



Special Alert

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New Law on Vietnamese Guest Workers

Background

On 13 November 2020, the National Assembly issued Law No. 69/2020/QH14, regulating Vietnamese Guest Workers, which will come into effect on 1 January 2022 (the “**2022 Law**”). The 2022 Law will replace Law No. 72/2006/QH11 (the “**2006 Law**”). The law comes in light of arising issues such as Vietnamese workers working abroad in the context of the impact of the 4th Industrial Revolution and managing migration, international labor mobility, overseas employment development and protection of citizens' right to work. This Article will discuss the changes and impacts on Vietnam's labor framework from the 2022 Law.

The need to amend the 2006 Law

The main reasons for enacting the 2022 Law are the appearances of many new forms of labor cooperation and movement patterns (for example, the form of citizens legally leaving for non-labor purposes, then staying and finding jobs to legally reside and work, e.g. Macao, Australia, New Zealand, and the formation of agreements on sending and receiving labor between localities of Vietnam and localities of receiving countries like Korea, Japan, etc.).

In addition, the conditions for the issuance of service licenses for bringing workers abroad are not strict (the 2006 Law requires only that enterprises have plans on cadres and facilities after being granted a license), financial conditions for charter capital are relatively easy (the legal capital is 5 billion VND, the escrow is 1 billion VND¹), the conditions for the leader in charge of administering activities of sending workers abroad² are still open and not completely suitable. There are also

¹ Article 8.2 of the 2006 Law, Article 6.1 of Decree No. 38/2020/ND-CP.

² Article 9.3 of the 2006 Law.

numerous conflicts with laws passed since the 2006 Law came into effect that make interpretation and application of the 2006 Law difficult or contradictory.

New regulations in the 2022 Law

Brokerage fees are eliminated

The 2022 Law eliminates brokerage fees that employees must pay to service enterprises engaging in outbound worker services (the “**Guest Worker Service Providers**”), and prohibits the collection of service fees for employees passing through non-business units.

Adding prohibited acts and areas

New prohibited acts include using forms of artifice to deceive workers, such as through false enticements, promises, advertising, or information; taking advantage of the recruitment/overseas dispatch of workers to engage in human trafficking, exploitation or forced labor, or other illegal acts; committing labor-related discrimination or forced labor; collecting brokerage fees or service charges from workers. Geographical areas that are prohibited for Vietnamese workers include active combat zones or potential active combat zones; radioactive areas; contaminated areas; areas with particularly dangerous epidemic(s).

Reducing the costs payable by the workers

The 2022 Law reduces the costs that workers may have to pay through removing the allowance for charging brokerage fees. Some types of expenses are still allowed to be collected from employees, namely service fees and deposits, but sets the ceiling and details of the allowed revenues. Service charges are not allowed to exceed the three-month salary ceiling, and service enterprises may collect this fee from employees and labor receiving parties.

Preventing forced labor

Workers have the right to unilaterally terminate employment contracts if workers are abused, exploited by employers, and/or face life-threatening risks or sexual harassment during the period of working abroad.

The 2022 Law also prohibits discrimination and forced labor in labor migration and allows workers who are facing, or are threatened with mistreatment, sexual harassment or forced labor to unilaterally terminate their employment contracts without financial penalties. Under the new rules, service enterprises may have their licenses revoked if they advertise fraudulently or use other deceptive methods to recruit workers, force labor/human trafficking or exploitation.

Adding rights and obligations of the workers

Workers must be supported in exercising their rights in labor contracts and vocational training contracts. If a worker is in a country party to a double taxation agreement with Vietnam they will be exempt from payment of social insurance or personal income tax in one of the countries³. Workers must be advised, assisted in terms of employment and re-entry after repatriating and be given access to voluntary social psychological consulting services⁴. Orientation training courses given before leaving Vietnam must include basic knowledge on labor abuse, prevention of human trafficking and countermeasures, gender equality, sexual harassment, gender violence, and prevention measures⁵.

Conclusion

Working abroad has long been a trend for Vietnamese workers, especially in this era of globalization. In addition to economic benefits, ensuring the rights of Vietnamese workers in the host country is vital. In that regard, the Government of Viet Nam has shown its commitment to preventing forced labor in the field of Vietnamese workers working abroad by passing the 2022 Law. This is the first important step towards reducing recruitment fees and associated costs, thereby reducing the cost burden on Vietnamese workers, while helping them to be better prepared before working abroad.

³ Article 6.1(g) of the 2022 Law.

⁴ Article 6.1(i) of the 2022 Law.

⁵ Article 65 of the 2022 Law.

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