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## Vietnam's Labor Code to See Significant Changes

Vietnam's 2012 Labor Code, in effect since May 1, 2013, is being reviewed and revised by the Ministry of Labor, Invalids and Social Affairs (MOLISA), the body in charge of labor issues in Vietnam. The draft revised Labor Code (Draft) was originally expected to be placed on the agenda for approval by the National Assembly during its April-May 2017 meeting session. However, this has been postponed so that further studies can be conducted before finalization.

Based on the latest draft version dated November 22, 2016, posted for public review on MOLISA's website, the Draft includes a number of significant proposed changes to the Labor Code, as set out below.

**Labor contract entry.** The current Labor Code does not specifically state who is authorized to enter into a labor contract. This requirement is now codified in the Draft, which clarifies that the employee must himself/herself enter into the labor contract (except for employees who are minors), with the employer's legal representative as the counterparty. The legal representative may authorize another person to enter into the contract on his/her behalf. However, the Draft does not address who would be authorized to sign the legal representative's own labor contract.

**Automatic conversion of short-term labor contracts.** The current Labor Code provides for the automatic conversion of a definite-term contract or a seasonal contract into an indefinite-term contract or a 24-month definite-term contract, respectively, if the employee continues to work for the employer after the contract expires but the parties fail to sign a new contract within 30 days of the expiry. The Draft provides that if a definite-term contract or seasonal contract expires and the employee continues working, the contract will be automatically renewed with the same term as the original. If this situation happens a second consecutive time, the contract will automatically convert into an indefinite-term contract.

**Unilateral termination.** Under the current Labor Code, an employee may terminate an indefinite-term labor contract without cause, subject to 45 days' notice. For other types of contracts, termination without cause is not possible. The Draft revises this provision to allow an employee to terminate any type of labor contract without cause, subject to prior notice of 5 working days, 30 days, or 45 days, depending on the type of contract.

For the employer, termination without cause is still not permissible. However, the Draft adds a new circumstance for unilateral termination, which allows the employer to unilaterally terminate an employee upon discovery that the employee has provided false personal information.

**Transfer of employees.** The Draft provides that in the case of merger, acquisition, consolidation, split, or transfer

of ownership or the right to use property of businesses, the current employer is responsible for formulating a post-transaction labor usage plan and notifying the employees at least 15 days in advance of the date it begins to formulate the labor usage plan. Under the current Labor Code, no notice period is required.

**Salary and payment.** Salary is redefined to comprise "base salary, bonus, and allowances," as opposed to the more ambiguous "salary, allowances, and other additional amounts" under the current Labor Code.

Pursuant to the current social insurance laws, the salary used to calculate the employee's social insurance contributions includes the employee's salary and allowances. From January 1, 2018, additional amounts will be included in the salary for the purpose of the social insurance contribution. With the new definition of salary, it is still unclear which amounts will be included.

The Draft requires employers to present the following information to employees each time salary payments are made: the method of salary payment; base salary, bonus, and allowances; overtime compensation; and deductible amounts for social, health, and unemployment insurance contributions. If this provision is passed in its current form, it would result in a significant increase in paperwork for most employers.

**Overtime hours.** Under the current Labor Code, the amount of overtime may not exceed 50 percent of regular working hours a day, 30 hours in a month, or 200 hours in a year, except for special cases in which 300 hours a year are permissible. The Draft raises the maximum overtime working hours to 600 hours per year.

**Protection of female employees.** Under the current Labor Code, female employees who perform heavy work must be transferred to lighter work during pregnancy from the seventh month, or have their shift reduced by one working hour every day, while still enjoying full payment of salary. This requirement is replaced by a provision of the Draft, according to which the employer of a female employee who is pregnant or raising a child under 12 months of age must readjust the employee's job or transfer her to another job if the existing job endangers her health. A female employee who is pregnant has the right to suspend her contract if a medical establishment certifies that continuing to work would adversely affect her pregnancy.

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**Retirement age.** The Draft includes an increase in the retirement age, with the age for women moving from 55 years to 60 years, and for men from 60 years to 62 years.

While the Draft clarifies some uncertainties of the current provisions, it appears that most of its changes will be in favor of employees. Given the complexity of the labor laws of Vietnam, specific advice should be sought to ensure compliance. 🏠