



Special Alert

December 2019

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Highlights of the Labor Code 2019

On 20 November 2019, the National Assembly of Vietnam issued a new Labor Code with the purpose of promoting the Vietnamese labor market and solving essential problems from practical implementation of the Labor Code 2012. It is intended to create a more flexible legal framework on employment and harmonize the legitimate rights and interests of employees and employers under the overall socio-economic development of Vietnam.

Below are some highlights of the notable amendments and supplements of the new Labor Code:

Labor Contract

The Labor Code 2019 redefines the labor contract as an agreement entered into between the employee and employer, regardless of the form of the contract, which mentions the scope of work, salary, work conditions and the rights and obligations of each party to the employment relationship. The Labor Code 2019 clearly provides that parties are not allowed to sign annexes to amend the term of a labor contract.

Type of Labor Contract

The Labor Code 2019 eliminates the seasonal or specific job labor contract with a duration of less than 12 months. This leaves two types of labor contract including indefinite-term labor contract and definite-term labor contract with a maximum term not exceeding 36 months. There is no minimum threshold for labor contracts.

The Labor Code 2019 allows employers and employees to enter consecutive definite-term labor contracts if the employee is:

- An older employee; or

- A foreign employee; or
- A director of a state-invested enterprise; or
- A member of an administrative board of the representative organization of the grassroots-level employees' collective.

Probation Period

The probationary period is raised, up to 180 days for managers of an enterprise pursuant to the Law on Enterprises, rather than the 60 days under the Labor Code 2012.

Termination of Labor Contract

Under Labor Code 2019, an employee may unilaterally terminate the labor contract at any time without reason but must give advance notice as prescribed per case. The Labor Code 2019 also provides that an employee may unilaterally terminate the labor contract at any time without giving prior notice in the following circumstances:

- (i) He/she is not assigned to the correct job or workplace or is not ensured the working conditions agreed in the labor contract;
- (ii) He/she is not paid the wages due in full or on time as agreed in the labor contract;
- (iii) He/she is maltreated, sexually harassed, or is subject to labor coercion;
- (iv) A female employee is pregnant and must cease working on the advice of a competent medical consultant or facility; and
- (v) The employer provides dishonest information on the work to be performed, the work place, the work conditions, working hours, rest breaks, occupational safety and hygiene, rates of wages and method of payment of wages, social and medical and unemployment insurance and provisions on confidentiality of business secrets and other matters directly relevant to entering into a labor contract.

Public Holidays

The Labor Code 2019 increases the number of public holidays to 11 days because Independence Day will become a two-day holiday from 2021.

Overtime Hours

Maximum overtime hours are up to 300 hours per year in the following:

- Producing and processing products for export of textile, garment, leather, shoes, electrical and electronic components, processing of agricultural, forestry and aquatic products;
- Production, supply of electricity, telecommunications, oil refining; water supply and drainage;
- In case of handling jobs requiring highly qualified technical workers and the labor schools do not fully and promptly supply them;

- Cases that must be resolved urgently, cannot be delayed, due to the seasonality and timing of raw materials and products or to solve jobs arising due to unforeseen objective factors, weather, natural disasters, enemy sabotage, fire; lack of electricity; lack of raw materials; technical problems of production lines; and
- Other cases prescribed by Government.

Retirement Age

The Labor Code 2019 increases the retirement age for male workers from 60 to 62 years and for female workers from 55 to 60 years old. From 1 January 2021, this change of retirement age will be phased in gradually, with the retirement age increasing by 3 months each year for male workers and 4 months each year for female workers until the new limits are reached.

Work Permit

The Labor Code 2019 amends the conditions for work permit exemption. Foreigners who are the owner or a member contributing capital of a limited liability company or chairman or member of the board of management of a joint stock company remain exempt from the work permit requirement, however, they must make a minimum capital contribution in the company.

The foreigner who marries a Vietnamese is an additional case of work permit exemption.

The work permit can be renewed only one time for an additional 2 years of employment.

Sexual Harassment

The Labor Code 2019 clearly defines sexual harassment in the workplace. It is any behavior of a sexual nature by any person to another person in the workplace which is considered as unwanted and unacceptable by the recipient. A workplace is any place where an employee works pursuant to the agreement with or assignment by the employer. The Labor Code 2019 also provides that an employee may unilaterally terminate the labor contract immediately without giving prior notice if she/he is being sexually harassed.

The prevention of sexual harassment in the workplace is a compulsory content in internal labor rules of a company.

The Labor Code 2019 will take effect from 1 January 2021.

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