

Polska



Labour Code

2018-04-05 09:44:49



The Labour Code covers a diverse range of labour related issues, including recruitment, employment contracts, working hours, labour discipline, and labour dispute resolution. The Labour Code is applicable to employees and employers, across both foreign and resident organisations.

Employment contract

In Vietnam, employment relationships are governed by the contractual agreement entered into between employer and employee. Contracts may take one of the following forms:

- Indefinite labour contract
- Define labour contract - the duration of which is defined by the two parties as a period of one to three years
- A temporary labour contract for a specific project or seasonal work - the duration of which is less than one year

Definite labour contracts can only be renewed twice; following that, the employer must sign an indefinite labour contract. In the case that the employer does not wish to renew the labour contract with the employee, the employer must inform the employee of the termination at least 15 days before the expiry date of the labour contract.

Contracts must comply with a prescribed form published by the Ministry of Labour, War Invalids and Social Affairs (MOLISA). The contract should include a job description, the place of work, wage, duration of the contract, probation period and cover matters such as social insurance and labour protection. The Labour Code allows an employer to require an employee whose work is related to business or technological secrets to enter into a separate agreement on confidentiality and nondisclosure of those secrets. The confidentiality agreement may contain a clause on compensation consequences in case of breach of contract

The Labour Code prohibits employers from keeping employees' original identification cards and qualifications when signing and performing labour contracts. Moreover, an employer may not require an employee to pay cash or provide any assets to guarantee performance under the labour contract.

A contract must be signed by the General Director of the organisation or another authorised person before the employment begins.

Working time and leave

Under the Vietnamese Labour Code, working hours should not exceed eight hours per day or 48 hours per week. This may be extended through an agreement between the employer and employee but cannot exceed four hours per day, 30 hours per month and 200 hours per year in total. In some special circumstances, the Government may allow up to 300 hours per year.

Employees who work overtime are entitled to additional wages. The normal overtime rate must be at least 150 per cent of the standard rate. On scheduled days off the overtime rate must be at least 200 per cent of the standard rate and for public holidays the overtime rate is 300 per cent of the standard rate.

Employees that are under 18 years of age and women who are over seven months pregnant, or have a child of less than one year in age, are granted an extra hour off a day and are not permitted to work overtime.

Employees are entitled to at least one rest day per week.

Employees who have been employed for 12 months are provided with minimum of 12 days of paid annual leave per year, alongside the 10 days of public holiday each year. Employees that work in dangerous jobs or those that reside in areas with harsh living conditions may be entitled to two to four extra days off. Furthermore, workers are generally entitled to an extra day of holiday for each five years of service with a company.

Employees are entitled to sick leave, although this is not paid for by the employer. The Social Insurance Fund covers sick-leave allowances for employees and also for female employees taking care of their sick children. The maximum time granted per year for sick leave is 30 days (in most industries and professions), with 15 days permitted for taking care of sick children. The allowance granted in lieu of salary is equal to 75 per cent of the salary which is used to calculate the monthly insurance contribution.

Social security

Vietnam's compulsory social insurance regime covers sickness, maternity, work-related accidents, occupational disease, retirement and survivorship allowance. The employers and Vietnamese employees are required to contribute compulsory social insurance, health insurance and unemployment insurance on a monthly basis to the social insurance fund.

Retirement benefits are provided under the compulsory social insurance regime.

A deduction of up to VND1 million per month is permitted for contributions to supplementary pension schemes. Though still in its infancy, it is expected that a greater number of providers will offer supplementary schemes. With these schemes, the employees will have a better support in and means to save for retirement diversify the sources of their pensions and will provide employers with a means to retain key employees.

A compulsory social insurance scheme applies to all enterprises, bodies and organisations that hire employees under labour contracts with a definite term of over three months and for labour contracts with indefinite terms. Employers and employees must pay contributions to the State Social Insurance Fund equal to 18 per cent of gross income by the employer and eight per cent by the employee.

The Fund covers the employees' benefits during sick leave, maternity leave, retirement, allowances for work related accidents and occupational diseases, and survivors' benefits. The ceiling level for social insurance is 20 times the Government's minimum wage, which is currently VND2.15 million per month.

In addition, employers and employees are required to contribute to the State Health Insurance Fund to partially cover health care benefits. The contributions currently constitute 4.5 per cent of gross income, with three per cent being the responsibility of the employer and 1.5 per cent the responsibility of the employee. Unlike the other social contributions, the health care contribution requirements also apply to expatriate employees.

An organisation is also obligated to contribute unemployment insurance.

Monthly pensions are provided from the Social Insurance Fund where an individual has contributed social insurance for more than 20 years and when they reach 60 years of age for men, or 55 years of age for women.

Healthcare and benefits

Healthcare

Basic health care is covered by the Social Insurance Fund. However, private schemes are becoming more popular especially amongst foreign employers but it must be noted that foreigners entering into labour contract with companies in Vietnam are obliged to join the health insurance scheme with the local social insurance department.

Workers' compensation

Workers suffering labour accidents or work-related diseases are entitled to an allowance equal to 100 per cent of their salary during the initial treatment period. Employers will be responsible for the allowance and all the examination and treatment expenses. After the conclusion of the treatment, the worker will receive further allowances from the Social Insurance Fund based on the degree of disability and illness. If a worker dies as a result of work related injury or disease, his family will be entitled to death benefits covered by the Social Insurance Fund. Employers have an additional obligation to pay compensation representing at least 30 months' salary to workers who suffer a reduction of more than 81 per cent of their labour capacity, or they must pay an equivalent amount to the close relatives of a worker who dies as a result of a labour accident or disease not caused by his own negligence. In cases where the injury or death of the worker is due to their own fault, the labourer will still receive an allowance equalling at least 12 months' salary.

Employment of resident and non-resident employees

The Vietnamese Labour Code states that foreign companies, branches and representative offices must provide Vietnamese citizens with priority of employment opportunity. Although, expatriates may be also be recruited.

Any Vietnamese citizens who wish to be employed by foreign companies must satisfy the following criteria:

- Are over 18 years old (with exceptions)
- Have fulfilled their legal obligations
- Have not been charged with any criminal activity
- Are not officials, employees of mass organisations or armed forces personnel
- Are retired officials, public servants or discharged armed forces personnel, who have obtained consent from their former employers

Where employment positions require specialist skills or senior management responsibilities that Vietnamese residents cannot fill, organisations are authorised to recruit foreigners to fill that position. For most positions, foreign employees must provide original copies of relevant educational qualifications in order to obtain a work permit.

Foreigners who work in Vietnam are required to obtain a work permit or obtain confirmation from the local labour department that he/she is exempted from this requirement work permit.

Work permits are issued for the same duration as the term of the labour contract; a work permit can be issued for a maximum of 24 months and is allowed to be renewed with the same duration.

All foreigners will be required to apply for a work permit, except for the following cases:

- They are a member of a limited liability company with more than two members
- They are the owner a limited liability one-member company
- They are a member of the management board of a joint-stock company
- They are in Vietnam to offer and sell services
- They are in Vietnam to deal with emergency cases that are likely to affect business activities of which Vietnamese experts cannot deal with
- They are a foreign lawyer who has been issued a license to practice law in Vietnam
- Foreigners' internal movement in the enterprises operating in 11 service sectors specified in Vietnam's commitment schedule to World Trade Organization are not subject to work permit requirements



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NARODOWA STRATEGIA SPÓJNOŚCI



**MINISTERSTWO
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UNIA EUROPEJSKA
EUROPEJSKI FUNDUSZ
ROZWOJU REGIONALNEGO



Projekt jest współfinansowany przez Unię Europejską ze środków Europejskiego Funduszu Rozwoju Regionalnego