

Client note – new Labor Code 2019

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After much consultation and heated debate, Vietnam adopted a new Labor Code on 20 November 2019 ("Labor Code"), which will come into effect on 1 January 2021, and replace the current law which dates from 2012. While Vietnam's labor legislation has always been seen as employee-friendly and highly regulated, a motivation for adopting the Labor Code was the need to ramp up certain employee protections in order to meet labor standards commitments given by Vietnam in recent new-generation free trade deals such as the EU-Vietnam Free Trade Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Conversely, the views of employers were canvassed during the law's public consultation process, and as a result some aspects of the Labor Code have been shaped in a more employer-friendly manner. We discuss some of the key changes introduced in the Labor Code below.

New renewal rights for some definite term labor contracts

Under the Labor Code there are now only two types of labor contracts: definite term contracts (which must have a term of not more than 36 months) and indefinite term contracts. These have always been the principal forms of labor contract, but under the previous labor code other types of labor contracts were required for seasonal or short-term employment. As has always been the case, for most employees a definite term contract can only be renewed once, after which it must become an indefinite term contract. The Labor Code softens this requirement by providing that definite term contracts with foreign employees, elderly employees, and officers of employee representative organizations can be renewed multiple times.

The process to renew a definite term contract has been tightened, with a new requirement that renewal can no longer be documented in an appendix/amendment to the existing labor contract and instead requires an entirely new contract. On the other hand, the formalities surrounding the making of a labor contract have been relaxed, and it is now permissible for a contract to be made via electronic means or even verbally if its term is less than one month.

Greater scrutiny of the substance of an employment relationship

In an effort to circumvent termination restrictions and other employer obligations, some employers attempted to structure employee relationships as something other than "employment" (e.g., as contractors or service providers). The Labor Code seeks to address any attempted evasion of legal obligations by emphasizing that a labor contract will be determined on the basis of its substance rather than the label given to it and will be scrutinized accordingly.

Limited expansion of an employer's right to terminate

A much derided characteristic of Vietnam's employment legislation is the limited ability of an employer to unilaterally terminate a labor contract, even for cause. The Labor Code has unfortunately done little to change this. Although it now introduces new grounds for an employer to terminate a labor contract – e.g., when an employee reaches retirement age, fails to turn up for work for five successive days without a legitimate reason, or was dishonest or provided false information during the recruitment process, the ability to unilaterally terminate an employee otherwise remains unchanged.

A technical anomaly (rarely enforced in practice) under the previous regime is corrected, with employees now allowed to unilaterally terminate their labor contracts subject only to observing the advance notice requirements (45 days in the case of an indefinite term contract, 30 days in the case of a definite term contract, or just three working days if the contract term is less than one year). No notice need be given if the employee suffers maltreatment or sexual harassment at work.

Protection from discrimination

One welcome improvement is a greater effort to protect employees from discrimination in the workplace. Employees are now provided with statutory protection from sexual harassment and discrimination on the basis of race, skin color, nationality, social origin, ethnic group, gender, age, pregnancy or maternity, marital status, family responsibilities, political views, disability, HIV status, or participation in a trade union. A key driver was the need to improve employee protection in order to meet existing standards in developed countries and commitments under international treaties, and it remains to be seen how these new protections will play out in practice.

Working time

Much of the debate leading up to the adoption of the Labor Code centered on working time, salary, and other employee rights. Despite efforts to reduce working hours and overtime, the government remained cautious due to concerns regarding the possible impact on productivity and the economy. As a result, working hours and overtime remain unchanged, with the monthly overtime working cap increasing from 30 hours to 40 hours. Employees can, however, look forward to an additional public holiday which will be taken together with the existing National Day on 2 September. Fiscal considerations have led to an increase in the retirement age, which will rise incrementally (by three months per year for men and four months per year for women) to an eventual 62 years of age for males (effective from 2028) and 60 years of age for females (effective from 2035).

Independent unions

For the first time, the Labor Code allows employees to join a representative organization (such as a labor union) for employees that is independent from the state-run Confederation of Labor. This change has been particularly welcomed by labor leaders in Vietnam who see it as a means to improve the collective bargaining process for employees. Employers may be less enthusiastic, but the requirement for a representative organization to be first registered with the state perhaps indicates the changes will not be as radical as envisaged.

Arbitration now available to settle employment disputes

Under the previous labor code, a labor arbitration council was established to arbitrate only in collective bargaining disputes. Under the Labor Code, however, the arbitration council now has authority to settle individual labor disputes so long as the parties in dispute agree to submit to its jurisdiction and, in certain cases, first go through a mandatory conciliation process. It is hoped that this will allow employers and employees to access the advantages arbitration typically provides as an alternative to litigation.

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