

LEGAL FORUM



EMPLOYMENT TERMINATION: CHALLENGES AND STRATEGIC SOLUTIONS

Firing senior executives in Vietnam: A **legal tightrope** walk where one wrong move could cost fortunes.

Unilaterally dismissing employees, especially those in senior leadership, remains a **high-stakes legal minefield** for enterprises. Success in this area demands more than just a firm grasp of labor regulations; it requires

strategic negotiation skills to ensure the process is both legally sound and professionally managed.

1. Legal Challenges and Judicial Realities

Vietnamese labor law has a strong tradition of employee protection. This

makes it notoriously difficult for employers to dissolve labor contracts, even when misconduct is involved. In practice, the majority of unilateral terminations contested in court are ruled illegal due to procedural errors or lapses in the rigorous legal protocols required of the employer.

The following scenarios highlight these common challenges:

1.1. The Burden of Proof in Underperformance Cases

Statutory provisions allow for termination if an employee “frequently fails to complete assigned tasks.” However, exercising this right is strictly contingent upon:

- **A Valid Performance Framework:** Employers must properly draft and issue internal “Performance Evaluation Rules”. The legality of how these rules are established is often a focal point in disputes.

Any procedural flaw in the disciplinary process can render the entire action void and unenforceable, leading to a judgment of illegal dismissal.

- **Objective Assessment:**

Frequent failure must be documented and assessed based strictly on the criteria set out in these properly issued rules.

- **Judicial Scrutiny:** Courts often set a high bar for evidence. Unless evaluation rules are granular and meticulously implemented, proving “frequent failure” remains a significant hurdle.

1.2. Job Abandonment: The Five-Day Rule and Its Nuances

While the law permits termination after five consecutive days of unauthorized absence, the practical application is often more conservative:

- **The “Six-Day” Prudence:** Due to varying judicial interpretations of the Civil Code regarding

time limits (where the first day may be excluded), a prudent employer often waits for six days of abandonment to ensure a rock-solid legal foundation.

- **Evidence and Proactive Engagement:**

Courts require clear evidence that the employee was physically absent and unresponsive to their duties. Crucially, the employer must demonstrate proactive efforts—such as immediate reminders and call-backs—to urge the employee to return to work.

1.3. Disciplinary Dismissal

Dismissal is only permitted for specific, severe misconduct as defined by the Labor Code and the company’s Internal Labor Rules. Any procedural flaw in the disciplinary process can render the entire action void and unenforceable, leading to a judgment of illegal dismissal.

2. Stiff penalties

Should a court rule a unilateral termination illegal, the enterprise faces a hefty financial toll, including back pay for the entire period of exclusion and mandatory compensation. Such disputes have already incurred **multi-billion dong liabilities** for enterprises; in one extreme instance, a company was mandated to pay an indemnity exceeding **9 billion VND**.

3. The Strategic Path: Mutual Termination Agreements

Prioritizing a **Mutual Termination Agreement (MTA)** is strongly advised to avoid the financial pitfalls of Vietnam’s pro-employee legal landscape. Securing such a MTA necessitates a high degree of strategic negotiation skill. A well-negotiated MTA eliminates exposure to unpredictable court awards and legal fees.

Central to these deals is a **non-mandatory payout** used to incentivize early contract termination. In line with Vietnamese market norms, this supplemental figure often spans three to six months’ salary or more, acting as the decisive factor in securing a smooth exit.



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