

Empty Streets, Factories and Offices: How Businesses Can Survive Vietnam's Prolonged Lockdown

By Sarah Galeski

August 23, 2021 – The streets are empty, and the quiet blowing of the wind is undisturbed even by the sound of a footstep. Despite having a population estimated at 13 million people, not a human voice or the rumble of a car motor can be heard in Ho Chi Minh City. The bustling metropolis has been transformed into a quiet country town. While this silence is in many ways beautiful, it is also heart-rending. It signifies the cessation of business and trade which has resulted in the closure of once thriving businesses that supported the local economy.

The city has been largely locked down since mid-June 2021, in an effort to fight the challenging fourth wave of the Covid-19 pandemic. As the lockdown continues into its third month, with no sign of ending, many businesses are forced to cut costs to ensure their survival.

In this article, we explore the various options available to employers to cut labor costs, as well as government relief measures to support both workers and employers.

1. Temporary Measures

Many businesses remain hopeful that the lockdown will soon end and their normal operations will resume in a matter of weeks or months. Thus, they may wish to take temporary measures to cut their labor costs while retaining their staff members. However, even those businesses which intend to permanently reduce their workforce are recommended to first implement temporary measures, as this strengthens the legal basis if they must ultimately terminate some of their employees, explained in further detail below.

(a) Unilateral Measures

Vietnam is an extremely pro-employee jurisdiction, thus there are few actions that employers can undertake to reduce employee salaries, benefits, or working time without employee consent. The only temporary measures an employer may take without employee consent are: (i) temporarily reassigning employees to other positions; (ii) suspending employees on the basis of *force majeure*; or (iii) forcing employees to take their annual leave.

(i) Reassigning employees to different job positions

Employers who are impacted in a more minor manner may consider temporarily reassigning employees to other job positions. This option may be useful if the employee's regular job requires a physical presence or is otherwise impeded by the prolonged lockdown. The business may be able to find another way for the employee to contribute productively, or at least reduce the employee's salary on a temporary basis.

An employer may reassign an employee to another job position due to the occurrence of a *force majeure* event, which includes epidemics, or due to business demands, provided business demands are defined in the employer's registered internal labor regulations. According to Official Letter No. 1064/LDTBXH-QHLDTL issued by the Ministry of Labor, Invalids and Social Affairs (MOLISA) on March 25, 2020, to guide salary and other payments during work stoppages due to the Covid-19 pandemic, if an employer wishes to rely upon the epidemic as a reason to reassign the employee, the employer must have been ordered to temporarily suspend their business operations under a decision from a competent State authority, causing difficulties for the employer such as problems sourcing raw materials and selling products. On the other hand, if the employer has not been subject to an explicit order to suspend operations, but has instead been indirectly affected, it must instead rely upon the reason of "business demands" to transfer employees.

Employees must be provided with three working days' notice and may be temporarily reassigned for up to 60 working days in one year. For the first 30 days, employees must receive their same salary and after this time, employees' salaries may be reduced by 15%. At the end of the 60 working days, if the employee refuses to continue the reassignment but the employer cannot return the employee to his or her regular position, the employer may then suspend the employee's employment, described in further detail below.

(ii) Suspension of employment

Suspending the employment of the employees is a much more drastic measure, but may be necessary in order to comply with government orders. The MOLISA has recently released an official letter clarifying the circumstances when an employer may suspend the work of the employees, and at the same time, cut the pay of its employees.

In Official Dispatch No. 264/QHLDTL-TL dated July 15, 2021, the MOLISA clarifies the circumstances that would constitute a suspension due to an epidemic, listed as a reason where any employer may unilaterally suspend its engagement with employees under Article 99.3 of the Labor Code. An employer may suspend employment due to the epidemic in cases where: (i) employees are subject to medical isolation; (ii) the workplace or residence of the employees is blocked as required by the competent authorities; (iii) the competent authorities have requested the company or specific departments to suspend operations; (iv) the company or department cannot operate because other employees or the employer are under medical isolation, so cannot come to work.

For a work suspension in these cases, wages may be paid as follows: (i) if the suspension is 14 days or less, the negotiated wage must be at least the regional minimum wage; or (ii) if the suspension is longer than 14 working days, the wage will be negotiated between the parties, but for the first 14 days it must be at least the regional minimum wage.

While the law specifies that a negotiated wage must be paid, it is not clear if some amount must be paid, or whether the negotiated amount can be nothing.

(iii) Forcing employees to take annual leave

If the suspension of work is anticipated to be very temporary, forcing employees to take their annual leave is the most preferable option. Under the Labor Code, an employer may decide the annual leave schedule after consulting with the employees and notifying them of the same. Thus, employers should first hold a meeting with the employees and explain the situation to them and gather their opinions, but after this meeting, the employer is entitled to unilaterally make a decision on the annual leave schedule.

The employer is also required to provide notice; thus this option cannot be implemented immediately. While the amount of notice required to be provided to employees is not specified in the law, we recommend providing at least one week's notice of the annual leave schedule.

Implementing this option would not save a business any money, as employees must be paid throughout their annual leave, but it could ensure that once operations resume normally, employees can fully devote themselves to increasing productivity and contributing to the business.

(b) Measures with Consent

Other measures are also available to employers provided that employee consent is obtained. Employees may agree to take unpaid leave, agree with the employer on suspension of their contracts without any pay; or otherwise reduce their working hours, salary and benefits.

In this case, we would recommend holding meetings with employees to explain the financial problems faced by the company, and note that if costs cannot be temporarily reduced, employees would have to be laid off. After this meeting, the employer should send the employees a clear written statement of its proposed changes to their labor contracts at least three working days in advance of signing the amended contracts. If the employees agree to the changes, the parties will sign an annex amending the existing labor contract or an entirely new labor contract. Please note, however, that if the parties agree to change the duration of the labor contract, an entirely new labor contract must be signed rather than an annex.

(c) Financial Support for Suspended Employees or Those on Unpaid Leave

If an employer lacks funds to pay employees through the suspension period, both employees and the employer may have access to government relief measures to provide some financial support to employees. On July 1, 2021, the government issued Resolution No. 68/NQCP on certain policies to support employees and employers in difficulty due to the Covid-19 pandemic which apply from May 1 until December 31, 2021.

Resolution No. 68 sets out a number of one-off payments available to employees whose work has been suspended due to the pandemic. It states that employees whose employment is suspended, or who are placed on unpaid leave, from May 1 to December 31, 2021, will be provided a lump sum of VND 1,855,000 (USD 81) per person if the contract suspension is for 15 days to one month, and VND 3,710,000 (USD 163) per person if the suspension period is for more than one month. Pregnant employees are entitled to further one-off payment of VND 1,000,000 (USD 44), and employees raising children under 6 years old are entitled to an additional VND 1,000,000 per child (however, only one parent is eligible). Employees whose employment has been suspended specifically because they live in a locked-down area or have been quarantined are entitled to another lump-sum payment of VND 1,000,000 per person if their work has been suspended for 14 days or more between May 1 and December 31, 2021. Employees are only eligible for these payments if they have contributed to social insurance up until the suspension.

Employers may also apply for an interest-free and security-free loan from the Bank for Social Policies which can be used to pay employees' salaries during a suspension period, provided the employees have been participating in social insurance up until the suspension period. In order to qualify, the employees must have been placed on suspension for at least 15 consecutive days due to epidemic at some point from May 1, 2021, until March 31, 2022. Employers must have no bad debts to be eligible. The loan is for the maximum amount of three months' wages at the

regional minimum wage for the workers, based on the actual suspension period, and the loan term is for less than 12 months. Loans may be obtained by businesses in the fields of transportation, aviation, tourism, accommodation services, or sending Vietnamese workers to work abroad under a contract on these same terms to pay wages once a business recommences operations after a suspension period.

2. Permanent Measures

(a) *Force Majeure Terminations*

Sadly, many businesses will need to terminate or lay off employees due to the impact of Covid-19. The Labor Code permits employers to unilaterally terminate employees in the event of a major epidemic where the employer has already exhausted all other possibilities. Until the Covid-19 pandemic, this ground for termination had been largely untested so the meaning of “*already exhausted all other possibilities*” is not clear. However, it appears that employers are required to have first attempted other measures to cut labor costs, such as those mentioned above (i.e., temporarily suspending operations, requesting employees to take unpaid leave, etc.), and should be prepared to provide evidence in the form of financial records or other documentation to demonstrate that the business would be unable to successfully continue without terminating the employees.

Employers must provide three working days’ notice of termination to employees with fixed-term contracts for a term of under one year, 30 days’ notice to employees with fixed-term contracts for a term of one year or more, and 45 days’ notice to those with indefinite-term contracts. A statutory severance allowance is also due for periods during which the parties did not participate in unemployment insurance. The statutory severance allowance is equal to half a month’s salary per year of service.

(b) *Redundancy Terminations*

If employers feel uncertain about their ability to demonstrate that they have “*exhausted all other possibilities*,” they may wish to terminate employees under the legal ground of redundancy rather than relying upon the ground of *force majeure*. Employers may terminate employees under the grounds of redundancy where they experience, among other things:

- (i) A change in structure or technology, including changes to the organizational structure or rearrangement of personnel; changes in processes, technology, or equipment; or changes in products or product structure; or
- (ii) Changes due to economic reasons which include an economic crisis or depression or changes in law and state policies upon the restructuring of the economy or the implementation of international commitments.

Employers intending to rely upon these legal grounds for termination must provide supporting documentation to show the basis for the redundancy is lawful, such as decisions of the company’s investor and general director to organizationally restructure. Employers must also create a labor utilization plan, explaining their efforts to retrain employees, their funds to settle commitments to employees and the list of employees who will be transferred to other jobs or terminated.

The employer must then consult with the corporate-level trade union on the labor usage plan, or if one does not exist, the immediate upper-level trade union (the district-level or industrial-zone-level trade union). While the Labor Code only requires union consultation if a corporate-level trade union exists, in practice, the local Departments of Labor, Invalids and Social Affairs

expect employers to continue to consult with the immediate upper-level trade union if there is no corporate-level trade union.

After formulating the labor usage plan, the employer must submit the same with an official notice of the redundancy to the labor authority and the employees at least 30 days prior to the termination date.

Employers are required to pay the employees job-loss allowance for any working periods not subject to unemployment insurance in the case of redundancy. Statutory job-loss allowance is equal to one month's salary per year of service, but at least two months' salary.

(c) Financial Support for Terminated Employees

Where an enterprise must cease its operations due to an order from the authorities arising from the Covid-19 pandemic, its employees may be eligible for relief from the government. If individuals have had their employment terminated during the period from May 1 until December 31, 2021, and have contributed social insurance up until their termination date but are not eligible for unemployment insurance, they may receive a lump-sum payment of VND 3,710,000 (USD 163).

3. Other Financial Support

The government realizes the severe impact lockdown restrictions are having on businesses, so in addition to the financial relief measures mentioned above, the government has suspended employers' and employees' contributions to some forms of statutory insurance. Normally, employers contribute 0.5% of their payroll capped at 20 times the basic minimum wage (which is currently VND 32,000,000 (USD 1,400)) to an occupational disease and accident fund. This contribution has been reduced to 0% from July 1, 2021, to June 30, 2022, and employers are expected to use the saved funds to undertake measures within their businesses to prevent the spread of Covid-19.

Employers who have been hard-hit by the pandemic may have their contributions to the retirement and survivorship fund suspended for up to six months. If a business has had to terminate, suspend or place on unpaid leave at least 15% of its employees (thereby canceling the social insurance participation of at least 15% of its workforce) compared to April 2021, but up until that date, all contributions had been fully paid, the employers and employees may suspend contributions for up to six months. This could amount to a significant sum, as employers must contribute 14% and employees must contribute 8% of salary capped at 20 times the basic minimum wage (currently VND 32,000,000 (USD 1,400)) to the retirement and survivorship fund.

Some businesses may be able to use this crisis as an opportunity to transform their operations. For businesses meeting certain conditions, the government will provide financial support for vocational programs to retrain their employees. If a business has changed its technological structure or the business's revenue has decreased by 10% in the preceding quarter compared to its revenue over the same period in 2019 or 2020, and the business has a plan to retrain employees, it may be able to secure financial support. The government will pay businesses VND 1,500,000 (USD 66) per employee per month for a maximum period of up to six months for retraining expenses. Businesses may apply for this funding from July 1, 2021, until 30 June 30, 2022.

4. Conclusion

To weather this crisis, we recommend that employers take an open and collaborative approach with their employees. Employers should explain their financial difficulties to their employees, and their plan to take temporary measures to preserve operations, requesting the employees' consent to take unpaid leave or a reduction in salary or benefits.

If employees must be terminated during this difficult period, employers could ask them to agree to mutual termination in exchange for a small additional payment. During these discussions, employers can point out the financial support available from the government, and offer to help employees apply for this financial relief, while at the same time taking advantage of these opportunities to preserve the business's remaining funds. Both businesses and employees can apply for financial relief through the National Portal on Public Services of the Government (NPPS), which can be accessed through this [link](#) (Vietnamese only).