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Vietnam

Labour Law

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The current applicable Vietnamese Labour Code[1] became effective on 1st January 2021 and applies to (Vietnamese and foreign) employees, apprentices, interns, employers and other individuals, agencies and organizations directly involved in labour relations.

The following summary shall provide you a general overview of current applicable labour regulations. Should you need any specific advice, please feel free to contact us.

I. Labour Contracts

The Vietnamese Labour Code stipulates 2 different types of labour contracts:

- Indefinite term labour contracts (type 1); or
- definite term labour contracts with a duration up to 36 months (type 2).

Labour contracts generally have to be made in written form whereby the electronic form may be recognized as legitimate - provided the legal requirements concerning a digital signature are complied with. In practice, electronic labour contracts are seldomly used since only a Vietnamese security certificate is considered to have sufficient evidential value.

Within 30 days as from the expiry date of a type 2 labour contract, the parties are obliged to conclude a new labour contract if the employee continues to work. If a new labour contract has not been entered into, the definite term contract shall automatically become an indefinite term labour contract.
The 30 days "grace" period should leave ample time to determine if an extension of the labour relationship is intended. However, we would suggest to instruct HR Departments/Office Managers to keep track of expiry dates of definite term contracts in order to avoid an "automatic" extension as stated above and to comply with the statutory obligation to notify the employee on his/her upcoming contract expiry date.

It should be noted that the Labour Code only allows for two consecutive definite term contracts and stipulates that any labour contract signed thereafter must be made for an indefinite term except for labour contracts with foreign employees where multiple definite term contracts are possible - always provided that those are in accordance with the respective work permit term (two years, renewable).

II. Cost and Benefits

Vietnam still offers one of the lowest labour costs in South East Asia. Nevertheless, based on our and our clients' experience, comprehensive in-house trainings will be required for more sophisticated production/service units and related training costs should be considered during the evaluation phase of the investment project. With regard to the excellent reputation of Vietnamese workers for their comparatively high motivation and basic skill set, training costs are usually recovered in a short period of time. However, retention of such higher trained "key" staff will most probably remain one of the key concerns of your HR Department.

[1] Vietnamese Labour Code (Law 45/2019/QH14).

III. Minimum Salary

Introduction: In Vietnam, a distinction must be made between two "minimum wages". The so-called "base salary", on the one hand, refers to the remuneration that must be paid in state-owned enterprises and authorities and, on the other hand, serves as assessment basis to determine certain contributions (social and health insurance). The so-called "regional minimum salary" is aimed at the private sector and thus also foreign-invested companies and must be considered when determining the unemployment insurance contributions. Since both "minimum wages" vary, please pay attention if the "base salary" or "regional minimum salary" is referred to in the following.

With effect as of 1st July 2024 regional minimum salaries have been raised to the following levels:
Ranging from VND 3.450.000/month in rural areas to VND 4.960.000/month in urban areas such as Ho Chi Minh City and Hanoi.
In practice, actual salaries paid are usually significantly higher. We encourage our clients to assess actual labour costs directly at the location of the investment project in order to evaluate a local benchmark for certain positions.

The base salary has been raised to VND 2.340.000/month with effect from 1st July 2024.

IV. Working Hours

Normal working hours can be fixed either on a daily basis with 8 hours per day and a 6-day (max) working week (max 48 hours a week) OR on a weekly basis with a maximum of 48 hours on up to 6 days per week and a maximum of 10 normal working hours in any working day. The latter option is more flexible since up to 10 hours per day are still counted as normal working hours without overtime payment. Nevertheless, the Labour Code is still far from allowing and/or acknowledging deviating agreements such as western “flexi time” arrangements.

Employees working at night (from 10:00 pm to 06:00 am) shall be paid an additional add-up of at least 30% of the actual hourly wage on a normal working day.
The total daily working time (normal working hours plus overtime working hours) in any of the above stated working hour regimes, i.e., 8 hours/day or up to 48 hours/week with a maximum of 10 normal working hours/day, is limited to 12 hours/day. In principle, overtime is limited to max 200 hours per year (max. 40 hours per month) and only in exceptional cases 300 hours per year are permitted.[2]

Overtime working hours are to be compensated with at least 150 % of the actual hourly wage on a normal working day, at least 200 % for working on days-off and at least 300 % on holidays and permitted leave days.
Employees working overtime during night shifts shall be paid an additional 20 % add-up in addition to the normal salary and in addition to the 30 % add-up for night shift work and in addition to the general overtime compensation.

[2] Exceptions apply to, e.g. businesses engaged in the production of textiles, garments, shoes and electrical and electronic equipment as well as to companies that have set a standard working time of 44 hours per week.

The employer will only be able to request an employee working overtime if obtaining his/her consent except for special cases (e.g., as a consequence of a natural disaster etc.).
Considering the low wages paid in the manufacturing sector, local employees are often very eager for working overtime and plan for the increased remuneration. If, due to insufficient workload, no overtime work is possible, resentment among the workforce may be the consequence.
Furthermore, please take note that the maximum permissible limit for overtime applies even if the entire workforce unanimously agrees to an overrun and that the use of the exceptional cases (i.e., more than 200 and up to 300 hours of overtime per year) must be notified to the local labour authority.

V. Vacation

If an employee has been working for the same employer for a period of 12 months, such person is entitled to receive the following number of paid leave days:

- 12 days for employees working under normal conditions;
- 14 days for employees working under heavy, dangerous or toxic working conditions, or disabled or minor employees; or
- 16 days for employees working under extremely heavy, dangerous or toxic conditions.

The number of days of paid leave increases by 1 day for every 5 years of employment.

Employees are entitled to a fully paid day off on the following public holidays:

- New Year: one day (the first day of January of each calendar year);
- Lunar New Year: five days;
- Victory Day: one day (the 30th of April of each calendar year);
- International Labour Day: one day (the first day of May of each calendar year);
- National Day: two days (the second day of September of each calendar year and the previous or next day);
- Hung Kings Commemoration Day: one day (the 10th of March of each Lunar year)

Foreign nationals are additionally entitled to one traditional public holiday and one national day of their home country.

An employee may take paid leave of absence for personal reasons such as marriage, marriage of a child or death of a biological (spouses') parent, spouse or child. Furthermore, he/she is entitled to one day leave of absence without pay on the death of a grandparent, sibling and on the marriage of a parent or sibling.

In general, deviations from Vietnamese labor law are permissible if such are beneficial to the employee. Therefore, it is not uncommon to agree on more than the statutory minimum vacation of 12 days per calendar year. Though, please note that Vietnamese labor law does not recognize a "forfeiture clause" and therefore vacation days not taken will accrue and have to be cashed out at the end of the employment period.

VI. Insurances, Labour Union Fee

A. Social Insurance (SI)

Social insurance is compulsory for employees working under labour contracts with a term of 1 month or more. The employer needs to contribute 17,5 % of the employee's monthly salary and the employee contributes an amount equal to 8 %.

Since 1st December 2018, foreign employees are also subject to the social insurance regime. Initially, the scheme only applied to the employer but, since 1st January 2022, foreign employees who work for an employer in Vietnam for a period of at least 1 year or for an indefinite period and have a work permit must now also contribute to the social insurance fund. An exception may apply for those foreign employees who have been assigned to a subsidiary in Vietnam and have previously been employed by the foreign mother company for at least 12 months. In practice however, local authorities tend to require the fulfilment of additional conditions in order to approve an assignment. Therefore, payment of social insurance contributions should be planned, even if the actual benefit for the foreign employee concerned is likely to be marginal.

The salary subject to the above contribution rates comprises the basic salary as well as regular and consistent allowances and is for both Vietnamese and foreign employees resp. the employers capped at 20 times of the current base salary (the so calculated cap currently amounts to 46,800,000 VND).

B. Health Insurance (HI)

Participation in the health insurance regime is compulsory for – Vietnamese and foreign – employments of more than 3 months. The employer must contribute 3 % of the employee's salary and the employee has to contribute an amount equal to 1,5 %.
Basis for calculation of the stated contributions is the actual salary, however, capped at a maximum of 20 times of the base salary (item A above).
For a foreign employee, an additional private health insurance will have to be taken out. For Vietnamese employees, an additional private health insurance is a popular additional "benefit".

C. Unemployment Insurance (UI)

Both the employer and the Vietnamese employee have to contribute 1 % of the employee's salary.

Basis for calculation of the stated contributions is the actual salary, however, capped at a maximum of 20 times of the regional minimum salary (item III above). The unemployment insurance regime is not applicable to foreign employees.

D. Labour Union Fee

Enterprises shall contribute 2 % of the salary fund of Vietnamese staff irrespective of whether the company has a grassroots labour union established or not. The Vietnamese employee’s contribution rate amounts to 1 % of his/her salary, if member of the labour union.

Basis for calculation of the contribution of the employer is the actual salary, however, capped at a maximum of 20 times of the base salary (item A above). The employee shall contribute not more than an amount of 234,000 VND.

Overview:

Vietnamese employee	Employer’s contribution (in %)	Employee’s contribution (in %)	Contribution assessment ceiling (in VND)
Social insurance	17,5	8	20 times of base salary
Health insurance	3	1,5	20 times of base salary
Unemployment insurance	1	1	20 times of respective regional minimum salary
Labour union fee	2	(1)	Employer: 20 times of base salary Employee: 234.000 VND (max. contribution)

Overview:

Foreign employee		Employer’s contribution (in %)	Employee’s contribution (in %)	Contribution assessment ceiling (in VND)
Social insurance	Sickness allowance, maternity/ fraternity allowance	3	-	20 times of base salary
	Injury benefit	0,5	-	
	Pension and death benefits	14	8	
Health insurance		3	1,5	20 times of base salary

VII. Work Permit

Generally, foreign employees should only be recruited for work positions requiring high technical or managerial skills. Current regulations provide that foreigners eligible for a work permit in Vietnam need to be managers/executives, experts, or technicians.

All of these categories require certain previous employment periods/respective working experience and/or education level. The term "manager"/"executive" includes heads of a company or representative office such as the "(General) Director" and the "Chief Representative". In order to be recognized as an "expert", the foreign employee must be able to prove both his/her university (or comparable) background as well as his/her working experience (at least 3 years) in a field that is closely related to the prospective work in Vietnam. A qualification as "technician" will be accepted if the foreign national can demonstrate training in a technical field (at least 1 year) and/or has professional experience (in case of training 3 years, otherwise 5 years) whereby the position in Vietnam must match the proven working experience.

In order to work in Vietnam, foreigners must obtain a work permit from labour authorities (i.e., the Department of Labour, War Invalids and Social Affairs (DOLISA) of the province/city where the employer is located) prior to signing a labour contract with their employers. Though, prior to the actual work permit application, the employer must in the first step publish a job advertisement for the vacant position. Then the employer must explain to the competent authority why a foreign employee is needed for this position and why such cannot be filled by a Vietnamese citizen ("Foreign Employee Demand Report").

A work permit is, however, not required in one of the following cases:

- *Owner or shareholding member of a Company Limited with a capital contribution of at least 3 billion Vietnam Dong;*
- *Chairperson or member of the Board of Management of a Joint-Stock Company with a capital contribution of at least 3 billion Vietnam Dong;*
- Chief Representative of a Representative Office and Director of a project of an international organization or non-governmental organization in Vietnam;
- *Stays in Vietnam for less than 3 months to market services;*
- Stays in Vietnam for less than 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these problems cannot be handled by Vietnamese and foreign experts who are currently in Vietnam;
- *Foreign lawyers granted a lawyer’s certificate in accordance with local laws;*
- It is in accordance with a treaty to which Vietnam is a contracting party;
- A foreign employee residing in Vietnam and married to a Vietnamese national;
- Internal transfers within a company which is engaged in one of the 11 service industry sectors in Vietnam’s WTO commitments which comprise: business, communication, construction, distribution, education, environment, finance, health, tourism, culture, entertainment and transportation;
- Entering Vietnam to provide professional and technical advisory services or perform other tasks serving research, construction, appraisal, assessment,

management and execution of programs and projects funded by official development aid;

- Persons who are issued with a license for practice of communications or journalism in Vietnam by the Ministry of Foreign Affairs;
- Persons who are appointed by foreign agencies or organizations to teach or do research in international schools under the management of foreign diplomatic missions or the United Nations in Vietnam, or of a facility established under an agreement to which Vietnam is a signatory;
- Volunteers who have obtained the certification of foreign diplomatic missions or international organizations in Vietnam;
- *Manager/executive, expert or technician who enter Vietnam for a period of under 30 days and up to 3 times per year;*
- Entering Vietnam to implement international agreements to which central or provincial agencies and organizations are signatories;
- Students who are studying in schools or training institutions in foreign countries execute their practicum at agencies, organizations or companies in Vietnam;
- *Relatives of members who are executing their functions in foreign missions in Vietnam under an international treaty to which Vietnam is a signatory;*
- Workers being holders of official passports for work in state agencies, political organizations or socio-political organizations;
- Being responsible for establishing a commercial presence;
- Certified by the Ministry of Education and Training as a foreign worker entering Vietnam for teaching and research purpose.

In cases where a work permit is not required - except for those marked in *italic*[3] - the employer still has to submit a written request to the Province's Department of Labour, War Invalids and Social Affairs (DOLISA) for certification that the respective employee is exempted from obtaining a work permit. The request shall be submitted 10 working days prior to start working.

The maximum term of any work permit is currently limited to a period of 2 years. After the expiration of such term the work permit may be extended once. Thereafter, a new work permit must be applied for.

Based on the work permit a right of residence such as the temporary residence card may be applied for.

VIII. Internal Labour Regulations

Employers with 10 or more employees are obligated to establish so called "Internal Labour Regulations" whereby employers with less than 10 employees are not. Instead, such have to specify provisions on labour discipline and material liability in its labour contracts or policies.

[3] For cases marked in *italic*, neither a work permit nor an exemption certificate is required but the competent labour authority needs to be notified.

Such regulations shall basically contain rules regarding the business management of the employers and they have to be formally registered with the respective provincial labour authority. The Internal Labour Regulations become effective after 15 days from the date of receipt of such registration, unless the labour authority objects to the rules within 7 working days.

Internal Labour Regulations shall include the following main content:

- Working hours and rest breaks;
- rules and regulations for the workplace;
- occupational safety and hygiene provisions;
- actions against sexual harassment in the workplace;
- regulations for the protection of assets and business secrets, confidentiality of technology and intellectual property of the enterprise;
- cases in which reassignment of employees shall be permitted;
- regulations on labour discipline;
- material responsibility; and
- the competent person to deal with labour discipline.

In case of a breach of the Internal Labour Regulations, the labour law allows for the following sanctions:

- Reprimand;
- Suspension of wage increase for up to six months;
- Demotion; or
- Dismissal.

IX. Termination of a Labour Contract

A labour contract may be terminated by the employer in the following circumstances:

A. Unilateral Termination

1. Termination for Personal Reasons

- The employee repeatedly fails to perform work as described in the labour contract;
- Due to an illness or accident the employee is unable to work over a period of 12 consecutive months in case of an indefinite term labour contract, or over a period of 6 consecutive months in case of a definite term labour contract with a duration of 12-36 months. In case of definite term labour contract with a duration of less than 12 months, a termination is justified if the employee is unable to work for more than half of the duration of the contract;
- The employee reaches the retirement age.

2. Termination for Behavioural Reasons

- The employee is disciplined in form of a dismissal due to causing an act of theft, embezzlement, gambling, intentionally causing injury, using drug at the workplace, disclosing technology and business secrets, intellectual property infringement of the employer, or is guilty of causing serious loss and damage or threatening to cause extremely serious loss and damage to the property or interests of the employer, or commits sexual harassment in the workplace;
- The employee is disciplined by suspension of wage increase for a certain period of time and re-commits an offence during such period, or the employee re-commits an offence after he/she is disciplined in the form of demotion in ranks;
- The employee was absent without proper reason for 5 out of 30 days or 20 out of 365 days. Cases which are considered "proper reasons" are: natural disaster, fire, illness of the employee or illness of a relative with a doctor's certificate and other cases as prescribed in the Internal Labour Regulations;
- The employee fails to be present at the workplace within 15 days after a labour contract suspension (e.g., due to pregnancy or military service);
- The employee does not provide correct information affecting the recruitment process.

3. Termination for Operational Reasons

- The employer is forced to reduce the production and jobs as a consequence of a natural disaster, fire, or another event of force majeure;
- The employer has to retrench employees due to restructuring, change of technology or for economic reasons, or due to a merger, consolidation, division or separation of enterprises (the establishment of a labour usage plan is compulsory in such case);
- The employer terminates its operations.

Please note that unilateral terminations by the employer are only legitimate if relevant formal requirements have been observed. Both compliance with formal and procedural rules as well as the burden of proof on the employer usually do not allow for lawful terminations resulting in negotiations for an amicable termination of the employment relationship.

B. Notice Period

The notice period depends on the term of the labour contract and generally amounts to:

- At least 45 days in case of an indefinite term;
- At least 30 days in case of a definite term labour contract with a duration of 12-36 months;

- At least 3 working days in case of contract with a term of less than 12 months.

A termination for behavioural reasons does not, except where the employee does not provide correct information affecting the recruitment process, require an advanced notice.

C. Involvement of the Labour Union

If the employee is a part-time labour union officer and his/her labour contract shall be terminated, the employer is obliged to discuss and reach an agreement in writing with the executive committee of the labour union of the enterprise. Upon disagreement, the two parties must submit a report to the competent body or organization. After a further period of 30 days, the employer is entitled to make the decision. Finally, the employee has the right to request the resolution of a labour dispute.

As labour unions have to be involved at a number of decisions it is thus highly advisable to establish and to support local labour unions in order to ensure the effectiveness of certain labour related decisions.

D. Reasons hindering a valid Termination by the Employer

Generally, termination is not allowed in the following circumstances:

- The employee is suffering from illness or injury or is being treated or nursed;
- The employee is on personal leave or any other type of leave permitted by the employer;
- Termination of a female employee for reasons of marriage, pregnancy, taking maternity leave, or raising a child under 12 months, except where the enterprise ceases its operation.

E. Payment of Allowances

Vietnamese labour law defines two different forms of termination payments which have to be paid when an employee, who has worked for the employer for at least 12 months, is "leaving" its employer, namely the severance allowance and the retrenchment allowance.

1. Severance Allowance

The severance allowance is mandatory in almost every case of a termination of a labour contract. Thus, a severance allowance also has to be paid in case of the expiration of the labour contract or in case of a legal termination by the employee. The severance allowance amounts to one half of a month's salary per year of employment.

2. Retrenchment Allowance

Has to be paid in cases such as termination due to organizational restructuring or technological changes or due to economic reasons as well as in case of a termination due to merger, division or separation of the employee's enterprise. The allowance shall amount to one month’s salary per year of employment but not less than 2 months’ salaries.

Please note: In case of local employees, payments of above-stated allowances are in most cases not necessary since employment periods during which the local employee was duly covered by the unemployment insurance will not be considered. Thus, an employee is only entitled to one of the above stated allowance payments if the employee concerned was not duly insured (e.g., no contributions have been paid) or not for the entire employment period. Since foreign employees cannot be registered with the statutory unemployment insurance system, payment obligations can only be avoided if the foreign employee is additionally paid the employer's unemployment insurance contribution. Recent court decisions tend to recognize this "compensation" as sufficient to deny claims of a foreign employee for severance resp. retrenchment allowance payments.

Due to the indicated complexity of unilateral termination procedures, employees facing a “termination request” might quote/request a “severance allowance” payment during negotiations and, in practice, such will most likely resolve your procedural issues. However, please do note that only an official severance/retrenchment allowance is non-taxable, if such allowance is not covered by current law (excessive amount, replaced by unemployment insurance coverage) the amount not covered by law is taxable.