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How Will Vietnam's New Labor Code Affect Employers?

In November 2019, the National Assembly of Vietnam issued a new version of the Labor Code, which serves as the principal legislation on employment and labor relationships in Vietnam, covering domestic and foreign employers and employees. The changes found in the new law are more incremental than sweeping, and generally serve to close loopholes and clarify vague provisions in the existing Labor Code of 2012.

While the new Labor Code will not take effect until January 1, 2021, employers operating in Vietnam should note the key changes now to facilitate timely implementation.

Extension of Protected Subjects

The new Labor Code clearly states that its legal protection extends not only to employees working under labor contracts, but also to *de facto* employees working for an employer under mutual agreement but without a labor contract. It also provides that, regardless of its name, a contract containing information on one party's paid work and salary, and the other party's management, administration, and supervision, will be considered a labor contract, and the parties will be subject to the Labor Code.

These changes aim to prevent employers from entering into non-labor contracts with their workers to circumvent employment-related requirements such as contributions to statutory insurance and limitations on working hours.

More Flexibility in Labor Contracts

In a nod to modern workplace realities, the new Labor Code recognizes labor contracts signed electronically, as long as they comply with the laws on electronic transactions. Oral contracts with terms of less than one month are also permitted, but written contracts are still required for groups of workers, minors under 15 years of age, and domestic workers.

Seasonal or job-specific labor contracts with terms of less than 12 months are no longer mentioned in the Labor Code, leaving only two types of labor contracts—those with indefinite terms, and those with definite (fixed) terms of no more than 36 months. (Seasonal or job-specific contracts are simply considered definite-term contracts of short duration.)

One significant development concerning foreign employees, elderly employees, and officers of employee representative organizations (such as trade unions) is that their definite-term contracts can be renewed multiple times. Other types of employees will be subject to the same rules as the current Labor Code, which limits employees to two consecutive definite-term contracts, after which the third contract must be an indefinite-term contract. Annexes amending the term of a labor contract are not allowed.

The new Labor Code gives both employees and employers the right to unilaterally terminate a labor contract when

the other party is found to have provided incorrect information at the time the contract was signed, providing additional protection for both parties.

New National Holiday

Employees will have one additional holiday each year, which will be a day adjacent to (before or after) the existing National Day holiday on September 2. The new holiday will be the 11th public holiday on the Vietnamese calendar.

Increase in Retirement Age

The retirement age for employees in normal working conditions (currently 55 for women and 60 for men) will increase to 60 for women and 62 for men. This change will be phased in gradually, with the retirement age increasing by four months each year for women and three months each year for men until the new limits are reached—by 2035 for women and by 2028 for men. In certain cases, depending on the harshness of the working conditions or the skill of the worker, the retirement age can be up to five years earlier or later.

Interestingly, an employee's attainment of the retirement age has been added as a valid reason for unilateral termination of the employment contract for both the employee and the employer. Previously, it was unclear whether the legal retirement age was viewed as a minimum age for retiring with full benefits or as a maximum age for retaining a worker on an "indefinite" contract—as it turns out, it is both.

Protection from Discrimination and Harassment

The new Labor Code clarifies sexual harassment, which is prohibited but not clearly defined by the current Labor Code. The new Labor Code's official definition is "any act of a sexual nature of one person against another person in the workplace against the latter's will," with "workplace" further defined as any place an employee is actually working for, under agreement with, or as assigned by the employer. Sexual harassment has also been added to the list of offenses subject to the penalty of dismissal.

Prohibited forms of labor discrimination are also defined in more detail in the new Labor Code. Specifically, employees will be protected from discrimination or exclusion, in a manner that affects equal employment opportunity, on the basis of race, skin color, national or social origin, ethnicity, gender, age, pregnancy, marital status, religion, beliefs, political views, disability, family responsibilities, HIV infection, or participation in a trade union or internal employee organization.

In a move toward gender equality, female employees are no longer prohibited from doing certain jobs, such as underground mining work, under the new Labor Code, which also provides better protection against forced labor and debt bondage as well as clearer rules on the employment of minors.

Independent Employee Representative Organization

The new Labor Code gives employees the right to join or form a representative organization of their choosing, independent of the trade union, in order to promote and improve the effectiveness of representation, protect their rights and interests in labor relations in accordance with the ILO Conventions and other international commitments, and facilitate international integration.

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Dialogue and Collective Bargaining

To foster good labor relations, the new Labor Code encourages dialogue and collective bargaining between the employer and the employees and their representative organizations. A dialogue at the workplace must be held at least once a year, whenever requested by the employer or the employees, and in other specified cases (for example, in the event of restructuring, or when making the salary scale).

The new Labor Code also expands the range of issues subject to collective bargaining to include, among others, conditions and operations of employee representative organizations, mechanisms and methods of preventing and settling labor disputes, assurance of gender equality, and prevention of workplace violence and sexual harassment.

Pro-Employer Changes

While the majority of changes in the new Labor Code may seem to favor employees, employers will benefit from

being given more rights to self-determination, without state intervention, in setting their own wage scales and salary structures. The dispute settlement process will also become more flexible, emphasizing conciliation procedures while moving away from state intervention and administrative settlement of labor disputes.

Finally, when work must be suspended due to reasons of *force majeure*, the employer will only be required to pay its employees at the statutory minimum wage for the first 14 working days of the suspension, instead of the entire duration as currently required. After 14 days, salary can be paid at a lower amount, subject to negotiation between the two parties.

Outlook

As the new Labor Code will not take effect until 2021, employers in Vietnam still have nearly a year to review and adjust their labor contract templates, internal labor regulations, and HR policies for compliance with the new law. A proactive approach and clear communication with employees now can help prevent confusion and difficulties later. 🇻🇳