

Labour Matters

Legislation

In replacement of the former Labour Code of 1994, the current Labour Code which was passed by the National Assembly on 18 June 2012 and took effect on 1 May 2013, currently serves as the principal legal base for all the labour matters in Vietnam. The Labour Code 2012 applies to both employee and employer including foreign organizations that employ local and foreign staff working on regular basis in Vietnam.

Since June 2012, a number of decrees, decisions, circulars, directions and other regulations have been issued from time to time, by the Government and various ministries and agencies, to replace those guiding for the implementation of the former Code and bring the provisions of the Labour Code 2012 into practice.

Recruitment

Formerly, foreign capital enterprises must recruit employees first from individuals recommended by the local labour supplier(s). Now, foreign capital enterprises can do direct recruitment.

Employees must be at least 15 years old. Employee who is a foreigner entering Vietnam to work must satisfy the following conditions:

- (i) The worker is capable of civil acts as prescribed by law;
- (ii) The worker's health is fit for working;
- (iii) The worker is a manager, chief executive officer, expert or technician;
- (iv) The worker is not a criminal or liable to criminal prosecution in accordance with the Vietnam laws and the foreign country's laws;
- (v) The worker obtains a work permit issued by competent State authority of Vietnam, except for cases entitled to exemption from work permit.

Preference in employment should be given to Vietnamese citizens. However, if a Vietnamese person with appropriate qualifications is not found, foreign employees can be hired. The employer is responsible to determine the demand for foreign workers for every job position in which Vietnamese workers are incompetent and send reports to the Chairperson of the People's Committee of the province or centrally-run city

where the planned working place of foreign workers is located in order to obtain the latter's approval for the recruitment of foreign worker for every job position.

It is worthy of note that according to Decree No.11/2016/ND-CP dated 3 February 2016 of the Government detailing the implementation of a number of articles of the Labour Code regarding foreign workers in Vietnam ("Decree 11), the foreign workers are exempt from work permits in the following cases:

(i) Capital contributing member or owner of a limited liability company.

(ii) Member of the board of management of a joint stock company.

(iii) Head of a representative office or of a project of an international organization or non-governmental organization in Vietnam.

(iv) Entering Vietnam for a period under 3 months in order to offer services.

(v) Entering Vietnam for a period under 3 months in order to resolve an incident breakdown or technically or technologically complex situation arising and affecting, or with the risk of affecting production or business with which Vietnamese experts or foreign experts currently in Vietnam are unable to deal.

(vi) A foreign lawyer issued with a certificate to practice law in Vietnam in accordance with the laws on lawyers.

(vii) In accordance with provisions of an international treaty of which Vietnam is a member.

(viii) A student studying in Vietnam is permitted to work in Vietnam, but the employer must provide 7 days' advance notice to the provincial-level Department of Labour, War Invalids and Social Affairs ("DOLISA").

(ix) The workers are internally reassigned in the companies which engage in 11 service industries in the Vietnam's WTO commitments on services, including: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation.

(x) The workers enter Vietnam to provide professional and technical advisory services or perform other tasks serving the research, construction, appraisal, assessment, management and execution of programs and projects funded by ODA according to the International Treaties on ODA between the competent

authorities of Vietnam and other countries.

(xi) The workers are issued with the licenses for the practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs ("MOFA").

(xii) The workers are appointed by foreign agencies or organizations to teach or do research in international schools under the management of foreign diplomatic missions or international organizations in Vietnam or the workers are permitted to teach or do research in educational and training institutions in Vietnam by the Ministry of Education and Training ("MOET").

(xiii) The workers are volunteers who have obtained the certification of the foreign diplomatic missions or international organizations in Vietnam.

(xiv) The workers enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for a period of under 30 days and an accumulated working period of under 90 days per year.

(xv) The workers enter Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories in accordance with the law;

(xvi) Students who are studying in schools or training institutions in foreign countries execute their practicum at agencies, organizations or companies in Vietnam upon agreements;

(xvii) Relatives of members execute their functions in foreign missions in Vietnam upon the approval of the MOFA, unless otherwise stated in the international treaties to which Vietnam is a signatory.

(xviii) Workers are holders of official passports for working in state agencies, political organizations or socio – political organizations.

(xix) Other cases decided by the Prime Minister at the request of the Ministry of Labour, War Invalids and Social Affairs ("MOLISA").

The employer shall request the DOLISA of the locality where the planned working place of foreign workers is located or the Management Board of IZs, EPZs, EZs and HTZs authorized by the DOLISA of the province or centrally-run city where the Board is located (collectively called "provincial-level State management authority on labour") to certify that such foreign

workers are eligible for exemption from work permits at least 7 working days before the day on which they start to work, except for the cases stated in (iv), (v) and (xiv) above. Within 3 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall send a written certification to the employer.

While at least 15 working days before the day on which the foreign worker intends to start his employment, the employer shall submit the application for the work permit to the provincial-level State management authority on labour. Within 7 working days from the day on which the sufficient application is received, the provincial-level State management authority on labour shall issue the work permit to the foreign worker. The duration of a work permit shall not exceed 2 years. After the foreign worker is issued with the work permit, the employer and the foreign worker shall sign a written labour contract in accordance with the Vietnam law before the intended working day of such foreign worker. Within 5 working days from the day on which the labor contract is signed, the employer shall send a copy of the signed labor contract to the provincial-level State management authority that issued such work permit.

Labour Contracts

A labour contract must be in writing and directly signed in 2 originals between the employee and the employer's legal representative, the employee shall keep 1 original and the employer shall keep 1 original, except for the temporary employment will last less than three months the parties may conclude verbal contracts.

If the worker is from 15 years up to under 18 years of age, then the entering into the labour contract must obtain a consent from his/her legal representative.

A group of workers may authorize one of the workers in their group to enter into a written labour contract for a seasonal work or specific job and in this case, the labour contract has the same validity as if it was signed with each worker.

A labour contract must be in conformity with the Vietnamese laws and collective agreements (if any), with maximal two definitive term contracts to be first permitted, then indefinite term contract to be applied.

A labour contract must have main clauses relating to: Name and address of the enterprise or of the employer's lawful representative; Full name, date of birth, sex, residential address, and number of identity card or other legal document of the employee; Job and workplace; Term of the labour contract; Wage rate, method of and time of payment of wages, allowances and other additional payments; Regime for wage increases and promotion; Working hours and rest breaks; Personal protective equipment of the employee; Social and health insurances for the employee; Training and skill improvement for the employee.

When an employee does a job, which is directly related to business or technological secrets as defined by law, the employer has the right to a written agreement with the employee on contents and term of confidentiality of business secrets and of technology, of interests or benefits and on payment of compensation if the employee breaches such agreement.

Probationary agreements may be separate from or included in the labour contracts. The probationary length varies, and subject to the nature and complexity of assigned jobs; but there may only be probation on one occasion for one job, and the probationary period must not exceed:

- (i) 60 days for working in a position requiring high level specialized or technical expertise;
- (ii) 30 days for working in a position requiring intermediate level specialized or technical expertise or for technical workers and professional staff; and
- (iii) 6 working days for other work.

An employee working pursuant to a seasonal labour contract is not engaged in a probationary period of work.

Statutory Minimums

Normal working hours are limited to 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on an hourly or daily or weekly basis; if on a weekly basis, then normal working hours must not exceed 10 hours in one day and must not exceed 48 hours in one week. Working hours shall not exceed 6 hours in one day for workers who perform extremely heavy, toxic or dangerous work as stipulated in the list issued by the MOLISA after presiding over coordination with the MOH.

Working hours may be extended by mutual agreements, but total daily overtime shall not exceed 50% of the normal working hours in 01 days; in case of application of working regulation on weekly basis, the total normal working hours and the overtime hours shall not exceed 12 hours in a day, 12 hours in one day when working overtime on public holidays or weekly days off, and 30 hours in 01 months; and the total of not more than 200 hours in 01 year, except for some special cases stipulated by the Government for the overtime working but shall not be more than 300 hours in 01 years, provided that the respective provincial-level State management authority on labour has been notified thereof.

Employees who have worked in the enterprise for 12 months in full are entitled to have a fully-paid annual leave in accordance with the wage stated in labour contract, which shall be:

- (i) 12 working days for employees working in normal conditions,
- (ii) 14 working days for employees doing heavy, toxic or dangerous works, or those working in the places with harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH, and minor or handicapped labour, or
- (iii) 16 working days for employees doing extremely heavy, toxic or dangerous works, or those working in the places with specially harsh living conditions according to a list issued by the MOLISA after presiding over coordination with the MOH.

Female employees are entitled also to prenatal and postnatal leave of six months in which the maximum period of prenatal leave shall be 2 months, with an allowance funded by social insurance agency and equal to 100% of salary. If a female employee gives birth to more than one child at the one time, she is entitled to an additional 1 month's leave for each child counted from the second child.

Salary rates must conform to the collective labour agreement (if any) and must not be less than the legally-regulated minimum regional wage rates in accordance with the new Decree No.1532/2016/ND-CP dated 14 November 2016 of the Government, stipulating region-based minimum wage levels for labourers working under labour contracts, which takes effect on 1 January 2017. According to which, there are currently four

levels applicable to employees, which come down from VND3,750,000 (about US\$165) regarding enterprises, agencies and organizations operating in the inners and most of suburb of HCMC, the inners and the mains of suburb of Hanoi and Hai Phong, Bien Hoa City and some rural districts of Dong Nai Province, Thu Dau Mot City and some rural districts of Binh Duong Province, and Vung Tau City; VND3,320,000 (about US\$146) in Can Gio district of HCMC, the remaining of suburb of Hanoi and Hai Phong, the inner and suburb of Da Nang, and the inner of some smaller cities including Hai Duong, Hung Yen, Vinh Yen, Bac Ninh, Ha Long, Cam Pha, Uong Bi, Mong Cai, Thai Nguyen, Viet Tri, Lao Cai, Nam Dinh, Ninh Binh, Hue, Da Nang, Nha Trang, Cam Ranh, Da Lat, Bao Loc, Phan Thiet, Ba Ria, Tan An, My Tho, Can Tho, Rach Gia, Long Xuyen, Chau Doc, Ca Mau, and some towns including Phuc Yen, Tu Son, Long Khanh, Dong Xoai, Ha Tien, etc.; VND2,900,000 (about US\$127.2) in the other cities and towns, to VND2,580,000 (about US\$113.2) in the rest.

Collective Labour Agreement

Representatives of both employer and labour collective in a foreign-invested enterprise may negotiate and sign a collective agreement. The labour collective's representative at grassroots level is the executive committee of the enterprise's grass-roots trade union or of a direct superior trade union when the grassroots trade union is not yet established.

Contents of a collective labour agreement must not contrary to the laws and be more favourable for the employees than the provisions of the laws. A collective labour agreement shall have the validity depending on agreement between the employer and the labour collective's representative. In case where the collective labour agreement does not state its effective date, such agreement shall take effect on the date of signing by the legal representative of enterprise or head of organization/agency and by the chairperson of grassroots trade union/the trade union at the directly superior level to the grassroots level, or by their authorized representative(s). A collective labour agreement shall only be signed if the negotiated content of such agreement is approved by more than fifty (50) per cent of the members of the labour collective. The employer has to notify all employees of the signed

collective labour agreement and send a copy of the collective labour agreement to the provincial-level State management authority on labour within 10 days from the signing date. Within 15 days as from the date of receipt, relevant State management authority has the responsibility to review the contents of the collective labour agreement, and if finding that any content is contrary to the laws or the signer is not competent to contract:

(i) To request in writing the parties to the labour collective agreement, which is not yet effective, to negotiate the amendment and supplement to the agreement and send the agreement amended and supplemented as the result of the parties' negotiations to the provincial-level State management authority on labour; or

(ii) To request in writing the People's Court to declare the effective labour collective agreement null and void, and at the same time to notify both parties to the labour collective agreement thereof.

The term of the collective labour agreement is between one and three years. When an enterprise signs a collective agreement for the first time, the term of the collective labour agreement may be less than one year. Within 3 months prior to the expiry of the collective labour agreement, both parties may negotiate to extend the term of such agreement or sign a new collective labour agreement.

Internal Working Rules

Foreign-invested enterprises employing ten (10) or more employees must have their written internal working rules registered with provincial-level State management authority on labour. Internal working rules must include compulsory items such as working hours and rest breaks; rules and order in the work places; occupational safety and hygiene in the work places; protection of assets and confidentiality of business secrets, technological secrets and intellectual property of the employer; conducts which are in breach of labour rules, and penalties imposed for those breaches and material responsibility for damage; etc.

Internal working rules must be notified to all employees and its main contents have to be displayed at necessary locations in the work places, and shall be the legal basis for employees to follow and for employer to apply disciplines in case of

breaches by employees.

Social, Healthcare, Occupational Accidents & Diseases and Unemployment Insurances, and Trade Union Expense and Fee

The compulsory insurances have recently been merged into one system being managed by Social insurance agency. These insurances cover illness, pregnancy, retirement, death, occupational accidents and diseases, and unemployment.

Foreign-invested enterprises are required to comply with the social insurance scheme, at least with respect to Vietnamese employees. In general, employers must pay to the social insurance fund and occupational accidents & diseases fund, now 18% and Vietnamese employees (and foreign employees as from 1 January 2018) will make a payment of 8% of their monthly wages (including wages and salary allowances; wages, salary allowances, and other allowances & subsidies as from 1 January 2018).

With respect to health insurance, both sides of employer and employees (regardless of being Vietnamese or foreigners) have to pay to the health insurance fund, of which 3% of total wages are paid by employers and 1.5% of the monthly wages are paid by employees.

Unemployment insurance is effective from 1 January 2009, which requires 1% of total wages to be paid by the employer and 1% of monthly wage to be paid by the employee. Having benefit from this type of insurance, the employee shall not be beneficial in terms of time for calculation of the job loss allowance or severance allowance when the employment relation is terminated.

Trade Union Expense payable by the employer would be 2% of the total payroll of the Vietnamese employees, and Trade Union Fee payable by the Vietnamese employees who are trade union members would be 1% of the monthly salary.

Labour Disputes

It should be first noted that Vietnamese laws allow employees to strike works against employers. With some exceptions, attempts must be made to settle labour disputes through conciliation between the employer and employee held by labour

conciliators.

For individual labour disputes, if the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, or if on expiry of the prescribed time-limit for conciliation the labour conciliator has not conducted a conciliation, either of the parties may refer the dispute to the competent court for final settlement.

For collective labour disputes:

(i) If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation, the parties may refer the dispute to:

(a) Chairperson of the district-level People's Committee for resolution regarding collective labour disputes about rights; or

(b) Labour Arbitration Council for resolution regarding collective labour disputes about benefits.

(ii) If on expiry of the prescribed time-limit for conciliation the Labour Conciliator has not conducted a conciliation, the parties may refer the dispute to the Chairperson of the district-level People's Committee for resolution, who shall be responsible to determine whether the dispute is one about rights or one about benefits, and then to directly resolve the dispute in the first case or to guide the parties to petition the Labour Arbitration Council to resolve the dispute in the second case.

(iii) In the event that the parties disagree with the decision of the Chairperson of the district-level People's Committee, or if such Chairperson has not resolved the dispute on expiry of the time-limit, then the parties may refer the dispute to the competent court for final settlement regarding collective labour disputes about rights. If the dispute cannot be settled through conciliation, or if one of the parties fails to implement the agreement set out in the minutes of successful conciliation prepared by the Labour Arbitration Council, then the labour collective has the right to conduct

procedures in order to strike regarding collective labour disputes about benefits.