

At a glance...

The National Assembly ratified the new Labour Code No. 45/2019/QH14 on 20 November 2019 to replace the current Labour Code. The new Labour Code has 17 chapters and 220 articles and will come into effect next year.

In detail...

The new Labour Code comes into effect on 1 January 2021. Here are some highlights:

Labour Contracts

- A new approach to define labour contracts more broadly is introduced. An agreement with a title other than “labour contract” but which sets out a scope of work, wage, management, administration and supervision by one side over another will be considered a labour contract. Currently in Vietnam, individuals are sometimes hired under some contracts or other forms of agreements which might fall outside the scope of the Labour Code and possibly also the social insurance contribution requirements. This change will clearly have implications in such case. This change is also an effort to handle new forms of employment seen in Industry 4.0.
- The new Labour Code for the first time recognises labour contracts made in electronic form.
- The maximum probationary period can be up to 180 days for managers as defined in the Law on Enterprises, including inter alia the (general) director of a company. Currently, the maximum probationary period is only 60 days.
- Employees now have the right to unilaterally terminate their labour contracts without any reason but must comply with prior notice requirements.
- Employers now have more rights to unilaterally terminate labour contracts, e.g. with employees who provided false information when entering into the labour contract.
- It is possible to enter into multiple definite term labour contracts with foreign employees. This resolves the current conflict between the provision in the law that an indefinite term labour contract must be entered into with an employee after two consecutive definite term labour contracts, and that the term of a labour contract with a foreign employee must adhere to his/her work permit expiry date.

In detail...

Salary

- Employers must not restrict or interfere with their employees' right to decide how to spend their salaries, and must not use force or coerce the employees to spend their salaries on purchasing goods/services from their employer.
- In the case of salary paid to employees' bank accounts, employers must pay the service fees for opening such bank accounts and for remitting salaries.
- The new Labour Code removes the requirement that salary scales and tables must be registered with the labour authority. However, the requirement to consult with "organisations representing the employees" on formulation of salary scales/tables and labour norms remains.

Working hours and overtime

- Yearly maximum permitted overtime remains unchanged, i.e. 200 hours per year in normal cases and up to 300 hours per year in special cases as defined in the new Labour Code. However, the permitted maximum overtime for a month increases from 30 hours to 40 hours.
- Another public holiday (the day preceding or following Independence Day – 2 September) is added.

Work permits

- A work permit for foreign employee can be extended only one time, for a further maximum two years. Accordingly, a new application process must be conducted if an employer wishes to continue to employ such foreign individual.

Retirement ages

- Starting from 2021, the retirement ages in normal working conditions for labourers are 60 years and three months for men and 55 years and four months for women. Retirement ages will be increased annually by three months for men until reaching 62 years in 2028 and by four months for women until reaching 60 years in 2035.

In detail...

Labour discipline

- Internal Labour Rules (“ILR”) must now include the following contents (in addition to the currently required ones):
 - ✓ Prevention of sexual harassment in the workplace; and the procedures for dealing with sexual harassment in the workplace;
 - ✓ Cases where an employer can temporarily transfer an employee to work that is different from that agreed to in the labour contract.
 - ✓ The person authorised to impose disciplinary penalties.
- An enterprise with branches in different locations is not required to register its ILR with all the respective local labour authorities but must just send the valid/registered ILR to those authorities [i.e. as a notification]. Labour authorities at the provincial/city level may delegate/authorise ILR registration to the labour authorities at district level.
- The new Labour Code adds sexual harassment to the list of acts that are subject to dismissal provided that this act is stipulated in the ILR.

Trade Unions

- In accordance with Vietnam’s commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CP-TPP) and the European Union – Vietnam Free Trade Agreement (EVFTA), the Labour Code is amended to allow the establishment of employees’ representative organisations which do not belong to the Vietnam General Confederation of Labour.
- Accordingly, an organisation independently established by employees can play similar roles as an in-house Trade Union’s in representing employees and protecting their rights. However, in order to be recognised by law, such organisation must have a charter and be registered with the relevant authorities. The government will stipulate further guidelines in this regard.

Transitional provisions

- From the effective date of the new Labour Code (i.e. 1 January 2021), all signed labour contracts, collective labour agreements and other legal agreements whose contents are not contrary to, or provide more favourable rights and conditions to employees than, the provisions of the new Labour Code will continue to be valid, except where the parties have agreed amendments thereof to comply with the new Labour Code.

Contact us

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