PERSOL HR DATA BANK in APAC

VIETNAM

Labor Laws

August 2020
Vietnam's labor laws are also designed to be advantageous for employees. Specifically, grounds for dismissal are specified under laws, and companies are required to pay statutory retirement benefits upon dismissing a worker. Furthermore, when a company wishes to dismiss a worker as a punitive dismissal, the company is required to take procedures such as consulting with the trade union and obtaining the trade union's agreement in advance. When a company wishes to dismiss a worker as a dismissal on grounds of reorganization, the company may not immediately dismiss the worker if the job of that worker, who has worked for 12 months or longer for the company, is no longer available, and is obligated to offer training and provide a new job to that worker. Moreover, a terminable contract for that new job may only be renewed once, and the minimum wage is also prescribed.

It cannot be said that Vietnam is generous regarding the acquisition of visas by foreigners, and Vietnam can be evaluated as being a jurisdiction in which labor management is extremely difficult for companies, similar to Indonesia.

*Overview of Common Law and Civil Law

Common Law is a legal system mainly in use in the UK and in nations formerly part of the British Empire (the US, Canada, Australia, New Zealand, etc.), which emphasizes decisions based upon traditions, customs, and precedent.

On the other hand, civil law developed on the European continent in nations such as France and Germany, and as a legal system compared to common law, civil law places emphasis on statutes. Japan uses a civil law legal system.
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1. **Points to consider regarding labor management, characteristics of labor practices, and the status of recent labor policy in Vietnam**

1-1. **Labor laws of Vietnam are advantageous for workers**

Based on a substantial one-party rule by the Communist Party of Vietnam, Vietnam is governed according to democratic centralism, which is defined as the integration of the centralized system and democracy. Legislative power, administrative power, and judicial power function not to maintain checks and balances, but as special branches for supporting the administration of the nation. Among the above, administrative power is charged by the government organized around 22 of the States and the State Committee, and the labor laws of Vietnam are primarily under the administrative jurisdiction of the Ministry of Labor, Invalids, and Social Affairs (MOLISA).

In Vietnam, which is a socialist state, workers are generously protected, and the labor laws work more favorably for workers than in Japan. For instance, when a company is to employ a worker for a definite term, if such employment is continued for a given period or longer, the company is required to thereafter employ that worker for an indefinite term, and the reason must be specified when the company is to dismiss a worker. Furthermore, when a dispute arises between the company and a worker, favorable judgments for the worker are often rendered, and it is necessary to take note that, in order to avoid future disputes, the company may be required to implement careful measures for the dismissal procedure.

The new Labor Code No. 45/2019/QH14, which became law on November 20, 2019 ("New Code"), was promulgated on December 6, 2019. Even under the New Code, the situation where the labor code works more favorably for workers has been followed. For example, the New Code includes severe revisions that have been made for employers, such as raising the retirement age or unilaterally terminating a labor contract simply by giving advance notice from employees with fixed-term contracts. The New Code will become effective on January 1, 2021.

1-2. **Labor union and strikes**

In Vietnam as a socialist state, not only a company trade union but a prefecture/district level (smaller administrative unit than central municipalities/state level) trade union is organized as a part of the Vietnamese Communist Party System Organ headed by the Vietnam General Confederation of Labor.

While legal strike procedures are prescribed in the Labor Code (Labor Code 2012 (Law No. 10/2012/QH13)), Article 209 onward, most of the strikes are illegal and do not follow these legal strike procedures; the matter is, workers have poor knowledge of the legal procedures for a strike. Most strikes are for demanding an increase in base pay, though protests against
overwork and the low quality of the worker’s canteen are also common reasons for such strikes.

When a legal strike occurs, the basic flow is a) hearing from workers, ii) decision of holding a strike, and iii) going on strike, provided that workers notify not only the company but the state-level labor administrative organization and state-level trade union. In the case of an illegal strike, the People's Committee Chairperson notifies the prefecture/district-level trade unions, and then the prefecture/district-level People's Committee Chairperson, labor administrative organization, and the trade union make an effort to solve the situation. If the investigation reveals that the strike was illegal, there is no need to protect the salaries and legal rights of the workers participating in the strike, and if the company's machinery or the like is damaged, the company is allowed to seek damages from the trade unions (Decree No. 05/2015/ND-CP). Nevertheless, even if the strike turns out to be illegal, there are cases where a resolution is brought by largely accepting the worker's demands.

1-3. Increase of minimum wage

From 2014 onward, the inflation rate has remained in single digits and has been relatively stable. Nevertheless, the minimum wage has been increasing every year, and in January 2020, the minimum wage increased by approximately 5.5% monthly in comparison to the previous year (nationwide average). Even if the company has already paid the minimum wage more than the amended minimum wage, mostly workers demand increases in the base pay under the latest revision rate, so the company is always required to confirm the latest details of such amendment.

1-4. Other

(1) High turnover rate

In Vietnam, there are social customs where workers take care of their parents and relatives, in addition to their own families, and their interest in salary and welfare is considerably high. Many workers do not hesitate to switch to a different job if they are presented with more favorable conditions. In order to prevent the outflow of competent personnel, while it is necessary to treat the workers fairly with regard to salary and benefits on the one hand, it is also necessary to consider the fact that, once a company hires a worker, it is difficult to dismiss that worker easily, and it is crucial that the company concludes a well-balanced employment contract, such as the terms of contract.

(2) Mandatory retirement

Under the Labor Code, the mandatory retirement age is 60 for males and 55 for females, though, the reason for termination of the employment contract is to satisfy the subscription period of social insurance and the mandatory retirement age, so even upon reaching the mandatory retirement age, if a worker does not satisfy the eligibility requirement for receiving social insurance, the company may not terminate the employment contract with that worker (Labor Code,
Article 36, Paragraph 4). The eligibility requirement for receiving social insurance is participation in the social insurance system for 20 years or longer in principal (Social Insurance Law, Article 54).

Provided, however the principal states so, Paragraph 3 of Article 1, Decree No. 148/2018/ND-CP prescribes that, with respect to the employment contract with elderly worker who already passed mandatory retirement age, in the case there is no need for such worker or where the health condition of the elderly worker is not good, both the company and the worker may terminate the contract by mutual consent, so there are rules when the company can terminate the contract as needed.

The New Code provides that the retirement age will be gradually increased to 62 for males and 60 for females (the New Code, Article 169).

(3) Confidentiality of workers

The need for protecting corporate secrets has increased pursuant to the maturity of the industry, and the Labor Code prescribes that, when a worker is directly involved with operational or technical secrets prescribed under the Labor Code, the company is required to reach a written agreement in advance with that worker with regard to the confidentiality obligation and compensation for damage upon violating such confidentiality obligation (Labor Code, Article 23, Paragraph 2). In order to avoid any future protest from a worker who is in contact with corporate secrets to the effect that the confidentiality obligation was not expressly imposed, going forward, it is desirable to clearly prescribe provisions concerning confidentiality in the employment contract or the internal work regulations.

It happens commonly that a worker uses the corporate email address for private purposes, and it will be important to impose the rule of usage of the email.
2. Overview of basic labor laws of Vietnam

2-1. Basic labor laws

(1) Characteristics

While Vietnam adopts the same continental civil law as Japan, much of the subject matter is still undergoing trial and error, and the satisfaction of various codes (Orders, Resolutions, Decrees, Decisions, Directives and Circulars acknowledged as being the "Legal Documents" set out in the Laws on Promulgation of Legal Documents 2008), which are issued on a case-by-case basis as needed, is required quite often. This situation will not change under the New Code, when a company is to impose some kind of disposition that would be disadvantageous to a worker, the company is required to confirm whether new bylaws or guidelines were presented based on the formulation of these various codes and, when formulated, whether the procedures taken by the company are in violation of the subject matter of such codes.

(2) Labor laws

(i) Labor Code 2012 (Law No. 10/2012/QH13)

This law comprehensively regulates the basic labor-related matters of Vietnam. In addition to prescribing provisions regarding employment contracts, work hours, and holidays, the Labor Code also sets forth the labor dispute resolution procedures (Labor Code, Article 194 onward), and the outline of social insurance (Labor Code, Article 186 onward).

The Labor Code guarantees the shortening of work hours and additional leaves for minors, elderly persons, physically disabled persons, and females, and it should be noted that, with regard to part-timers whose work hours are shorter than statutory work hours, the Labor Code guarantees them the same level of treatment and wage systems as full-time workers (Labor Code, Article 34).

The New Code will become effective on January 1, 2021, as stated above.

(ii) Law on Trade Unions 2012 (Law No. 12/2012/QH13)

A new Law on Trade Unions has been enforced since January 2013. The Law on Trade Unions prescribes matters related to the organization, rights, and obligations of trade unions. The Law on Trade Unions also sets forth matters related to legal strike procedures, in addition to the union’s involvement in the creation of internal work regulations of trade unions and in the employment contract negotiations with trade unions, as well as its function to serve as the window of labor disputes (involvement in disputes, initiation of lawsuits), and its relation with the labor department (cooperation with investigations).

A company is required to cooperate in the establishment of a trade union, and once established, the company is obligated to
2. Overview of basic labor laws of Vietnam

provide information to and discuss and cooperate with the trade union and must make a contribution to the trade union fund in an amount of 2% of the wages to be used as the basis for calculating the social insurance (Law on Trade Unions, Article 26).

(iii) Employment Law 2013 (Law No. 38/2013/QH13)

The Employment Law is composed of a total of 7 chapters and 62 articles and prescribes in detail matters related to the employment generation, information related to the labor market, national trade certificate, recruiting service, unemployment insurance, etc.

(iv) Social Insurance Law 2014 (Law No. 58/2014/QH13)

The Social Insurance Law is composed of a total of 9 chapters and 125 articles and prescribes in detail matters related to the rights and obligations of companies and workers pertaining to social insurance, as well as matters related to the accumulation of funds. Companies and their workers are obligated to participate in and contribute to social insurance, health insurance, and employment insurance. The applicable scope of the revision was extended to foreign workers from December 1, 2018, in principle, if such worker meets requirements of relevant rules (Decree No. 143/2018/ND-CP).

(v) Health Insurance Law 2014 (Law No. 46/2014/QH11)

This law sets forth matters related to health insurance and was enforced as of January 2015. Based on the Decree of 2014 (Decree No. 105/2014/ND-CP), information related to payments has been partially supplemented.

(vi) Others

Law on Vocational Education and Training 2014 (Law No. 74/2014/QH13)

This law prescribes matters related to the organization and operation of institutions to implement vocational education and training, and the details of the vocational education and training.

Law on Gender Equality 2006 (Law No. 73/2006/QH11)

This law prescribes various measures for promoting gender equality. With regard to employment, this law sets forth equal treatment at the workplace, and applies to private companies.

Law on Persons with Disabilities 2010 (Law No. 51/2010/QH12)

This law prescribes the rights and obligations of disabled persons, as well as the responsibilities of the State, family members, and society. This law promotes the participation of disabled persons in society by guaranteeing the education and training of disabled persons and their participation in social activities.

Law on Occupational Safety and Health 2015 (Law No. 84/2015/QH13)

This law prescribes securement of occupational safety and health, policies, and systems for victims of labor accident and occupational disease, the rights and obligations of each party/persons regarding to the occupational safety and health, and national management regarding to the occupational safety and health, and this law is applicable to workers who have not entered into employment contracts.
2-2. Employment contracts

(1) Labor Code and workers

Based on Article 2 of the Labor Code, the Labor Code applies to (i) Vietnamese workers, (ii) employers, (iii) foreign workers working in Vietnam, and (iv) other individuals and corporations having a direct labor relationship. Even with regard to officers and other persons in management positions, if it is substantially determined that they are serving under the instructions of a domestic or an overseas "employer" (e.g.: supervisor of a foreign parent company), it should be noted that they may be subject to the Labor Code as "workers".

(2) Employment contract

The company has the obligation to declare the use of labor within 30 days from the date of commencement of operations and report periodically on changes in the labor in the process of operation to the local state management agency of labor (Labor Code, Article 6, Paragraph 2d, Decree No. 03/2014/ND-CP). Furthermore, upon hiring a worker, the company must notify the following matters in advance to the worker prior to concluding an employment contract with that worker (Labor Code, Article 19).

<table>
<thead>
<tr>
<th>Cf. Matters to be notified to workers in advance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Job description</td>
</tr>
<tr>
<td>(2) Work location</td>
</tr>
<tr>
<td>(3) Working conditions</td>
</tr>
<tr>
<td>(4) Work hours</td>
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<tr>
<td>(5) Rest break</td>
</tr>
<tr>
<td>(6) Occupational safety and sanitary conditions</td>
</tr>
<tr>
<td>(7) Wages</td>
</tr>
<tr>
<td>(8) Payment method of wages</td>
</tr>
<tr>
<td>(9) Social insurance and health insurance</td>
</tr>
<tr>
<td>(10) Confidentiality obligation of trade secrets</td>
</tr>
<tr>
<td>(11) Other matters that should be known by</td>
</tr>
<tr>
<td>workers upon concluding the employment</td>
</tr>
<tr>
<td>contract</td>
</tr>
</tbody>
</table>

With regard to employment contracts, excluding temporary employment contracts of less than three months, companies are required to conclude a written employment contract with all workers, and the company and the worker must retain one copy each (Labor Code, Article 16). While no designated form of the contract, and it would suffice so as long as the following contents are described. When concluding the employment contract, it is recommended that the company will
explain the matters, such as the job description, which may cause a dispute at a later date, and obtain a separate document with the worker's signature indicating that the worker has understood and agreed to the contents of the employment contract. Under the Labor Code, the matters that need to be included are as follows (Labor Code, Article 23, Paragraph 1). Certain details are additionally indicated in a Decree (Decree No. 05/2015/ND-CP).

**Cf. Subject matter of employment contract**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Information of employer (name of representative, location of company)</td>
</tr>
<tr>
<td>(2)</td>
<td>Information of worker (name, date of birth, gender, address, ID number of worker)</td>
</tr>
<tr>
<td>(3)</td>
<td>Job description, workplace</td>
</tr>
<tr>
<td></td>
<td><em>Since the worker's consent is required for changing the job description, the company may find it convenient if it is not excessively limited.</em></td>
</tr>
<tr>
<td>(4)</td>
<td>Period of employment contract</td>
</tr>
<tr>
<td>(5)</td>
<td>Wage (rate, time of payment, payment method, allowance, and other additional benefits)</td>
</tr>
<tr>
<td>(6)</td>
<td>Wage increase and promotion system</td>
</tr>
<tr>
<td>(7)</td>
<td>Work hours, holidays</td>
</tr>
<tr>
<td>(8)</td>
<td>Work safety facilities of workers</td>
</tr>
<tr>
<td>(9)</td>
<td>Social insurance and health insurance (unemployment insurance added by the New Code)</td>
</tr>
<tr>
<td>(10)</td>
<td>Training and instruction course for up-skilling</td>
</tr>
</tbody>
</table>

There are the following three types of employment contracts; specifically, (i) an indefinite term employment contract, (ii) a definite term employment contract (12 months to 36 months), and (iii) a seasonal employment contract (less than 12 months).

**(i) Indefinite term employment contract (Labor Code, Article 22, Paragraph 1(a))**

The employment contract for indefinite term employment is the basic employment contract in Vietnam. Grounds for dismissal under the Labor Code are limited, and the workers are generously protected.

***(ii) Definite term employment contract (Labor Code, Article 22, Paragraph 1(b))***

This is an employment contract in which the contract term is limited to 12 months or longer and 36 months or less, and the company may terminate the contractual relationship at the expiration of the contract term. The employment contract may be renewed only once. When the company wishes to continue employing the worker based on definite-term employment, the company is required to conclude a new definite term employment contract with the worker. If the worker continues working without concluding an employment contract within 30 days after the expiration of the contract term, the company should take heed because it will be deemed that the company has switched to an indefinite term employment contract (Labor Code, Article 22, Paragraph 2). When the contract term expires after renewal, the company must decide whether to terminate the employment contract or conclude an indefinite term employment contract with the worker. When terminating the employment contract, it is recommended that the company provide a prior written notice to such effect in order to prevent
the worker from asserting the implicit renewal of the employment contract. Since renewal is only allowed once, the maximum length of employment based on a definite term employment contract is six years (initial employment for a period of 36 months + additional employment for a period of 36 months based on renewal of the employment contract).

While there are many local companies that go against this system, such company assumes the risk of paying a fine (20 million dong or less) or it may be determined that the employment contract is invalid in subsequent dispute procedures.

The term of the employment contract may be amended only once in employment contract Appendix but the type of the employment contract shall not be amended. (Decree No. 05/2015/ND-CP, Article 5).

(iii) Seasonal employment contract (Labor Code, Article 22, Paragraph 1(c))

An employment contract with a contract period of less than 12 months is based on the premise that the job description will also end within the same period due to the nature of the job description. Excluding temporary personnel to cover for workers on maternity leave or the like, as a general rule, a seasonal employment contract is not permitted for work of an ongoing nature.

In the New Code, the classification of (iii) above has been deleted, and the types of employment contracts are classified into the following two types (New Code, Article 20);

(i) an indefinite term employment contract; and

(ii) a definite term employment contract (less than 36 months).

(3) Probation period

The maximum length of the probation period is prescribed under laws depending on the job description (Labor Code, Article 27).

<table>
<thead>
<tr>
<th>Occupational ability level</th>
<th>Maximum number of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job requiring advanced skills (technical qualification of technical college diploma and above)</td>
<td>60 days</td>
</tr>
<tr>
<td>Job requiring mid-level skills (Job position requiring mid-level expertise and skills. Technical workers and specialized workers also fall under this category)</td>
<td>30 days</td>
</tr>
<tr>
<td>Other (Simple work, etc.)</td>
<td>6 days</td>
</tr>
</tbody>
</table>

The company is required to notify the probationary worker of his/her employment or non-employment at least three days before the termination of the probationary work, and the company is required to immediately conclude an employment contract if that probationary worker has satisfied the required level. Because dismissal during the probation period and upon the expiration of the probation period is limited to cases where the worker fails to satisfy the conditions agreed upon between labor and management, it is desirable for the company to expressly prescribe the company’s required
level in writing.

The New Code newly provides for a probation period for the position of "executive in enterprises." Under the New Code, a company is allowed to set a probation period up to 180 days for such executive positions in enterprises (New Code, Article 25).
3. Duty to prepare internal work regulations in Vietnam and contents of internal work regulations

3-1. Duty to prepare internal work regulations, and registration thereof

A company that employs 10 or more workers is obligated to create and report the written internal work regulations and post the same in the workplace (Labor Code, Article 119, Paragraph 1 and 4). As indicated in Section 3-3 "Procedures" described later, it should be noted that the internal work regulations must also be registered with labor authorities within a certain period. While a company that employs fewer than 10 workers is not obligated to create internal work regulations, it would be desirable for the company to register its internal work regulations with the competent labor department to enable the company to take disciplinary action in the future in accordance with the labor circumstances of Vietnam in which the grounds for dismissal are limited, for instance, to the violation of the company’s internal work regulations.

In the New Code, regardless of the number of the workers, every company shall issue its own internal work regulations (New Code, Article 118, Paragraph 1).

3-2. Details

After discussions with a trade union (Labor Code, Article 119, Paragraph 3), the company must prescribe the following matters.

(1) Work hours, rest breaks
(2) Workplace rules
(3) Occupational safety and hygiene in the workplace
(4) Protection of company’s assets, trade secrets, technical/business secrets, intellectual properties
(5) Grounds for disciplinary action, description of disciplinary action, liability for damages (related to facilities, etc.)

In the New Code, a company must prescribe the matters about actions against sexual harassment in the workplace, cases in which reassignment of employees are permitted, and the person who is authorized to implement disciplinary action (New Code, Article 118, Paragraph 2).
3-3. Procedures

Within 10 days after issuing the internal work regulations, the company is required to submit such internal work regulations to the local state-level labor authorities, together with the minutes indicating that the company has held discussions with the trade union and documents that prescribe the company’s grounds for disciplinary action (Labor Code, Article 120). Labor authorities will examine the contents of the internal work regulations and register the same if there are no legal problems. If the correction or re-submission described below is not required, the internal work regulations will become valid 15 days after being received by the labor department (Labor Code, Article 122). When the labor department discovers a legal breach in the internal work regulations, the labor department will instruct the company to correct or resubmit the internal work regulations. While the labor department is required to give instructions within seven business days after submission if there is any problem with the internal work regulations, in reality it is not unusual that this process takes two weeks, and even up to one month in certain cases, after submission.

3-4. Precautions concerning internal work regulations

When a company wishes to take disciplinary action, the following matters are required under the Labor Code in order to protect the workers from the company’s abuse of its discretion (Labor Code, Article 123, Paragraph 1), and the company only takes disciplinary action of (i) reprimand, (ii) prolongation of the wage rise period for no more than six months or demotion, and (iii) dismissal (Labor Code, Article 125). It should also be noted that even when the worker corresponds to multiple grounds for disciplinary action, there are restrictions in that punishment will be limited to the heaviest punishment that is scheduled, and, when making deductions from that worker’s wage, the amount of deduction must be 30% or less of the monthly salary of that worker (Labor Code, Article 101). And as a general rule, the company must take disciplinary action within six months from the occurrence of such grounds for disciplinary action (within 12 months when financial or technical secrets are involved (Labor Code, Article 124)).

Cf. Disciplinary action

(1) Company’s burden of proof regarding the worker’s error (fault)
(2) Participation in disciplinary procedures of trade union
(3) Guarantee of worker’s participation in disciplinary procedures and the opportunity to defend himself/herself
(4) Preparation of written minutes

Taking a disciplinary action that is not defined in the internal work regulations against an employee who has committed a violation is prohibited (Labor Code, Article 128, Paragraph 3), even if there are disciplinary grounds required under the Labor
Code. Hence, on a practical level, it is important that the grounds for disciplinary action and specific acts corresponding to
such grounds are specified in the internal work regulations. Furthermore, from the perspective of securing evidence to prepare
for any subsequent dispute, when there is any fact of violation, it is recommended that the company obtain a signed document
from the worker (for instance, in the event of a violation, the company should deliver a document to the worker describing
specific facts of the violation and grounds for disciplinary action, and obtain the signature of that worker to the effect of
agreeing to the contents of the document).

The New Code stipulates that, in addition to the cases provided for in the internal labor regulations, a company may take
a disciplinary action where it is provided for in the relevant employment contract or Labor Code (New Code, Article 127,
Paragraph 3).
4. Overview of the wage system (bonus, retirement benefit, and overtime pay) in Vietnam

4.1 Wages

(1) Payment, etc.

The term “wages” refers to the monetary amount paid to the employee by the employer to perform the work as agreed by the two parties and includes compensation, allowances, and other payments (Labor Code, Article 90, Paragraph 1). The company is required to pay the full amount of wages, and wages are to be paid in cash or transfer to a bank account (Labor Code, Article 94, Paragraph 2). For monthly pay, wages must be paid at a frequency of once a month or once every half month, and the delay in payment must not exceed one month even in cases of force majeure events (Labor Code, Article 96, Decree No. 05/2015/ND-CP). The specific time of payment of wages is as follows.

Cf. Time of payment based on wage form (Labor Code, Article 95)

<table>
<thead>
<tr>
<th>Wage form</th>
<th>Time of payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly pay, daily pay, weekly pay</td>
<td>Payment after the completion of the period or collective payment based on an agreement (provided, however, that payment must be made at a frequency of at least once every 15 days)</td>
</tr>
<tr>
<td>Monthly pay</td>
<td>Once a month or once every half month</td>
</tr>
<tr>
<td>Piecework, subcontracting</td>
<td>Based on agreement. If the job is to be performed over several months, advance payment may be received according to the workload completed in the relevant month</td>
</tr>
</tbody>
</table>

While the company may create a wage schedule and a grade-based wage schedule based on respective job positions, such as managerial positions, technical jobs, specialized jobs, and general duties, it should be noted that there are restrictions regarding the difference between maximum wage and minimum wage and the wage difference between grades when the foregoing wage schedules are to be created (Decree No. 49/2013/ND-CP).

The New Code allows the company to create a wage scale and schedule with some degree of discretion and prescribes only the following requirements for creating the wage scale and schedule: (i) the wage rate is an average value that is achievable to most employees without having to extend normal working hours and must be experimented before officially introduced, (ii) the company consult with the representative organization of employees (if any) during establishment of the wage scale, payroll, and labor productivity norms, and (iii) the pay scale, payroll, and labor productivity norms shall be publicly posted in the workplace before they are implemented (New Code, Article 93, Paragraph 1).
(2) Overtime work

(i) Overtime work

Because Vietnam is a socialist country, all workers are eligible to receive the payment of overtime allowance. As a general rule, the company must not allow its workers to work beyond eight hours per day and a total of 48 hours per week. When the company is to cause its workers to engage in overtime work, the company is obligated to pay overtime allowance at the following rate relative to that worker’s standard pay (Labor Code, Article 97, Paragraph 1, Decree No. 05/2015/ND-CP).

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>Weekday</td>
<td>150% or more</td>
</tr>
<tr>
<td>Holiday</td>
<td>200% or more</td>
</tr>
<tr>
<td>Public holidays and New Year’s holiday (paid days off)</td>
<td>300% or more</td>
</tr>
</tbody>
</table>

(ii) Nighttime work

For nighttime work, the company is required to pay a minimum of 30% in addition to the worker’s standard pay.

(iii) Overtime work performed late at night

When a worker performs overtime work late at night, in addition to paying overtime allowance and nighttime work allowance, the company must pay an amount obtained by multiplying the amount of payment indicated in the payment slip by 20% (Labor Code, Article 97, Decree No. 05/2015/ND-CP).

(3) Minimum wage

A worker’s wage must not be lower than the minimum wage (Labor Code, Article 90, Paragraph 1). Unlike Singapore and Malaysia, all workers in Vietnam are guaranteed a minimum wage. The specific amount of the minimum wage is prescribed by the wage council composed of the following three organs: the government, the Chamber of Commerce and Industry, and the General Confederation of Labor.

The minimum wage is increased at a pace of roughly once a year, and the Regional Minimum Wage (RMW) was increased by approximately 5.5% in comparison to the previous year since January 1, 2020 (refer to the following table). The General Minimum Wage (GMW) that is mainly applicable to the government workers will also be increased from 1.39 million dong to 1.49 million dong in July 2019.

Because the minimum wage is applied based on the premise of being paid to inexperienced workers who have not been trained, workers who do not correspond to such inexperienced workers are guaranteed to receive a minimum wage that is higher by 7% or more than as prescribed in the Labor Code (Decree No. 49/2013/ND-CP). The training includes the
internal training within the company, so companies should consider that the local minimum wage plus 7% is the actual minimum wage.

Cf. Local minimum wage applicable from 1 January 2018

<table>
<thead>
<tr>
<th>Region</th>
<th>Major regions</th>
<th>Minimum wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region 1</td>
<td>Hanoi City, Ho Chi Minh City, Hai-phong City, etc.</td>
<td>4.42 million dong</td>
</tr>
<tr>
<td>Region 2</td>
<td>Da-nang City, Bac-ninh Province, etc.</td>
<td>3.92 million dong</td>
</tr>
<tr>
<td>Region 3</td>
<td>Ha Nam Province, etc.</td>
<td>3.43 million dong</td>
</tr>
<tr>
<td>Region 4</td>
<td>Regions other than those prescribed in Region 1 to Region 3</td>
<td>3.07 million dong</td>
</tr>
</tbody>
</table>

(4) Wage of workers during probation period

During the probation period, workers are guaranteed a wage that does not fall below 85% of the wage of other workers of the same job description (Labor Code, Article 28).

4-2. Bonus

While there are no specific guidelines or regulations regarding the bonus, it is customary to pay wages for the 13th month under the name of the "13th month salary" or the like. When previously paid bonuses or the like are to be restricted or confiscated, it should be noted that the company is required to consult with the trade union.

Such 13th month salary is commonly paid around the Tet New Year (Lunar New Year), so it is also called the "Tet Bonus." It is the longest holiday in a year and paid during the Tet season when many people return to their hometowns. In the event a company does not give definitive notice of the bonus or divides the bonus twice and pays before and after the Tet Holiday with the intention to prevent workers from returning to the workplace after the holiday, such behaviors tend to trigger the antipathy of workers and often bring about a strike. Strikes tend to occur in this season the most in a year, so companies should give definitive notice of the actual amount of the bonus to their workers in good time.
4-3. Overtime allowance

See Section 4-1 (2) "Overtime work." The company should take heed regarding the point that all workers are entitled to receive an overtime allowance. As a general rule, working hours must be eight hours per day, and 48 hours per week (Labor Code, Article 104, Paragraph 1). When the company is to ask a worker to engage in overtime work beyond the foregoing limit, it must be based on mutual agreement, but in any case, overtime hours must not exceed any one of 50% of normal work hours in a day, 30 hours per month, or 200 hours per year (even in special cases, only up to 300 hours per year), and, when the overtime hours per month exceed the foregoing standards, the company must grant additional holidays corresponding to the period that the worker was unable to take time off (Labor Code, Article 106).

Because the framework of 200 hours per year is a burden on companies, the economic circle strongly demands to improve such rules under the New Code; however, the New Code continues to regulate the monthly overtime cap, which has been increased from 30 hours to 40 hours, and the yearly overtime cap, which is set as 200 hours, with the exception to be increased up to 300 hours if the government allows under exceptional circumstances.

4-4. Retirement allowance

Excluding mandatory retirement or punitive dismissal, the company is required to pay retirement (unemployment) allowance to workers who were continuously hired for 12 months or longer and workers who were unilaterally dismissed by the company (Labor Code, Article 48). The amount of the retirement allowance is half a month's worth of salary for each year of service. However, when a worker is dismissed on the grounds of reorganization, the company must pay a retirement allowance of one month's worth of salary for each year of service, and a minimum of two months' worth of salary (Labor Code, Article 49). Here, the period that a worker receives unemployment insurance under the Social Insurance Law is deducted from that worker's years of service.

Excluding cases of calamities or dissolution of the company, in cases of unilateral dismissal, both parties shall fully liquidate each party's rights within seven days from the date of termination of the labor contract (Labor Code, Article 47, Decree No. 05/2015/ND-CP).

4-5. Others (general holidays)

(1) Weekly holiday, annual leave

As a general rule, workers are given a weekly holiday of one day per week (more precisely, 24 consecutive hours) (Labor Code, Article 110, Paragraph 1). A company may also prescribe in its internal work regulations that Sunday will not be a
holiday.

For workers who have worked for more than 12 months, normally 12 days are granted as annual leave, and an additional day of annual leave is granted for every five years of service (Labor Code, Article 111, Article 112; for workers who have worked less than 12 months, annual leave is granted according to the ratio of the length of service based on the foregoing period). With regard to the specific dates of acquiring annual leave, because employers are permitted to make decisions through consultation with workers and a prior notice, this provision is advantageous for employers. The company is required to purchase any unused annual leave of workers who left the company by being dismissed or for other reasons (Labor Code, Article 114, Paragraph 1).

(2) Public holidays, etc.

Workers are guaranteed the following public holidays and New Year’s holiday (Labor Code, Article 115, Paragraph 1). Foreign workers are additionally allowed to take one day of leave for each of their country’s own traditional or national public holidays.

<table>
<thead>
<tr>
<th>Date or Period</th>
<th>Period</th>
<th>Public holidays</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1 (solar calendar)</td>
<td>1 day</td>
<td>New Year’s Day</td>
</tr>
<tr>
<td>End of January to early February</td>
<td>5 days</td>
<td>Vietnamese New Year</td>
</tr>
<tr>
<td>March 10 (lunar calendar)</td>
<td>1 day</td>
<td>Hung Vuong Anniversary Day</td>
</tr>
<tr>
<td>April 30 (solar calendar)</td>
<td>1 day</td>
<td>Victory Day</td>
</tr>
<tr>
<td>May 1 (solar calendar)</td>
<td>1 day</td>
<td>International Labor Day</td>
</tr>
<tr>
<td>September 2 (solar calendar)</td>
<td>1 day</td>
<td>National Day</td>
</tr>
</tbody>
</table>

The New Code adds an extra public day off to the National Day public holiday, raising the number of public holidays to 11 days. The new national holiday will be on the 1st or 3rd of September which is one day before or after the day of the National Day, 2nd of September (the actual date of extra day off will be decided annually by the Prime Minister (New Code, Article 112, Paragraph 1-dd, and Paragraph 3).

(3) Special leave for weddings and funerals

Article 116 of the Labor Code approves leaves for the following reasons.
<table>
<thead>
<tr>
<th>Reason</th>
<th>Number of days</th>
<th>有給/無給の別</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>3 days</td>
<td></td>
</tr>
<tr>
<td>Marriage of child</td>
<td>1 day</td>
<td></td>
</tr>
<tr>
<td>Death of natural parent, spouse’s parent, spouse, or child</td>
<td>3 days</td>
<td>Pay</td>
</tr>
<tr>
<td>Death of grandparent or sibling or Marriage of father, mother or sibling</td>
<td>1 day</td>
<td>No pay</td>
</tr>
</tbody>
</table>

4. Overview of the wage system (bonus, retirement benefit, and overtime pay) in Vietnam
5. Methods and points to consider regarding ordinary dismissal, punitive dismissal, and dismissal on grounds of reorganization in Vietnam

5-1. Dismissal

Events of termination of an employment contract are prescribed under laws (Labor Code, Article 36). Thus, when the company is to dismiss its worker, the dismissal must correspond to one of the following circumstances, and it could be said that it is difficult to dismiss employees unless it is based on a mutual agreement. Grounds for dismissal include, for instance, punitive dismissal, dismissal on grounds of reorganization, and repeated default of obligations under the employment contract.

Cf. Events of termination of employment contract

| (1) Expiration of employment contract |
| (2) Termination of job prescribed in employment contract |
| (3) Mutual agreement of parties |
| (4) Mandatory retirement |
| (5) Worker receives the death penalty, sentence for imprisonment or sentence prohibiting the worker from performing his/her job under the employment contract |
| (6) Death or loss of competency of worker |
| (7) Death or loss of legal capacity of individual employer, or discontinuation of business of company |
| (8) Punitive dismissal |
| (9) Termination of contract by worker according to the Labor Code |
| (10) Termination of contract by company according to the Labor Code, or dismissal of worker for economic reasons (restructuring, etc.) or merger |
5-2. Ordinary dismissal

It could be said that dismissing employees in Vietnam is generally difficult. In the case of ordinary dismissal, the company can only dismiss a worker unilaterally when it is able to certify that the worker repeatedly breached his/her contractual obligations. Moreover, the company may dismiss a worker if it is acknowledged that, even when the worker has been continuously treated for 12 months due to an injury or other reasons (6 months or longer for definite term workers, and more than half of the labor period for seasonal workers), the worker is unable to return to work, or if a worker does not appear at his/her workplace within 15 days after the start date of work or after the expiration of the work suspension period (Labor Code, Article 38).

As the premise for a company to dismiss its own worker, the company must prescribe specific evaluation standards of workers based on its internal work regulations, and, after reflecting the opinion of the head of the trade union, notify such standards to the worker, and then evaluate that worker (Decree No. 05/2015/ND-CP).

5-3. Punitive dismissal

Punitive dismissal is possible only when certain acts prescribed under laws are acknowledged (Labor Code, Article 126). The burden of proof lies with the company, and the dismissal procedures must be carried out carefully as described below in order to ensure the lawfulness of the dismissal.

<table>
<thead>
<tr>
<th>Cf. Acts subject to punitive dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Criminal acts and other acts of infringement of rights</td>
</tr>
<tr>
<td>· Theft, embezzlement, gambling, act of intentionally hurting others, drug use at workplace, and certain other criminal acts</td>
</tr>
<tr>
<td>· Divulgence of corporate secrets and infringement of intellectual properties</td>
</tr>
<tr>
<td>· Other acts that will or may cause material damage to the company</td>
</tr>
<tr>
<td>(2) Repeated acts that correspond to suspension of pay raise</td>
</tr>
<tr>
<td>· Subsequent offense during pay raise suspension period</td>
</tr>
<tr>
<td>· Subsequent offense of act corresponding to discharge</td>
</tr>
<tr>
<td>(3) Unauthorized absence for 5 days or more per month or 20 days or more per year without due cause (due cause includes disasters, illness of worker or his/her relative (requires an appropriate certificate by a medical institution), and matters set out in the internal work regulations)</td>
</tr>
</tbody>
</table>
5-4. Dismissal on grounds of reorganization

When a company is compelled to downsize or dismiss two or more employees for restructuring at the request of a state organ or for economic reasons, changes to the machinery or technologies being used, government-designated force majeure events, including calamities, dismissal on grounds of reorganization can only be acknowledged after the company prepares a worker employment plan, engages in collective bargaining with a trade union (once a year or more (Decree No. 05/2015/ND-CP)), submits a dismissal notice at least 30 days in advance, and submits necessary documents to the State authorities (Labor Code, Article 36, Article 38, Article 46, Decree No. 05/2015/ND-CP).

As a general rule, because labor relations are to be succeeded in cases of a merger or a company-split of the company, dismissal on grounds of reorganization is allowed only when such succession is impossible. However, the evaluation criteria of "impossible" has not yet been indicated, and the operation of this rule is somewhat unclear.

5-5. Dismissal procedures

In Vietnam, dismissal is permitted only in extremely limited circumstances, and, even if a worker is dismissed, favorable judgments for the worker are often rendered in a subsequent labor dispute, and the company is required to follow the dismissal procedures with extreme caution. While there are currently no provisions concerning sanctions against violations, generally, the following procedures must be followed in accordance with the company’s rules and the provisions of the Labor Code. It should be noted that any illegal dismissal or wrongful constructive dismissal may be criminally responsible under the new penal code.

(i) Prior notice (number of days required is as indicated below)

<table>
<thead>
<tr>
<th>Employment form</th>
<th>Number of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indefinite employment</td>
<td>At least 45 days in advance</td>
</tr>
<tr>
<td>Definite employment</td>
<td>At least 30 days in advance</td>
</tr>
<tr>
<td>Seasonal labor or specific jobs</td>
<td>At least 3 business days in advance</td>
</tr>
</tbody>
</table>

(ii) Holding of meetings and preparation of minutes regarding the default of obligations set out in the internal work regulations, and issuance of a decision (when the meeting is held, the company is required to have the trade union (or its representative) participate in the procedures, and offer an opportunity for the worker to defend himself/herself)
5. Methods and points to consider regarding ordinary dismissal, punitive dismissal, and dismissal on grounds of reorganization in Vietnam

5-6. Labor disputes

(1) Individual disputes

Individual labor disputes correspond to the cases listed below.

(1) Disputes related to punitive dismissal or unilateral termination of employment contract
(2) Disputes related to compensation for damage or payment of allowance in relation to termination of employment contract
(3) Disputes between workers and companies
(4) Disputes related to social insurance or health insurance
(5) Disputes related to claim for damages associated with sending workers overseas

As the flow of process, labor mediation procedures are foremost taken by the labor mediation board (organ appointed for each region by the government authorities) within five business days, and, only when an agreement cannot be reached in these labor mediation procedures, the dispute is to be resolved in the people’s court (Labor Code, Article 200, Article 201). Because a deadline for filing objections and complaints is prescribed with the date of discovery of the infringement of rights as the date of reckoning (six months for filing a mediation and one year for initiating legal action with the people’s court), it is recommended that the company sends dated notices, in writing, so that the filing of complaints is not allowed to go on indefinitely.

(2) Group disputes

It should be noted that the organ to handle the dispute resolution will differ depending on the content of the dispute (Labor Code, Article 203). As with individual disputes, group disputes are also foremost subject to dispute resolution procedures by the labor mediation board, and only when an agreement cannot be reached in these dispute resolution procedures, the company may request the resolution of the dispute by the respective chairpersons. Even with a group dispute, since the period of filing for a dispute resolution is also limited to one year from the date of discovery of the infringement of rights (Labor Code, Article 207), it is recommended that the company sends dated notices in writing.

Cf. Flow related to group disputes
5-7. Others

(1) Termination by workers

A worker may terminate his/her employment contract upon falling victim to violence, forced labor, or sexual harassment. Furthermore, definite-term workers and seasonal workers are permitted to unilaterally discontinue work under circumstances where they are required to take care of a family member (Decree No. 05/2015/ND-CP).

(2) Payment of unused leaves

A company is required to convert unused annual leaves or corresponding salaries into monies, and pay such monies (Decree No. 05/2015/ND-CP).
In order for a foreigner to work in Vietnam, it is necessary to obtain both (i) a visa that permits that foreigner to enter and reside in Vietnam, and (ii) a work permit that allows that foreigner to work in Vietnam.

With regard to (i) above, the common practice is for Japanese company workers to acquire an LD visa, which is issued to company workers. Note that, when requirements are satisfied, a temporary residence card (TRC) may be acquired in substitute for the visa of (i) above.

The Law on Entry, Exit, Transit, Residence of Foreigners in Vietnam (Law No. 47/2014/QH13) will be deleted and revised by the Law No. 51/2019/QH14 which was passed by the national assembly on November 25, 2019. The new law will become effective on July 1, 2020. The new law includes the official introduction of electronic visas, the ability for electronic visa holders to change their visa category in country, and the elimination of the 30-day cooling-off period for visa-exempt foreign nationals, among other changes. Since the new law has not been effective and there are no detailed guidelines for the new law, it is necessary to confirm additional information.

6-1. Visas

(1) Types of visas

There are various types of visas, for periods up to five years, and because there are a large number of visas according to the organization or position, it would be desirable to contact the embassy to confirm the appropriate visa.
6. Types of foreigner visas and acquisition requirements

(2) Acquisition requirements

(i) Acquisition requirements

According to the respective visas, the submission of documents required under the Law on the Entry, Exit, Transit and Residence of Foreigners in Vietnam (Law No. 47/2014/QH13) enacted in 2014 is required.

(ii) Procedures, etc.

In order to acquire a visa, the company needs to submit documents to the Immigration Department. While the required designated documents, including the invitation letter of the worker issued by the Vietnamese corporation, will differ according to the type of visa, generally, the following documents are required: specifically, (i) a visa application form (designated form), (ii) a copy of a passport (that is valid for six months or longer) and a photograph, and (iii) a copy of a certificate related to the legal registration status of the company in Vietnam ((a) certificate of establishment or certified copy of the decision of the authorizing organ, (b) corporate seal, registration form with the representative’s signature).

(3) Effects of violation

Depending the type of violation, fines are imposed (e.g.: a fine of 10 million to 20 million dong will be imposed when a worker, without permission, conducts activities that differ from those that were approved when the visa was issued).

(4) Temporary Residence Card (TRC)

When a foreign worker is to reside in Vietnam for longer than one year, the foreign worker may also apply for a TRC.
in substitute for a visa. Eligible persons are those who correspond to DT, NN1, NN2, DH, LD, and TT (as well as LV1, LV2, PV1) in the foregoing visa table, and the permitted residency period differs depending on the type of visa. The respective issuing requirements of a TRC are similar to those of a visa, and the validity of a TRC is from 1 year up to five years. However, the validity of a TRC is, normally, substantially up to two years because it is pursuant to the validity of that person's passport and the validity of the following work permits.

6-2. Work permits

Prior to hiring a foreign worker, the company must report to the Municipalities or Provinces of Vietnam People's Committee and acquire a work permit, and it should be noted that any violation may result in the deportation of that foreign worker (Decree No. 11/2016/ND-CP).

The validity of the work permit depends on the contract term set out in the employment contract, in no case will the validity exceed two years. While the work permit may be renewed, even in this case the validity of the work permit will be up to two years.

(1) Types

Work permits are classified into three types. In other words, there are work permits for (i) representatives or management positions, (ii) professionals in the respective fields, and (iii) engineers. Job experience and work experience are required for the respective qualifications, and a certificate of a degree for verifying the specialty of the professional is required.

(2) Requirements and procedures

When hiring a foreign worker other than in the scope of a contractor, it must be of a job description that cannot be handled by Vietnamese workers (Labor Code, Article 170, Paragraph 1). Thus, a document indicating that such foreign worker is a professional or a technical worker such as an administrator or a representative director and an approval document of the employment of that foreign worker from a competent regulatory body must be obtained in advance. After obtaining the approval document, the company is required to file an application with the Department of Labor, Invalids, and Social Affairs (DOLISA), which has jurisdiction over the scheduled workplace, at least 15 business days before the worker starts working. Generally, the following documents are required.

Furthermore, when employing a foreign worker, it should be noted that the company is additionally obligated to submit, on a case-by-case basis, an employment plan to MOLISA or the state-level People’s Committee Chairperson at least 30 days before the scheduled date of employment (Circular No. 18/2018/TT-BLDTBXH).
After the work permit is issued, the company will conclude a written employment contract with the worker. The employment contract must be concluded before the scheduled date of employment. Furthermore, after the employment contract is concluded, the company must submit a copy of the employment contract to DOLISA within five business days.

(3) Cases where work permits are not required

In the following cases, foreign workers are not required to acquire work permits. However, even in these cases, the company is required to file an application with DOLISA at least seven business days before the work start date of a foreign worker, and obtain the approval of DOLISA regarding the hiring of that foreign worker.

Abridged translation of Labor Code, Article 172, Paragraph 1 to Paragraph 8

1. Investor or owner of a limited liability company
2. Member of the board of directors of a joint stock company
3. Head of a representative office or a project director of an international organization or a non-governmental organization in Vietnam
4. Person who enters Vietnam for a duration of less than three months to undertake marketing activities
5. Person who enters Vietnam for a duration of less than three months to resolve complicated technical problems that pose risks of affecting production and business activities and which cannot be resolved by Vietnamese experts and foreign experts currently in Vietnam
6. Foreign lawyer who is granted with a professional certificate in Vietnam
7. Person who is acknowledged under international conventions and treaties of which the Socialist Republic of Vietnam is a signatory
8. Foreign students who are studying and working in Vietnam (provided that the employer must notify the labor management authority at the state-level 7 days in advance)
6. Types of foreigner visas and acquisition requirements

In the New Code, this clause has been deleted, and instead, the clause “The people who gets married with a Vietnamese citizen and wishes to reside in Vietnam” has been added (New Code, Article 154, Paragraph 8).


Partial excerpt from Decree No. 11/2016/ND-CP, Article 7

(a) Foreign workers who are internally transferred within an enterprise operating in the 11 service sectors in the list of Vietnam’s commitments on services to the World Trade Organization (WTO), including: business, communication, construction, distribution, education, environment, finance, healthcare, tourism, cultural entertainment, and transport

(b) Foreign workers who are issued with a license for the practice of journalism (media press) in Vietnam by the Ministry of Foreign Affairs in accordance with the law

(c) Foreign workers coming to Vietnam to work as experts, managers, chief executive officers or technical employees with a period of less than 30 days and no more than 90 cumulative days in one year

(4) Effects of violation

In response to violations, deportation of the worker, punishment against the company (30 million to 75 million dong), and business suspension measures up to three months are scheduled.
About this document

About the information compiled in this document

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