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SUMMARY
OF
43 REMARKABLE AMENDMENTS AND SUPPLEMENTS OF THE LABOUR CODE 2019

Attorney Duong Tieng Thu and Nguyen Huu Phuoc[1]

As of 20 November 2019, the Labour Code 2019 was passed by the National Assembly of Vietnam and will officially take effect on 01 January 2021. In comparison to the Labour Code 2012, the Labour Code 2019 has some new noteworthy points which are both favourable and unfavourable for the enterprises that will be highlighted below. The enterprises, particularly the human resources departments of the enterprises, should review their internal legal documents such as specific agreements with the employees, labour contracts, internal labour regulations, bonus regulations, collective labour agreements (if any), and revise as well as supplement these internal legal documents to take advantages and reduce disadvantages of the Labour Code 2019 as well as remain compliant with the applicable regulations of the Labour Code 2019.

1. Expansion of scope of regulation and subjects of application

Currently, the Labour Code 2012 only regulated issues relating to employees and employers in a labour relationship though the execution of a labour contract. The Labour Code 2019 has further provisions where in the case there is no existence of a labour relation, such relation is still governed by the labour laws in certain criteria

[1] Phuoc & Partners

such as regional minimum wages, maximum working hour and rest time, labour safety and hygiene etc.[2] As such, the objects to be governed by the Labour Code 2019 have increased up to approximately 55 million people.

This new regulation also solves some important labour issues and serves to protect the legal rights and interests for these objectives. However, there not yet no regulation to guide how to put it into practice and we have to wait for guiding legal documents from the Vietnamese Government in the coming time.

Actions to be taken by the enterprises: Any enterprise which is currently hiring external people under the form of outsourcing without labour contracts should now review the agreements between two parties and relevant labour criteria of the labour laws to see if there are any labour criteria which has not been met in order to revise and supplement accordingly to comply with the new requirements of labour laws.

2. Employees Collective's Representative Organisation

The Labour Code 2012 stipulates that the representative organisation of the employees' collective is executive committee of grassroots trade union, or executive committee of the immediate upper level trade union in the case of a business where a trade union has not been established[3].

Meanwhile, in addition to the executive committee of the grassroots trade union, the Labour Code 2019 has recognised "the employees' organisation at the enterprise" as the representative organisation of the employees at the grassroots level[4]. Accordingly, the immediate upper level trade union will no longer be automatically the representative organisation for the employee collective. The establishment of this new legislation is in line with the basic international labour standards, meeting Vietnam's implementation of international commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Vietnam-EU Free Trade Agreement (EVFTA).

[2] Article 3.6 of the Labour Code 2019
[3] Article 3.4 of the Labour Code 2012
[4] Article 3.3 of the Labour Code 2019

In the coming time, the Vietnamese Government will surely stipulate application files, orders, and procedures; competence and procedures for grant of registration and withdrawal of registration; State management of financial and asset issues of the employees' organisation at the enterprises; division, separation, consolidation, merger, dissolution, and association rights of the employees' organisation at the enterprises.

However, this new regulation poses a problem for the enterprises having established the grassroots trade union and which have operated so far, whether the employees in these enterprises can choose to establish the employees' organisation at the enterprise; or the new employees' organisation or the existing grassroots trade union shall be terminated before the new employees' organisation at the enterprise is formed or the representative organisation of the employee collective is not only one but two i.e. the current Grassroots trade union and the employees' organisation at the enterprise. For the second scenario, if the answer is yes, then in the case there is a conflict of interest between the two organisations representing for the employees in the enterprises, or conflict of viewpoint in protecting the rights and interests of the employees, how will such problems be solved? Which authority will be the competent body to settle such disputes? This is a difficult question for the lawmakers and needs more specific legal guidance from the Vietnamese Government in the coming time in order for the employees and the employers to have appropriate behaviours.

Actions to be taken by the enterprises: Any enterprise whose grassroots trade union was established may now organise a poll for opinions amongst their employee collective regarding the employees' intention to join the employees' organisation at the workplace in the coming time in order to prepare proper action plan soon.

3. Apprenticeship and training at the workplace

The Labour Code 2012 has no clear distinction between apprenticeship and on-the-job training and as a result there are no regulations on the minimum and maximum duration of apprenticeship and on-the-job training at enterprises before the

enterprises are required to enter into labour contracts with the labourers. This also creates certain disadvantages for the labourers when the enterprises intentionally extend unnecessarily the terms of apprenticeship and on-the-job training. In this case, because the labourers only signed apprenticeship agreements or on-the-job training agreements instead of labour contracts, they are not allowed by law to participate in compulsory social insurance, health insurance, and unemployment insurance. Therefore, the labourers will not be able to enjoy benefits from participation in the compulsory insurance regime.

Understanding this disadvantage, in order to reduce the enterprises' ability to abuse the signing of the on-the-job training and apprenticeship agreements instead of the labour contracts to avoid the obligation of compulsory insurance participation, the Labour Code 2019 clearly states that the on-the-job training and apprenticeship in order for the labourers to work for the enterprises involve the situation whereby the enterprises recruit the labourers to guide them to work practices and apprenticeships according to the vacant working positions in the enterprises. The on-the-job training period will not exceed 03 months in any circumstance[5]. For the apprenticeship, its duration will be compliant with the programs for each level as regulated in the Law on Profession Education.

Actions to be taken by the enterprises: If the enterprises have apprentices and trainees who are working under on-the-job training agreements and/or apprenticeship agreements, the term of on-the-job training must be amended under a form of appendix to the on-the-job training agreements to the maximum of 3 months only, and the term of apprenticeship shall be amended to be in line with each level of apprenticeship pursuant to the Law on Profession Education.

4. Labour contracts

[5] Article 61.2 of the Labour Code 2019

The Labour Code 2012 prescribed: "*The labour contract is an agreement between the employees and the employers on paid, working conditions, right and obligations of each party in the labour relations*."[6]

In the Labour Code 2019, the basic contents remain the same with the addition of a new case: if the substance of the signed contract of the contracting parties are the same as the labour contract, it is still considered as the labour contract and is governed by the Labour Code, although the name of the contract could be different[7]. The above regulation affirms that whether a contract is a labour contract or not, it depends on the substance of content and not on its name. Thereby, it has solved the situation of the employers who intentionally took advantage of the Labour Code 2012 by not having these issues to be regulated. Previously, they would sign a contract with the employees that avoided the binding provisions of the Labour Code by changing the contract name to such as individual service contract, work contract etc. Thus, adding this provision to the Labour Code 2019 helps enlarge the scope of application objects of the Labour Code 2019 and ensure the employees' rights to be upheld because the employees' role is viewed as a weak party in the labour relation.

In addition, the Labour Code 2019 does not allow the employers to force the employees to perform the labour contracts in order to fulfil the employees' debt payment to the employers[8]. This is perfectly reasonable, as the debt obligation and labour relation are two completely separate relationships, with different rights and obligations and with different governing laws. Besides, one of the principles of the labour law is that the employees are free to choose jobs so labour contracts must be established not by coercion, but through voluntary spirit where both parties are in agreement. Specifically, it will see the reason why lawmakers make such provisions in the labour relation; the employees are always more or less dependent on the employers, especially for salary and wage payment that affects the liabilities of debt payment directly. Thus, it is likely that the employers will take advantage of this to make it difficult for the employees to repay their debts, without guaranteeing the employees' rights in both the lending and borrowing relation and the labour relation.

[6] Article 15 of the Labour Code 2012
[7] Article 13 of the Labour Code 2019
[8] Article 17.3 of the Labour Code 2019

Actions to be taken by the enterprises: Any enterprise that has entered into contracts with outside labourers must be ready to request the outside labourers either (i) to obtain individual business household licenses/to establish companies under the Law on Enterprises in order for them to be able to continue providing services to the enterprises lawfully and issuing VAT invoices, or (ii) to calculate the costs of payable personal income tax and compulsory insurances in case both parties shall enter into labour contracts in order to pay compulsory insurances and personal income tax according to partially progressive tax rates.

5. Types of labour contracts

The Labour Code 2012 regulates two forms of labour contracts, including: (i) written labour contracts; and (ii) verbal labour contracts with respect to temporary work for a duration of less than 3 months[9]. To keep pace with social development where electronic means are now used for both transmission and storage of information (i.e. transmission and storage of information is defined as the information to be created, sent, received, archived by electronic means) with equal importance and effectiveness to that of ordinary documents, the Labour Code 2019 has added a new electronic form of labour contract in addition to written and verbal forms. This helps create favourable conditions for the employers and the employees to quickly find mutual agreement, determining the labour relationship while minimising any obstacle of geographical distance. Electronic means are implemented in the form of data messages in accordance with the Law on Electronic Transactions, which will be valid as written labour contracts[10]. Verbal labour contracts are only applicable to any labour contract with a term of less than 01 month[11]. Besides, the addition of this form is also in line with the regulations of the Civil Code 2015, as it allows transactions through electronic facilities in the form of data messages which are considered equal to written transactions forms[12].

[9] Article 16 of the Labour Code 2012
[10] Article 14.1 of the Labour Code 2019
[11] Article 14.2 of the Labour Code 2019
[12] Article 119.1 of the Civil Code 2019

While the Labour Code 2012 stipulates that labour contracts of 3 months or more must be concluded in writing, the Labour Code 2019 further stipulates that labour contracts with the following conditions must be in writing: for seasonal works or specific tasks which have a term of less than 12 months, for labour contracts between the employers and the employees under 15 years of age, and for labour contracts with domestic labourers[13].

Actions to be taken by the enterprises: With the acceptance of electronic form of labour contract, the enterprises may consider not maintaining hard copies of labour contracts in their offices for a long time but will archive them under the electronic form on iCloud, recruitment websites and/or their servers. This will help minimise admin cost (paper and ink, storing space, persons in charge etc.).

6. Types of labour contracts

The Labour Code 2012 stipulates 03 types of labour contracts, including: (i) indefinite term labour contracts; (ii) definite term labour contracts; and (iii) seasonal or work-specific labour contracts that have a duration of less than 12 months. Because nature of seasonal labour contract is for temporary, casual, or defined jobs within a 12-month period, the Labour Code 2012 does not permit the employers and the employees to enter into seasonal or work-specific labour contracts of under 12 months for regular jobs which have duration of 12 months or more, except in the case of temporary replacement of the employees who have taken leave for military duty, pregnancy and maternity, sickness, labour accidents, or other temporary leaves. In terms of renewal under a seasonal labour contract, the labour law does not limit the number of renewals of seasonal labour contract as long as the work is of seasonal nature. For definite term labour contracts, the Labour Code 2012 specifies that when they expire and the employees continue working, the two parties shall sign new labour contracts within 30 days from the date of expiration. If no new labour contract is entered into, the signed definite term labour contracts having periods of between 12 and 36 months will become indefinite term labour contracts

[13] Article 26.2 of the Labour Code 2012 and Article 14.2, Article 145.1.a, Article 162.1 of the Labour Code 2019

and the seasonal or work-specific labour contracts of less than 12 months will become definite term labour contracts with a duration of 24 months[14]. Regulations on restricting the signing of seasonal labour contracts make some difficulties for the enterprises as the labour laws do not provide any guidance and definition of the jobs that are considered as regular works which have a duration of more than 12 months for enterprises to properly comply with and minimise legal risks. In addition, the Labour Code 2012 does not stipulate how the rights, obligations and interests of the parties will be resolved during the period of not signing new labour contracts, hence leaving the enterprises confused when applying.

In these regards, the Labour Code 2019 has removed the provision of seasonal contracts and labour contracts for jobs with durations of less than 12 months with the argument that if such kinds of labour contracts are used, the employers will have tendency not to sign definite term labour contracts with the employees because there is no limit by law for entering in seasonal labour contracts and labour contracts for the jobs with durations of less than 12 months. Instead, the types of labour contracts have been shortened to only two types: (i) indefinite term labour contract; and (ii) definite term labour contract with a duration not exceeding 36 months[15]. This provision has resolved the aforementioned difficulties and satisfies the needs of short-term and flexible personnel of the enterprises without resorting to the plan of using labour outsourcing services from external providers. The Labour Code 2019 has specified that within 30 days from the expiration date of a labour contract, the two parties must sign a new labour contract. In the duration of not having entered into the new labour contract, the rights, obligations and interests of the two parties will be performed under the previously signed labour contracts[16] while it is unclear on how to fulfil the rights, obligations and interests of the two parties in the duration from the expiry date of the current labour contract to the commencement date of the new labour contract by the two parties under the Labour Code 2012.

Another important point in the Labour Code 2019 that the Labour Code 2012 had not clarified is to indirectly acknowledge the term of labour contracts with foreign

[14] Article 22 of the Labour Code 2012
[15] Article 20.1 of the Labour Code 2019
[16] Article 20.2.a of the Labour Code 2019

employees as will base on the terms of work permits rather than being an indefinite term after 02 signed definite term labour contracts and the employers are allowed to enter into definite-term labour contracts with foreign employees more than twice[17].

Actions to be taken by the enterprises: If any enterprise maintains seasonal labour contracts or labour contracts with a term of less than 12 months for certain types of employees, it must start to prepare in order to conclude new labour contracts with a term of up to 36 months. Although the employment costs associated with compulsory insurance and personal income tax will not change in both types of labour contracts, the employers will no longer be able to extend the labour contracts by an appendix to the signed labour contract. There is a new requirement that requires the employers to conclude a new labour contract when the labour contract expires, so the employers' decision about the working term from 1 day to 36 months will be very important and depends on judgment of the employers regarding capacity and work performance of the employees during their performance of seasonal labour contracts or labour contracts with a term of less than 12 months.

7. Annexes to labour contracts

The Labour Code 2012 stipulates that annex to labour contract detail some provisions of the labour contract or to amend/supplement the labour contract and is an integral part of labour contract and will have its validity the same as that of the labour contract[18]. In case the annex to the labour contract detail some provisions of the labour contract that lead to different understandings of the labour contract, the content of labour contract will prevail. In case the annex thereof amends or supplements the labour contract, it must specify the amended or supplemented provisions and the effective time. Particularly, for the amendments of the labour contract' term by the annex to the labour contract, Decree No. 05/2015/ND-CP has stricter regulations. Accordingly, the term of the labour contract is only amended once by an annex to the labour contract and must not change the type of the signed

[17] Article 151.2 of the Labour Code 2019
[18] Article 24 of the Labour Code 2012

labour contract, except for the extension of the term of labour contract with elderly employees and employees who are part-time trade union cadres in accordance with the applicable laws[19].

For this point, the Labour Code 2019 has maintained the aforementioned provisions of the Labour Code 2012, but revised the regulation on amending the labour contract term as stipulated in Decree No. 05/2015/ND-CP. Accordingly, the Labour Code 2019 no longer allows the employers and the employees to use the annex to the labour contract to modify the term of labour contract[20]. This change may cause many difficulties for the enterprises when they must comply with the requirement of only signing a definite term labour contract of a maximum twice with the employees without using annex to the labour contract to amend the term of the labour contract.

Actions to be taken by the enterprises: Since the Labour Code 2019 comes into effect, the obligation for assessing the working performance of the employees in the enterprises by people at a management level and the human resources department will be tougher and it will take more time. This is because, if accidentally assessed incorrectly, there will be the risk of either losing talents or having to keep the employees who do not meet strict working requirements too long in the enterprises. Therefore, the enterprises must consolidate or build: (i) detailed job descriptions for each job position in the enterprises; and (ii) detailed and specific Key Performance Indicator (KPIs) to help the management make sound and sound human resource decisions.

8. Probation

Since the Labour Code 2012 took effect, one of the contentious issues is whether a probationary agreement can be specified in the labour contract and that it will be signed on the first day of working of the employees. If so, another question will be raised is that when a labour dispute arises out of and occurs during the probationary

[19] Article 5 of the Decree 05/2015/ND-CP
[20] Article 22 of the Labour Code 2019

period, which regulation will be applied to settle the dispute? Will the labour disputes arising out of and occurring during the probationary period be settled in accordance with the probation regulation or that of the labour contracts? From the viewpoint of protecting the employees because they are treated as a weak party in the labour relation, the disputes will be resolved in accordance with the regulations relating to labour contract of the Labour Code 2012 as this view considers that the employers and the employees have signed labour contracts, paid compulsory insurances, and personal income tax has been withheld by the partially progressive tax rates since the first day of working. In contrast, the viewpoint of employer protection is that these disputes shall be resolved under probationary regulations of the Labour Code 2012 because the two parties are still in the probationary period.

The Labour Code 2019 has resolved the above-mentioned controversy matter. Accordingly, the employers and the employees may agree on the probationary content to be stated in either the labour contracts or a separate probationary contract. In the event that the probationary job is satisfactory, the employer will continue fulfilling the signed labour contract if the probationary agreement is stated in the labour contract or shall conclude a new labour contract of the two parties only conclude the probationary contract.

In addition to the probationary period as specified in the Labour Code 2012, the Labour Code 2019 also adds a longer period of probation that is no more than 180 days for the employees who have titles in accordance with the regulations of the Law on Enterprises and the Law on Management and Use of State Capital Invested in Business and Production at Enterprises such as owners of private enterprises, Chairmen of the Members 'Council, members of the Members' Council, Chairmen of the companies, Chairmen of the Board of Management, members of the Board of Management, Director ..., and other individuals in accordance with the provisions of the charter, internal regulations of the enterprises. In case the probationary job is unsatisfactory, the signed labour contracts or the probationary contracts will be terminated. During the probationary period, each party has the right to cancel the signed probationary contract or labour contract without notice and compensation[21].

[21] Article 24, 25 and 27 of the Labour Code 2019

Currently, the enterprises often incorporate probationary agreement into labour contracts to minimise the need for making and managing probationary contracts and labour contracts separately. However, when the probationary job does not meet the requirements, there is legal risk that the enterprises do not have solid legal ground to terminate the labour relationship with the employees as the parties are bound by the signed labour contracts. The new regulations on probationary issues of the Labour Code 2019 show that the lawmakers have grasped the practical situation and have codified some issues to create a clear legal corridor for the parties to have suitable actions when getting involved in creating labour relationship.

Actions to be taken by the enterprises: If it is considered that maintaining the management of probationary contracts or offer letters being separated from labour contracts will take time, effort, and cost on behalf of the human resources departments, the enterprises may consider integrating probationary terms directly into the labour contract and do not worry that they cannot end the probation when the probationary jobs are unsatisfactory. In addition, for the job positions of employees at management level, the probationary period may last for up to 180 days before a definite term labour contract will be entered into.

9. Work permits

The Labour Code 2012 stipulates that the maximum validity period of work permits is 02 years and can be renewed with the maximum term of 02 years when the validity period has from 5 to 45 days left[22][23] but it is unclear if the renewal can be many times. In this regard, the Labour Code 2019 allows the work permits to be extended by a maximum of 02 years but limit to one time of extension only[24].

This poses several questions i.e. does the extension of work permit's validity period as stipulated by the Labour Code 2019 creates optimisation in terms of time and procedural steps as compared to those of the Labour Code 2012? Which cases are

[22] Article 15.1 of Decree 11/2016/ND-CP
[23] Article 173 of the Labour Code 2012 and Article 16 of Decree 11/2016/ND-CP
[24] Article 155 of the Labour Code 2019

under the extension procedure and which cases are under the reissuance one? Such questions can only be answered when the Vietnamese Government issues decrees to provide guidance on this matter.

Actions to be taken by the enterprises: Any enterprise currently hiring foreign labourers should be aware that there is still a possibility that the Labour Code 2019 will be guided by Decrees of the Vietnamese Government in such a way that allows only one time of issuance of a 2-year work permit and one time of maximum 2-year extension with the total maximum accumulated working period of 4 years (including 1 initial issuance and 1 extension), the enterprises shall find other foreign labourers to replace or have to proper plan to train Vietnamese employees to replace the working positions of such foreign labourers from now on.

10. Termination of labour contracts

In addition to 10 cases in which labour contracts would be automatically terminated under the Labour Code 2012, the Labour Code 2019 has 04 more cases[25]:

(i) Any employer who is not an individual is notified by the State management agency of business registration that there is no legal representative or authorised person to perform the rights and obligations of the legal representative;

(ii) Any foreign labourer working in Vietnam who is expelled under the decision or ruling of the Courts or the competent State authorities;

(iii) Any foreign labourer working in Vietnam whose work permit is expired; and

(iv) Probation as stated in the labour contract does not meet the requirements or is terminated by either party.

[25] Article 34 of the Labour Code 2019

It is important to note that any employee serving a suspended sentence is not a proper reason for automatic termination of labour contract[26].

With these new regulations, the Labour Code 2019 clarifies some unclear points of the Labour Code 2012 i.e. there are cases of foreign labourers entering Vietnam to work and violating Vietnamese law but the violations do not happen during working hours and are not at the workplaces, if the foreign labourers are deported, will their labour contracts automatically be terminated? In addition, there are cases where a number of foreign labourers who have worked in Vietnam for a single employer for many years and the two parties have signed more than twice definite labour contracts, refused to leave pursuant to the employers' requests when their work permits are expired but the employers did not want to file an extension with the foreign employees' argument that the third labour contract they entered into automatically became an indefinite term labour contract by law regardless it is clearly stated in the labour contract and the employers are therefore obligated to carry out procedures to extend their work permits. Only when they are unable to provide the documents as required by Vietnamese law or the relevant Vietnamese regulations at that time have changed in a way that does not allow the employers to hire foreign labourers to work in Vietnam then their labour contracts will be automatically terminated. In addition, this new provision also clarifies a current controversial issue that if the employers and the employees conclude labour contracts with the probationary clause from the first day of working, are the employers entitled to unilaterally terminate such labour contracts during the probationary period if the work on trial period are not satisfactory.

Actions to be taken by the enterprises: Any enterprise that hires foreign labourers should pay attention to the above two advantages of the Labour Code 2019 in order to be more flexible in hiring foreign labourers. In addition, any enterprise that is maintaining both probationary contract and labour contract separately may consider merging them into one under the name of labour contract to ease internal management and minimise the work of administrative and human resources departments.

[26] Article 34.4 of the Labour Code 2019

11. Invalid Labour Contract

The Labour Code 2019 continues to maintain the cases of invalid labour contract. However, in cases of violating the principle of voluntary commitment, good faith, equality, co-operation, and honesty, the labour contract shall be completely invalid[27].

"*The contents of the labour contract restrict or prevent the employees to exercise their right to establish, join trade unions and participate in trade union activities*" has not been considered as a legal ground for declaring labour contracts as invalid or not.

Also, deregulation of any labour contract content which stipulates the employees' right lower than the regulations on labour law, internal labour regulations, and collective labour agreement being applied, or the labour contract content restricting partly or completely other rights of the employees shall be corresponding to the invalidation of the labour contract, partly or entirely[28].

Regarding competency declaring labour contracts as invalid, the Labour Code 2019 narrows the scope of this authority to only competent courts instead of Labour Inspector and the Courts as prescribed in the Labour Code 2012[29]. This regulation aimed to synchronise with the Civil Procedures Code 2015 on the basis that only the Court, i.e. the judicial body who has authority to declare a labour contract to be invalid, is also in line with international customs and international treaties that Vietnam is a member. This regulation also does not affect operation of Labour Inspectorates as prescribed on administrative sanctions.

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes of the Labour Code 2019 in order to apply when considering and determining whether a labour contract is invalid or not.

[27] Article 49.1.b of the Labour Code 2019
[28] Article 50 of the Labour Code 2012 and Article 49 of the Labour Code 2019
[29] Article 51 of the Labour Code 2012 and Article 50 of the Labour Code 2019

12. Unilateral termination of labour contracts by the employees

The current practice of labour law shows that the employees can quit their jobs by any reason, and it is impossible to request them to compensate their employers for their act of unilateral termination of labour contracts. As a result, the regulations of the Labour Code 2012 stipulate that the employees are only allowed to terminate the definite term labour contracts for one of the reasons as set forth by the laws are no longer practical[30]. Therefore, the Labour Code 2019 no longer require the employees to provide lawful reasons for terminating their definite term labour contracts, instead the employees must follow prior notice similar to the Labour Code 2012[31]. This regulation aims to assure the employees' right to select a better job elsewhere.

Furthermore, in accordance to the Labour Code 2019, in addition to the cases as mentioned in the Labour Code 2012 that the employees are allowed to unilaterally terminate their labour contracts, some cases are modified to make them clearer in meaning and delete the case of being voted to take charge of or being appointed to a position in State bodies. In addition, the employees are also allowed to unilaterally terminate the labour contracts without prior notice when in any of the following circumstances[32]:

(i) The employees are under working conditions which are not corresponding to the agreement, except for the case of transferring the employees to other jobs than those of the labour contracts;

(ii) The employees' salaries are not paid in full or on time, except for other force majeure circumstances where the employers have sought all remedies but cannot pay the salaries on time;

[30] Article 37 of the Labour Code 2012
[31] Article 35 of the Labour Code 2019
[32] Article 35.2 of the Labour Code 2019

(iii) The employees are beaten or verbally abused by the employers, or the employers have acts that affect health, dignity, and honour of the employees;

(iv) The employees are sexually harassed at the workplace;

(v) The employees reach the retirement ages; or

(vi) The employers provide false information which affects the implementation of labour contracts.

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these adverse changes of the Labour Code 2019 in order to apply when considering and determining as to whether an act of unilateral termination of labour contract of an employee in a specific situation is compliant with the law.

13. Rights to terminate the labour contracts

In recent years, there have been many cases where the employees unilaterally quit their jobs at the enterprises (including the case of leaving immediately after submitting their resignation letters) and the enterprises have been confused in applying the provisions of labour laws to solve this situation. Some enterprises have issued decisions on unilateral termination of labour contracts, while others conduct procedures to handle labour discipline under the form of dismissal. Of course, majority of the enterprises do not want to carry out labour discipline procedures because it has many complicated steps to follow, it is time consuming and requires participation of the executive committee the grassroots trade union, report to local labour authorities. However, when unilaterally terminating the employees' labour contracts, the enterprises are not sure as to whether their decisions have been in accordance with the labour law or not, and whether they would be protected by the State authorities in resolving disputes in such circumstances.

Compared to the Labour Code 2012, the Labour Code 2019 has added a number of cases where the employers are entitled to unilaterally terminate the labour contracts, including[33]:

(i) The employees reach the retirement ages;

(ii) The employees are arbitrarily absent from work without plausible reasons from 05 consecutive working days or more; and

(iii) The employees provide false information when entering into the labour contracts, affecting the recruitment.

Moreover, the Labour Code 2019 also added the advance notice that the employers must comply with as given as follows[34]:

(i) For certain specific jobs with particular natures, duration of advance notice will be prescribed by the Vietnamese Government; and

(ii) For employees who unilaterally quit their jobs without plausible reasons for 05 consecutive working days or more and employees who do not present at the workplace after the expiry of the period of temporary suspension of labour contracts, they do not need to inform the employees before unilaterally terminating the labour contracts[35].

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these favourable changes of the Labour Code 2019 in order to apply when considering and determining unilateral termination of a labour contract with any employee in a specific situation whether it is compliant with the law.

14. Being entitled to sign several definite-term labour contracts with elderly employees

[33] Article 36.1 of the Labour Code 2019
[34] Article 36.2 of the Labour Code 2019
[35] Article 36.3 of the Labour Code 2019

According to the Labour Code 2012, for elderly employees (reaching the statutory retirement ages but have not fully paid sufficiently social insurance premiums), the employers and the employees will either extend the term of the labour contract or enter into a new labour contract. However, the Labour Code 2012 does not specify how long (min and max) the new contract term will be and whether or not it can be extended, and if it can, how many times of extension can it be. In practice, because the elderly employees often do not have as good health as young people as well as according to the Labour Code 2012, the employers must take care of the health of elderly employees, any employer who wants to continue employing the elderly employees often require the elderly employees to have annual health check-ups and if the competent doctor's opinion is that the elderly employees are physically fit for working, the employers will conclude a 12-month labour contract (because the prescribed health certificate will be valid only for 12 months from the date of the doctor's opinion) and continue to extend it when the elderly employees wish to extend the labour contract term and can submit to the employers a prescribed health certificate of a competent doctor that they are healthy enough to work.[36].

In this regard, the Labour Code 2019 makes it clearer by allowing the employers to enter into several definite term labour contracts with the elderly employees[37].

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes of the Labour Code 2019 in order to apply when considering extension or renewal of labour contracts of the elderly employees.

15. When the employers unilaterally terminate the labour contracts illegally and reinstate the employees

When the employers unilaterally terminate labour contracts illegally and if the affected employees are invited to return to work, the employees have to reimburse the employers for the severance allowance or unemployment allowance if they

[36] Article 162 of the Labour Code 2012
[37] Article 149 of the Labour Code 2019

received from the employers when leaving the enterprises[38]. This provision of the Labour Code 2019 is completely new as the Labour Code 2012 does not address this issue and therefore many employees do not want to pay back the money that they previously received from the employers.

Actions to be taken by the enterprises: The enterprises need to do nothing but be aware of this favourable change of the Labour Code 2019 in order to apply when the enterprises have to reinstate any employee who was unilaterally terminated by the enterprises unlawfully.

16. Labour usage plan

When retrenching a lot of employees due to structural changes, technological changes, business reasons, mergers, divisions, splitting, consolidation, or transfer of ownership or ownership of assets, the Labour Code 2012 requires the employers to establish labour usage plan and the employers are only allowed to retrench the employees after consulting the representative organisation of the employee collective and notifying to competent labour authorities at least 30 days in advance. The Labour Code 2012 does not require the employers to disclose the labour usage plan to the affected employees before submission of the labour usage plan to the competent labour authorities.[39]

In this regard, the Labour Code 2019 stipulates that after the employers discuss with the representative organisation of the employee collective regarding the labour usage plan, the employers must publicly notify the labour usage plan to the employees within 15 days from the date of passing the labour usage plan.[40] This provision may be detrimental to the employers as the labour usage plan includes information on compensation packages and financial support funds to settle the labour contracts with the employees. Obviously, the financial situation and allocation of the enterprises each year is different and will depend on other relevant factors. Therefore, the fund to be used to pay the employees when terminating the

[38] Article 41.1 of the Labour Code 2019
[39] Article 44, 45 and 46.2 of the Labour Code 2012
[40] Article 44 of the Labour Code 2019

labour contracts for each year is different in cases of changes to human resource structure or technology, or due to economic reasons occurring consecutively year after year. However, the employees often claim benefits at least equal to or higher than the practices incurred at the enterprise. At that time, it may be the case that if the employees know their compensation packages are not equal to the previous years, they may make it difficult for the enterprises during the process of paying the compensation packages when terminating their labour contracts. The disclosure to the affected employees also give rise to another disadvantage for the enterprises when information relating to the compensation package of each affected employee must be the same amongst the affected employees in order to maintain a fair treatment while for the case of tough employees and those with senior positions who make trouble for the enterprises during the retrenchment process that the enterprises are forced to pay more to attract them to agree with the termination of their labour contracts in peace.

Actions to be taken by the enterprises: If any enterprise is expected to have personnel restructuring in 2021, it should pay attention to this important change. In order to minimise the disclosure of information related to supporting packages and payments to retrenched employees potentially resulting in them unfavourably comparing the supporting packages to each other leading to inadequate complaints and grievances, the enterprises can only provide in principle the method of calculation of the amounts of supporting packages that they will pay to the retrenched employees in the labour usage plan instead of listing detailed formulas or specific amounts of money for each employee.

17. Notice of labour contract termination

Previously, the Labour Code 2012 did not provide form of notice on termination of labour contracts by the employers and therefore each enterprise will have its particular form of notice. Besides, for the case of business liquidation, the Labour Code 2012 is not clear as to the point of time of labour contract termination, whether it is at the time that enterprise owners submit their application for closure to local licensing bodies or at the date of written closure approval from the local licensing bodies.

Regarding these two points, the Labour Code 2019 indicates that the notice on termination of labour contracts must be made in writing, except in cases where the laws do not require notice on termination of labour contracts. The Labour Code 2019 further stipulates that if the employers are not individuals terminating their operation, the time of termination of labour contracts is calculated from the time the notice on termination of operation is issued. In case the employers are not individuals that are notified by the business registration agencies of the provincial People's Committees that there are no legal representatives or no authorised persons to exercise the rights and perform the obligations of the legal representatives, the time of termination of labour contracts shall be counted from the date of such notification[41]. However, this new regulation has not resolved the controversial practice that whether the enterprises, in the case of dissolution, need to issue advance notice of 30 days for definite term labour contracts or 45 days for indefinite term contracts on the termination of the labour contracts.

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes being applicable for employers of the Labour Code 2019 in order to apply when the labour contracts of the employees are terminated.

18. Responsibilities of the parties upon the termination of labour contracts

The Labour Code 2019 states that within 14 working days after termination of the labour contracts, the employers and the employees shall make all payments related to the interests of each party; instead of 07 working days in accordance with the Labour Code 2012, except for special cases, this time limit may be extended but must not exceed 30 days[42]. This will help businesses have more time to carry out work transfer and carry out all of internal procedure of payment of each business.

According to the Labour Code 2019, in addition to the obligations such as completing procedures to certify the duration of social insurance, unemployment

[41] Article 45.1 of the Labour Code 2019
[42] Article 47.2 of the Labour Code 2012 and Article 48.1 of the Labour Code 2019

insurance contribution, and returning original of other documents kept by the employers as prescribed in Labour Code 2012, the employers also have the obligations to provide copies of documents related to the employees' work process if requested by the employees and the employers will bear the cost of document copying and delivery[43].

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these unfavourable changes the Labour Code 2019 in order to apply when labour contracts of the employees are terminated.

19. Periodical dialogue at the workplace once a year

Instead of the requirement for the employers to organise periodically every 03 months as current regulations, the Labour Code 2019 has increased the time to organise periodical dialogue at the workplace to once a year because the organisation of dialogue on a quarterly basis will have significant affect to the manufacturing activities of export processing enterprises during busy seasons. At the same time, it has added a number of cases where the employers have to organise dialogues such as in case the employees face the risk of unemployment or being forced to resign due to economic reasons, when formulating the salary scale, payrolls and labour norms, etc.[44]

While the Labour Code 2012 stipulates "*the content that the two parties focus on*" could be included in the dialogue, the Labour Code 2019 expands this by stipulating that "*the content that one party or the parties focus on*", thus, only needing one party to request, a topic will be able to become an agenda content for discussion at the dialogue.[45]

The Labour Code 2019 also expands the scope of the collective labour agreement. Accordingly, in addition to labour collective agreements at enterprise level and those of industry and trade, collective labour agreement of many enterprises will

[43] Article 47.3 of the Labour Code 2012 and Article 48.3 of the Labour Code 2019
[44] Article 63.2 of the Labour Code 2019
[45] Article 64 of the Labour Code 2012 and Article 64 of the Labour Code 2019

bring more opportunities to the employees to access more favourable agreements.[46] As such, form of periodical dialogue is diversified to make it more convenient for the employees and the employers.

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these unfavourable changes of the Labour Code 2019 in order to apply accordingly.

20. Salaries

Regarding salary regulations, the Labour Code 2019 has the following new points as compared to those of the Labour Code 2012:

- The employers are allowed to pay foreign labourers working in Vietnam in foreign currencies. This is the content recorded in Decree 05/2015/ND-CP of the Vietnamese Government and is now officially recorded in the Labour Code 2019[47];

- For transparency in salary calculation, for each time of salary payment, the employers must notify payroll statements to the employees, clearly stating the salary, overtime pay, night-shift salary, content and number of deductible amounts (if any)[48];

- In case the employees are paid salaries through their personal accounts opened at banks, the employers must pay bank charged related to account opening and salary remittance. In this regard, the Labour Code 2012 indicates that the employers and the employees will negotiate and agree which party will bear this cost and therefore there is no consistency of application amongst businesses[49];

[46] Article 75 of the Labour Code 2019
[47] Article 95.2 of the Labour Code 2019
[48] Article 95.3 of the Labour Code 2019
[49] Article 96.2 of the Labour Code 2019

- If the employees are unable to receive salaries directly, the employers shall pay the salaries to the persons legally authorised by the employees; and[50]

- The employers must not restrict or interfere with the employees' rights to self-determination of salary spending through forms such as purchasing goods and using services of the employers[51].

Actions to be taken by the enterprises: The human resources departments of the enterprises will be busier than before when they are required to make a monthly payroll for each employee and send it to each employee regardless of whether or not the employees request for it. In addition, the enterprises shall also bear bank charges for opening and maintaining bank accounts for the employees. Therefore, in order to minimise the bank charges, the bank accounts of the employees should be opened at the same banks of the enterprises.

21. The Vietnamese Government does not directly intervene in enterprises' salaries

According to the Labour Code 2012[52], the enterprises must build a wage scale, payroll, and labour norms according to the principles prescribed by the Government (for example, the wage scale and payroll must have the number of steps, the difference between the two adjoining lowest steps is 5%) and must send the wage scale, payroll, and labour norms to the district-level labour authorities. In case the district-level labour authorities find that the wage scale, payroll, and labour norms violate the principles prescribed by the Government, they shall notify the enterprises to amend and supplement them in accordance with regulations [53].

Meanwhile, according to the Labour Code 2019, the enterprises are entitled to take the initiative in setting wage scales, payrolls and labour norms on the basis of negotiation and agreement with the employees.

[50] Article 94.1 of the Labour Code 2019
[51] Article 94.2 of the Labour Code 2019
[52] Decree 121/2018/ND-CP and Decree 49/2013/ND-CP
[53] Decision 636 QD-LDTBXH

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes to be in favour of the employers of the Labour Code 2019 in order to still build but without registering the salary scales, payrolls, and labour norms with the local labour authorities anymore.

22. Non-monetary rewards

While the Labour Code 2012 uses the term "Bonus", the Labour Code 2019 mentions "Reward" instead of "Bonus"[54]. Thus, in addition to monetary rewards, the employees may be rewarded in other forms such as in kind, services, products, assets, securities, and member benefits based on the business results of the enterprises as well as the level of work completion of the employees.

However, when rewarding in other forms, the enterprises should note whether the rewards are subject to personal income tax, and whether such rewards are considered as deductible expenses of the enterprises, and whether the enterprises are required to issue VAT invoices.

Actions to be taken by the enterprises: Any enterprise that has its internal policy of rewarding the employees under the form of bonuses which are specified in either labour contracts, bonus regulations or collective labour agreements (if any) should consider changing to conform to the new regulations. However, when issuing any new regulation on bonuses that are not in cash, it should be noted whether these kinds of bonuses are subject to personal income tax, and whether the bonuses are treated as deductible expenses of the enterprises as well as whether the enterprises are required to issue VAT invoices for such in-kind bonuses.

23. Paying for work suspension

If due to power or water incidents rather than the employers' faults, or for other objective reasons such as natural calamity, fire, dangerous epidemic, enemy sabotage, relocation of the operation place upon request of a competent State

[54] Article 103 of the Labour Code 2012 and Article 104 of the Labour Code 2019

agency, or for economic reasons, the Labour Code 2012 stipulates that the salary for work suspension shall be agreed by the employer and the employees but must not be lower than the regional minimum wages. This leads to the situation where the employers only pay salaries for work suspension equal to or higher than 7% of the regional minimum wages for the employees with vocationally trained and professional qualifications[55]. Besides, there are also situations whereby the employers suffer serious difficulties when facing global epidemic such as virus Corona recently and are forced to let the employees to temporarily stop working, the employers are required to pay salaries for work suspension to the employees regardless of whether the employees agree to receive or not.

According to the Labour Code 2019, the salaries for work suspension will still be based on the agreements between the employers and the employees but the salaries for the work suspension must not be lower than the regional minimum salaries set for the first 14 days of termination[56]. After that, the salaries are still negotiable but will be either higher, lower or even nil subject to mutual agreement between the employers and the employees.

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes of the Labour Code 2019 in order to apply in case the enterprises must pay salaries for the employees during the period of work suspension.

24. Rest time

It is unclear under the Labour Code 2012 as to whether there is a difference in treatment of rest time (including in the working hours or not) during working hours between the employees working pursuant to standard office hours and those who are working under shifts.

[55] Article 98 of the Labour Code 2012
[56] Article 99 of the Labour Code 2019

The Labour Code 2019 amends the regulations related to rest breaks during the working time[57]:

(i) The employees who work consecutively for 06 hours or more shall be given a rest break of 30 minutes, which shall be included in the working hours;

(ii) The employees who work for 06 hours or more in one day, shall be given a rest break of at least 30 minutes consecutively, which shall not be included in the working hours; and

(iii) In cases of night-time work, the employees shall be given a rest break of at least 45 minutes consecutively, which shall not be included in the working hours.

Actions to be taken by the enterprises: The enterprises should review internal regulations relating to break times in labour contracts, internal labour regulations, and labour collective agreements (if any) to readjust them accordingly. For the internal labour regulations, the enterprises must apply for re-registration to be valid for use. For labour collective agreements (if any), the changes must be reported to the local labour authorities.

25. Personal leave with fully paid days off

In addition to the cases as mentioned in the Labour Code 2012, the Labour Code 2019 supplements the cases of personal leave with fully paid days off for adoptive father and adoptive mother. Accordingly, it makes clearer on meaning on cases of the Labour Code 2012 including married children (including natural children, adopted children), parents, mothers-in-law or fathers-in-law, mother-in-law deaths (including natural fathers, natural mothers, adoptive fathers, adoptive mothers of spouses), and deceased children (including natural children, adopted children)[58].

[57] Article 109 of the Labour Code 2019
[58] Article 115 of the Labour Code 2019

Actions to be taken by the enterprises: The enterprises need to do nothing but pay attention to these changes of the Labour Code 2019 in order to apply in case the employees apply for leave with pay in such a case.

26. Working overtime

The Labour Code 2019 increases the number of overtime hours for the employees up to a maximum of 40 hours/month instead of 30 hours/month as stipulated by the Labour Code 2012[59].

The Labour Code 2019 also stipulates cases that the employees are allowed to work more than 300 hours/year, including[60]:

(i) Manufacturing, export processing of products of textiles, garments, leather, shoes, electricity, electronics, agricultural, forestry, salt, and aquatic products;

(ii) Production, supply of electricity, telecommunications, oil refining; water supply and drainage;

(iii) In the event that job handling requires highly educated and qualified employees that the labour market is in short supply and unable to provide promptly or adequately;

(iv) In the case urgency is required to accomplish the necessary work in a short time frame; for example, due to the seasonal qualities of key ingredients and products, or resolving incidents arising from factors that cannot be predicted including weather disasters, calamities, fire disasters, lack of ingredients, or technical errors of a production line; and

(v) Other cases as stipulated by the Vietnamese Government from time to time.

[59] Article 106.2.b of the Labour Code 2012 and Article 107.2.b of the Labour Code 2019
[60] Article 107.3 of the Labour Code 2019

In addition, the Labour Code 2019 also requires the employers to notify in writing the provincial labour management authorities of People's Committees in case of working overtime of 300 hours/year[61].

The increase of overtime hours to 10 hours per month but no change the time limits and business lines to be entitled to the use of 201 hours to 300 overtime hours a year have not tackled completely the enterprises' needs of overtime hours yet.

Actions to be taken by the enterprises: If any enterprise wishes to use the employees to work overtime, it is necessary to note that: (i) it is allowed to increase the maximum number of overtime hours in a month to 40 hours from the current 30 hours in order to adjust their current shifts accordingly; (ii) check whether the registered business lines of the enterprises are included in the list of business lines of the enterprises that are allowed to recruit employees to work overtime to 300 hours per year. If there are any unclear issues, for example, enterprises with multiple registered business lines that include the business lines which are not in the list of business lines to be entitled to a cap 300 hours of overtime per year, leading to uncertainty as to whether or not they can mobilise all of the employees to work overtime to 300 hours per year, a petition letter can be sent to the local Departments of Labour, War Invalids, and Social Affairs for clarifications.

27. Public and New Year holidays

The Labour Code 2019 has increased the National Day holiday from 01 day to 02 days (02 September of the calendar year and 01 day immediately preceding or after)[62].

Actions to be taken by the enterprises: The enterprises should review and revise where necessary a new guide on employees taking annual leave to ensure that not too many employees will take extended leave by combining their annual leave,

[61] Article 107.4 of the Labour Code 2019
[62] Article 115.1.dd of the Labour Code 2012 and Article 112.1.dd of the Labour Code 2019

weekly holidays, and 2 days of National Day holiday, which to a certain extent may hinder normal business operation of the enterprises.

28. Annual leave

The Labour Code 2019 stipulates that the minimum number of annual leave is 12 days and the employees with less than 12 months of employment shall be entitled to annual leave in proportion to the number of actual working months[63]. The Labour Code 2019 also clearly stipulates that the annual leave of the employees shall be increased by 01 additional day for every full 05 years of employment with the same employers.

This provision is clearer than the provisions on the same topic in the Labour Code 2012[64]. According to the provisions of the Labour Code 2012, there are two different viewpoints between the labour management authorities and the enterprises. From the regulation that "*the annual leave of the employees shall be increased by 01 additional day for every 05 years of employment with the same employers*" prescribed in the Labour Code 2012, the enterprises' viewpoint is that the employees must ensure they stay with the same employers for the whole 5 years in order to receive 01 additional day to the annual leave while the labour management authorities' viewpoint is that the employees will be entitled to have 01 additional day to the annual leave on the first day of the fifth year of working[65].

Actions to be taken by the enterprises: The enterprises should review and revise the relevant provisions of their internal labour regulations to conform to the relevant provisions of the Labour Code 2019.

29. Age of retirement

The Labour Code 2012 stipulates that the employees who meet the conditions of duration of social insurance premium payment (sufficient 20 years of social

[63] Article 113 of the Labour Code 2019
[64] Article 114 of the Labour Code 2019
[65] Article 115 of the Labour Code 2012

insurance contribution) under the provisions of the Law on Social Insurance are entitled to pension when the male employees are full 60 years old while the female employees are full 55 years old[66].

The Labour Code 2019 has adjusted the retirement ages as follows: the age of retirement for the employees in normal working conditions is adjusted according to the roadmap until they reach 62 years of age for the male employees by 2028 and 60 years for the female employees by 2035. From 2021, the retirement ages for ordinary employees is 60 years and 03 months for the male employees and 55 years and 04 months for the female employees. After that, each year will be increased by 03 months for the male employees and 04 months for the female employees[67].

Actions to be taken by the enterprises: The enterprises need to review all labour contracts of the employees to see which cases have fully paid sufficient years of social insurance and are about to reach the prescribed retirement ages in order to adjust their personnel plan accordingly as well as plan to notify the concerned employees of the enterprises' intention as to whether they will conclude definite term labour contracts with them (based on medical certificate of sufficient working health of competent doctors). It should be known whether the employees want to continue working for the enterprises or that their labour relationship will end as soon as the concerned employees reach the prescribed retirement ages.

30. Internal labour regulations

As prescribed in the Labour Code 2012, only the employers who employ more than 10 employees have to issue internal labour regulations in written form. Thus, it could be understood that any employer who employs 9 employees or fewer does not need an internal labour regulation[68]. In fact, it causes difficulty to the employers with no internal labour regulations as the Labour Code 2012 stipulates that it is impossible for such employers to handle disciplinary violations against the breached employees in such a situation. There is also the case that if the employers

[66] Article 187 of the Labour Code 2012
[67] Article 169 of the Labour Code 2019
[68] Article 119.1 of the Labour Code 2012

do not issue a written internal labour regulation but has an agreement with the employees on labour discipline content and state them in the labour contracts, and in such a case it is still possible for the employers to handle disciplinary violations against the breached employees. However, in practice this will be hard to happen because these labour discipline provisions are often long and if they are included in the labour contracts, they will take seats of other important information that must have in the labour contracts.

For the above reasons, the Labour Code 2019 stipulates that the employers in all cases have to issue internal labour regulations regardless of the number of employees in the enterprises. However, only the employers who employ 10 employees or more shall have an internal labour regulation in the written form[69]. Therefore, by the time the Labour Code 2019 takes effect, any verbal internal labour regulation of the employers who employ less than 10 employees are useful in handling violations of labour discipline. However, there is still a question mark toward i.e. how the enterprises can prove that there is an existence of such a verbal internal labour regulation.

The Labour Code 2019 provides flexibility through the addition of authority of registration of internal labour regulations at the district level when specific conditions are met and is authorised by labour authorities under the provincial People's Committee[70].

Actions to be taken by the enterprises: The enterprises do not need to do anything but note such changes of the Labour Code 2019 in order to apply in the enterprises and when registering their new internal labour regulations.

31. New compulsory contents of Internal labour regulation

The Labour Code 2012 stipulates that content of the internal labour regulation must not contradict the provisions of the labour law and other provisions of relevant laws.

[69] Article 118.1 of the Labour Code 2019
[70] Article 119.5 of the Labour Code 2019

The internal labour regulation includes main contents of[71]: (i) working hours and rest periods; (ii) order at the workplace; (iii) labour safety and labour hygiene at the work place; (iv) protection of assets, technological and business secrets, and intellectual property of the employers; and (v) breaches of labour disciplinary regulations by the employees, disciplinary measures against breaches of labour disciplinary regulations and material responsibilities.

From the new regulations on discrimination and sexual harassment, the Labour Code 2019 stipulates that the employers need to state the following additional contents in the internal labour regulations for uniformity with the purpose of having legal grounds for settlement of violations of labour disciplinary regulations:[72]

(i) Preventing sexual harassment at the workplace; procedures for handling sexual harassment at the workplace;

(ii) The cases the employers may temporarily assign the employees to perform works which are not prescribed in the labour contracts provided; and

(iii) Competent persons having to handle labour disciplines.

Actions to be taken by the enterprises: The enterprises need to supplement three compulsory points as mentioned above into the internal labour regulations and re-register them to competent local labour authorities.

32. Settlement of violations of labour disciplinary regulations

The Labour Code 2012 prescribed 03 forms of labour disciplines as follows: (i) reprimand; (ii) deferment of salary increase for no more than 6 months; demotion; and (iii) dismissal[73]. Dismissal shall be applied as a form of disciplinary measures in any of the following circumstances: (i) where the employees commit an act of theft, embezzlement, gambling, intentionally causing injury, using illicit drugs

[71] Article 119.2 of the Labour Code 2012
[72] Article 118.2 of the Labour Code 2019
[73] Article 125 of the Labour Code 2012

inside the workplace, disclosing technological or business secrets or infringing the intellectual property rights of the employers, or committing acts which are seriously detrimental or posing serious detrimental threat to the assets or interests of the employers; (ii) where the employees who are subject to the disciplinary measures of deferment of wage increase recidivists while the disciplinary measures are not yet repealed; or where the employees were demoted as a labour discipline and recidivists; and (iii) where the employees have been absent from work for 05 accumulated days in a time frame of 30 days, or 20 accumulated days over 365 days without proper reason[74].

In this regard, the Labour Code 2019 divides deferment salary increases for no more than 6 months and demotion into 02 separate forms of labour discipline instead of applying both at the same time in a particular violation act which leads to difficult application in practice because there is only few working positions which have titles in the enterprises such as owners of private enterprises, members of members' councils; members of boards of management. Accordingly, it could be understood that the Labour Code 2019 prescribes 04 forms of labour disciplines, including: (i) reprimand; (ii) deferment of salary increase for no more than 6 months; (iii) demotion; and (iv) dismissal[75].

Besides, apart from the acts that shall be applied to labour discipline under the form of dismissal as prescribed by Labour Code 2012, the Labour Code 2019 also supplements sexual harassment at the workplace as a violated act that shall receive labour discipline under the form of dismissal[76]. It is the regulation that many enterprises have expected for a long time from the issuance date of the Labour Code 1994 to that of the Labour Code 2012 as the enterprises could not adequately deal with the employees who have committed sexual harassment at the workplace to adversely affect the enterprises' business operation.

[74] Article 126 of the Labour Code 2012, Article 31 of Decree 05/2015/ND-CP and Article 1.13 of Decree 148/2018/ND-CP
[75] Article 124 of the Labour Code 2019
[76] Article 125.2 of the Labour Code 2019

In addition, there are some changes regarding writing off of disciplinary records, reduction of the labour discipline duration. Pursuant to the Labour Code 2012, after 03 months in respect of an employee who is reprimanded or after 06 months in respect of an employee who is subject to the disciplinary measure of prolonging the wage rise period commencing from the date his/her violation is handled, the concerned employee will have his or her disciplinary record be automatically written off if he or she does not commit recidivism[77]. In such cases, recidivism means that an employee precisely re-commits the same violation for which he or she has been disciplined[78]. However, in reality, there is a fact that such a case has occurred once in a blue moon. Thus, the employers will face difficulty as the concerned employee commits other violation(s) but he or she will have his or her disciplinary record be automatically written off cause the violation(s) is not the same as the initial one. Under the Labour Code 2019, this problem has been solved in a way that the employee does not need to commit a similar violation to the initial one but only violate any breached act as mentioned in the Internal Labour Regulations will not be automatically written off the former violation.

Furthermore, according to the Labour Code 2012, the employers are prohibited to apply labour discipline to any employee who has committed a violation which is not defined in the registered Internal Labour Regulations[79]. Moreover, this can be broadly explained by local State agencies in such a way that is more favourable for the employees. More specifically, regardless of either an act that has been provided as a violation of the Internal Labour Regulations under the Labour Code (for example, in case an employee commits an act of theft, embezzlement; he or she shall be dismissed) or an act that has been agreed by the parties in the labour contract as well as sub-agreements of the parties such as offer letter but such act is not defined as a violation in the Internal Labour Regulations; the employers shall not have the right to apply labour discipline to the employees who have committed such act. However, according to the Labour Code 2019, this such circumstance has been interpreted in reverse that only an act is provided as a violation under one of the

[77] Article 127 of the Labour Code 2012
[78] Article 126.2 of the Labour Code 2012
[79] Article 128.3 of the Labour Code 2012

above-mentioned documents, there are enough reasons for the employers to apply labour discipline to the employees[80].

Actions to be taken by the enterprises: The enterprises need to revise and supplement 4 forms of labour discipline and add acts of sexual harassment at the workplace as well as matters relating to reduction and deletion of discipline into their internal labour regulations as mentioned above and re-register with the local labour authorities.

33. Participation of the representative organisation of the collective of employees at the grassroots level

According to the Labour Code 2012, in principle, the order of the labour discipline violation process must include participation of the representative organisation of the employees' collective at the grassroots level, also known as the executive committee of grassroots trade union[81]. This provision raises a problem for those who do not join grassroots trade unions (for example, foreign labourers) i.e. whether or not the representatives of the employee collective will be invited when handling labour violations.

The Labour Code 2019 answers this question by indicating that only the employees who join a trade union have to invite the executive committee of the grassroots trade union to participate in the process of handling labour discipline violations[82].

Actions to be taken by the enterprises: The enterprises do not need to do anything but note the changes of the Labour Code 2019 in order to apply in the enterprises when they want to apply labour discipline to violated employees.

34. "Discrimination" and "Sexual harassment in the workplace"

[80] Article 127.3 of the Labour Code 2019
[81] Article 123.1.b of the Labour Code 2012
[82] Article 122.1.b of the Labour Code 2019

The Labour Code 2012 only mentioned these two concepts without providing a formal definition. However, labour discrimination and sexual harassment have been defined in detail in the Labour Code 2019.

Accordingly, "*labour discrimination*" is an act of discrimination, exclusion, or prioritisation on the basis of race, colour, national or social origin, nationality, gender, age, maternity status, marital status, religion, belief, political opinion, disabilities, family responsibilities, or HIV status, or for the reason of carrying out the act of establishing, joining and operating a trade union or organisation of the employees in entities affecting the equality of job or career opportunity[83]. Discrimination, exclusion, or prioritisation arising from specific job requirements and acts of maintaining/protecting jobs for the employees who are easily injured is not deemed to be discrimination.

"*Sexual harassment at the workplace*" is made clear to encompass any person's conduct towards others at the workplace which is not desirable or acceptable. The workplace refers to any place where the employees actually work as agreed or assigned by the employers[84].

However, the above regulations are only descriptive without specifying each act that is deemed to be labour discrimination or sexual harassment at the workplace. The regulations in the form of behavioural description will cause difficulties for the enterprises in cases where a specific act must be determined - whether labour discrimination, sexual harassment, or neither. As a result, the competent Government authorities and employers are facing difficulties to interpret an act as to whether it is labour discrimination or sexual harassment at the workplace.

Therefore, when stipulating labour discrimination and sexual harassment at the workplace in the internal labour regulations, the employers should specify each behaviour to make it more convenient for the settlement of violations of labour disciplinary regulations. In the process of developing these regulations, the

[83] Article 3.8 of the Labour Code 2019
[84] Article 3.9 of the Labour Code 2019

employers may refer to the Code of Conduct on Sexual Harassment at the workplace chaired by the Labour Relation Committee under the Ministry of Labour, War Invalids and Social Affairs and coordinating with the General Labour Confederation of Vietnam and the Vietnam Chamber of Commerce and Industry in formulating and promulgating.

Actions to be taken by the enterprises: The enterprises that have not included acts of discrimination in labour and sexual harassment at the workplace in the registered internal labour regulations should refer to these new definitions in the Labour Code 2019 and the Code of Conduct on Sexual Harassment above with the aim to complete the provisions on how to recognise the acts of discrimination in labour and sexual harassment at the workplace as well as to provide suitable labour discipline forms that are appropriate to the cultural and business specific characteristics of each enterprise.

35. Acts of violation for disciplinary violations

Currently, according to the Labour Code 2012, only violations by the employees that are listed in the registered internal labour regulations of the enterprises can be adequately disciplined according to the forms of discipline of such acts by the employers[85] except for the case of enterprises having less than 10 employees and being not required to maintain and register their internal labour regulations but provisions relating to labour disciplines are stated in the signed labour contracts. From there, the question is that if the violations of the employees are not listed in the registered internal labour regulations of the enterprises or with respect to an enterprise having less than 10 employees and being not required to maintain and register the internal labour regulations is: "if such violated acts are listed by the Labour Code 2012 and its guiding regulations as breached acts, could they be disciplined?

This question has been answered clearly in the Labour Code 2019. Accordingly, with respect to the violated acts that are listed in the Labour Code 2019, the

[85] Article 128.3 of the Labour Code 2012

employers still have the right to apply labour discipline against the violated employees under the framework of labour discipline as prescribed in the Labour Code 2019 if the content of their internal labour regulations does not stipulate such violated acts or the enterprises do not have internal labour regulation in written form[86].

Actions to be taken by the enterprises: The enterprises do not need to do anything but just note this important point for use if it happens at the workplace.

36. Statute of limitations for settling violations of labour disciplinary regulations

According to the Labour Code 2012, when statute of limitations for labour discipline is expired, the employers have the right to extend such statute of limitations but not more than 60 calendar day from the expired date above[87]. A problem arises in cases although the statute of limitations is still effective, the remaining time is not enough for the employers to fulfil all the required procedural steps to discipline a violation.

To support the employers to extend the statute of limitations, the Labour Code 2019 stipulates that if the statute of limitations is not expired or the remaining time is not enough to carry out the prescribed discipline procedure, the employers have the right to extend the statute of limitations by not more than 60 days in order for them to have enough time to fulfil the labour discipline procedures as prescribed[88].

Actions to be taken by the enterprises: The enterprises do not need to do anything but just note this important point in favour of the employers for use if it happens at the workplace since 1 January 2021.

37. Compensation for material damage

[86] Article 127.3 of the Labour Code 2019
[87] Article 124 of the Labour Code 2012
[88] Article 123 of the Labour Code 2019

According to the Labour Code 2012, the employees who damage tools, equipment, or the other assets have to pay compensation as prescribed by the law[89]. This leads to the situation that the employers have provisions on compensation being different from the compensation as stated in the applicable laws; in this case the compensation according to the laws shall be applied. However, the compensation according to the laws is limited to a certain amount, depending largely on the employees' employment income each month and in practice it can take a long time to clear the compensation.

In this regard, the amendments in the Labour Code 2019 solve this matter by stipulating that the violated employees can compensate either pursuant the requirements of law or pursuant to relevant provision in the internal labour regulations of the enterprises[90]. However, the law is silent on the case where the employers and the employees reach a separate agreement on compensation instead of mentioning it in the internal labour regulations of the enterprises.

Actions to be taken by the enterprises: The enterprises may consider increasing the level of compensation pursuant to the requirements of labour law in case the employees damage tools, equipment, or other acts that damage the property of the enterprises and include them in the internal labour regulations of the enterprises for re-registration and application.

38. Occupational safety and hygiene labour

According to the Labour Code 2019, the labour law will no longer directly regulate issues on occupational safety and labour hygiene. Instead, when problems arise relating to occupational safety and labour hygiene at the workplace, the employers and the employees shall base on relevant laws such as the Law on Occupational Safety and Labour Hygiene 2015, the guiding documents, etc., for settling.[91]

[89] Article 130 of the Labour Code 2012
[90] Article 129 of the Labour Code 2019
[91] Article 132 of the Labour Code 2019

This will help reduce the overlap of different legal document governing on the same legal issues that cause troubles for the enterprises.

Actions to be taken by the enterprises: If any enterprise has not taken into account certain requirements of the 2015 Law on Occupational Safety and Sanitation when formulating its internal labour regulations and internal rules on occupational safety and sanitation (if any), they should be soon examining this Law and its legal guiding documents and reviewing legal issues being associated with occupational safety and sanitation at the workplace, which are specified in the internal labour regulations and internal rules (if any) of the enterprises and to revise them accordingly.

39. Provisions on female employees

Specific provisions for female employees and ensuring gender equality have been changed in the Labour Code 2019 in terms of access to ensuring the right to work and labour rights of female employees instead of restrictive regulations under the Labour Code 2012 in order to create conditions to expand employment opportunities for the female employees while ensuring labour conditions and standards for them.

Accordingly, the Labour Code 2019 adds some provisions on the female employees as follows:

(i) Supplementing the regulation that when the labour contracts are expired during pregnancy or raising a child under 12 months of age, the female employees are given priority to sign new labour contracts with the employers[92]. According to the Labour Code 2012, the employers are not required to renew the labour contracts with the female employees in such a case; and

(ii) Detailed provisions for unilateral termination or suspension of a labour contract, whereby a pregnant female employee must meet two conditions:

[92] Article 137.3 of the Labour Code 2019

notifying the employer and providing confirmation of the competent medical facility on continued work that would adversely affect their status. In case of labour contract suspension, the pregnant female employees who cannot confirm the medical examination and treatment facility's designated discharge date, they may reach an agreement with the employers on the time of delay[93]. In the Labour Code 2012, it seems the pregnant female employees are only required to mention reason of unilateral termination or postponement of labour contracts in the notice to the employers.

Actions to be taken by the enterprises: The enterprises do not need to do anything but note such changes of the Labour Code 2019 applicable for the female employees in order to apply them strictly in the enterprises.

40. Settlement of labour disputes

According to the provisions of the Labour Code 2012, the Labour Arbitration Council is only authorised to resolve collective labour disputes.[94] However, the Labour Code 2019 has more flexibility in selecting a settlement mechanism by providing the Labour Mediator, the People's Court, and the Labour Arbitration Council with the competence to resolve labour disputes for individuals[95]. In addition, the Labour Code 2019 also removes the authority of the Chairman of the District People's Committee to resolve collective labour disputes in order to follow international customs and commitments in commercial treaties that Vietnam is a party, instead giving this authority to the Labour Arbitration Council[96].

Actions to be taken by the enterprises: The enterprises do not need to do anything except for noting such change of dispute settlement bodies to comply with in case there are labour disputes with the employees.

[93] Article 138.2 of the Labour Code 2019
[94] Article 200 and 203 of the Labour Code 2012
[95] Article 187 of the Labour Code 2019
[96] Article 203 of the Labour Code 2012 and Article 191 of the Labour Code 2019

41. Amending and supplementing regulations on handling of strikes that are not in the right order and procedures

In addition to the procedures and steps as regulated in the Labour Code 2012, the Labour Code 2019 has added specific solutions to deal with strikes that are not in the right order and procedures. Accordingly, within 12 hours after receiving the notice that the strike does not comply with the strike regulations, the Chairman of the District People's Committee shall assume the prime responsibility and direct the State management agency in charge of labour and coordinate with the trade union at the same level and relevant agencies and organisations directly meet with the employers and the representative board of the employees' representative organisation at the grassroots level to listen opinions and assist the relevant parties to find measures to deal with and restore production and business activities to normal, specifically:

- In case of detecting acts of law violation, making records, handling them or proposing competent agencies to handle individuals or organisations that have committed such violations according to the provisions of law; and

- Regarding contents of a labour dispute, depending on each type of dispute, guiding and assisting the disputing parties to carry out procedures for labour dispute settlement according to the Labour Code 2019.

Actions to be taken by the enterprises: The enterprises do not need to do anything except for noting such new changes of the required procedure and steps for lawful strikes to strictly comply with in case there are strikes at the workplace.

42. Amending and supplementing cases of illegal strikes

Specifically, the Labour Code 2019 has removed 02 cases of illegal strikes previously defined in the Labour Code 2012 including: (i) not arising from a collective labour dispute about benefits; and (ii) organisation for employees who do not work together with the same employer for a strike.

In addition, the Labour Code 2019 also adds 03 cases of illegal strikes i.e.: (i) violating the regulations on order and procedures for conducting a strike; (ii) not being organised by the employees' representative organisation who has the right to organise and lead the strikes; and (iii) not belong to the cases of strikes as prescribed in Article 199 of the Labour Code 2019.

Actions to be taken by the enterprises: The enterprises do not need to do anything except for noting such new changes of causes for lawful strikes to comply with in case there are strikes at the workplace.

43. Effectiveness

The Labour Code 2019 comes into force from 01 January 2021 and replaces the entire content of the Labour Code 2012. From the effective date of the Labour Code 2019 onwards, labour contracts, collective labour agreements, and signed legal agreements whose contents are not contrary to or guarantee the employees have more favourable rights and conditions than the relevant provisions of the Labour Code 2019 shall be continued, unless the parties have agreements on amendments and supplements in order to apply the provisions of the Labour Code 2019. Due to the above changes, the Labour Code 2019 also amends some corresponding provisions of the Law on Social Insurance 2014 and the Code of Civil Procedure 2015.[97]

In the coming time from third quarter of 2020 to early 2021, there shall be at least 14 drafted Decrees of the Vietnamese Government, 7 drafted Circulars of MOLISA and 01 drafted Decision of the Prime Minister will be circulated by MOLISA to relevant State authorities and agencies, enterprises and labourers for opinion before they are submitted to the Prime Minister for signing.

Actions to be taken by the enterprises: The enterprises can now compare provisions of the Labour Code 2012 and those of relevance of the Labour Code 2019 to identify positive and negative impacts of the Labour Code 2019 to the

[97] Article 220 of the Labour Code 2019

enterprises' business activities and will: (i) together with other enterprises in the same industries directly raise voices to relevant State authorities during their process of issuing draft decrees and circulars to guide the implementation of the Labour Code 2019; or (ii) by itself raise its own viewpoint to the Vietnam Chamber of Commerce and Industry (VCCI) and the assigned enterprises' representation organisation in order for VCCI to collect all enterprises' opinion and then work with the relevant State authorities on behalf of the enterprises regarding the draft decrees and circulars to be issued.