



VIETNAM

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Labour Code (Law No. 10/2012/QH13)
2. Decree No. 49/2013/ND-CP
3. Decree No. 95/2013/ND-CP dated 22 August 2013
4. Decree No. 45/2013/ND-CP
5. Official Letter 392/LĐTĐ-TL
6. Social Insurance Law (Law No.71/2006/QH11)
7. Decree 127/2008/NĐ-CP
8. Circular 17/2009/TTBLĐ-TĐ
9. Decree No. 05/2015/ND-CP
10. Law on Social Insurance (Law No. 58/2014/QH13)
11. Law on Health Insurance (No. 25/2008/QH12)
12. Circular No. 40/2011 / TTĐT ĐLĐ-TĐ-BYT
13. Decree 85/2015/ND-CP
14. Law on Inspections (No. 56/2010/QH12)
15. Circular No. 10/1998/TTĐLĐ-TĐ
16. Circular No. 04/2014/TT-ĐLĐ-TĐ
17. Circular 27/2013/TT-ĐLĐ-TĐ
18. Law on Occupational Safety & Health (Law No. 84/2015/QH13)
19. Joint Circular No. 33/1987/TT-LĐ
20. Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN)
21. Law on Persons with Disabilities (No. 51/2010/QH12)
22. Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11)
23. Law on Trade Unions (No. 12/2012/QH13)
24. Criminal Code (No: 15/1999/QH10), last amended in 2009 (No. 37/2009/QH12)
25. Circular No. 10/2013/TTĐLĐ-TĐ
26. Circular No. 11/2013/TT-ĐLĐ-TĐ
27. Decree No. 41/2013/NĐ-CP
28. Decree 196/CP dated 31.12.1994

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Vietnam has not ratified the Conventions 95, 117 & 131.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Labour Code (Law No. 10/2012/QH13)
- Decree No. 49/2013/ND-CP
- Decree No. 95/2013/ND-CP dated 22 August 2013

Minimum Wage

In accordance with section 91 of the Labour Code 2012, workers' salary must at least be equal to the minimum wage, i.e., a wage which will ensure the minimum living needs of the employees and their families and which is based on the local social & economic conditions as well as the normal wage in the labour market.

In accordance with the Labour Code 2012, Government shall announce the regional minimal wage on the basis of the recommendations of the National Wages Council. National Wages Council is a tripartite body with representation from Government, employer and workers. The minimum wage rate is determined on hourly, daily, and monthly basis for different sectors and regions.

The region based minimum wage levels are applicable to the labourers working under labour contract for companies, enterprises, cooperatives, cooperative groups, farms, households, individuals, agencies, and organizations employing labourers. Wages may be determined by agreement between the workers and the employer (employment contract) as well through collective bargaining agreement however these cannot be lower than the government announced minimum wage levels. The new Decree further requires that the minimum wage rate of a trained worker must at least be 7% higher than the region based minimum wage rate. The wage level for heavy, hazardous and dangerous working conditions must at least be 5% (7% for special hazardous conditions) higher than the regional minimum wage rate.

The monthly wage paid to an employee who performs the simplest work (unskilled worker) under normal working conditions must not be lower than the regional minimum wage. Enterprises coming under regional minimum wages are required to develop a salary scale and wage table and to calculate benefits paid for employees. Employers are required to consult with relevant trade union and send the wage scales to the labour management authority at the district level. These wage scales are used as a basis for recruitment and employment, wage negotiation and wage payment. Employers are required to make these wage scales publicly available at the workplace before implementation.

Employers may agree with probationary workers to pay a probation salary equal to at least 85% of the normal wage. If an apprentice (during apprenticeship or vocational training) directly or indirectly produces products for sale, wages must be agreed between the parties (apprentice and the enterprise). Temporary workers are entitled to the same wage as other workers, plus any additional benefits.

Compliance with the provisions of Labour Code including minimum wages is the responsibility of The MOLISA (Ministry of Labour, Invalids and Social Affairs) Inspectorate.

In line with article 13 of the 2013 Decree, if an employer pays its workers at a rate lower than the minimum wage decided by the Government, the employer is liable to:

- (a) a fine from 20,000,000 VND to 30,000,000 VND, if the violation concerns 01 - 10 workers;
- (b) a fine from 30,000,000 VND to 50,000,000 VND, if the violation concerns 11 - 50 workers; and
- (c) a fine from 50,000,000 VND to 75,000,000 VND, if the violation concerns 51 workers or more.

Other than this, the Decree allows suspension of enterprise operations for one to three months for payment of wages lower than the minimum wage rate declared by the government.

Sources: §28, 61, 91-93 of Labour Code (Law No. 10/2012/QH13); Decree detailing the Implementation of a Number of Articles of the Labour Code on Wages (No 49/2013/ND-CP); §13 of the Decree No. 95/2013/ND-CP dated 22 August 2013

Regular Pay

An employer may make the payment of wages by time (hourly, daily, or on monthly basis), piecework or completion of a task. The only condition is that the chosen form of payment is maintained for a certain period. In case of any change, the employer must notify the worker(s) at least 10 days in advance.

Wages may be paid in cash or paid directly into an employee's individual bank account. The employees must be paid wages directly, fully and in a timely manner (as agreed in the employment contract). In case the wages are not paid in a timely manner, it must not be later than 01 month (from its due date) in special cases. If delay exceeds 15 days, the employer must pay the employee an additional amount that is equal to the arrears of salary multiplied by the ceiling of the one-month deposit interest rate announced by the State Bank of Vietnam at the time of payment.

In accordance with the provisions of Labour Code, an employer is under the obligation to pay workers the wages: at least once in 15 days to employee whose salary is determined on hourly, daily or weekly basis; at least once a month or once a fortnight to employee whose salary is determined on monthly basis; and as agreed upon between the parties for the employees whose salaries are determined on the basis of product (completion of a task) and piecework. If the work has to be done in many months, the monthly salary shall be advanced by the volume of work done during the month.

The employer is only entitled to deduct the salary of employee for the compensation of damages of tools and equipment of the employer to the extent only as provided under

the Labour Code. Employee must be informed about the reasons for deduction of salary however the monthly deduction cannot exceed 30% of employee's monthly salary after the payment of compulsory social insurance, health insurance, unemployment insurance and income tax.

In line with a 2018 Decree (No. 121/2018/ND-CP), enterprises have to establish Labour productivity norms as the basis for giving product-based pay to employees. However, an enterprise employing less than 10 workers is exempt from submitting its pay scale, payroll, and Labour productivity norms to the Labour authority of district where business is located.

Sources: §94-96 & 101 of Labour Code (Law No. 10/2012/QH13)

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Vietnam has not ratified the Conventions 01 & 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Code (Law No. 10/2012/QH13)

Overtime Compensation

In accordance with the provisions of Labour Code, working hours cannot exceed 08 hours per day or forty-eight (48) hours per week. Employer may determine the working hours on a daily or weekly basis; the normal working hours may not exceed 10 hours per day and 48 hours per week. The state however encourages the employers to implement 40-hour working week. The working hours cannot exceed 06 hours per day for workers involved in extremely hard, dangerous and hazardous work.

Overtime work is the work beyond the normal working hours as specified under the law, collective agreement or labour rule. An employer may engage an employee on overtime with his/her consent only and on payment of premium rate. The Labour Code further requires the employer to provide compensatory leave for the overtime without days-off if the worker is engaged on overtime for certain consecutive days in a month (limit of 7 days is defined in a 2013 Decree). If compensatory rest periods are not available, overtime premium is paid.

Workers may be required to work overtime hours however overtime working hours cannot exceed 12 hours a day for working on weekly rest days or public holidays (50% of the standard working hours on normal days); 30 hours a month (for both normal and hazardous work) and 200 hours a year. In exceptional cases, 300 hours of overtime may be allowed per year (Art. 106). The 300-hour limit is applicable to hazardous work that includes the garments sector.

The compensation for working overtime is: at least 150% of the normal wage rate on weekdays; at least 200% of the normal wage rate on weekly days-off; and at least 300% of the normal wage rate on holidays and days-off with pay (annual leave). Employees who receive time-based wages or piece rate wages receive 300% their regular wages for hours worked in addition to one full day of regular wages.

In certain cases (force majeure, protection of life and property, national defence and security), employer can require a worker to work overtime on any day and the employee cannot refuse to do such overtime work in above referred situations.

Sources: §97, 104, 106 & 107 of Labour Code (Law No. 10/2012/QH13)

Night Work Compensation

In accordance with the provisions of Labour Code, night is the period from 20:00 to 06:00 of the following day. Night work is paid at the premium rate of 130% of the normal hourly salary paid during the day. Employees working overtime during working hours are entitled to additional 20% of the normal wage for day time. If employees have to work overtime at night, they get their wages for these hours according to a formula which focuses on whether the worker has worked overtime during the day before working overtime at night. In case, the worker did not work overtime: $(150\% + 30\% + 20\%) * 100\%$ of the normal wage if the worker did not work overtime the day before working overtime at night; $(150\% + 30\% + 20\%) * 150\%$ of the normal wage if the worker worked overtime the day before working overtime at night; $(200\% + 30\% + 20\%) * 200\%$ of the normal wage for working on weekly rest days; and $(300\% + 30\% + 20\%) * 300\%$ of the normal wage for working on public holidays and days of paid leave (annual leave).

Sources: §97 & 105 of Labour Code (Law No. 10/2012/QH13); CIRCULAR 23/2015/TT-BLDTBXH; DECREE 05/2015/ND-CP

Compensatory Holidays / Rest Days

Compensatory rest for working on weekly rest days or public holidays is not provided under the Labour Code since it does not generally require working on weekly rest days and public holidays. Where required, the employer is only liable to pay the worker the difference between the normal time rate and the overtime penalty rate for the overtime worked (i.e. 50%, 100 or 200% of the worker's normal time rate). When compensatory rest periods are not available, overtime has to be paid.

Weekend / Public Holiday Work Compensation

The Labour Code does not usually contemplate work on weekend/public holidays. However, if the provisions of art. 97 and 106 are taken into account, work on weekly rest day is compensated with a penalty rate of 200% of normal rate of pay while work on public holidays is compensated with a penalty rate of 300% of normal rate of pay. Employees who work overtime on holidays falling on the weekly days-off will be paid overtime salary. Employees who work overtime on compensation days off will be paid overtime salary on weekly rest day.

Source: Decree 05/2015/ND-CP; Labour Market Regulation aka Employing Workers Index

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Vietnam has ratified the Convention 14 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Labour Code (Law No. 10/2012/QH13)
- Decree No. 45/2013/ND-CP
- Official Letter 392/LĐTBXH-TL

Paid Vacation / Annual Leave

Workers, after 12 months of service, are entitled to fully paid annual leave of following duration: 12 working days for employees working in normal working conditions; 14 working days for persons working in heavy or dangerous work; and 16 working days for workers doing extremely heavy or hazardous work.

The 14-day annual leave is applicable to young workers under 18 years and workers with disabilities. Workers are entitled to one additional day of annual leave for every five years of service with the same enterprise (increased leave for senior workers). Annual leave for workers who have worked for less than one year or who stopped working during the year is calculated on the pro-rata basis in proportion to the length of employment. Annual leave is calculated as follows: [number of days of annual leave (12 or 14 or 16) + additional days of annual leave depending on seniority (one day for every 5 years)/12 months] X number of actual working months in the year. A fraction equal to or greater than 0.5 is rounded up by 1.

Before commencement of annual leave, workers are entitled to receive an advance payment which is at least equal to the amount they would receive in salary for those days of annual leave. Employer is required to arrange a timetable of annual leave in advance and notify employees of this schedule in consultation with the employees. If an annual leave plan is prepared by the employer however the worker works voluntarily on these days, employer is required to pay the worker their full regular wages in addition to full pay for annual leave for working on these days (200% of the normal wage for working days). If the employer does not schedule annual leave or if the annual leave is scheduled but the employer requests the workers to work on these days, employee must be paid at 300% of the normal wage rate. Workers receiving time based or piece rate wages are entitled to a total of 400% of the normal wage rate for working on days of annual leave (100% as normal wage + 300% for unused annual leave).

A worker is entitled to receive compensation in lieu of annual leave if he/she is unable to take annual leave in case of employment termination (due to job leaving, job loss) or other reasons. Splitting of annual leave is also allowed under the law.

Sources: §111-114 of Labour Code (Law No. 10/2012/QH13); §6 & 7 of the Decree elaborating a number of articles of the Labour Code on hours of work, hours of rest, occupational safety and occupational hygiene (No. 45/2013/ND-CP); Official Letter 392/LĐTBXH-TL

Pay on Public Holidays

Workers are entitled to 10 fully paid public holidays in the following manner: Solar New Year Day (January 1); 5 days for the Lunar New Year (can be taken as last one day of the previous Lunar year and first four days of the new Lunar Year OR last two days at the end of the previous Lunar year and first three days of the new Lunar year); King Hung Vuong's Anniversary (March 10); Victory Day (April 30); International Labour Day (May 1); National Day (September 2).

If a public holiday falls on a regular weekly rest day, employees are entitled to a compensatory day-off on the following working day. Foreign employees, in addition to above described 10 public holidays, are entitled to 1 day-off for traditional New Year and 1 day-off for the national day of their country.

Employers are required to notify employees of the Lunar New Year Holiday plan at least 30 days before the holiday.

Sources: §115 of Labour Code (Law No. 10/2012/QH13); §8 of the Decree elaborating a number of articles of the Labour Code on hours of work, hours of rest, occupational safety and occupational hygiene (No. 45/2013/ND-CP); Decree No. 3238/TB-BLDTBXH

Weekly Rest Days

Workers are entitled to 24 consecutive hours (one day) of rest per week on Sunday or any other specified day. The weekly rest day must be clearly stated in internal regulations (of the enterprise) or the collective agreement. In special cases when an employee can't take weekly rest and is rather required to work on such a weekly rest day, employer is required to ensure that employee is entitled to at least 04 rest days per month on average.

Sources: §110 of Labour Code (Law No. 10/2012/QH13)

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Vietnam has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Labour Code (Law No. 10/2012/QH13)
- Social Insurance Law (Law No.71/2006/QH11)
- Decree 127/2008/NĐ-CP
- Circular 17/2009/TTBLĐTBXH
- Decree No. 05/2015/ND-CP

Written Employment Particulars

An employment contract is an agreement between the worker and the employer on the paid work, the working conditions, the rights and obligations of each party in the labour relation.

Labour Code provides for both fixed/definite term and indefinite term contracts. Employment contract must be in writing except for temporary jobs of under 3-month duration. An employment contract may also be concluded for seasonal work or a specific task which has a term of less than 12 months. The employment contract must be drawn up in two originals, one for each party. Every employer, upon engagement of an employee, should provide him in writing, the name and address of the employer, type of work and work location (workplace), duration of employment contract, terms of salary payment (mode of payment and wage payment periods), the grade and salary increase regime, the working hours and break time, personal protective equipment (PPE) for the employee, social and medical insurance and also the vocational training and occupational skill improvement courses.

For temporary work of less than three months, a verbal contract may be concluded. A 2015 Decree requires that the term of the employment contract may be amended only once in employment contract Appendix and must not be changed in the type of the signed contract, except for changes in employment contracts with elderly employees and those who are part-time unionists.

Sources: §15-24 of Labour Code (Law No. 10/2012/QH13); Decree 05/2015/ND-CP

Ministry of Labour, Invalids and Social Affairs (MOLISA) is working on the revision of the Labour Code and has already shared the first draft of the proposed amendment. The draft proposed extensive changes in the Labour Code. Once the new Labour Code is enacted (by mid of 2017), new information will be uploaded.

Fixed Term Contracts

Labour Code provides for three types of employment contracts: indefinite term contracts (where parties don't specify the term and expiry date of the contract); fixed term contracts (term is specified and expiry date of contract is within 12 to 36 months); and Casual/temporary employment contracts (term of less than 12 months).

If a worker continues to work after the expiration of his/her initial contract, both parties must sign a new employment contract within 30 days. If a new contract is not signed within this limit, a definite term contract turns into an indefinite term contract and a temporary contract with duration of less than 12 months becomes a 24-month definite term contract.

The fixed term contracts and temporary employment contracts may be renewed only once. Maximum length of fixed term contracts including renewals is 72 months while maximum length of casual/temporary employment contracts is 24 months. If a worker is still engaged for work on the expiry of these terms, the fixed term and casual/temporary contracts turn into an indefinite term contract.

An employer cannot engage a worker on temporary contract for a seasonal job of under 12 months for regular work that would normally require 12 months or more of work, except in the following cases: (i) the temporary substitution of employees called up for military service, (ii) the temporary substitution of employees taking maternity leave, sick leave, occupational accident (injury leave) or other temporary leave.

Temporary workers have the same rights as regular workers. If a person is engaged for less than three months, employer is not required to pay contributions to the mandatory social insurance scheme. The amount must be paid directly to the worker (as a percentage of monthly pay) as follows: social insurance (18%), health insurance (3%), unemployment insurance (1%), annual leave allowance for workers performing non-hazardous work (4%) and annual leave allowance for workers performing hazardous work (4.5%).

Sources: §22, 23 & 186 of Labour Code (Law No. 10/2012/QH13)

Probation Period

The parties to an employment contract (employer & employee) may agree on a probationary contract, which must include the rights and responsibilities of both parties during the probationary period. The probationary period cannot be extended and a worker can be placed on probation only once for a position in an enterprise. The length of the probationary period is based on the complexity of work and skill required to do the work.

The probationary contract must include name and address of the employer or of the legal representative of the employer; full name, date of birth, sex, residence address, identity card number or other legal documents of the employee; job description and workplace; duration of employment contract; wage, mode of payment, due date of payment (payment period), allowances and other additional payments; processes for promotion, wage increase; working time and rest periods.

The maximum length for probationary periods is as following: 60 days for work requiring technical college diploma or further education; 30 days for work requiring a

secondary school certificate, secondary professional qualification or specialized workers; and 6 working days for other types of work. No probationary period is contemplated for workers working on a temporary labour contract.

Employers are required to inform workers of the results of the probation period within three days before the end of the probation period. For workers (with maximum probationary period of 6 days), employer may notify the results to the worker at the end of probation period. If the worker passes the probation period, employers has to conclude an employment contract with the worker. Worker's salary during the probationary period must be at least 85% of the minimum wage.

During the probationary period, each party has the right to terminate the probationary contract without prior notice and compensation if the probation work fails to meet the requirements as agreed by both the parties.

Sources: §26-29 of Labour Code (Law No. 10/2012/QH13); §7 of the Decree 05/2015/ND-CP

Notice Requirement

An employment contract is terminated in the following cases: on expiry of contract term or completion of tasks stated in the contract; by agreement between parties; death (or declaration of missing status by Court) of worker or employer; dismissal of worker; imprisonment of worker or being subject to a Court order; unilateral termination of contract by worker or employer; reaching the retirement age (qualification for pension benefits from social insurance); cessation of enterprise operations or termination of workers due to structural or technical changes or for economic reasons, merger, acquisition, or separation.

An employee (with indefinite term contract) has the right to terminate employment in the following cases: if he/she is not assigned to the agreed occupation or workplace or are not provided with the working conditions as agreed to in the contract; not paid in full or within the time agreed, the wage stipulated in the employment contract; subjected to maltreatment, sexual harassment or coercive labour (employer's illegal acts like violent, aggressive behaviours, disrespect and humiliating acts, acts affecting the employee's health, dignity, honour, and use of coercive measures or sexual harassment in the workplace); inability to carry out contractual responsibilities due to personal or family difficulties; election or appointment to full time work in a public office or in the state apparatus; stoppage of work on doctor's recommendations (applicable to pregnant workers only); illness or work (or non-work) injury and inability of worker to resume work following treatment.

The notice period is 3 working days in the above mentioned first three cases (non-provision of work as agreed in employment contract, non-payment of wages in full or non-punctual payment of wages, and subjection to maltreatment and sexual harassment) and illness or injury of a worker after which worker is unable to resume

work. For definite term contracts, the required notice period is 30 days while in the case of indefinite term contracts the required notice period is 45 days. In the case of unilateral termination of contract by a pregnant worker on the advice of a doctor, the notice period is determined by the doctor.

An employer may also unilaterally terminate an employment contract in the following cases: failure on the part of the worker to fulfil the tasks assigned by contract; non-recovery of an ill worker after 12 months of illness (for indefinite term contract), 6 months (for fixed term contracts), or more than half of the term for a temporary contract of less than 12 months duration; reduction in production and workforce in consequence of a natural calamity, fire or force majeure; failure of the employee to be present at the workplace after suspension of contract has ended (in cases provided under the Labour Code). The required notice period (in case of contract termination by employer) is 3 working days in the event of prolonged illness (explained above) or temporary contracts of less than 12 months. The notice period is 30 working days for termination of definite term contracts and 45 days for indefinite term contracts.

Unilateral termination of an employment contract by an employer is not permitted in the following cases when an employee is: under treatment for illness, a work accident or an occupational disease; on annual leave, personal leave, or any other type of leave permitted by the employer; and absence of a female worker for her marriage, pregnancy, maternity leave, or who is nursing a child under 12 months of age. Employers, however, may refuse to renew an employment contract in cases where contract term has completed or has expired in such circumstances.

Sources: §36-39, 155 & 156 of Labour Code (Law No. 10/2012/QH13); Decree No. 05/2015/ND-CP

Severance Pay

Labour Code provides for both severance allowance and employment loss allowance. Severance allowance is paid in all cases of termination of employment except for the case of disciplinary dismissal, retirement and unlawful termination by the worker. In such case, worker is entitled to half month (15 days) salary plus allowances for each year of service.

The employment loss allowance/redundancy pay is payable by the employer in case of employment termination due to structural or technical changes or for economic reasons, merger, acquisition, or separation. In this case, employee is entitled to one month's salary for each year of service. In case of redundancy, a worker is entitled to one-month salary for each year of service (the minimum is two months' salary) as employment loss allowance.

If it is proved that unilateral termination of employment contract by the employer was unfair, employer has to re-employ the worker under the employment contract and pay the salary, social insurance, medical insurance for the days the employee is banned from

working plus the salary of at least 02 months. If the worker does not wish to be re-employed, employer must pay the severance allowance in addition to above-referred two months' salary. If the employer does not wish to re-employ the worker, worker and employer must agree on extra compensation besides two months' salary and severance pay as provided under the law. For violation of advance notice, employee must be paid compensation equivalent to his salary for the days for which advance notice was not provided.

If an employee unlawfully terminates the employment contract, he/she is not eligible for severance allowance. He/she is entitled to half monthly salary and is required to reimburse the cost of training (if any), and pay compensation for any days the notice was not given in case of not fulfilling prior notice requirements.

In accordance with the 2009 circular, an employer must pay severance allowance and employment loss allowance for the number of years the worker has worked up to 31 December 2008. The severance pay is calculated based on the average wage received by the worker received during the 6 months prior to termination.

From 1 January 2009 onward, the enterprises employing 10 or more workers contributing to employment insurance scheme don't have to pay severance allowance or employment loss allowance for the period in which employee participated in the unemployment insurance scheme. The enterprises employing less than 10 employees still have to pay severance allowance or employment loss allowance.

Sources: §42-49 of Labour Code (Law No. 10/2012/QH13); § 2(3 & 4), 139(6) & 140 of Social Insurance Law (Law No.71/2006/QH11); Decree 127/2008/NĐ-CP; Circular 17/2009/TTBLĐTBXH

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Vietnam has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Labour Code (Law No. 10/2012/QH13)
- Law on Social Insurance (Law No. 58/2014/QH13)

Paternity Leave

No specific paternity leave entitlements are found in the Labour Code. However, personal leave entitlements as identified under §116 of Labour Code may be used. There is no provision for independent paternity leave however if mother and father are both covered by Social Insurance or either of them is covered and mother dies during child birth, the father or any other person nursing the child is entitled to the maternity regime until the child is four months old.

From 1 January 2016, male workers participating in social insurance are entitled to take paternity leave on the birth of a child: 05 working days for normal delivery; 07 working days in case Caesarean birth or delivery under 32 weeks of age; 10 working days in case of twins and an additional leave of 03 days for each child from the third child; 14 working days in case of having Caesarean birth for twins. The paternity leave must be taken within 30 days of the birth of a child.

Source: §116 of Labour Code (Law No. 10/2012/QH13); §34 of the Law on Social Insurance (Law No. 58/2014/QH13); Circular 59/2015/ TT-BLDTBXH

Parental Leave

No specific leave entitlements found in the law on parental leave.

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities. However, the Labour Code does provide for shorter working hours if the parties reach an agreement on working less than the usual working hours in a day or week. The employee working shorter hours has the salary, rights and obligations similar to that of other full-time employees, and is entitled to equitable opportunities, labour safety and labour hygiene conditions without discrimination. It is part of the state policy to encourage employers to create conditions for female employee to work regularly and widely apply the flexible timetable working regime, working shorter hours and assigning work at home.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Vietnam has not ratified Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Labour Code (Law No. 10/2012/QH13)
- Law on Health Insurance (No. 25/2008/QH12)
- Circular No. 40/2011 / TTLT BLDTBXH-BYT
- Decree 85/2015/ND-CP

Free Medical Care

Costs of medical examination and treatment, function rehabilitation, regular pregnancy check-ups and birth giving are covered under the art. 21 of Health Insurance Law. 100%, 95%, or 80% of the cost of primary services is paid, depending on the type of insured person and service (as explained under art. 12 of the Law). The beneficiaries usually have to pay 6% insurance premium on monthly salary for eligibility to health benefits (except in some cases specified under the law).

A 2015 Decree requires that when having periodic check-up, female employees must receive maternity-related examination according to the list of maternity-related examination promulgated by the Ministry of Health.

Source: §12, 13 & 21 of the Law on Health Insurance (No. 25/2008/QH12); Decree 85/2015/ND-CP

No Harmful Work

The employer is not permitted to use female employees to work at night, work overtime and take far business trip when she is in the 6th or 7th month of pregnancy or is nursing a child under 12 months.

If female employees are involved in heavy work, they have to be moved to lighter work or their working hours must be reduced by 01 working hour every day from the 7th month of pregnancy.

A 2011 circular gives a long list of 79 occupations in which employment of women (including pregnant as well as breastfeeding workers with children under 12 months of age) workers is prohibited. The prohibited occupations (specific to pregnant and breastfeeding women workers) include, among others, direct contact with radioactive sources, chemicals that may affect placenta and mother's milk source, work in rubber production, driving agricultural tractors, and driving construction machines.

Employers must ensure that there are sufficient bathrooms and restrooms at working places according to regulations of the Ministry of Health. They are encouraged to cooperate with the internal trade union in building up plans and taking measures so that female employees have constant jobs, flexible working schedules including part-time jobs and work-at-home jobs according to reasonable requests of female employees.

Source: §155 of Labour Code (Law No. 10/2012/QH13); Joint Circular Stipulating Harmful Working Conditions and List of Occupations in Which Employment of Female is Prohibited (No. 40/2011 / TTLT BLDTBXH-BYT) dated 28 December 2011; Decree 85/2015/ND-CP

Maternity Leave

Female employees are entitled to 06 months' paid maternity leave with the condition that pre-natal leave period shall not exceed 02 months. For twins or more children, there is provision of 01-month additional leave per child. In the case of adoption of a child under 6-month, leave can be taken until the child is 6 months old (maximum leave for adoption is thus 6 months).

A worker must fall under one of the following four cases for eligibility to maternity leave: pregnancy; giving birth to a child; adoption of an infant under 4 months of age; and taking of intra-uterus device or taking of sterilization measures.

For pre-natal examination (during pregnancy), five days' leave is permitted. If the workplace is far from the medical institution or if the worker is having an ailment or her foetus is abnormal, the pregnant worker is entitled to 2 days off for each maternity check-up (10 days during pregnancy). In the case of miscarriage, abortion or stillbirth, 10-50 days' maternity leave is provided depending on the age of foetus. If a new born child dies, the maternity leave allowed (after death of the child) is 90 days if the child is under 60 days of age or 30 days if the child is 60 days or older. If a woman worker is taking contraceptive measures, she is entitled to 7-15 days of leave depending on the kind of contraceptive measures. A woman worker is entitled to 5-15 days in a year for recovering or convalescence after confinement.

Source: §157 of Labour Code (Law No. 10/2012/QH13); §31-38 of Law on Social Insurance (Law No. 58/2014/QH13)

Income

Maternity leave is a paid leave and workers are entitled to their full wages, paid under the social insurance law (by the Government). The maternity leave is paid by social insurance agency based on full salary of the worker. The worker and employer are not required to pay social insurance premiums during the term of maternity leave. There is also provision for lump-sum allowance equivalent to 02 months of general minimum salary for each child. A female worker must have contributed to the social insurance scheme for at least 6 months for entitlement to maternity benefits.

Female workers are entitled to maternity benefit for 6 months. There is provision of 30 days' extra benefit for each child from the second onwards.

In all other cases (pre-natal examinations during pregnancy, miscarriage or abortion, death of a new born, and in case of taking of contraceptive measures), the maternity

benefit is paid by the social insurance agency on full salary. In the case of recovery or convalescence after confinement, workers are provided 25-40% of the minimum wage applicable. If only the father contributed to the social insurance, he is entitled to a lump-sum allowance equivalent of two month's basic salary on childbirth.

Source: §38 & 39 of Law on Social Insurance (Law No. 58/2014/QH13)

Protection from Dismissals

Protection from dismissals during maternity leave is provided under the law. In accordance with the §155.3 of Labour Code, an employer is not entitled to dismiss or unilaterally terminate the employment contract of a female employee for the reason of marriage, pregnancy, maternity leave or nursing a child under 12 months. Such dismissal is considered unfair.

A pregnant worker may unilaterally terminate employment contract if a competent medical facility has confirmed that the continuation of work will negatively impact the embryo. The contract termination notice in such case is prescribed by the medical facility.

Source: §155(3) of Labour Code (Law No. 10/2012/QH13); Decree 85/2015/ND-CP

Right to Return to Same Position

The female employee is guaranteed the old job upon returning to work after the end of maternity leave. In case, the old job no longer exists, the employer must arrange another job for her with the salary rate not lower than the one she held before maternity leave.

Source: §158 of Labour Code (Law No. 10/2012/QH13)

Breastfeeding

Female employees who are raising infants (under 12 months) are entitled to take fully paid 60-minute break during working hours to nurse children, collect and store milk or to take rest. Employers are required to build rooms for collecting and storing breast-milk according to the actual conditions of working places and the need of the female employees and capacity of the employers. Employers are encouraged to enable female employees raising infants to collect and store breast-milk at working places. Time off duration is agreed by the employees and the employers.

The law also provides menstrual breaks. During her menstruation, a woman worker has the right to a break of 30 minutes per day for at least 3 days per month, while receiving the same wage. Length and timing of the rest breaks during menstrual period may be agreed between the parties according to the actual conditions at the workplace and the needs of employees.

Source: §155(5) of Labour Code (Law No. 10/2012/QH13); Decree 85/2015/ND-CP

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Vietnam has ratified both the Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Code (Law No. 10/2012/QH13)
- Law on Inspections (No. 56/2010/QH12)
- Circular No. 10/1998/TTBLĐTBXH
- Circular No. 04/2014/TT-BLĐTBXH
- Circular 27/2013/TT-BLĐTBXH
- Law on Occupational Safety & Health (Law No. 84/2015/QH13)

Employer Cares

The Labour Code places responsibility on all the actors to make the workplace safe and requires all enterprises, agencies, organizations and individuals related to labour and production to comply with the law on labour safety and hygiene.

Employers have to ensure that the working environment meets the required standards, improve the healthcare and working conditions of workers, and establish practices to minimize or eliminate safety and health related hazards.

Employers must also ensure the safety and health of employees and the environment (by complying with the standards on labour safety & hygiene) when building or renovating new facilities or when purchasing equipment that has strict OSH requirements.

The employer has to ensure that the workplace meets the requirements of space, ventilation, dust, steam, toxic gas, radiation, electromagnetic field, heat, humidity, noise, vibration and other harmful elements specified in the relevant technical regulations and those factors must be tested and measured periodically. Employer has to further ensure that national standards on labour safety and hygiene have been published and applied. Employer has to test and assess the dangerous and harmful factors and improve the working conditions and health care for the employees; periodically test and maintain the machinery, equipment, workshops and warehouses.

The employees also have certain obligations to ensure health and safety at the workplace which include, inter alia, compliance with the regulations, procedures and rules on the labour safety and hygiene related to the work and duties assigned; proper usage and maintenance of the personal protective equipment already provided; promptly report to the responsible person upon detecting the risk of occurrence of occupational accident and disease, toxic or dangerous incident; participate in emergency and remedying the consequence of occupational accident upon the employer's order.

The employer must appoint a person to ensure the labour safety and hygiene at the workplace. For the production and business facilities in areas with the risks of occupational accidents and diseases and with the employment of 10 or more employees, the employer must appoint a person with relevant expertise to be in charge of the work

of labour safety and hygiene. Such person must first be trained on the labour safety and hygiene.

Under the OSH Law, employers have the obligation to develop, enforce and actively collaborate with agencies and organisations in the guarantee of OSH measures for workers and related people at the workplace managed by themselves and pay occupational accident and disease insurance premium for workers. Workers are also under obligation to comply with OSH regulations; promptly report to responsible persons any risks of technical incidents that may cause OSH failure, occupational accidents or diseases; and proactively participate in the provision of first aid and overcome the consequence of incidents.

Source: §133, 137 & 138 of Labour Code (Law No. 10/2012/QH13); §6 & 7 of the Law on Occupational Safety & Health (Law No. 84/2015/QH13)

Free Protection

Labour Code requires that workers engaged in potentially dangerous and/or harmful work must have sufficient protective clothing and protective devices. The personal protective equipment must meet the quality standards. Workers are required to use the PPE in accordance with the rules published by the Ministry of Labour - Invalids and Social Affairs.

A MoLISA Decree guides the implementation of regulations on personal protective equipment. Specific Personal Protective Equipment for head, eye and face, hearing, respiration, hand, foot, body, and protective equipment preventing falling from heights and preventing electric shock is provided by the employers. Workers who are in contact with following elements (or employed in following working conditions) must be provided PPE: contact with disadvantageous physical elements; contact with harmful chemicals and dust; contact with harmful biological elements and disadvantageous working environment (harmful virus, bacteria, harmful insects; polluted dung, water, garbage, sewage; other harmful biological elements); and working with machinery, equipment, working tools, or in positions with high risks of occupational accidents; working at heights, in mines, and low-oxygen places; working under water, in forest or working in other dangerous and harmful working conditions.

Employer has to provide personal protective equipment to the worker free of cost and any act on the part of employer to pay cash in hand to employees instead of providing personal protective equipment or to pay cash in hand and let employees purchase personal protective equipment themselves is strictly prohibited.

Employers are further required to instruct workers on smooth use of the adequate personal protective equipment and closely supervise its use. Employers have to provide facility for storage and maintenance of personal protective equipment according to the instructions of manufactures, or producer of such personal protective equipment.

Law on Occupational Safety & Health requires employers to provide personal protective equipment (PPE) to workers in contact with hazardous and toxic factors. Workers are also obliged to properly use the PPE during the work process. Employers must take technological, technical measures and equipment to exclude or minimize hazardous factors and toxic factors and improve working conditions. Employers are further required to instruct workers in the use of PPE and monitor its use by workers. Employers are further prohibited from providing money to workers in lieu of PPE, or require workers to buy PPE themselves or collecting money from workers to purchase PPE.

Sources: Circular No. 10/1998/TTBLĐTBXH; Circular No. 04/2014/TT-BLĐTBXH; §149 of Labour Code (Law No. 10/2012/QH13); §23 of the Law on Occupational Safety & Health (Law No. 84/2015/QH13)

Training

The employer must organize training on labour safety and hygiene to the employees, trade apprentice, trainees upon recruitment and personnel arrangement (promotion, transfers); and giving guidance on regulations regarding labour safety and hygiene to the persons visiting and working at the facility under the scope of management of the employer.

A MoLISA Circular divides workers into four sub-groups and requires different type of training for these groups. Group 1 includes managers, including director and vice director of the enterprise; head and vice head of the enterprise's branch; person in charge of HR and administration work; and production supervisor or equivalent positions. The second group includes full time and part-time OSH officers and managers who are also in-charge of the OSH work. The third group includes persons doing work or operating machines that have a strict OSH requirement. The fourth group includes employees that are not in first three sub-groups (apprentices, probationary workers, foreign workers, and domestic workers).

The sub-group 3 training must have following contents: policies and legal requirements on OSH; overview of work and machines that have strict OSH requirements; hazardous and harmful elements when working or operating machines with strict OSH requirements; and safety techniques when working or operating machines with strict OSH requirements. The duration of first training must be at least 30 hours. The training must be held every two years with duration equivalent to at least half of the first training. The training certificate is valid for two years. The training for the sub-group 4 must include general knowledge of OSH and OSH requirements of a specific job. The duration of first training must be at least 16 hours. The training must be held every year with duration equivalent to at least half of the first training.

Under the OSH law, employers must organize information, communication and training activities in OSH; organize first-aid and emergency care, prevention and control of occupational diseases for workers. The employer must organize training on

occupational safety and health for employees, apprentices and trainees upon recruitment and work assignment; and provide guidance on occupational safety and health regulations for visitors to the workplace under their management. An employee who performs work which require strict occupational safety and health regulations must participate in the training course on occupational safety and health, take the examination and be granted a certificate.

Sources: Circular 27/2013/TT-BLDTBXH on OSH training; §150 of Labour Code (Law No. 10/2012/QH13); §13-14 & 72 of the Law on Occupational Safety & Health (Law No. 84/2015/QH13)

Labour Inspection System

There is a separate Law on Inspection in the country promulgated earlier in 2004 and more recently in 2010. The MOLISA (Ministry of Labour, Invalids and Social Affairs) Inspectorate is the central labour inspection authority in the country. Its Labour Policy Inspection Division, OSH Inspections Division and Child and Social Affairs Policy Division ensure compliance with labour and employment laws, occupational safety and health legislation, as well as payment of social security dues and investigation of occupational accidents.

Inspectors are also obligated to ensure compliance with the law as regards the establishment of trade unions in enterprises, the negotiation and application of collective bargaining agreements, and the settlement of labour disputes.

Labour inspectors provide information and technical advice to employers and workers, and bring to the attention of the competent authorities any issues not specifically covered by the existing legal provisions (for further amendments in legislation). Labour inspectors also investigate complaints and adjudicate disputes between workers and employers.

Source: Law on Inspections (No. 56/2010/QH12); Labour Code (Law No. 10/2012/QH13)

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Vietnam has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Social Insurance Law (Law No. 58/2014/QH13)
- Joint Circular No. 33/1987/TT-LB
- Labour Code (Law No. 10/2012/QH13)
- Law on Health Insurance (No. 25/2008/QH12)

Income

There is a provision of paid sick leave under the Social Insurance Law. Sick leave duration varies on the basis of type of employment a worker is involved in. For those working under normal working conditions, it is 30 working days (for those with less than 15 years of contribution), 40 days (for those with 15-30 years of contribution), and 60 days (for those with 30 or more years of contribution). For those working in heavy or hazardous occupations/jobs, the sick leave duration increases by 10 days for every category. If an employee suffers from a disease that requires extended treatment, maximum sick leave duration is 180 days in a year. If the illness continues even after 180 days, a lower amount is paid as compensation depending on the years of contributions (50-65%). The maximum sickness benefit is 75% of the employee's declared wage to the Social Insurance. Workers who contribute to social insurance and take leave (after written confirmation from a doctor) must be compensated by the social insurance agency. There is also provision of convalescence leave of 5-10 days and the sickness benefit during this time is 30% of the basic salary. The daily sickness benefit is calculated by dividing the monthly sickness benefit by 24 days

Sources: §25-29 of Social Insurance Law (Law No. 58/2014/QH13); Circular 59/2015/TT-BLDTBXH

Medical Care

The worker who had an occupational accident must receive a timely emergency healthcare and considerate treatment. It is responsibility of the employer to make full payment of all medical expenses for the employees not participating in health insurance. (Art. 144 of Labour Code). The Health Insurance Law provides for covering of health insurance benefits. There is a difference in the levels of coverage for different individuals. For some individuals, 100% of the medical care costs are covered while for others, only 80% of it is covered.

Source: § 21-22 of Law on Health Insurance (No. 25/2008/QH12)

Job Security

The employer is entitled to unilaterally terminate the labour contract if the employee suffering from sickness or accidents cannot recover after 12 consecutive months of treatment for indefinite term contracts, after 06 months for employees working under fixed-term labour contracts, or over one half of the contract term for employees working under casual labour contract or regular labour contract with term under 12 months. When the employee recovers, he/she may be considered to conclude the new contract.

Source: §38(1)(b) of Labour Code (Law No. 10/2012/QH13)

Disability / Work Injury Benefit

An employee is entitled to employment injury benefit if he/she meets the following conditions: If the worker has suffered from employment injury under one of the following cases: during work time at the workplace; before or after work time or outside the workplace while on assignment by the employer; and on route to and from workplace and residence and in a reasonable time and route. A worker must have lost at least 5% of the working capacity in an employment injury in order to be entitled to employment injury benefit.

The employee who has lost earning capacity from 5-30% is entitled a lump-sum benefit. The employee who has lost 5% of earning capacity is given benefit equivalent to 5 months of the common minimum wage, then 0.5 percent of the common minimum wage for every additional percentage of lost earning capacity. In addition to above benefit, the employee is entitled to an additional benefit based on the years of paying social insurance premiums. If social insurance premiums have been paid for less than one year, the benefit equals 50% of monthly wage, then for every additional year of social insurance premiums, he/she is entitled to 30% of the monthly wage of the month prior to taking leave of absence for medical treatment.

The worker who has lost at least 31% of the earning capacity is entitled to monthly benefit as follows: for 30% of the lost earning capacity, employee is paid 30% of the common minimum wage, then 2% of the common minimum wage for every additional percentage of lost earning capacity. In addition to above benefit, the employee is entitled to an additional benefit based on the years of paying social insurance premiums. If social insurance premiums have been paid for less than one year, the benefit equals 50% of monthly wage, then for every additional year of social insurance premiums, he/she is entitled to 30% of the monthly wage of the month prior to taking leave of absence for medical treatment.

If a worker dies because of an occupational accident/disease, the relatives of the deceased worker are entitled to lump-sum benefit equivalent to 36 months of the common minimum wage.

The employee with occupational accidents and disease (not due to his/her own fault) and reduced working capacity of 5% or more is compensated by the employer at the following rate:

- a) At least equal to 1.5 monthly salaries under the labour contract if the employee's working capacity is reduced from 5.0% to 10% and then for every 1.0% increase in loss of working capacity (from 11% to 80%), an addition of 0.4 months of salary under the labour contract;
- b) At least 30 months' salary under labour contract for the employee whose working capacity is reduced by 81% or more or for the death of the employee's relative from the occupational accidents.

If the occupational accident occurred due to the fault of the employee, he also receives an allowance of an amount at least equal to 40% of the above rates as follows:

- a) at least equal to 0.6 monthly salaries under the labour contract if the employee's working capacity is reduced from 5.0% to 10% and then for every 1.0% increase in loss of working capacity (from 11% to 80%), an addition of 0.16 months of salary under the labour contract;
- b) at least 30 months' salary under labour contract for the employee whose working capacity is reduced by 81% or more or for the death of the employee's relative from the occupational accidents.

There is also provision of 5-10 days of convalescence leave and the per day allowance is 25-40% of the basic salary depending on whether the rehabilitation took place at home or a health establishment.

Work injuries are divided into four categories: (i) permanent total incapacity (ii) temporary incapacity and (iii) fatal injury leading to death of a worker.

In the case of permanent incapacity/disability, 100% of the monthly minimum wage is paid for an assessed loss of working capacity of at least 31%, in addition to the disability grant. In the case of temporary disability, 100% of an insured worker's monthly salary is paid from the first day of treatment until recovery or certification of permanent disability. In the case of fatal injury, dependents (widow/widower, children and parents) receive survivors' pension and survivors' grant. 50% of the monthly minimum wage is paid for each eligible dependent supervisor. The benefit is paid up to four dependent survivors. If an insured worker has less than 15 years of coverage, there is an option of survivors' grant as a lump-sum payment. Funeral grant, a lump sum of 10 months of minimum wage, is paid to the person paying for funeral.

In line with a 2017 Decree (No. 44/2017/ND-CP), there is a reduction in the rate of compulsory social security contribution to the Occupational Accident and Occupational Disease Insurance Fund from June 1st, 2017. The compulsory contribution to the Fund, paid by the employers on monthly basis is reduced from 1% to 0.5%.

Source: §144-145 of Labour Code (Law No. 10/2012/QH13); §42-52 of Social Insurance Law (Law No. 58/2014/QH13); Circular 04/2015/TTBLDTBXH

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Vietnam has not ratified the Conventions 102, 121, 128, 130 & 168.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Social Insurance Law (Law No. 58/2014/QH13)
- Labour Code (Law No. 10/2012/QH13)

Pension Rights

The employee must satisfy the conditions of the social insurance payment in accordance with the law on social insurance to enjoy the pension salary when male is full 60-year-old and female is full 55 years old.

Workers who have reduced working capacity; doing extremely hard, harmful or dangerous work; doing hard, harmful or dangerous work in upland and remote areas, border islands may retire at a younger age than specified above.

Social Insurance law provide for both old age pension and old age grant. For a pension, a worker must have attained 60 years of age (55 years for women workers) with at least 20 years of contributions. An option of early pension is available to those (men at 55 years and women at 50 years) who worked in hazardous or arduous working conditions or in certain geographic regions with at least 15 years of contributions. 45% of the insured worker's average earnings are paid for the first 15 years of contributions plus 2% or 3% (for men and women respectively) of insured worker's covered average monthly earnings for each year of contributions exceeding 15 years. The maximum pension is 75% of the insured workers' average earnings. Those not eligible for old age pension (having less years of contribution) are paid old age grant. Insured workers, who have paid contributions in excess of the number of years corresponding to the 75% pension rate, are entitled to lump sum allowance on retirement.

Source: §187 of Labour Code (Law No. 10/2012/QH13); §53-65 of Social Insurance Law (Law No. 58/2014/QH13)

Dependents' / Survivors' Benefit

Social Insurance law provides for Survivor's Pension provided that the deceased had at least 15 years of contributions, was an old-age pensioner or was a pensioner with an assessed degree of disability of at least 81%. Survivor's pension is payable to dependents including widow - 55 years or older, widower - 60 years or older (or widow under age 55 or widower under 60 but impaired work capacity by 81% or more); children under 15, or under 18 if still in school, or older than 15 but disability of at least 81%; father, mother, father in law, mother in law (or others that depend on the dead worker income) at pension ages or under pension age but of disability of at least 81%. Parents, spouses are eligible if they do not have income or have income which is less than minimum wage. 50% to 70% of the monthly minimum wage is paid as pension to the eligible dependent survivors (allowed for 4 dependents only). There is also an option of funeral grant and survivors' grant as lump sum amount of money.

Sources: §66-71 of Social Insurance Law (Law No. 58/2014/QH13)

Unemployment Benefits

According to Art. 186 of Labour Code and Employment law, the person who has contributed to unemployment insurance fund but has lost his/her job and has not found the job within 15 days of registration is eligible to get unemployment benefit. Every month, employees have to pay an unemployment insurance premium equal to one percent of their monthly salary, while the employer is required to pay one percent of the employee payroll.

Unemployment allowance is 60% of the average monthly salary in the 6 months prior to the start of unemployment. The duration of unemployment allowance varies on the basis of number of years of contributions as follows. Unemployment allowance is paid for:

- 3 months with 12 to 36 months of contributions;
- there is addition of one month of unemployment benefit for every 12 months of contributions; and
- the maximum benefit is 12 months with 145 months of contributions or more

Source: §186 of Labour Code (Law No. 10/2012/QH13); §49-53 of the Employment Law (Law No: 38/2013/QH13); Circular No. 28/2015 / TT-MOLISA; Decree No. 28/2015 / ND-CP

Invalidity Benefits

The Social Insurance law provides for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. To be eligible for invalidity benefit, worker must be assessed with at least 61% of the incapacity for work with at least 15 to 20 years of contributions. Invalidity benefit is calculated similarly as old age benefit.

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Vietnam has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN)
- Labour Code (Law No. 10/2012/QH13)
- Law on Persons with Disabilities (No. 51/2010/QH12)
- Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11)
- Law on Trade Unions (No. 12/2012/QH13)
- Decree No. 05/2015/ND-CP

Equal Pay

Constitution of Vietnam guarantees right to equal pay for equal work for both men and women in that it prohibits gender discrimination. Labour Code supports the principle of equal pay for work of equal value and requires an employer to pay all workers equally without gender discrimination.

Sources: §26 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §90 of Labour Code (Law No. 10/2012/QH13); §13 of the Law on Gender Equality (Law No.73/2006/QH11)

Sexual Harassment

Sexual harassment and maltreatment of employees is prohibited under the Labour Code (Art. 08). A worker may unilaterally terminate the employment contract if they are subject to maltreatment, sexual harassment, or coercive labour. However, no punishment for perpetrators of this crime is provided under the Labour Code.

Sources: §8, 37, 182-183 of Labour Code (Law No. 10/2012/QH13); Decree No. 05/2015/ND-CP

Non-Discrimination

In accordance with article 26 of the Constitution, male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality. In accordance with article 16 of the Constitution, all people are equal before law and no one is subject to discriminatory treatment in political, civil, economic, cultural or social life.

Men and women have to be treated equally at the workplace. Workers have the right to work and to freely choose the type of occupation or employment they want to. They may also freely choose the vocational training they want to participate in and have the right to improve their professional skills. It is strictly prohibited to discriminate on the grounds of sex, race, social class, marital status, belief, religion, HIV status, disability or participation in the union activities at the workplace. The Labour Code prohibits discrimination based on gender or marital status. Employers must observe and implement the principle of equality between men and women for recruitment, employment, working time, rest time, advancement in wage grades, and remuneration.

The text in this document was last updated in February 2019. For the most recent and updated text on Employment & Labour Legislation in Vietnam, please refer to: <https://luong.com.vn/>

Violations of the law on gender equality in the field of labour include applying different qualifications (criteria) in recruiting male and female workers to the same job; refusing to recruit or limit recruitment of workers, firing or dismissing workers for gender reasons or because of their pregnancy, giving birth or raising their children; implementing discriminatory allocation of jobs between man and woman leading to inequality in income or applying different pay levels for workers of the same qualifications and capacity for gender reasons; and refusal to carry out specific provisions provided for female workers in the labour law.

Employers are prohibited from discriminating against employees with disabilities in all employment related matters. Employers are further required to take care of disabled persons' health. A disability is an impairment which results in difficulties in working, living and studying of a person. Employers are required to create favourable conditions for people with disabilities to work, which includes adapting vehicles, safety devices, and equipment and appropriately laying out of machinery. Employers must consult employees with disabilities on matters relating to their rights and interests.

Organizations employing persons with disabilities at least 30% of their total employees may receive supports for improvement of their working conditions and environment suitable to persons with disabilities; be exempt from enterprise income tax; borrow loans at preferential interest rates under production and business development projects; receive priority in land, ground and water surface lease and be exempt from rents of land, ground and water surface to serve production and business activities in proportion to the percentage of employees with disabilities, the degree of their disabilities and the size of enterprises.

Employers are prohibited from following acts when employing disabled workers: requiring a disabled employee with the working capacity reduced by 51% or more to work overtime or work at night; employing disabled employee to do heavy, hazardous or dangerous work, or exposure to toxic substances under the list issued by the Ministry of Labour - Invalids and Social Affairs in coordination with the Ministry of Health.

Stigmatizing and discriminating acts against HIV-infected person are also prohibited under the law. Employers are responsible for: organizing propaganda and education on HIV/AIDS prevention and control measures and anti-stigmatization and anti-discrimination against HIV-infected people; arranging jobs suitable to the health and professional qualification of HIV-infected labourers; and facilitating employees' participation in HIV/AIDS prevention and control activities.

Employers are prohibited from terminating the employment contract of an employee or cause difficulties to this person in his/her work on the ground of being infected with HIV; forcing a physically fit employee to change the job he/she has been doing on the ground that such person is infected with HIV; refusing to give a salary raise to or to promote an employee, or fail to ensure his/her legitimate rights or benefits on the ground that such person is infected with HIV; or request a job applicant to have an HIV test or produce an HIV test result, or refuse to recruit a person on the ground that such

person is infected with HIV, except for certain profession where HIV testing is made compulsory by a government order.

Trade union discrimination is also prohibited under the Law on Trade Unions and any acts causing disadvantage to the workers because of reasons related to establishment, participation and operation of a trade union are considered discrimination and prohibited.

The employer shall ensure equal rights between male employees and female employees in terms of recruitment, assignment, training, wages, awards, promotion, payment of wage and policies on social insurance, medical insurance, unemployment insurance, working conditions, labour safety, working time, rest time and other welfare pertaining to physical and spiritual conditions.

Sources: §16 & 26 of the Constitution of the Socialist Republic Of Vietnam 2013 (No.18/2013/L-CTN); §5, 8, 154, 177, 178 of Labour Code (Law No. 10/2012/QH13); §2, 4, 14, & 34 of the Law on Persons with Disabilities (No. 51/2010/QH12); §14 of the Law On HIV/AIDS Prevention And Control (No. 64/2006/QH11); §9 of the Law on Trade Unions (No. 12/2012/QH13); Decree No. 85/2015/ND-CP

Equal Choice of Profession

The Constitution guarantees the freedom of enterprise to all citizens. In accordance with article 33 of the Constitution, everyone has the right to freedom of enterprise in the sectors and trades that are not prohibited by law. The Constitution further protects the rights of citizens to work and to choose their occupations, employment and workplaces.

Art. 153-154 of Labour Code ensure the equal working rights of female employees and encourages employer to create favourable working conditions for female employees. However, a circular from 2013 prohibits employment of women in 77 occupations, 38 of which are applicable to all female employees while the remaining 39 occupations/activities are applicable to pregnant and breastfeeding workers. Work that can negatively affect the reproductive functions and child fostering, work in mines, and work in water is prohibited under the Labour Code.

Source: §33 & 36 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §153-154 & 160 of Labour Code (Law No. 10/2012/QH13); Decree No. 26/2013/TT-BLDTBXH

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Vietnam has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN)
- Labour Code (Law No. 10/2012/QH13)
- Criminal Code (No: 15/1999/QH10), last amended in 2009 (No. 37/2009/QH12)
- Circular No. 10/2013/TTBLĐTBXH
- Circular No. 11/2013/TT-BLĐTBXH

Minimum Age for Employment

The Constitution strictly prohibits employment of children under minimum age. Minimum age for employment is 15 years. Employer may hire a person under 15 years of age (minimum 13 years is required) to perform light work as provided in the list circulated by the MOLISA. When hiring workers under 15 years, employer is required to sign the contract with legal representatives in agreement with the underage worker; arrange the working hours as such that it does not affect the worker's schooling; and ensure that the working conditions, labour safety and hygiene is appropriate with the age of the underage worker. Constitution guarantees compulsory secondary education which is free of charge. Only primary education is compulsory.

Employment of underage workers is prohibited in the following jobs: carrying and lifting heavy objects beyond the physical condition of the underage person; producing and using or transporting the chemicals, gases, explosives; maintaining the equipment and machinery; demolishing constructional buildings; cooking, blowing, casting, rolling, stamping, and welding metals; diving, offshore fishing; and other work that may harm the health, safety or the ethics of the underage person. Employment of underage persons is prohibited in the following workplaces: underwater, underground, in caves and in the tunnels; constructional sites; slaughter facilities; casinos, bars, discos, karaoke rooms, hotels, motels, saunas and massage rooms; and other workplace harming the health, safety or the ethics of the underage person.

The working hours of underage employees (under 15 years) cannot exceed 4 hours a day and 20 hours a week. Overtime and night work is prohibited for underage workers. The underage employees must not be employed to produce and trade in alcohol, wine, beer, tobacco, substances affecting mind and other drugs. The employers must provide opportunities for the underage employee and person under 15 years old to take part in labour and cultural learning.

Source: §35 & 61 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §161-165 of Labour Code (Law No. 10/2012/QH13); Circular No. 11/2013/TT-BLĐTBXH

Minimum Age for Hazardous Work

Minimum age for hazardous work is 18 years. A young employee is a person between the age of 15 and 18 years. An employer may sign an employment contract with young employees with the following conditions: working hours should not exceed 8 hours per

day and 40 hours per week; annual leave of 14 days per year is allowed; overtime or night work are not allowed (except in certain cases allowed by MoLISA); and difficult and hazardous jobs are prohibited.

Workers under 18 years of age are prohibited from carrying and lifting heavy objects which are beyond a young worker's physical strength (15 Kg limit for males/12 kg limit for female workers 15-16 years of age; and 30 kg limit for males/25 kg limit for female workers 16-18 years of age). Other prohibited jobs include using or transporting chemicals, gasoline and explosives; performing maintenance of equipment and machines; participating in the demolition of buildings or other structures; melting, blowing, casting, rolling, moulding and welding metals; operating boilers; working as storekeepers or assistants in chemical or dye warehouses; working in direct contact with chemicals causing gene mutation, chemicals causing long-term harm to reproductive health, cancer-causing chemicals and poisonous chemicals; working in contact with solvents such as screen printing.

Workers under 18 are prohibited in working environments which are not compliant with the legal safety regulations and standards for elements such as electromagnetic fields, vibration, noise, temperature, silica dust, dust not containing silica, cotton dust and asbestos dust; underwater, underground; construction sites.

Working for over 4 hours a day in an uncomfortable and narrow space, which sometimes requires labourers to go on their knees, lie or stoop and working on high scaffolds or ropes hung over 3 meters higher than the working floor; working on hills and mountains with a steepness of over 30 degrees as well as being in contact with factors which may cause contagious disease is also prohibited under the law. A 2013 decree gives a long list of 79 jobs that are prohibited for workers under 18 years.

In accordance with the provisions of Penal Code, those who employ children to perform jobs which are heavy, dangerous or in contact with hazardous substances on the lists prescribed by the State, causing serious consequences, or who have already been administratively sanctioned for this act but continue to commit it, shall be subject to a fine of between five million dong and fifty million dong, non-custodial reform for up to two years or a prison term of between three months and two years.

Employers are required to keep a registered logbook for monitoring working conditions of young employees. The logbook must record the following information: full name; date of birth; working assignments; and results of periodic health checks. Records of workers under 18 years of age should include both workers who are working at the factory premises and off-site.

Sources: §161-165 of Labour Code (Law No. 10/2012/QH13); §228 of Criminal Code (No: 15/1999/QH10), last amended in 2009 (No. 37/2009/QH12); Circular No. 10/2013/TTBLĐTBXH

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Vietnam has ratified the Convention 29 only.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN)
- Labour Code (Law No. 10/2012/QH13)

Prohibition on Forced and Compulsory Labour

The Constitution of Vietnam strictly prohibits forced labour along with discrimination and employment of children under minimum age (as prescribed in the Labour Code). The Labour Code prohibits any form of forced labour. Forced labour is any work which is carried out in an involuntary manner and/or against the will of the employee on threat of use of force or other tricks to coerce the worker to work involuntarily.

Source: §35 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §3(10), 8(3) & 183 of Labour Code (Law No. 10/2012/QH13)

Freedom to Change Jobs and Right to Quit

In accordance with the Constitution, citizens have the right to work and to choose their occupations, employment and workplaces. Workers have the right to change jobs after serving due notice on their employer. For violations of the advance notice time, the employer must be paid a compensation equivalent to the employee's salary of the unnoticed days. For more information on this, please refer to the section on employment security.

Source: §35 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §43 of Labour Code (Law No. 10/2012/QH13)

Inhumane Working Conditions

Workers may be required to work overtime hours however overtime working hours cannot exceed 12 hours a day for working on weekly rest days or public holidays (50% of the standard working hours on normal days); 30 hours a month (for both normal and hazardous work) and 200 hours a year. In exceptional cases, 300 hours of overtime may be allowed per year (Art. 106). The 300-hour limit is applicable to hazardous work which includes the garments sector.

Overtime must be voluntary, with agreement from both parties. Pressuring employees, in any way, is prohibited. For more information on this, please refer to the section on Compensation.

Source: Labour Code (Law No. 10/2012/QH13); §2(1.2) (a) of Circular No. 15/2003/TT-BLDTBXH

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Vietnam has not ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN)
- Labour Code (Law No. 10/2012/QH13)
- Law on Trade Unions (No. 12/2012/QH13)
- Decree No. 41/2013/NĐ-CP
- Decree 196/CP dated 31.12.1994
- Decree No. 05/2015/ND-CP

Freedom to Join and Form a Union

The Constitution grants the right to form association and defines trade union as "the socio-political organization of the working class and the toiling people, created on the voluntary base, represents the workers, looks after and protects the legitimate and legal rights and interests of the workers; participates in state administration and social management; participates in the control, inspection, and supervision of the activity of State organs, organizations, units, and enterprises with respects to the matters concerning the rights and duties of the workers; propagandizes and mobilizes learning, development of the ability and professional skills, conformity of laws, and construction and defence of the Fatherland among the workers".

Trade unions are established to protect the lawful rights and legitimate interests of workers. Labour Code provides enterprise level workers with the right to establish, join and operate the trade union in accordance with the Law on Trade unions. Law provides for two types of unions: grassroots-level trade unions, established at the level of enterprise and immediate upper-level trade unions that supervise the activities/operations of grassroots-level trade unions. The immediate upper level trade unions have the right and responsibility to mobilize employees to join and establish grassroots-level trade unions and request the employer and local labour state management agencies to create favourable conditions for and support the establishment of grassroots-level trade unions.

If a grassroots-level trade union is established in accordance with the Trade Union Law, employer has to recognize the trade union and create favourable conditions for the activities of these trade unions. Trade unions have following rights: represent workers' collective interests by negotiating, signing and supervising the implementation of collective bargaining agreements; litigating in Court upon violations of CBAs; cooperate with enterprises in formulating and monitoring the implementation of wage scales and tables; guide and counsel workers on their rights and obligations upon signing and implementing labour contracts with enterprises; represent workers in taking legal actions in Court with workers' authorization; take part in the settlement of labour disputes together with the competent agencies; organize and lead strikes as stipulated by the law.

Employers are prohibited from obstructing or making it difficult for employees to establish, join or operate a trade union; coercing employees to establish, join or operate a trade union; asking employees not to join or to withdraw from a trade union; and discriminating against employees regarding wages, hours and other rights and obligations in order to obstruct employees from establishing, joining and operating a trade union.

Sources: §10 & 25 of the Constitution of the Socialist Republic of Vietnam 2013 (No.18/2013/L-CTN); §188-193 of Labour Code (Law No. 10/2012/QH13); §4, 10, 14, 15 & 24 of the Law on Trade Unions (No. 12/2012/QH13)

Freedom of Collective Bargaining

A collective bargaining agreement is a written agreement between the workers' collective and the employer concerning working and employment conditions, agreed upon between the parties through collective bargaining. There are both enterprise level and sectoral level collective bargaining agreements. The provisions of the collective labour agreement must not be inconsistent with the regulation of law and must be more favourable to the employee compared with the provisions of law. The following are the contents of a CBA: wages, bonuses, allowances and pay raises; work and rest hours, overtime hours, and break between shifts; employment protection for workers; occupational safety and health and the implementation of internal work regulations; and other issues of concern.

Once a CBA is signed, the employer must inform all workers of the CBA and its provisions. A CBA must be registered with state labour management agency within 10 days of its signing. An enterprise level CBA is valid for the duration of 1-3 years. However, the duration of first CBA signed by an enterprise may be less than one year.

The National Wage Council, provided under the Labour Code, is a tripartite advisory body for the government and is composed of representatives of the Ministry of Labour, the Vietnam General Confederation of Labour and employer organisations at National level with five members from each group. The Council implements the advisory functions for the Government about adjustment, announcement of the region-based minimum wages.

National Industrial Relations Commission set up under Decision by Prime Minister in 2007, in another advisory body reporting to Prime Minister on mechanism, policy, solutions for developing sound industrial relations, and develop mechanisms for coordination between the agencies and organizations involved in the prevention and settlement of labour disputes and strikes.

Sources: §66-89, 92 of Labour Code (Law No. 10/2012/QH13); Decision by the Prime Minister (No. 68/2007/QD-TTg)

Right to Strike

Right to strike is recognized under the Labour Code, 2012. A strike is a temporary and voluntary cessation of work organized by the workers in order to resolve an interest-based labour dispute (dispute over issues that go beyond provisions of the labour law or a registered CBA).

A strike must be led by the trade union executive committee if one has been established in the enterprise. If a trade union executive committee is not established, strikes are organized and led by the upper level trade union on the request of workers. A trade union is entitled to collect the members' opinion regarding a strike; organize and lead strikes; negotiate on disputed issues; withdraw a decision to hold strike; and request the Court to declare a strike as lawful.

An employer is entitled to continue to negotiate on disputed issues or request mediation from the labour management authority; accept all or part of the demands made by the workers' collective but must inform the Trade Union executive committee in writing of the decision; temporarily close the workplace during a strike due to the lack of necessary operational capacity or to protect the enterprise's assets; and request the Court to declare that a strike is illegal.

Labour Code prohibits certain acts by the workers/trade unions and employer during strike period. Employers are prohibited from obstructing employees in exercising their right to go on strike; terminating employment contracts, imposing labour disciplinary measures on employees or strike leaders, or transferring employees and strike leaders to other work or workplaces on the grounds of their preparation for, or involvement in, the strike; retaliating, inflicting punishment against employees who take part in a strike or against strike leaders; and taking advantage of the strike to commit illegal acts.

Workers/trade union are prohibited from following acts during strike period: inciting, inducing or forcing employees to go on strike; preventing workers who do not take part in the strike from working; using violence, sabotaging machines, equipment or assets of the employer; and violating public order and security.

Strikes in special state-defined industries that are supplying public products or services which are essential to the national economy, or could threaten national defence and security or public health and safety are unlawful. These include industries dealing with power production; oil and gas exploration and extraction; production and provision of gas; assurance of air safety and maritime safety; provision of telecommunication system infrastructure; postal services for state agencies only; provision of clean water, drainage and environmental hygiene in central-affiliated cities; and organizations directly serving for security and defence.

Sources: 209-234 of Labour Code (Law No. 10/2012/QH13); Decree No. 41/2013/NĐ-CP



DECENT WORK QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

DecentWorkCheck Vietnam is a product of WageIndicator.org
and www.luong.com.vn

National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>





05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Vietnam scored 44 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.