

Labour Code of the Socialist Republic of Vietnam
Adopted at the National Assembly of the Socialist Republic of Vietnam,
9th Legislature, 5th Session (May 26 – June 23, 1994)
The Gioi Publishers, Hanoi, 1994

Preamble

‘Labour is the most important activity of human beings and creates the material wealth and spiritual values for society.’ p 7

‘It institutionalizes the renovation line of the Communist Party of Vietnam and reinforces the provisions contained in the 1992 Constitution.’ p 7

General Provision

‘The present Labour Code also applies to..... family servants.’ p 9

‘Everybody has the right to work, to freely select their occupation and trade.’ p 10

‘It is prohibited to ill-treat workers and impose forced labour in whatever forms.’ p 11

‘..... to create employment for oneself.’ p 11

‘..... but the wages must in no case be lower than the minimum wages set by the State.’ pp 11-12

‘The employee must be given labour protection and must be allowed to work in conditions which protects occupational safety and health; the employee is given a leave system including annual paid leave and social insurance in accordance with the stipulations of the Law.’ p 12

‘..... it is the responsibility of the employer to cooperate and discuss with trade unions various issues relating to labour relations, the improvement of living conditions, both material and spiritual of the workers.’ p 13

‘..... to respect the honour and human dignity of the workers and treat them with deference.’ p 14

‘The State encourages the settlement of labour disputes by means of reconciliation and arbitration.’ p 14

‘..... deductions of a percentage of the profits of an enterprise to award bonuses in order to make labourers feel that they have a stake in the productivity and efficiency of the enterprise.’ p 15

‘It is the policy of the State to enable workers to purchase shares and contribute capital for the development of the enterprise.’ p 15

Employment

‘.... all persons that are able to work are given the opportunity to do so.’ p 17

‘The worker has the right to work for any employer and at any place not forbidden by the Law.’ p 19

‘The employer has the right.....to increase or reduce the number of workers in accordance with the requirements of production and business.’ p 20

‘.... the family situation of each worker.’ p 21

‘Each enterprise must establish an emergency severance fund.’ p 21

‘The dispatch of Vietnamese guest workers to foreign countries.’ p 22

Vocational Training

‘Vocational training facilities.....are allowed to collect training fees and must pay tax.’ p 24

Labour Contract

‘The concluded labour contract must be a written document in duplicate with one copy for each party. With respect to temporary work lasting for less than 3 months or household labour services, there can be oral labour contracts.’ p 29

‘The employer must make a written entry in the labour book stating the reasons for the cancellation of the labour contract and return the labour book to the workers concerned. Besides relevant entries in the labour

book, the employer must not do anything else which might handicap the worker efforts to seek new employment.’ pp 43-44

Collective Labour Agreement

‘The collective agreement is signed when over 50% of the members of the collective of workers in an enterprise approve the contents of the negotiated agreement.’ p 47

‘The duration of a collective agreement is from 1 to 3 years. With respect to enterprises which conclude a collective agreement for the first time, the duration of the agreement may be less than 1 year.’ p 51

Wages

‘Wages must be paid in cash. Both sides may agree on payment of part of the wages by means of cheque or State money orders on the condition that this does not give rise to losses and problems for the workers.’ p 57

‘The employer is not allowed to punish labourers by cutting their wages.’ p 57

‘1. Payment for extra working hours is done as follows:

- a. In regard to workdays, the worker is given wages which are at least tantamount to 150% of the hourly wages of a regular workday.
- b. Regarding weekly rest days and other holidays, the worker is given wages which are at least 200% of the hourly wages of a regular workday.’ p 58

‘The worker performing night work..... is given additional wages which are tantamount to 30% of daytime wages.’ p 58

‘It is the responsibility of the employer to make deductions from his or her annual profits in order to provide bonuses to workers who have been working for more than one year for the enterprise.’ p 60

Working Time, Rest Time

‘The working time must not exceed 8 hours in a workday or 48 hours in a week.’ p 63

‘The working time in a workday must be reduced by 1 to 2 hours with respect to persons who perform work which involves particular hardships, harmful or dangerous effects.’ p 63

‘The employer and the workers may agree on extra working hours which must not exceed 4 hours in a day and 200 hours in a year.’ p 63

‘The worker who works 8 consecutive hours per day has the right to take a 30 minutes’ rest, and the rest time is to be deducted from the working time.’ p 64

‘The worker is entitled to at least a one-day (24 hours) rest per week.’ p 64

‘The worker who works for 12 months in an enterprise or under an employer is entitled to annual leave with full wages.’ p 66

Labour Discipline, Physical Responsibility

‘The worker has the right to justify himself or ask a lawyer or a people’s advocate to plead his or her case.’ p 73

Occupational Safety and Health

‘The employer must have adequate means to shield parts and components of machines and equipment which may cause physical harm.’ p 82

‘The worker has the right to refuse to work at a certain work venue or to leave that place if he or she detects the danger of an impending industrial accident which might seriously threaten his or her life or health and must give notice to his or her immediate superior.’ p 83

‘The worker whose work involves dangerous and noxious elements must be provided with adequate means to protect himself or herself.’ p 84

‘The employer must bear all the medical expenses for the worker who is a victim of industrial accident(s) and occupational disease(s) from first aid to emergency aid or full medical treatment.’ p 87

Specific Regulations Concerning Female Workers

‘The State creates policies which give preferential treatment and tax deductions to enterprises using a large number of female workers.’ p 90

‘The employer must abide by the principle of equality between men and women in recruitment, use, promotion and remuneration of labour.’ p 90

‘The employer is not allowed to employ female workers of any age for work which involves full-time underground mining or immersion of the body in water.’ p 92

‘During period of menstruation, a female worker has the right to take a 30-minute rest, deducted from the working time, while continuing to receive full pay.’ p 94

‘If an enterprise uses a large number of female employees, the employer has the responsibility to help in the organisation of creches and kindergartens or to support a part of the costs borne by mothers whose children are of crèche and kindergarten ages.’ pp 94-95

Specific Regulations Concerning Under-Age Workers and Other Categories of Workers

Under-age workers

‘It is forbidden to recruit workers who are less than 15 years old, except for trades and occupations approved by the Ministry of Labour, Invalids and Social Affairs.’ p 98

‘The working time of an under-age worker must not exceed 7 hours a day or 42 hours a week.’ p 99

Highly Qualified Professionals and Technical Workers

‘A highly qualified professional or technical worker has the right to hold several jobs or offices simultaneously on the basis of several labour contracts concluded with employers of the condition that he or she is able to fulfil adequately these contracts and keeps the employer informed of all his or her labour contracts.’ p 103

‘The preferential treatment extended to highly qualified professional and technical workers should not be construed as discriminatory measure in the use of labour.’ p 105

Workers who work for foreign organisations and foreigners in Vietnam, foreign workers in Vietnam, Vietnamese guest workers abroad.

‘With respect to tasks involving high technical requirements or management jobs which Vietnamese are not yet able to fill, the above-mentioned enterprise, agencies, organisations and individuals can recruit foreigners for a certain period of time, but must implement training plans or programmes which would enable Vietnamese workers to assume these tasks and replace the foreign workers concerned.’ p 107

Other workers

‘The employer must respect the honour and dignity of household servants and has the responsibility to provide due care as and when the household servant is ill or is affected by an accident.’ p 111

Social Insurance

‘Obligatory social insurance is applied to enterprises employing 10 workers or more. In such enterprises, the employer and the workers must buy social insurance..... thus enabling the workers to receive social insurance allowances in the event of illness, industrial accidents, occupational diseases, pregnancy and childbirth, retirement or death.’ pp 113-114

‘The State encourages workers, trade unions, employers and other social organisations to establish social mutual aid funds.’ p 123

Trade Unions

‘The employer must refrain from acts of discrimination against workers who have established or joined a trade union organisation and are engaged in trade union activities or from using economic and other measures in order to interfere with a trade union organisation and its activities.’ p 124

‘It is the responsibility of the employer to ensure the necessary conditions and means for the activities of the trade union organization.’ p 125

‘A worker who is not a full-time trade union activist can use part of his or her working time to perform trade union work while continuing to receive full wages from the employer.’ p 125

‘The Vietnamese General Confederation of Labour and the trade union organisation at various levels are entitled to hold discussions with State

agencies and the representatives of the employer in order to settle various relating to labour relations.’ p 126

Resolution of Labour Disputes

Competence and sequence relating to the resolution of disputes involving individual workers

‘The Council’s [Council of Labour Conciliation] work is based on the principle of agreement and consensus.’ p 131

Competence and sequence relating to the resolution of collective labour disputes

‘If a collective of workers does not agree with the decision of the Provincial Council on Labour Arbitration it has the right to apply for a resolution by the People’s Court or organize a strike.’ p 139

‘An employer’s request to the People’s Court to re-examine the decision of the Council on Labour Arbitration does not prevent the collective of workers from exercising their right to stage a strike.’ p 140

‘While the Council on Labour Conciliation and the Council on Labour Arbitration are engaged in resolving a labour dispute, no party to the dispute is allowed to take unilateral action against the other.’ p 140

‘The Trade Union Executive Committee at the enterprise level may decide to organize a strike after over half of the collective of workers express approval by means of a secret ballot or signatures.’ p 140

‘It is strictly prohibited to resort to acts of violence, acts which result in damage to machinery, equipment and property of the enterprise and which infringe upon public order and security during the strike.’ p 141

‘It is forbidden to organize strikes in public utilities and enterprises which are essential to the national economy, national security and defence.’ p 141

‘If the strike is deemed to be a serious danger to the national economy or public safety, the Prime Minister has the right to postpone or terminate it.’ p 142

‘The following strikes are illegal:

- a. Strikes which do not arise from collective labour disputes and strikes which go beyond the scope of labour relations;
- b. Strikes which go beyond the scope of the enterprise.’ p 142

‘It is within the competence of the People’s Court to decide whether a strike is legal or illegal.’ p 142

‘The People’s Court has the right to make the final decision on strikes and collective labour disputes.’ p 143

‘It is strictly forbidden to retaliate against persons who have taken part in or led a strike.’ p 143

‘Persons who prevent the exercise of the right to strike, compell (sic) others to strike, resort to illegal acts during the strike, or refuse to execute the decision of the Prime Minister, the People’s Court will, depending upon the gravity of the violation, be required to pay compensation for damage and will be subjected to administration punishment or legal proceedings.’ p 143

State Management on Labour

‘The Vietnamese General Confederation of Labour and Trade Union organisations at various levels take part in supervising State management of labour in accordance with the provisions of the Law.’ p 146

‘The State creates conditions that enable employers to contribute their views to State agencies on questions regarding management and the use of labour.’ p 146

‘The employer of a facility which uses 10 workers or more must have a data book on the workers under him or her, a wages book and a social insurance book concerning the latter.’ p 147

‘.....each worker is issued a labour book, a wages book and a social insurance book.’ p 147

State Labour Inspection, Dealing with Violation of Labour Laws

State Labour Inspection

‘To deal with complaints and charges from workers on violations of labour laws.’ p 150

‘In the performance of his or her work, a Labour Inspector has the right:

1. To inspect and investigate at any time and without advance notice, venues which pertain to objects and areas entrusted to him or her.
2. To request the employer and other persons concerned to provide information and materials which are relevant to the issue being inspected and investigated.
3.
4. To decide to stop temporarily the use of machinery, equipment, workplaces which are likely to be dangerous in terms of industrial accidents or serious pollution of the work environment and to assume responsibility for the above action and immediately submit a report to the competent State agency.’ pp 151-152

‘A labour inspector must have no individual interests connected directly or indirectly with the enterprise or individual being investigated. Even after his or her release from duty, the labour inspector must not divulge his or her professional secrets or the sources of complaint.’ p 152

‘The person to whom the decision is given has the right to submit a complaint to the competent State agency but must strictly implement the decision of the Labour Inspector.’ p 153

‘The inspection of occupational safety and health in the fields involving radioactivity, oil and gas exploration and exploitation, railway, river, road and air transportation and the units of the armed forces is carried out by the departments concerned in coordination with the State labour Inspectorate.’ p 154

Punishment on Violations of Labour Laws

‘The owner of an enterprise must bear civil responsibility with respect to punishments inflicted on the directors, managers or representatives of their enterprises by competent State agencies due to violations of labour law in the course of labour management.’ p 155

Implementation of Clauses

‘Agreements which are more beneficial to the workers as compared with the provision of the present Code will continue to be implemented.’

