

VIETNAM EMPLOYMENT LAW

NEW LABOUR CODE 2019 – TAKEAWAY CHANGES

The National Assembly of Vietnam adopted a new Labour Code No. 45/2019/QH14 (the “**New Labour Code**”) on 20 November 2019, replacing the current Labour Code No. 10/2012/QH13. Enterprises will have a year to get used to changes before the New Labour Code takes effect on 1 January 2021. We highlight below certain changes of interest. For any further information or discussion, please reach to us at our contact information below.

APPLICABLE ENTITIES

New definition of employee

There is now a broadened definition of “employee”. So any person (from 15 years) (i) working under an agreement with the employer; (ii) receiving a salary; and (iii) subject to the management, administration and supervision of the employer, will qualify as an “employee”.

In addition, any agreement not named as “employment contract” will still be considered as such if its contents contain all the elements of an employment contract.

Accordingly, “employees” will include not only persons working under an “employment contract”, but also those working under other agreements (regardless of nomenclature) containing the essential elements of an employment contract.

The foregoing brings into question whether a contract for services may be deemed to be an employment contract.

Persons working without employment relationships

Any person falling outside the broadened definition of an employee may still be subject to the new Labour Code but there is no elaboration of what this entails. There will likely be further regulations clarifying this.

PROBATION

Probation for managers of enterprises

There is now a probation period of up to 180 days for managers of enterprises as defined in the Law on Enterprises.

Employees not subject to probation

Employees whose term of employment is less than a month will not be subject to probation. Currently such exemption only applies to those working under seasonal employment contracts.

EMPLOYMENT CONTRACT

Employment e-contract

Employment contracts executed through electronic means (as defined in e-transaction laws) is now recognized as if it were a written employment contract.

Removal of seasonal employment contract

There will be only two types of employment contracts: (i) indefinite term employment contract; and (ii) definite term employment contract whose term does not exceed 36 months.

No more extension by appendices

Parties may no longer extend the term of a definite term employment contract by appendices. When such a contract expires, the parties must sign a new contract to extend the term. The practice currently recognises extensions of the employment contract by appendices as being part of one contract. With this clarification, the employer will be deprived of the opportunity of having up to three extensions before the employment term is deemed to be indefinite.

Multiple definite term employment contracts

Under the New Labour Code, parties may sign multiple definite term employment contracts for (i) elderly employees; (ii) foreign employees; (ii) members of executive board of organization representing the labour collective (including trade unions); and (iv) directors of State-owned enterprises.

WORKING HOURS - REST HOURS

Overtime

The New Labour Code has increased the monthly overtime cap from 30 to 40 hours.

The New Labour Code also clarifies the circumstances where employers are permitted to arrange overtime work of up to 300 hours in a year and has introduced allowing for such increase including:

- (i) manufacturing or processing for export of electric, electronic, and salt products;
- (ii) work where employees with specialised qualifications are required and not available locally; and
- (iii) urgent work where such urgency is due to seasonal changes or changes to the nature (timing) of materials or products; or work arising due to unforeseen objective factors and other force majeure events;

Public holidays

There will be an additional day off following or preceding Independence Day (September 2).

SALARY PAYMENT – SALARY SCALE

Interest for late salary payment

Employers failing to make payment of salary for 15 days or more will be obligated to pay the default interest. The interest rate is now defined as the interest rate equivalent to the interest rate for mobilizing 1-month deposit as declared by the bank where the employer maintains its account.

Currently parties are required to refer to the rate declared by the State Bank of Vietnam before referring to the rate declared by the bank of the employer.

Salary scheme (salary scale, table, and rate)

The requirement to register salary schemes with the labour authorities is removed though the employer is still required to consult with organization representing the labour collective (including trade unions) when formulating such schemes.

LABOUR DISCIPLINE

Sexual harassment

Sexual harassment at the workplace is now defined for the first time in the New Labour Code. Dealing with sexual harassment is also required to be provided for in the internal labour regulations.

Sexual harassment is therefore a new ground for dismissal.

Labour discipline procedures

Employers may now deal with a breach of labour discipline so long as it is stated in the internal labour regulations, the employment contract, or the labour laws. Currently, breaches of labour discipline will only be dealt with if it is prescribed in the internal labour regulations that are registered with the authorities.

TERMINATION

New grounds for unilateral termination by employer and no advance notice in certain cases

The employer will be entitled to unilaterally terminate the employment contract if the employee is absent from work without legitimate reason for **five or more consecutive working days**. The current Labour Code only allows the employer to dismiss the employee after completing the labour discipline procedure. *(Where the employees is absent from work without legitimate reasons for an aggregate of five working days in a month or twenty working days in a year, the employer will still be able to dismiss the employee pursuant to the current Labour Code, but only after applying the labour discipline procedures.)*

Provision of **false information** by the employee is also a new ground for unilateral termination. This will better protect the employer's rights during the employment term.

The New Labour Code also clearly states that the employer may unilaterally terminate the employment of employees reaching **retirement age**.

Finally, the New Labour Code clarifies that an advance notice to terminate will **not** be required if the employee is absent from work for a certain period as discussed above, or where the employee fails to return to work after the prescribed period following the

suspension of the employment contract as agreed between the parties or permitted under the laws.

Unilateral termination by employee without reason and without advance notice in certain cases

The New Labour Code entitles employees working under any type of employment contract, the right to unilaterally terminate the contract without the need to assign any reason. The employee is still required to give the requisite advance notice.

Employees will also not need to serve advance notice to terminate the employment contract in the following cases: (i) not assigned to correct job or workplace; (ii) not given the agreed working conditions; (iii) not paid in full or on time; (iv) mistreated or humiliated (by employer); (v) sexually harassed at work; (vi) being pregnant and the continued employment will adversely affect her foetus; (vii) reaching retirement age; or (viii) provided with false information by the employer which affect the contract performance.

RETIREMENT AGE

The retirement age will be gradually increased to 62 years by 2028 for men, and 60 years by 2035 for women.

WORK PERMIT

The following foreigners under the New Labour Code are no longer required to obtain work permits to work in Vietnam:

- chairman of the board of management;
- persons responsible for the operation of an international organization or foreign non-governmental organization; and
- foreigners married to Vietnamese citizens and living in Vietnam.

Term of work permit

The New Labour Code has clarified that the term of a work permit is limited to 2 years and that the work permit may only be extended once for another maximum period of 2 years.

ORGANIZATION OF EMPLOYEE

Under the new Labour Code, employees may establish and join not only trade unions (which belong to the Trade Union System of Vietnam) but also their own "organization" at the enterprise. The Government will further clarify the minimum number of employees for establishing such an organization.

This organization must be registered with the authorities and may have and operate according to its own charter.

All materials herein have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your particular factual and legal circumstances.

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