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Business Law Practitioners



VIETNAM

Employment Guide

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Employment relationships in Vietnam are governed by the 2019 Labour Code, which took effect as 1 January 2021 (the “**Labour Code**”), and its guiding regulations. In comparison to some other countries in the region, the position of employees is well protected. Vietnamese labour law is mandatory in a one-sided way: Employers and employees may not agree on terms that are less favourable to the employee than the conditions set out in labour legislation. They may, however, agree on terms that are more favourable.

Labour Contract

With the exception of short-term labour contracts (less than one month), labour contracts must be in writing. Labour e-contracts that are established in the form of data messages in accordance with the 2005 Law on Electronic Transactions are recognized as written labour contracts. It is recommended to use the standard labour contract issued by the Ministry of Labour, War Invalids and Social Affairs (the “**MOLISA**”) as a template in order to avoid unnecessary explanations at local departments, though this is not required by law.

In principle, a labour contract must include certain items including work to be performed, working hours and rest breaks, wages, location of job, duration of contract, conditions on occupation, safety and hygiene, training and social insurance for the employee. In addition to the compulsory items, and depending on the particular industry, employers can include additional items or clauses such as those for the protection of intellectual property rights, confidentiality, the protection of trade secrets, and non-compete and non-solicitation undertakings. Any additional items must be in compliance with the labour laws and the Vietnamese laws in general.

The terms of labour contracts can be either indefinite or definite with a maximum term of 36 months. The definite term labour contract may be entered into twice, each time for up to 36 months. There is no minimum threshold for a definite term labour contract.

Probation

The employer and the employee may reach agreement on a probationary (trial) period of work and the rights and obligations of the two parties within that period.

The duration of a probationary period depends on the nature and complexity of the work and must not exceed 180 days for managers of an enterprise pursuant to the 2020 Enterprise Law, 60 days for jobs requiring professional or technical college qualification or above, 30 days for jobs requiring an intermediate-level qualification or for technicians or trained staff, and six days for any other work.

During the probationary period, the employer must pay a salary that corresponds to at least 85% of the ordinary salary for the job. Either party may terminate the employment relationship during the probationary period without providing advance notice and without paying compensation.

Performance of Labour Contracts

The labour contract is specific to the employee and must be performed by that individual. Employers must ensure that they do not assign employees to tasks of a nature other than those defined in the labour contract without obtaining the agreement of the employee or within certain allowed instances such as temporary assignments, emergencies and any such change in assignment must be accompanied by an appropriate change in wages. Employment contracts can be suspended or altered to encompass a part-time employment situation.

Termination of Labour Contracts

Termination of a labour contract must comply with provisions of the Labour Code. At will termination by employers is prohibited. The employer may only terminate a labour contract prior to its term under certain specific conditions as set out by the law. Depending on the ground for termination, the requirements for severance or job-loss allowance, notice periods and procedures differ.

Labour contracts may be terminated in cases of the employee's failure to carry out tasks, breach of discipline or other misconduct, or serious injury or illness. Employers may unilaterally terminate a labour contract in certain circumstances specified in the Labour Code. Employees may unilaterally terminate the labour contract at any time without reason but must give advance notice as prescribed. However, in some circumstances the labour contract may be unilaterally terminated by the employee without giving prior notice. Regulations require a minimum notice period for each type of contract in which the minimum length is 45 days for indefinite labour contracts, 30 days for definite labour contracts with a period between 12 months and 36 months and three days for definite labour contracts with a period of fewer than 12 months.

Workplace Discrimination

It is strictly prohibited to discriminate on the basis of gender, race, skin color, social class, beliefs, religion, HIV, infection, marital status, pregnancy status, or disability and sexual harassment. Employers are also obliged to ensure equal pay and not discriminate on salary due to gender discrimination.

The Labour Code 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 Labour Code also provides that an employee may unilaterally terminate the labour 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 labour rules in order to effectively prevent discrimination from occurring in the workplace.

Minimum Wage

The laws provide for two categories of minimum wage: general minimum wage and regional minimum wage.

Contributions to compulsory social insurance are calculated on the basis of the salary stated in the labour contract. However, if the salary exceeds an amount above 20 times the general minimum wage, the basis of calculating the contributions is an amount appropriate to that wage. Currently, the general minimum wage is VND1,490,000 per month (approximately US\$64 per month) and the minimum regional salary varies from VND3,070,000 to VND4,420,000 per month (approximately from US\$128 to US\$184 per month). These minimum salaries are subject to change each year by the Government.

The regional minimum wage is the minimum monthly salary to which an employee is entitled. Based on the level of development, the government divides the whole country into four (4) regions (regions I, II, III, IV). The regional minimum wage depends on the place of employment.

Working Conditions

The Labour Code specifies certain working hours that are allowed and includes provisions for nighttime, overtime and holiday labour. Rest breaks are mandatory for employees who work for more than six hours in one day. A weekly period of 24 consecutive hours is mandated as a day off for all employees with specific exceptions. The regular annual leave allowance is 12 days at full pay after the first year of employment. During the first year of employment leave is accrued at a rate of one day per month.

Internal Labour Rules and Social Insurance

An employer must establish internal labour rules if they employ ten or more employees. Internal labour rules must address working hours and rest breaks; order in the workplace; occupational safety and hygiene; cases in which an employee may be temporarily transferred to undertake work different from that specified in his or her labour contract; prevention of sexual harassment in the workplace; and the sequence and procedures for dealing with a breach being an act of sexual harassment in the workplace; protection of assets, business secrets and confidentiality of technology and of intellectual property of the employer; conduct by employees constituting a breach of labour discipline and forms of penalty imposed for those breaches; liability for material damage; person authorized to impose disciplinary penalties. Internal labour rules must be consulted with the trade union before issuing and registered with the local labour department. The Labour Code provides specific regulations for governing the various matters which must be included in internal labour rules.

In addition to creating, registering, and posting internal labour rules, an employer is responsible to pay the obligatory social insurance, health insurance and unemployment insurance premiums to the

government for each employee. Employers are also encouraged to take out separate health insurance for their employees. As of 1 January 2021, for employees working in normal conditions, the full retirement age is 60 years 3 months for male workers and 55 years 4 months for female workers. The retirement age will be gradually increased from 60 to 62 by 2028 for male workers and from 55 to 60 by 2035 for female workers.

Labour Collectives

The Labour Code allows for labour collectives to represent workers before employers. Labour Collectives can be either employer specific or trade specific. Provisions for the procedures for collective bargaining are set forth in the Labour Code and the following matters are subject to such bargaining: Wages, allowances, wage rises, bonuses, meal allowances and other regimes; labour rates and working hours, holidays, overtime and rest breaks between shifts; job security for employees; occupational safety and hygiene, and implementation of the internal labour rules; operational conditions and methods of organizations representing employees; and the relationship between the employer and organizations representing employees; regimes and methods for preventing or resolving labour disputes; gender equality, protection of maternity, annual leave, and prevention of violence and sexual harassment at the workplace; and other matters that are of interest to the parties.

Labour collectives can enter into collective labour agreements with the employers and such agreements shall govern the employer/employee relationships for those parties. Collective labour agreements will apply to all employees who become employed subsequent to the agreement and those employed at the time the agreement was reached are allowed to retain the higher of their existing benefits and those provided in the collective labour agreement. Collective labour agreements may be entered into at all levels of labour collectives with individual employers or industries of employers.

The terms of a labour collective must be accepted by at least 50% of the employees and registered with the local labour department.

Foreigner Employment

The employment of an expatriate by an enterprise is allowed but generally limited to a managerial position or to a position requiring a high level of expertise that Vietnamese workers are not yet able to satisfy.

Foreign employees, with definite exceptions, are required to obtain work permits when they work in Vietnam. Work permits are issued by the local Department of Labour, Invalids and Social Affairs (the “**DOLISA**”) where the foreign employee is working. Work permits are issued for a maximum period of 24 months and may be renewed only one time for an additional 24 months of employment. A work permit is tied to the specific employer who applied for the employee’s work permit, and the foreigner may legally work only for that employer.

Foreign employees who work without work permits shall be forced to exit or be expelled from Vietnam. Employers employing foreign employees without work permits are subject to an administrative fine.

Annually, an employer is responsible to determine its need to employ foreigners for each working position for which Vietnamese workers are unable to satisfy the requirements, and report and explain the same to the chairman of the People's Committee of the province or city in the locality where the employer has its head office. The chairman of the provincial people's committee shall provide written consent to each employer regarding the employment of a foreigner for each working position.

Labour Dispute Resolution

The Labour Code provides for two categories of labour disputes: an individual labour dispute between an employee and the employer; and a collective labour dispute between a labour collective and the employer. Mediation is the first step in all labour disputes. If this fails, the parties may turn to the court for a settlement.

The following individual labour disputes may be resolved by the People's Court without requiring to be referred first to mediation at the enterprise:

- A dispute relating to the disciplinary measure of dismissal for breach of the law on labour, or a dispute arising from unilateral termination of a labour contract;
- A dispute relating to payment of compensation for loss and damage or payment of allowances upon termination of a labour contract;
- A dispute between a domestic servant and the employer;
- A dispute relating to social insurance;
- A dispute relating to payment of compensation for loss and damage pursuant to a contract between an employee and a labour export enterprise or professional labour export organization; and
- A dispute between a sub-leasing employer and the sub-leased employee.

The limitation period for requesting resolution of an individual labour dispute shall be from six months to one year subject to the nature of the labour dispute.

Employees may strike under certain circumstances in order to persuade an employer to negotiate or to agree to certain terms in the resolution of a labour dispute. The procedures and allowances for strikes are strictly outlined by the Labour Code.

Contact Us

For more information or assistance, please contact us:



Le Thi Khanh Hoan

Senior Associate | Head of Employment,
Regulatory & Compliance

E hoan.le@indochinecounsel.com



Dang The Duc

Managing Partner

E duc.dang@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam

T +84 28 3823 9640

F +84 28 3823 9641

E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam

T +84 24 3795 5261

F +84 24 3795 5262

E hanoi@indochinecounsel.com

www.indochinecounsel.com

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