



GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

Vietnam



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.

VIETNAM



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Vietnamese dong (VND). The official language is Vietnamese, but English has become increasingly popular in the business community.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity without a license to operate in Vietnam cannot directly hire Vietnamese employees.

Employers must pay social insurance in respect of Vietnamese employees (currently 17.5 percent, including 3 percent to the sickness and pregnancy fund, 0.5 percent to the work-related accidents and occupational disease fund, and 14 percent to the retirement and survivorship fund), health insurance (currently 3 percent), unemployment insurance (currently 1 percent), as well as trade-union fees (currently 2 percent) and withholding of the employee portion of the social insurance (currently 8 percent), health insurance (currently 1.5 percent), unemployment insurance (currently 1 percent), trade-union fees (currently 1 percent, if the employee participates in a grass-roots trade union). Salary for calculating social insurance and health insurance contributions is capped at 20 times the general minimum monthly salary, which is currently VND1.8 million (approximately USD79), while the salary for calculating unemployment insurance contributions is capped at 20 times the regional minimum salary, which varies depending on the region. Personal income tax must be paid by employees on their assessable income, but the employer must make tax declarations, deduct and remit tax to the state budget, and is generally responsible for undertaking tax finalization on behalf of the employee.

In terms of compulsory insurance contributions for foreign employees who have (i) a work permit or practicing license and (ii) a labor contract with an indefinite term or a term of 1 full year or more, employers must pay social insurance premiums in respect of foreign employees (currently 17.5 percent, including 14 percent to the superannuation and survivorship fund, 3 percent to the sickness and pregnancy fund and 0.5 percent to the work-related accidents and occupational disease fund) together with health insurance contributions (currently 3 percent) and withholding of the foreign employee's portion of social insurance (currently 8 percent) and health insurance premiums (currently 1.5 percent). The salary for calculating social insurance and health insurance contributions is capped at 20 times the general minimum monthly salary which is currently VND1.8 million (approximately USD79).

PRE-HIRE CHECKS

Required

Generally, before hiring foreign employees to work in Vietnam, employers must obtain prior written approval from the provincial People's Committee through the Department of Labor, Invalids and Social Affairs (DOLISA).

Possessing a valid work permit issued by the provincial labor authorities is a compulsory condition for foreign citizens to work in Vietnam, except where an exemption applies. In order for such an exemption to apply, an application with the provincial DOLISA or the Ministry of Labor, Invalids and Social Affairs (MOLISA) must be filed for confirmation. Moreover, in some situations, such as those involving foreigners who are married to Vietnamese and reside in Vietnam, no confirmation from DOLISA is necessary, but notification is still required.

Legal sanctions for the employer of a foreign citizen without a work permit include fines. A foreign citizen working in Vietnam without a work permit risks deportation and fines. See the "Immigration" section for further details.

Permissible

Employers may request their employees to provide information relating to the execution of an employment contract, such as full name, age, gender, residence address, education level, occupational skills and health conditions.

There are no regulations on obligatory pre-hire checks, including pre-hire reference checks, pre-hire criminal checks or pre-hire credit checks, in the Labor Code 2019. However, specific regulations exist in more heavily regulated fields, such as aviation, security and medicine. Questions about an applicant's past, health and criminal record are generally permissible in Vietnam.

IMMIGRATION

A valid work permit together with a temporary resident card, a temporary resident confirmation or a visa are required for foreign nationals who wish to reside and work in Vietnam for more than 3 occasions per year with each occasion not exceeding 30 days. A foreign national entering Vietnam to work without a valid work permit may be subject to fines and expelled from Vietnam. Based on the validity of the work permit, foreign national will be granted a work temporary resident card and/or a work visa.

The employer applies for work permits on behalf of the foreign employee with a prescribed application form. Applications for prior written approval for a work permit may be submitted physically, via post or electronically at <http://dvc.vieclamvietnam.gov.vn/>.

HIRING OPTIONS

Employee

Individuals may be employed on an indefinite-term contract or a definite-term contract.

Under a definite-term contract, the parties agree to the term and the time of termination of the contract for a period not exceeding 36 months.

Independent contractor

A Vietnamese individual may provide services to an enterprise or organization in Vietnam as an independent contractor, although they should generally have a household business registration to do so. The provision of services as an independent contractor falls under the jurisdiction of the 2015 Civil Code, the 2020 Law on Enterprises and the 2005 Commercial Law and is generally not considered an employment relationship to which the labor laws apply. Consequently, an independent contractor is not entitled to any statutory employment rights under Vietnam law.

The new Labor Code 2019 strengthens the protection of employees engaged under a services or consultancy agreement without justification in order to avoid employment rules. The new Labor Code 2019 provides that the name of the contract does not determine its qualification, and, when such a contract specifies the “work to do” (*công việc phải làm*), wages, management (*quản lý*) and administration (*hành*) of the hired party, then such a contract must be regarded as an employment contract.

As a general rule, the use of a service contract for permanent and long-term work is not encouraged and may be viewed by the labor authorities as a circumvention of employment-related requirements, such as contributions to statutorily required insurance for employees. This risk may be increased if the individual does not have a household business registration.

Agency worker

An agency worker is an employee recruited by an enterprise that hold a license for “labor outsourcing activities” (Outsourcing License) who thereafter works for another employer (ie, a subleasing employer). The permit under the Outsourcing License only covers certain types of occupations on a specific (and exclusive) list created by the government. The agency worker is subject to management by the subleasing employer but maintains an employment relationship with the employment outsourcing enterprise. The period of any employment outsourcing must not exceed 12 months. Agency workers have the right to receive pay and benefits equivalent to those specified in the employment contract signed between the employer and the employment outsourcing enterprise. Further, the employment outsourcing enterprise must ensure that the agency worker receives a wage not lower than that of an employee of the subleasing employer with the same job and professional qualifications, or a job of the same value. Additionally, the subleasing employer has an obligation, among others, not to discriminate regarding labor conditions between agency workers and other employees of such subleasing employer.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Employment agreements may be in written or electronic form – or verbal form if the term of employment is less than 1 month. Employment agreements must contain specific provisions in accordance with the Labor Code 2019, which are further detailed and clarified by Decree 145/2020/ND-CP dated December 14, 2020 of the Government (as amended by Decree 35/2022/ND-CP dated May 28, 2022 of the Government) and Circular No. 10/2020/TT-BLĐTBXH dated November 12, 2020 from the Ministry of Labor - Invalids and Social Affairs.

Probationary periods

Permissible if agreed between the parties. During the probation period, the employer should pay the employee no less than 85 percent of the full-time wage. The probation period must not exceed 180 days in the case of an enterprise manager role pursuant to the Law on Enterprises, and the Law on Management and Use of State Capital Invested in Production and Business in Enterprises, 60 days for work requiring specialized or technical skills and at least college level equivalency, 30 days for work requiring specialized or technical skills and at least vocational high-school level and beyond, or 6 business days for other types of work. An employee working under a definite-term labor contract with a term of less than 1 month may not be subject to a probationary period. Either party may terminate employment during the probationary period without prior notice or payment of severance.

Policies

Enterprises with 10 or more employees must have written internal labor regulations. The employer must consult with the relevant collective body regarding written internal labor regulations and register the same with the competent labor authority. Employees must be made aware of the regulations which must also be clearly displayed at the workplace. The regulations must cover:

- Working hours and rest breaks
- Rules and codes of conduct
- Occupational health and safety
- Prevention of sexual harassment in the workplace and the procedures for dealing with a breach involving an act of sexual harassment in the workplace
- Protection of assets and confidentiality
- Cases in which an employee may be temporarily transferred to undertake work different from that specified in their labor contract
- Disciplinary procedures and penalties
- Liability for material damage and
- The person having authority to impose disciplinary penalties.

The relevant collective body is an organization representing the employees at the grassroots level, including the grassroots trade union and employee's organization, which form together the Organization Representing the Employees at the Grassroots Level. It is not compulsory to establish a trade union or an employee's organization at company level, but a trade union can be established upon the voluntary participation of at least 5 employees. Specific guidance on establishing an employee's organization at the company level has not as yet been issued.

The employer must consult the opinion of the Organization Representing the Employees at the Grassroots Level in case the employer has such an organization about its internal labor regulations.

The new Labor Code 2019 and implementing decree No. 145/2020/ND-CP also provides that the persons having the authority to issue disciplinary sanctions are those who have the authority to enter into employment contracts on behalf of the company as prescribed in Clause 3 Article 18 of the Labor Code 2019 or the persons specified in the company's internal labor regulations.

Third-party approval

An employer must register its internal labor regulations with the competent labor authority where the company is located. Each province has a Department of Labor, Invalids and Social Affairs (DOLISA), but there is only one Ministry of Labor, Invalids and Social Affairs (MOLISA), located in Hanoi. While MOLISA is the higher authority, regulatory interpretations may differ between DOLISAs.

LANGUAGE REQUIREMENTS

No statutory language requirements exist. However, in the event of dispute, the labor courts review documents in Vietnamese only.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

The maximum number of normal working hours is 8 hours per day and 48 hours per week. Employers have the right to stipulate that employees work on a daily or weekly basis, but they must notify the employee of such. If a weekly basis applies, normal working hours must not exceed 10 hours in a day and must not exceed 48 hours in a week.

Any employee working at night shall be paid at least an additional 30 percent on top of the wage for such work conducted during the daytime.

Overtime

Employers may require an employee to work overtime, but only when:

- The employee agrees
- The overtime hours do not exceed 50 percent of the normal working hours in a day and

- Where working hours are implemented on a weekly basis, the total of normal working hours and overtime hours do not exceed 12 hours in a day; the total overtime hours do not exceed 40 hours in a month or 200 hours in a year or, in special cases, 300 hours in a year, the latter subject to written notification being provided to the provincial labor authorities.

No employees are exempt from the overtime requirements.

Employers must pay employees who work overtime and work at night.

Overtime means the period of time spent working in addition to normal working hours, as stipulated by law, in the collective labor agreement or in the internal labor rules.

An employee who works overtime must be paid according to the wage unit price or wage of their current work as follows:

- On normal days, at a rate of at least 150 percent
- On weekly days off, at a rate of at least 200 percent
- On holidays and paid leave days, at a rate of at least 300 percent, exclusive of the individual's normal daily wage

If the employee works overtime at night, the employee must be paid (i) the relevant overtime rate (ie, 150 percent, 200 percent or 300 percent of their normal daily rate), (ii) an additional 30 percent of their normal daily rate, as noted above, plus (iii) 20 percent of the applicable rate as calculated per items (i) and (ii).

Wages

By law, employers must establish a salary scale, payroll and labor rates which are the basis for recruiting employees and reaching agreement with them on the salary rate to be stipulated in labor contracts. When formulating its salary scale, payroll and labor rates, the employer must seek an opinion from the Organization Representing the Employees at the Grassroots Level if the employer has such an organization. Thereafter, the employer must make an advance public announcement at the workplaces of its employees before implementation.

The government announces a minimum monthly area wage rate that is normally amended once a year and has 4 levels depending on the geographic location. The minimum area wage is the lowest rate that can be paid to employees doing the most basic work in normal working conditions. The current minimum wage ranges from VND3.25 million per month (approximately USD139) to VND4.68 million per month (approximately USD201) depending on the location.

The government also announces a general minimum monthly wage from time to time – normally once per year – that applies for state employees but is also used to determine the maximum amount of monthly wage on which social insurance or health insurance premiums are based (ie, equal to 20 months' general minimum wage level). The current general minimum wage is VND1.8 million (approximately USD79).

Vacation

An employee who works for the employer for 12 full months is entitled to fully paid annual leave as follows:

- 12 working days for employees working in normal conditions
- 14 working days applicable to employees who are under 18 years old, have disabilities or work in heavy, toxic or dangerous jobs
- 16 working days applicable to employees working in extremely heavy, toxic or dangerous jobs as defined in the list issued by the MOLISA

An employee may agree with an employer to take annual leave in installments or to combine the periods of annual leave and take leave once every 3 years.

Sick leave & pay

Employees on leave due to sickness or personal accident (not labor accidents) are entitled to receive a monthly allowance paid by Vietnam's social insurance fund. There is no obligation for an employer to pay an employee during sickness absence. The allowance from the social insurance fund is also available to those who take leave to care for sick children under 7 years old and is equal to 75 percent of salary (on which social insurance premiums are based) for the month preceding the leave. A medical certificate from a health establishment must be provided by the employee.

The maximum entitlement is:

- 30 days per year if the employee has contributed to the social insurance fund for less than 15 years
- 40 days per year if the employee has contributed to the social insurance fund from 15 years to less than 30 years and
- 60 days per year if the employee has contributed to the social insurance fund for 30 years or more.

There is no limitation on the number of days that an employee can be on leave due to sickness if the employee can reach an agreement with the employer on leave of absence without pay. However, the employer has the right to unilaterally terminate the labor contract if the employee is ill or injured and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite-term labor contract, or 6 consecutive months in the case of a definite-term contract of 12 up to 36 months, or more than half the duration of the contract in the case of a definite-term contract with a duration of less than 12 months.

Maternity/parental leave & pay

Women are entitled to 6 months of maternity leave. The maximum maternity leave prior to childbirth is 2 months, and the remainder is taken after birth. For multiple births, the mother is entitled to an additional 1-month leave for each child from the 2nd child. An employee who adopts an infant child is entitled to maternity leave until the child is 6 months old.

A male employee who pays social insurance premiums and whose wife gave birth to a child is entitled to paternity leave of 5 to 14 working days depending on the number of children born and the circumstances of the birth.

During maternity leave, the employee receives a monthly allowance of 100 percent of their average salary (on which social insurance premiums are based) in the preceding 6 months from the government, provided that the

employer has paid social insurance premiums for the employee for at least a full 6 months in the 12-month period before childbirth or child adoption. Female employees who give birth or employees adopting a child under 6 months are entitled to a lump sum allowance equivalent to twice the monthly basic salary for each child in the month of childbirth or adoption. This lump sum allowance is in addition to paid maternity leave.

Personal leave of absence & leave without pay

Provided that employees notify their employer in advance, employees are entitled to take leave with full payment of salary in the following circumstances:

- The employee's wedding: 3 days
- The wedding of the employee's natural or adopted child: 1 day and
- Death of the employee's natural or adoptive parent, employee's spouse, natural or adoptive parent of the employee's spouse, or employee's natural or adopted child: 3 days

Upon notification to the employer, an employee is also entitled to take 1 day off without pay in the case of death of employee's grandparent or sibling, or on the marriage of employee's parent or sibling.

An employee may reach agreement with the employer on leave of absence without pay.

DISCRIMINATION & HARASSMENT

Any discrimination, exclusion or preference on the grounds of race, color, gender, nationality, social class, ethnicity, age, maternity status, marital status, religion, belief, political belief, HIV status, family responsibility, disability or joining or establishing a trade union or employees' organization at the enterprise is prohibited. Discrimination against outsourced employees is additionally prohibited.

WHISTLEBLOWING

Whistleblowing or denunciation is mainly handled in accordance with the Law on Denunciation No. 25/2018 /QH14, the Criminal Proceedings Code No. 101/2015/QH13 and the Anti-Corruption Law No. 36/2018/QH14.

Denunciation may be made verbally or in writing. Generally, after receipt of the denunciation, the competent authority will verify the information of the denouncer and the contents of denunciation in order to issue a written conclusion within a period up to 30 days. This may be extended for an additional period of up to 60 days, subject to the complexity of the case. The conclusion must be disclosed publicly in accordance with the laws.

Denouncers and their relatives are protected by certain legal mechanisms. Although the denouncers must give their name and address when making the denunciation, their identifying information may be kept confidential.

Under certain circumstances as provided in the Criminal Code No. 100/2015/QH13, dated November 27, 2015, failure to denounce a criminal violation or corrupt act may subject the relevant person to a penalty of up to 3 years' imprisonment.

BENEFITS & PENSIONS

In accordance with Decree No. 135/2020/ND-CP, the compulsory retirement age for employees working in normal conditions will be progressively adjusted to 62 years old for male employees in 2028 and 60 years old for female employees in 2035.

An employee whose ability to work is reduced; who performs particularly heavy, toxic or dangerous work; or who works in areas where the socio-economic conditions are particularly difficult may retire at an earlier age but no earlier than 5 years before the normal retirement age, unless otherwise provided by Vietnamese law.

The retirement age may be increased by up to 5 years for employees with high technical expertise or professional qualifications, or in a number of other special cases.

A retiree is entitled to a monthly pension financed by the social insurance fund if that person has reached retirement age and has been paying into the fund for at least 20 years. Men and women are entitled to the same maximum pension rates. Lower pension rates may apply to those who only partially satisfy the above requirements. A lump-sum payment may apply where an employee fails to meet the above requirements.

DATA PRIVACY

Vietnamese laws do not provide for a separate framework governing the concept of personal data in an employment context, but personal data provisions are provided under various laws – mainly the Civil Code, the Law on Protection of Consumer's Rights, the Law on Cyber Information Security, the Law on Cybersecurity and decrees, and circulars (including but not limited to the new Decree No. 13/2023/ND-CP of the Government dated April 17, 2023 on personal data protection which provides further requirements and responsibility of the data controller, data processor and data controlling and processing party.

General data security requires any party to obtain the respective individual's consent if their personal information is collected, processed, used or stored in any way. Consequently, this requirement will equally apply to employers when handling their employees' personal data (ie, the employer must obtain the employee's direct consent). In addition to obtaining the above consent from employees regarding their personal data, there are certain general obligations and standards that employers must adhere to when collecting, processing and using the personal data of the data subject (ie, the employee). These rules are predominantly rooted in Vietnamese data privacy laws mentioned above. In addition, Decree No. 13/2023/ND-CP stipulates the obligations of entities in relation to data processing. If an entity involved in collecting and processing personal data, it is required to formulate and promulgate regulations on personal data protection, appoint personnel to be responsible for sensitive personal data protection, check the network security for the system and the means and equipment for personal data processing before processing, irrecoverable deletion or destruction of devices containing personal data, etc. On a separate note, if an entity conducting data cross-border transfers, it must prepare an impact assessment dossier on cross-border personal data transfer available at all times for the inspection of Ministry of Public Security.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Upon a transfer of assets, change of ownership, division or separation, consolidation or merger, sale, lease out or conversion of the company's form impacting the job of several employees, the previous employer must prepare a so-called labor usage plan. The previous employer and the successor employer must implement the labor usage

plan. When employees' employment contracts are terminated as a result of the transaction or conversion, the employer must pay a specific severance allowance, called a job-loss allowance, to the affected employees who have regularly worked for the employer for 12 or more months.

EMPLOYEE REPRESENTATION

Trade unions act as employee representatives in Vietnam. The employer is responsible for encouraging and providing favorable conditions for the establishment of a trade union within the workplace. Trade unions participate in the improvement of social legislation, represent workers in the negotiation and execution of collective agreements, and assist in labor disputes. An employer is prohibited from being prejudiced against employees based on their participation in a trade union.

Employers are not obliged to establish a trade union, but they are intended to create a favorable environment for their establishment. In order for a trade union at enterprise level to be established, 5 or more employees must unite and request recognition by the higher-level union. Employees who are trade union officers may conduct trade union activities during working hours. Such employees have specific protection against termination of their employment. All employers and enterprises, regardless of whether a trade union is established or not, including foreign-invested enterprises, must pay into the trade union fund at a rate of 2 percent of their payroll (on which social insurance premiums are based). This trade union fee paid by the employer is a permissible deduction when assessing corporate income tax.

In practice, production companies tend to have a union, whereas service companies do not.

In parallel to a grassroots trade union, the Labor Code 2019 enshrines the right of employees to set up or join a labor representative organization, called an employee organization, that is independent from the existing trade union system managed by the Vietnam General Confederation of Labor.

TERMINATION

Grounds

The grounds for termination of an employment contract include the following:

- Expiry of the term
- The agreed work is completed
- Agreement between the parties
- Employee is imprisoned or legally prevented from carrying out the contract
- The foreign employee is deported in accordance with an order issued by the courts or competent authorities
- The work permit of a foreign employee expires
- The employee dies, is missing or has lost legal capacity for civil acts

- The employer dies, is missing or loses legal capacity for civil acts, or ceases its operations; or a business registration authority states that the company does not have a legal representative or authorized person
- The employee is dismissed in accordance with the laws
- One of the parties unilaterally terminates (eg, due to performance issues) in accordance with the law
- The employer makes the employee redundant as a result of a restructuring, a change of technology, economic reasons or due to a merger, division, sale, lease, conversion of the company's form, consolidation or separation of the enterprise, transfer of ownership or rights of the assets of the enterprise, and
- One of the parties terminates the employment contract or probationary contract during or at the end of the probationary period.

An employer may unilaterally terminate an employment contract where:

- The employee repeatedly fails to perform their work in accordance with the terms of the labor contract. However, in order to do so, the employer must specify the criteria for assessing the level of completion of work in a performance policy. Such a policy must be issued after consulting the Organization Representing the Employees at the Grassroots Level, if any
- The employee is sick or has an accident and remains unable to work after relevant periods of medical treatment specified at law
- The employee fails to attend the workplace after 15 days from the expiration of a labor contract suspension period
- The employee has reached the retirement age
- The employee is absent from work without a legitimate reason for 5 consecutive working days or more
- The employee provides untruthful information (*ie*, the employee's full name, date of birth, gender, residential address, educational standard, trade skills and qualifications, certification of health status and other matters directly relevant to entering into the labor contract which the employer requests) when entering into the labor contract and this fact adversely affected recruitment of the employee
- The employer is forced to reduce employment, after attempting all measures to recover from a natural disaster, fire or dangerous epidemic, enemy destruction, resettlement or narrowing of production and business as required by a competent State agency.

An employee on an indefinite-term employment contract may unilaterally terminate the contract if they provide the employer with at least 45 calendar days' advance notice or at least 120 calendar days' advance notice (if the employee works in certain industries and trades and special jobs as regulated by the government, including as an enterprise manager as prescribed by the Law on Enterprises).

An employee working under a definite-term labor contract from 12 to 36 months may unilaterally terminate the contract by giving a 30 calendar days' advance notice or 120 calendar days' advance notice (if the employee works in certain industries and trades and special jobs as regulated by the Government, including as an enterprise manager as prescribed by the Law on Enterprises).

Further, an employee working under a definite-term employment contract with a term of less than 12 months may unilaterally terminate the contract by giving advance notice of at least 3 working days or advance notice of a period equal to a quarter of the term of the employment contract (if the employee works in certain industries and trades and special jobs as regulated by the Government, including as an enterprise manager as prescribed by the Law on Enterprises).

However, the employee is not required to give an advance notice to the employer if the employee:

- Is not assigned to the correct job or workplace, or is not given the work conditions agreed upon in the contract
- Is not paid their salary fully or in a timely manner
- Is mistreated, humiliated or forced to work by the employer
- Is sexually harassed at the workplace
- Is pregnant and must cease working per the advice of a competent medical examination and treatment establishment
- Reaches the retirement age or
- Has been provided untruthful information by the employer which has adversely affected the implementation of the employment contract.

Employees subject to termination laws

All.

Restricted or prohibited terminations

An employer is not permitted to unilaterally terminate an employment contract if:

- The employee is suffering from an illness or injury caused by a work-related accident or occupational disease and is undergoing treatment by a doctor, other than in the circumstances specified in the "Grounds" section above
- The employee is on annual leave, paid leave or any other type of leave permitted by the employer or
- The female employee is pregnant, the employee is on maternity or paternity leave or is nursing a child under 12 months of age.

Third-party approval for termination/termination documents

Not applicable.

Mass layoff rules

Mass layoff rules apply in cases of termination of employment due to restructuring, change of technology or changes for economic reasons. If the employer is unable to create new jobs and must make employees redundant, the employer must pay severance allowances to those employees. In order to conduct a mass layoff of its employees, the employer must have discussions with the organization representing the labor collective at the grassroots level and provide 30 days' advance notice to the provincial state administrative body for labor and to the impacted employees.

Notice

The employer must give prior notice to the employee when unilaterally terminating an employment contract, unless otherwise provided by law. The notice period must be:

- At least 45 days in the case of an indefinite-term employment contract
- At least 30 days in the case of a definite-term contract with a term of from 12 months to 36 months and
- At least 3 working days in the case of a definite-term contract with a term of less than 12 months, or in the case of termination of the contract due to illness or injury of the employee, as prescribed by law.

However, where the employee performs certain jobs regulated by the government (including, inter alia, where the employee works as an enterprise manager as prescribed in the Law on Enterprises), the employer must provide at least 120 days' advance notice if the employee is working pursuant to an indefinite-term employment contract or a definite-term employment contract of 12 months or more, or an advance notice of at least a period equal to a quarter of the term of the employment contract if the employee is working pursuant to an employment contract with a term of less than 12 months.

Statutory right to pay in lieu of notice or garden leave

There is no specific right of payment in lieu of notice or garden leave under Vietnamese law. However, the employer and the employee are generally entitled to mutually agree to payment in lieu of notice or garden leave.

Severance

Generally, employees working for 12 months or more are entitled to a severance allowance equal to the aggregate amount of half of 1 month's salary for each year of employment, unless the employee and the company contributed to the mandatory unemployment insurance scheme for the entire duration of the employment relationship.

In the event of restructuring, change of technology or changes for economic reasons; or upon the merger, consolidation, division or separation of an enterprise; or sale, lease out or conversion of the enterprise's form; or transfer of the ownership or rights of the assets of the enterprise, the retrenchment allowance is 1 month's salary for each year of employment, with a minimum of 2 months' salary.

An employee who unilaterally and illegally terminates a contract is not entitled to a severance allowance and must pay compensation to the employer of half of 1 month's salary.

"Salary," for the purposes of calculating severance payment, refers to the average salary set out in the labor contract including (1) wage rates for the work or position (based on the wage scales formulated by the employer in accordance with labor laws), (2) wage allowances and (3) other additional items specified together with the wage rate agreed in the labor contracts which are regularly paid each pay period earned in the 6 months immediately preceding termination.

POST-TERMINATION RESTRAINTS

Confidentiality & Non-competes

Article 21.2 of the Labor Code 2019 stipulates that, when an employee performs work which is directly related to business or technological secrets, the employer has a right to obtain the employee's written agreement to terms of confidentiality for business secrets and technology as well as on payment of compensation, an agreement that is generally enforceable during employment should the employee breach it.

There is no regulation of non-compete clauses in the Labor Code 2019; however, such clauses exist as a matter of practice. Under the Labor Code 2019, an employee is entitled to freely choose a job and employment with any employer in any location not prohibited by law. The employee also has the right to enter into multiple labor contracts with multiple employers, provided that the contents in the executed contracts are fully performed. As a result, in case of a dispute, a competent court may declare the non-compete provisions invalid as they are non-compliant with the Labor Code 2019.

It is recommended that any non-competes that are intended to survive termination of the labor relationship be included in a separate standalone contract between the employer and employee outside the labor contract, as such agreement is treated as a civil agreement and covenants therein may survive termination of the labor relationship. This approach has become more common and is supported by some court cases.

Customer non-solicits

Not regulated. Uncertain in terms of enforceability.

Employee non-solicits

Not regulated. Uncertain in terms of enforceability.

WAIVERS

The waiver of statutory rights is not regulated by labor laws and may be unenforceable in practice.

REMEDIES

Discrimination

Employers (who are individuals) are subject to a fine of between VND5 million (approximately USD217.24) and VND10 million (approximately USD434.48) for discrimination on the basis of race, gender, skin color, nationality, social class, ethnicity, age, maternity status, marital status, belief, religion, political belief, disability, family responsibility or HIV infection. Levels of fines applicable to organizations that serve as employers are twice the levels noted above.

Unfair dismissal

An employer (who is an individual) may face a penalty of up to 3 years' imprisonment on a case-by-case basis if the act of illegally laying off an employee results in serious consequences.

The employer must take the employee back to work under their labor contract and must pay wages, social insurance, health insurance and unemployment insurance for the period during which the employee did not work, plus at least 2 months' wages in accordance with the labor contract.

If the employer does not wish to re-employ and has the employee's consent, then, in addition to the compensation prescribed above and the severance allowance, the 2 parties may agree upon an additional amount of compensation of at least 2 months' wages in order to terminate the labor contract.

If the role that an individual employee held no longer exists, and the employee wishes to continue to work, then, in addition to the compensation mentioned, the 2 parties must negotiate an amendment or supplement to the labor contract.

Failure to inform & consult

An employer (who is an individual) may be subject to a fine of between VND5 million (approximately USD217.24) and VND20 million (approximately USD868.96) for the following:

- Failing to consult the organization representing the employees at the grassroots level (where the company has such an organization) on formulation of wage scales, wage tables, labor rates and bonus rules, and the performance policy/rules on assessment of the level of completion of work.
- Refusing to reach a written agreement with the executive board of organization representing the employees at the grassroots level when unilaterally terminating employment contracts, re-assigning workers or laying off workers who are members of the leadership of the organization representing employees at the grassroots level, but not yet at the level justifying criminal prosecution.

Levels of fines applicable to employers which are organizations are twice the levels noted above.

CRIMINAL SANCTIONS

Employers may be criminally liable for certain violations, such as unlawfully dismissing an employee or using force or threats which cause an employee to resign, and may be subject to a fine, imprisonment or both.

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