1).

130 Labor Code, art 203(1).

Chairman of a district's People's Committee to resolve the collective labor dispute.¹³¹ The Chairman is responsible for resolving the collective labor disputes within five working days from the date of receipt of the request for resolution.¹³²

The authorized representatives of the parties must be present at a session resolving a collective labor dispute about rights. If necessary, the Chairman may invite representatives of other bodies and organizations concerned to attend the session for some cases. In resolving the dispute, the Chairman may rely on various regulations, such as the law on labor, the collective labor agreement, and internal labor rules in order to consider and deal with conduct in breach.¹³³ If the Chairman resolves the matter but the two parties remain in dispute or if the Chairman fails to resolve the matter on time, each party has the right to petition to the courts to resolve the matter.¹³⁴

Collective Labor Disputes Concerning Benefits

The employees and the employer may select a labor conciliator or the Labor Arbitration Council to settle a collective labor dispute concerning benefits.¹³⁵

In the event of an unsuccessful conciliation or if either of the parties fails to implement the minutes of settlement, each party has the right to petition the Labor Arbitration Council to resolve the dispute.¹³⁶ The Labor Arbitration Council is responsible for resolving collective labor disputes within seven working days of the date of receipt of the request for resolution.¹³⁷

The authorized representatives of the two disputing parties must be present at a session resolving a collective labor dispute about benefits. In necessary cases, the Labor Arbitration Council may invite representatives of other bodies and organizations concerned to attend the session. At the dispute resolution meeting, the Labor Arbitration Council of the company must put forward a settlement proposal for consideration by the two parties.

If the two parties agree to the settlement proposal, the Labor Arbitration Council must prepare the minutes of settlement. Both parties are obliged to comply with the agreements recorded in the minutes of settlement. If the parties disagree with the settlement proposal or if one of the disputing parties is not present for a second time without proper reason after being validly summonsed, the Labor Arbitration Council must prepare the minutes of unsuccessful conciliation.¹³⁸

131 Labor Code, art 204(2).

132 Labor Code, art 205(1).

133 Labor Code, art 205(2).

134 Labor Code, art 205(3).

135 Labor Code, art 203(2).

136 Labor Code, art 204(2).

137 Labor Code, art 206(1).

138 Labor Code, art 206(2).

When one of the parties fails to implement the minutes of settlement after five days from the date of the minutes of settlement or within three days after the establishment of the minutes of unsuccessful conciliation, both parties have the right to conduct procedures in order to initiate a strike.¹³⁹

Termination

Under Vietnamese law, unilateral termination by employers is strictly regulated. On the other hand, the parties are entirely free to agree on termination on any grounds they desire for mutually agreed termination.¹⁴⁰ When the parties agree to terminate employment, they are not required to give advance notice.

Aspects of Termination of Employment

A contract is deemed terminated:

- Upon the expiry of the contract term, except in case the labor contract of an employee who is a part-time trade union officer is still within the term of such office, such contract will be extended until expiry of the period of such office;
- If the task required under the contract is completed;
- When both parties agree to terminate the contract;
- When the employee has satisfied the conditions of period of employment for social insurance contribution and reaches the age of pension entitlement;
- When the employee is sentenced to a jail term or to the death penalty, or is prohibited from performing the job prescribed in the labor contract by a legally enforceable decision of a court;
- When the employee dies, or is declared by a court to have lost legal capacity for civil acts, to be missing, or to be dead;
- When the employer being an individual dies, or is declared by a court to have lost legal capacity for civil acts, to be missing, or to be dead; or the employer not being an individual terminates its operation;
- When the employee is disciplined in the form of dismissal;
- When the employee exercises his or her right to unilaterally terminate the labor contract in accordance with the Labor Code; and
- When the employer exercises its right to unilaterally terminate the labor contract in accordance with the Labor Code; or the employer retrenches the employee as a result of restructuring, change of technology, for economic reasons, or due to merger, consolidation, or separation of the enterprise or co-operative.¹⁴¹

139 Labor Code, art 206(3).

140 Labor Code, art 36(3).

141 Labor Code, art 36.

Under Vietnamese labor law, dismissal is the highest disciplinary measure, and it may be applied to employees when (i) they commit an act of theft, embezzlement, gambling, deliberate violence causing injury, using drugs at the workplace, disclosure of business or technology secrets or infringement of intellectual property rights of the employer, or are guilty of conduct causing or threatening to cause serious loss or damage to the property or interests of the employer; or (ii) the employee is disciplined by the form of deferral of a wage increase and then commits a second offense during the period when the initial disciplinary measure had not been absolved, or the employee was disciplined in the form of demotion and thereafter committed a second offense; or (iii) an employee of his or her own accord takes an aggregate of five days off in one month or an aggregate of 20 days off in one year without proper reasons.¹⁴²

A disciplinary hearing meeting must be held and the employee has the right to defend himself or herself or to employ a lawyer or another person to do so.¹⁴³

When an enterprise or a co-operative has its operation terminated, or is dissolved or declared bankrupt, there shall be priority payment of wages, allowance, social insurance and health insurance, unemployment insurance, and other interests of the employees.¹⁴⁴

Restrictions on Termination

The law provides restrictions on unilateral termination, which in practice makes it very difficult for the employer to terminate an employee. An employer may unilaterally terminate the contract only under the following conditions:

- The employee repeatedly fails to perform the work in accordance with the terms of the labor contract;
- The employer is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months in case of an indefinite term labor contract; or six consecutive months in case of a definite term labor contract; or more than half of the duration of the contract in case of a seasonal or specific job labor contract with a duration of less than 12 months;
- As a result of natural disaster, fire, or for any other reason of *force majeure* despite all necessary measures to remedy the problem implemented by the employer;
- The employee fails to attend the workplace for a period of 15 days.¹⁴⁵

142 Labor Code, art 126(1).

143 Labor Code, art 123(1).

144 Labor Code, art 47(4).

145 Labor Code, art 38(1).

Required Notice Periods

Employers must provide an advance notice to their employees within a minimum statutory time limit.¹⁴⁶ Employees who resign are required to give advance notice to their employers before a minimum statutory time limit. In both cases, the relevant time limits are 30 days in advance for fixed term labor contracts, 45 days for indefinite labor contracts, and three working days for seasonal or specific job labor contracts with a duration of less than 12 months.¹⁴⁷

Procedures for Termination

There must be proper legal grounds for an employer to terminate a labor contract with an employee. Employers are required to follow a number of statutory steps, such as sending an advance written notice regarding the employment termination to employees within the minimum statutory time limit.

If employers fail to prove the legal grounds for termination or fail to follow proper statutory procedures, a termination may be declared to be wrongful. If this is the case, employers may be required to reinstate the employees, pay their salaries, social insurance, and medical insurance for the period that they were not allowed to work, and pay two months of the employees' salaries as a penalty for wrongful termination.¹⁴⁸

Severance or Redundancy Payments

Vietnamese labor law requires employers to pay severance to terminated employees who had been regularly working for the employer for 12 months or more.¹⁴⁹ The severance allowance shall be one half of one month's wage for each year of employment.¹⁵⁰

If contributions to the unemployment insurance fund were made for the benefit of the employee, employers are not required to pay severance for the duration of time that the employees paid their unemployment insurance premium.¹⁵¹ Any income earned by an employee in the form of a salary, wage, allowance, and bonus is subject to personal income tax (PIT). Severance payments, at the minimum statutory level, are not subject to PIT, whereas any extra payments are subject to PIT.

Employers are required to withhold and pay PIT to taxation authorities. Employers are not required to contribute to any allowances after termination,

146 Labor Code, arts 37(2) and 38(2).

147 Labor Code, art 38(3).

148 Labor Code, art 42(1).

149 Labor Code, art 48(1).

150 Labor Code, art 48(1).

151 Labor Code, art 48(2).

unless otherwise agreed by the parties in the labor contract and so long as all required severance payments are paid in full.

Time Limit for Claims Following Termination

The limitation period for requesting a labor conciliator to resolve an individual labor dispute is six months, and one year for requesting a court to resolve an individual labor dispute from the date of the conduct that any party claims breached its rights or benefits.¹⁵²

Employer Duties, Liabilities, and Worker Benefits under National Unemployment Insurance Programs

In Vietnam, unemployment insurance is governed by the Law on Social Insurance¹⁵³ and relevant regulations on unemployment insurance. The unemployment insurance regime provides unemployment compensation and introduces new jobs to employees after they have lost a job or their labor contract has been terminated and they have not been able to find a job.¹⁵⁴ Employees working for enterprises employing 10 or more Vietnamese persons and under labor contracts with indefinite terms or terms of 12 to 36 months must participate in unemployment insurance.¹⁵⁵

Employers and employees must each contribute one per cent of the employee's monthly salary (capped at a stipulated level) to the Social Insurance Fund, subject to a statutory maximum, with the State contributing 1 per cent of the total salary funds calculated for payment of unemployment insurance.¹⁵⁶

Eligible employees will receive a monthly unemployment compensation equivalent to 60 per cent of their average salary during their last six months of employment.¹⁵⁷ The period for which unemployment compensation is received (ranging from 3 months to 12 months) depends on how long the employee has paid the unemployment insurance.¹⁵⁸

Mandatory Job-Retraining Programs and/or Placement Programs

In cases of reorganization or changes in technology, employers are required to retrain employees. When there is a merger, consolidation, division, or separation, succeeding employers must be responsible for continuous

152 Labor Code, art 202.

153 Law Number 71/2006/QH11, adopted by the National Assembly of Vietnam on 29 June 2006.

154 Law on Social Insurance, art 3(4).

155 Law on Social Insurance, art 2(3) and (4).

156 Law on Social Insurance, art 102.

157 Law on Social Insurance, art 82.

158 Law on Social Insurance, art 82.

performance of the labor contracts.¹⁵⁹ On transfer of ownership or right to use assets of an enterprise, the previous and new employers must jointly prepare a labor usage plan with the details set out under “Transfers of Business”, above.¹⁶⁰

In cases of reorganization or changes in technology or when all available employees are unable to be employed, there must be a plan for labor usage.¹⁶¹ If a labor contract is terminated under these circumstances, an employee who is let go but who has worked for the former employer for 12 months or longer must be entitled to receive a job-loss allowance equal to one month’s salary for each working year but no less than two months’ salary (please see “Transfers of Business”, above).¹⁶²

Retirement

There is no scheme for pension plans under Vietnamese labor law. However, both employers and employees are required to contribute to the compulsory social insurance fund that shall pay pensions to employees when they retire.¹⁶³

Employer and Employee Contributions

Employers and employees are required to make social insurance, medical insurance, and unemployment insurance contributions to the social insurance fund. The fund shall pay allowances to employees for sick leave, maternity leave, work-related accidents, occupational disease, and pensions.¹⁶⁴ Currently, an employer must contribute 18 per cent and the employee must contribute 8 per cent of his or her base salary (which is currently capped at VND 23-million — approximately USD 1,100) to the social insurance fund, and 3 per cent and 1.5 per cent to the health insurance fund, respectively. For unemployment insurance, employers and employees must contribute 1 per cent each, with the State providing another 1 per cent.¹⁶⁵

Conclusion

Vietnamese labor laws are very protective of employees. Employers are required to have legal grounds for termination of labor contracts or have evidence of violations by employees for labor disciplinary measures. Without carefully

159 Labor Code, art 45(1).

160 Labor Code, art 45(2).

161 Labor Code, art 44(1).

162 Labor Code, art 49(1).

163 Labor Code, art 187.

164 Labor Code, art 186.

165 Law on Social Insurance, art 102.

worded and registered internal labor rules, dismissal of an employee is practically impossible.

In practice, in order to avoid further claims regarding unfair termination, employers normally pay out their employees by offering a severance payment level that is higher than the minimum level required by law and the employer should consider employing workers on a fixed-term contract basis. This option does not provide security or enhance the position of the employees in the long run.