

# LABOUR HANDBOOK FOR COVID-19

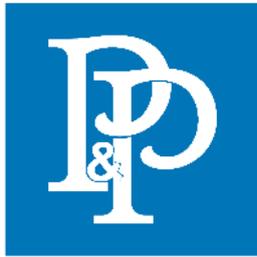
ENTERPRISES SHOULD  
KEEP IN MIND

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*Join hands for Vietnam #FaithOfVictory*

21 Sep 2021





**PHUOC & PARTNERS**  
ATTORNEY AT LAW

*We sincerely wish  
our beloved Clients, Partners, and Colleagues  
health, happiness, and peace*



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## OVERVIEW

The Covid-19 pandemic has been a threat to the economy and healthcare systems of many countries around the world since the first case recorded in December 2019. Since April 2021, Vietnam has experienced a severe hit by the most stubborn outbreak of the Covid-19 pandemic, and so far, it has not shown any sign of reduction. Recently, the Prime Minister has issued several directives that directed the localities to implement strict social distancing measures to prevent the epidemic from spreading. As regards the impact of the pandemic on enterprises from the end of 2019 until now, this outbreak has hit the Vietnamese economy and burdened enterprises. According to the General Statistics Office, more than 85,500 enterprises withdrew from the market by the end of August 2021, with Ho Chi Minh City accounting for nearly 30%.

To survive through Covid-19, enterprises shall contrive to adapt to the new situation by issuing remote work policies to avoid interruption or stagnation in production and business activities based on digital technology platforms. Along with that, most manufacturing enterprises also strive to renovate infrastructures to ensure the living conditions for employees under “03 on-site” (working, eating, resting at the workplace) in order to maintain productivity and avoid supply chain disruption.

However, during the implementation of the two labour options above, it is difficult for enterprises to avoid conflict of interest related to employees. Regarding the remote work model, enterprises may face legal risks of their trade secrets, technological secrets, labour safety during remote work, loss of work tools or other potential legal risks when launching the "3 on-site" option. In addition, there are many other issues that enterprises shall seek solutions, including allowances, insurance regimes, benefits for employees during the pandemic, employees' personal income tax in the context of salary reductions and allowance increase for employees who have been exposed to a confirmed case of Covid-19, vaccination requirements when employees return to work post-Covid-19, supports from the grassroots trade union where employees are members, and financial assistances from local authorities.

In addition, enterprises may also face the risk of bankruptcy or dissolution if the enterprises' revenue is inversely proportional to the operating costs in general and labour costs in particular incurred by enterprises. As a consequence, many enterprises have chosen to shorten daily working hours, cease work, suspend performing labour contracts and even retrench their employees. Although these deferments might resolve enterprises' difficulties in short-run costs, these can be a hazard for enterprises to legal risks in labour post-Covid-19.

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## DISCLAIMER

*The publication “Labour Handbook for Covid-19 – Enterprises should keep in mind” comprises links, except for provisions of legal documents that Phuoc & Partners cited in order to provide readers with further information and convenience in reading this publication as a summary of the latest legal topics at the time of publication.*



Nevertheless, this publication will no longer be appropriate when new legal documents are enacted in the near future. Moreover, all opinions and advice in this publication will not be our official legal advice for any specific cases in practice, thus, readers should consider enterprises' actual situation to apply the advice in this publication as flexibly as possible.

We recommend that readers seek legal advice from a professional legal consultancy firm regarding any specific matter of interest to you or your organization if there are potential legal risks in your problem.

Phuoc & Partners would like to disclaim all responsibilities for any damages arising from applying the legal opinions mentioned in this publication without consulting a professional legal consultancy firm.

# PREFACE

In the context of the Covid-19 pandemic, we have come up with an idea of a handbook to make it easier and more convenient for enterprises to look for useful information in the fight against the pandemic. We hope this handbook does not only help enterprises overcome the initial situation challenges, catch up with changes and prepare their minds to face challenges in the “*new normal*” situation but also help enterprises minimise legal risks in the future. However, we realise that there is no source synthesising solutions, new legal regulations, or policies for enterprises to look up at the moment. Therefore, it is necessary to consolidate all legal issues that the enterprises are concerned about and solutions for those matters in a concise and logical sequence so the enterprises can easily follow up and apply them in practice.

As one of the leading law firms in Vietnam specialising in labour law, Phuoc & Partners understands that, more than ever, enterprises’ owners need a labour handbook accompanying them in weathering the Covid-19 storm, strengthening the labour relationship with employees, as well as minimising related legal risks when the pandemic subsides. Please let us introduce to readers our new publication: “**Labour Handbook for Covid-19**”.

With this publication, we hope that we have a chance to join hands with readers in solving legal difficulties arising within the enterprises during the Covid-19 pandemic.

# ACKNOWLEDGMENTS

Phuoc & Partners as well as our lawyers and supporting professional staff have made the effort to produce the publication: “**Labour Handbook for Covid-19**” in September 2021, we hope that it will contribute to resolving legal difficulties for readers and seising opportunities during the COVID-19 pandemic.

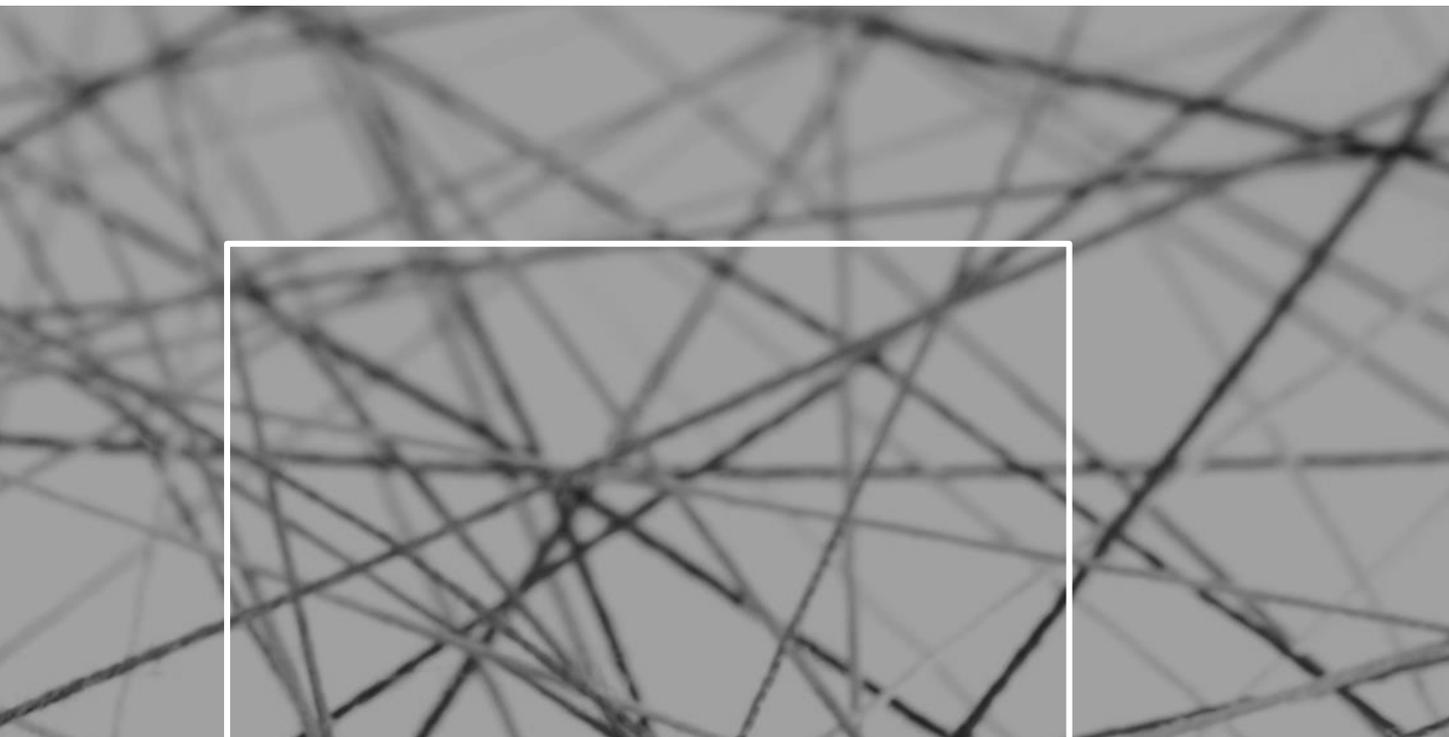
In order for this Handbook to reach readers, we would like to give sincere thanks to Paralegal Le Thi Minh Thu, Paralegal Ly Ngoc Huynh Nhi, and other staffers drafted jointly the first ideas for this publication. In addition, with the enthusiastic participation of Paralegal Phan Huy Quyen and Paralegal Ngo Thi Ngoc spent a lot of time re-reading and reviewing the entire contents of this publication.

## LIST OF ABBREVIATIONS

CC	Civil Code
SI	Social insurance
UI	Unemployment insurance
HI	Health insurance
MOLISA	Ministry of Labour – Invalids and Social Affairs
OAI/ODI	Occupational accident and occupational disease insurance
ENT	Enterprise
PD	Personal data
LC	Labour Contract
LD	Labour Discipline
LISA	Labour – Invalids and Social Affairs
LOSH	Law on Occupational Safety and Health 2015
ILRs	Internal Legal Regulations
EE	Employee
ER	Employer
LL	Labour Law
PIT	Personal income tax
CIT	Corporate income tax
VAT	Value-added tax

## **A. DIFFICULT PROBLEM OF ENTERPRISES WITHIN THE CONTEXT OF THE COVID-19 PANDEMIC**

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*In the choice of remote work, 03 on-site, and preparing to accompany employees, a series of issues arise that enterprises face:*



## I. Remote work during the pandemic - Challenges for enterprises

### 1. Protecting enterprises' trade secrets, technological secrets

Trade secrets and technological secrets (collectively referred to as “**Trade Secrets**”) are enterprises' competitive advantages, thus, any direct or indirect, tangible or intangible damages caused by employees' accidental or intentional leakage of these Trade Secrets may lead to extremely serious consequences for the enterprises' operation and development. When transitioning from traditional work model to work from home, remote work, online work model (collectively referred to as “**Remote Work**”), many enterprises are facing risks when not only the Trade Secrets but also their partners and clients' Trade Secrets may be leaked as it is impossible to thoroughly guarantee the safety of personal electronic devices, the internet and other unknowns in employees' remote work environment. Therefore, enterprises need to have a data management system and reasonable and appropriate prevention measures within their abilities to minimise unnecessary losses during the transition from traditional work model to remote work model.

Moreover, protecting Trade Secrets while working remotely in general also relates to the following three key issues:

- *Firstly, ensuring technology safety and telecommunications network security:*

***Regarding devices to access***, enterprises should request their employees to use the devices and computers provided by the enterprise only to work and access the enterprises' data system remotely. This regulation allows enterprises to be proactive in setting up security systems for these devices such as firewalls, anti-virus software, etc. It should be noted that all of the above-mentioned technological devices shall be secured with a password which is changed periodically by the IT department of enterprises.

***Regarding network connection***, enterprises should request their employees to connect to secure networks with a virtual private network (VPN) encryption system provided by the enterprises to prevent hackers from gaining access to enterprises' network.

***Regarding online communications and meetings***, enterprises need to have detailed and specific regulations on the technology platforms that employees are allowed to use based on the enterprises' remote work policy, and the right to join meetings shall also be restricted with passwords. Violations and appropriate sanctions must be updated in the enterprises' ILRs and registered

with the local State management agency of labour.

In addition, enterprises' online database system should also be delegated to access, depending on the sensitivity of the information and employees' working position. For the Trade Secrets, confidentiality should also be set up at the highest level of safety and minimise the number of employees who have the right to access. Enterprises should also spend necessary and timely financial resources to invest in software that monitors the remote download of important information folders in enterprises' database in order to control the numbers of downloads and send a timely warning notice to enterprises' managers.

- *Secondly, guaranteeing the security of remote workplaces for employees:*

In general, employees' remote workplaces are considered apprehension in maintaining the confidentiality of enterprises' Trade Secrets. Therefore, enterprises should consider stipulating that employees shall be responsible for ensuring that their workspaces are private and safe, incapable of being eavesdropped, or recorded. In addition, enterprises' devices and hard copies are also needed to be stored in safe places in order to prevent the third party from approaching

- *Thirdly, ensuring that Trade Secrets are not disclosed by employees:*

One of the most important elements to protect enterprises' Trade Secrets is the human factor. In order to be proactive in protecting enterprises' Trade Secrets, enterprises should enter into non-disclosure agreements or commitments ("**Non-disclosure agreement**") with key employees, employees at managerial and executive levels who have the right to access enterprises' sensitive information in order to ensure the confidentiality of enterprises' Trade Secrets as well as of its partners and customers/clients.

Moreover, it is extremely necessary to draft and promulgate, review and update the confidentiality policies and non-disclosure agreements in order to serve the remote work model so that the enterprises can manage legal risks in protecting Trade Secrets from being disclosed

Furthermore, to prevent employees from accidentally or intentionally disclosing enterprises' Trade Secrets after their labour contracts are terminated, the terms of the non-disclosure agreement shall set forth that the non-disclosure agreement's validity is extended within a reasonable period when the labour relations between enterprises and employees are terminated. In this regard, as

the prevailing law does not set a limit on the period of confidentiality commitment, enterprises are free to consider a reasonable period for both parties to comply with in practice at enterprises<sup>1</sup>. To be more cautious, enterprises may also request their employees to return all working tools (specifically, devices and information, data, documents, etc.) related to enterprises' Trade Secrets that they either had or are having and knowing upon leaving to avoid unexpected legal issues.

In addition to the aforementioned contents, to ensure that the remote work model runs smoothly, enterprises should also consider providing training and disseminating their policies and internal regulations to employees before officially implementing the remote work model. At the same time, to increase vigilance, the enterprises also need to regularly and periodically keep employees updated on several types of fraud that third parties may illegally infiltrate into enterprises' data system. Enterprises' software, technology platforms, and security systems should also be regularly improved and upgraded to reduce the risk of being attacked by cybercriminals.

➤ *To learn more about this issue, please see more legal article:*

**[Remote Work – Risk on protecting: Trade Secrets for Enterprises?](#)**



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<sup>1</sup> Article 4 of Circular 10/2020/TT-BLĐTBXH.

## 2. Labour safety during remote work

Pursuant to the labour law, labour safety means any measure to prevent the impact of hazardous factors to ensure that there is no injury or death to personnel during work performance<sup>2</sup>. Nevertheless, in the remote work era, employees flexibly choose to work at different places that suit them best, it could be at home, a coffee shop, a library, etc. These remote workplaces are commonly not as well equipped with facilities that meet occupational safety and hygiene requirements as an office, head office or factory (places that shall comply with the State regulations on working conditions). Besides, in accordance with the labour law, employees are entitled to employment injury insurance when they suffer from a labour accident causing a decrease in work ability of 5% or more in any of the following cases: (i) at the workplace and during working time, even when they are doing necessary daily activities at the workplace or during working time as prescribed in the Labour Code and ILRs of their production facilities and businesses, including break time, mid-shift meal, in-kind meals, menstrual hygiene, bathing, breastfeeding or personal hygiene; (ii) outside the workplace or beyond working time while performing a task requested/authorised by enterprises; and (iii) on the route between home and workplace within a reasonable period of time and route<sup>3</sup>. However, the new regulation of the Labour Code stipulates that workplace means any place where employees actually work in accordance with the agreement or any assignment assigned by enterprises from time to time.<sup>4</sup>

➤ *To learn more about this issue, please see more legal articles:*

[Telework policy development: The key for effective teleworking during the COVID-19 pandemic; and](#)

[Occupational Accident While Remote Work, Will Insurance Cover It?](#)



Regarding the workplaces, as mentioned above, if the enterprises assign their employees to work from home, this may be considered as employees' remote

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<sup>2</sup> Article 3.2 of LOSH 2015

<sup>3</sup> Article 45 of LOSH 2015.

<sup>4</sup> Article 3.9 of Labour Code.

workplace. Therefore, if employees suffer an injury during their working time at a remote workplace, enterprises may face the risk of paying such employees all expenses related to the labour accidents. Therefore, to mitigate risks, enterprises should formulate regulations on labour safety in the remote work policy and have employees committed in writing that they will strictly comply with these regulations. In particular, this commitment should state that enterprises have no responsibility if employees violated the regulations issued by enterprises and notified to all employees.

### 3. Loss of work tools

- *Loss of work tools due to theft:* when social distancing is applied to prevent the Covid-19 pandemic, several subjects have taken advantage of enterprises' negligence to steal assets that are enterprises' work tools. Therefore, enterprises should be very vigilant to ensure security by using surveillance devices such as closed-circuit televisions.
- *Loss, damage to work tools due to employees' faults:* several enterprises may allow employees to use enterprises' work tools such as mobile devices, laptops, documents to work remotely. However, in practice, it is difficult for enterprises to manage employees' use of work tools when they work remotely, and if there is a loss, it is also difficult for the enterprises to have acknowledgement of the exact occurrence time to timely take prevention measures. However, the labour law stipulates that an employee who causes loss to enterprises' work tools, equipment, assets, or other assets which enterprises hands over, or who consumes more than the permitted norm shall compensate<sup>5</sup>. Therefore, although employees are requested to work remotely, they shall compensate if they cause loss or consumes more than the permitted norm of the assets handed over by enterprises.

However, in the case of loss of work tools due to employees' faults, enterprises face other challenges as follows:

- *Firstly*, the damage severity is based on employees' fault<sup>6</sup>. However, as employees are working remotely, enterprises are not able to monitor all employees' behaviour when they use the assets assigned by enterprises. Employees may take advantage of this issue to cite all sorts of reasons in order to be exempt from compensation liability. As a result, enterprises will be in a

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<sup>5</sup> Article 129.2 of Labour Code.

<sup>6</sup> Article 130.1 of Labour Code.

disadvantageous situation; and

- Secondly, according to the Labour Code, the statute of limitations of compensation for damages is 06 months from the date employees cause loss or consumes enterprises' assets over the permitted norm<sup>7</sup>. And it is difficult for enterprises to determine the time which such employees cause loss or consumes the enterprises' assigned assets over the permitted norm when they work remotely. Therefore, once again, enterprises will be in a disadvantageous situation.

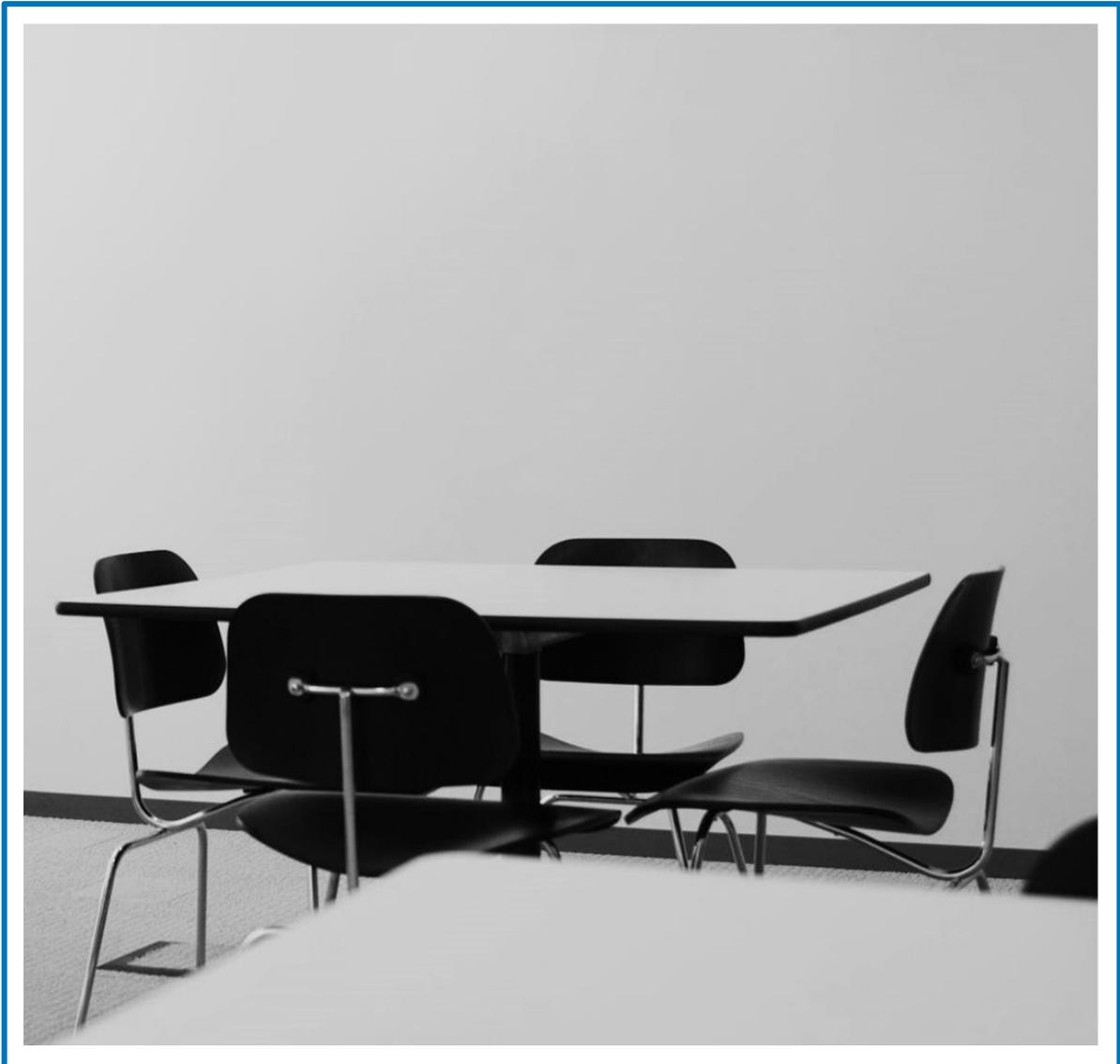
In addition, enterprises may only carry out the online meeting of compensation for damage to keep up with the statute of limitations of compensation for damage according to the Labour Code because it is impossible to predict when the Covid-19 pandemic will end. However, carrying out such an online meeting would not be easy as enterprises may be apprehensive about whether they have the right to carry out the online meeting of compensation for damage like other internal meetings or not; whether enterprises' decision on compensation for damage which is issued online is recognised by the labour law.

In order to minimise several challenges mentioned above when employees cause loss to enterprises' work tools, enterprises should proactively specify relevant issues in their ILRs, or consider signing a liability contract with employees so that employees acknowledge and clearly understand their compensation liabilities to losses of enterprises' assets and be more careful when using enterprises' common assets.

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<sup>7</sup> Article 72.1 of Decree 145/2020/NĐ-CP.

#### **4. Handling labour discipline online**



##### **4.1. Difficulties in determining violations**

Many surveys indicate that remote work model creates comfort and initiative on employees' working time, as a result, it helps improve employees' performance. However, as employees do not work under direct supervision from their managers, they may get distracted easily and perform their work unprofessionally or take advantage of lack of management to perform or refrain from several conducts that led to violation of enterprises' ILRs.

One of the principles for handling labour discipline is that the enterprises shall be

able to prove employees' faults<sup>8</sup>. Meanwhile, the statute of limitations of handling labour discipline is 06 months from the date on which violation occurred; or 12 months in case such violation is related to finance, assets, or disclosure of enterprises' technological secrets, trade secrets<sup>9</sup>. However, when transitioning from the traditional work model to the remote work model, it is difficult for enterprises to monitor and determine the nature of the violation and when it occurred. Moreover, as the fourth industrial revolution 4.0 is developing rapidly, employees' violation of labour discipline is now subtler that makes it even harder for enterprises to detect.

## **4.2. Several notes on holding an online disciplinary meeting**

### **4.2.1. Meeting venue**

It is a common understanding that the term "venue" mentioned above is a physical point or place where enterprises hold a face-to-face disciplinary meeting for attendees. However, under the Government's strict "social distancing" policy, a "meeting in the flesh" is no longer suitable, especially when the Government has called on the people to "stay where they are" and restricted close contact.

Therefore, the optimal alternative for enterprises is setting up a "virtual" venue, accordingly, the mandatory attendees are provided with a link or password to join the meeting room created by enterprises via software integrating management tools and remote communications, such as video call. In this way, the mandatory attendees could remotely discuss, thus, enterprises can hold a disciplinary meeting and ensure effective measures of Covid-19 prevention.

If one of the mandatory attendees is unable to attend the meeting at the time and venue as notified, enterprises and employees could negotiate for a new time and venue. If both parties cannot reach an agreement, the final decision is at the discretion of enterprises. In case any mandatory attendee fails to confirm his/ her attendance or is absent from the second meeting, the enterprises can still proceed with such disciplinary meeting.

### **4.2.2. Online disciplinary meeting minutes**

According to Article 70.3 of Decree 145/2020/ND-CP, contents of the disciplinary meeting shall be recorded in minutes, confirmed and signed by the mandatory attendees before the meeting comes to an end; if anyone refuses to sign the meeting

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<sup>8</sup> Article 122.1 (a) of Labour Code.

<sup>9</sup> Article 123.1 of Labour Code.

minutes for any reason, their full names and reasons (if any) shall be clearly recorded in the meeting minutes by the minute's taker. Within the statute of limitations of handling labour discipline, the person who has the authority to handle labour discipline shall issue and send a disciplinary decision to all mandatory attendees.

Pursuant to the above-mentioned provisions, the mandatory attendees shall be given an opportunity to express their confirmation of the meeting minutes before the online disciplinary meeting comes to an end. This may be completed in an online disciplinary meeting by requesting the minute taker to read the minutes out loud or send the minutes in the form of the data message to all mandatory attendees; once everyone has acknowledged the minutes' contents, the enterprises may request for their confirmation; these activities may be retained in the form of text messages, audio, and even video recording the meeting (a feature that most online meeting software has) as evidence.

Regarding the signing of the meeting minutes, enterprises have two options: (i) using traditional wet-ink signatures; or (ii) using electronic signatures. Under Article 1 of the Law on Electronic Transactions 2005, the electronic signature is not only used for documents related to the certificate of land use right, ownership of the house and other assets on the land, inheritance documents marriage certificates, divorce decisions, birth certificates, death certificates, bill of exchange, and other valuable documents. Therefore, it can be understood that both parties have the right to use electronic signatures to sign the disciplinary meeting minutes. However, in fact, except for tax, customs, and social insurance, the use of electronic signature is quite uncommon or even appears in most of the other fields (although it is recognised by law). Many people, including those working for the State authorities specialising in the settlement of labour disputes, still raise a concern about the reliability as well as the legal validity of the electronic signature, partly because of its newness.

Another option for enterprises is using wet-ink signatures to sign the meeting minutes. Enterprises may send the meeting minutes to the mandatory attendees to sign before closing the meeting; while waiting for the mandatory attendees to sign the minutes, enterprises can proactively request to postpone the disciplinary meeting (this is not prohibited by law). If any mandatory attendee refuses to sign the meeting minutes, their full names and reasons (if any) shall be clearly recorded in the meeting minutes by the minutes' taker and other attendees are still required to sign. Thus, it is recommended that enterprises send the meeting minutes to employees who are being disciplined (if such employees agree to sign) before sending to other mandatory attendees; the minutes can be couriered by post, express delivery (recommend sending with the advice of delivery), or use a delivery app with a document delivery feature provided that it meets the requirements on enterprises' schedule and

information confidentiality.

#### 4.2.3. Is online disciplinary decision recognised by law?

Theoretically, by reading the law, it could be interpreted that an online disciplinary meeting can substitute for a traditional face-to-face meeting. However, it is still too soon to make a conclusion that a disciplinary decision resulting from an online disciplinary meeting will be automatically recognised by the labour law at the moment. In fact, any employees who have been disciplined in an online disciplinary meeting has the right to file a complaint to the competent State authorities or file a lawsuit to a competent Court, if they believe that enterprises held the disciplinary meeting which is contrary to the labour law. Therefore, the answer of "whether such disciplinary decision is recognised or not" is depended on the opinion of the State authorities receiving the complaint or of the Court accepting the case. Although online meetings are now considered as a part of the "new normal" in the current pandemic situation, experience shows that the State authorities still follow the "old normal" mind-set about new issues that have not yet been guided by law.

Enterprises should note that it is difficult for the provisions of law to catch up with dramatic changes in social and economic life, especially during the spread of the Covid-19 pandemic at the present. Enterprises cannot expect that legislators are able to keep up with enterprises' demands immediately. Potential legal risks arising from the undefined, ambiguity and misunderstanding of law will result in different interpretations and perspectives of legal terms, which are understandable.

➤ *To learn more about this issue, please see more legal articles:*

[Online Disciplinary Meeting – Whether It Is Feasible?](#)



## 5. Online attendance tracker

Previously, in order to manage employees' attendance, human resources department in enterprises would be in charge of managing manual attendance every day. Accordingly, the traditional method uses attendance paper sheets to track employees' attendance and then summarises them through Microsoft Excel software. This method's advantage is simple and easy to use, but time-consuming for the human resources department and there is a risk of inaccuracy when editing attendance data, which may cause difficulties for the human resources department to manage records as well as affect the trust of employees in enterprises in a long term. Nowadays, attendance machines using proximity/magnetic cards or fingerprints appeared have helped enterprises' attendance tracking to proceed more promptly. However, this method's drawback is that it depends on electrical infrastructure, Internet connection, etc. Especially, under the long-term social distancing at the moment, such attendance trackers gradually become obsolete as the risk of Covid-19 spread is exceedingly high due to close interaction and most employees are currently working remotely while these attendance trackers are installed at enterprises' workplaces. Therefore, an online attendance management system has appeared to meet the needs of enterprises when having their employees worked remotely.

Accordingly, an attendance management system is a means that employees use applications on their smartphones, laptops, and other electronic devices to clock in and out from anywhere. Enterprises will manage the data, use support tools to consolidate, process payroll, etc. The current types of online attendance management systems include:

- Applications on computers connecting to fingerprint attendance machines;
- Applications connecting to AI Camera<sup>10</sup>; and
- Attendance tracking applications on smartphones, computers using QR codes<sup>11</sup>, selfie<sup>12</sup> facial recognition algorithms, or integrated with GPS (Global Positioning System)<sup>13</sup>.

Similar to other forms of attendance tracker, online attendance management systems

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<sup>10</sup> Artificial Intelligence

<sup>11</sup> A quick response (QR) code is a barcode that can be read easily by a barcode scanner or a smartphone having the function of taking pictures with a specialised application to scan the code.

<sup>12</sup> *Self-Portrait Photo in Vietnamese means taking a photo of yourself.*

<sup>13</sup> *Global positioning system developed and operated by the USA.*

support enterprises in managing their employees' working time, what time employees start and end work, managing the number of working days, annual leave, and the absences of employees. In addition, several online attendance management systems

also automatically synchronise with payrolls and manage employees' documents. Moreover, they also help prevent employees from logging attendance on behalf of other employees, especially in the remote work era, because they are not working under the direct supervision of managers in the same way as when working at the workplace. However, online attendance management systems are facing several challenges as follows:

***Firstly, enterprises shall invest a considerable expense in an online attendance management system*** although the available attendance tracker may still be in good condition, it is no longer suitable for the "new normal". As a result, it is necessary to purchase a full version of an online attendance management system, because free version applications are often for trial only, without professional management features as a paid version. Thus, employees may easily ask someone to log attendance on their behalves.

Secondly, ***the online attendance management system is still quite unfamiliar to users, thus, employees need a reasonable time to get used to it.*** In addition, an online attendance management system also requests a stable Internet connection, electronic devices such as smartphones and laptops shall have appropriate configuration and be in good condition. In some cases, as network problems occur unexpectedly, the enterprises should also consider extending the time for clocking in and reporting timesheets within a certain time in order to reduce pressure and increase job satisfaction, which encourages employees to work more efficiently.

***Thirdly, online attendance management systems are mostly technology-oriented, working by collecting personal data.*** Therefore, enterprises shall have the management of information and data sent back



outsourced to other service providers or set up an internal specialised department. In the case of outsourcing, enterprises should pay attention to legal issues related to employees' personal data and information confidentiality under the information technology support services contracts. In the case of using available human resources, in addition to data confidentiality, enterprises should also formulate an appropriate training session for employees to comprehend and handle the work in the most effective way.

In addition, enterprises should also coordinate other tools and methods to assess and compare with employees' declared clock in and out time. Because of the remote work model, it is difficult for enterprises to supervise their employees' activities, thus, enterprises should prioritise the quality and efficiency of work in order to assess employees' performance. In this regard, the enterprises should pay attention to two main points:

- Enterprises should issue a **Remote work code of conduct** with the following provisions: (i) employees' manners, clothes when working remotely, attending online meetings or meetings in person with colleagues, partners or clients; (ii) keep in touch and promptly respond to messages, emails and calls from colleagues, partners or clients; and
- Clearly stipulating that employees' remote work results are assessed in the same way as when employees work at enterprises' workplaces and will also be used to assess their performance, review for a salary increase, bonus payment, promotion or to unilaterally terminate the labour contracts if employees repeatedly fail to perform their work. The assessment of work completion level should comply with the enterprises' internal regulations.

With the above-mentioned advantages and disadvantages of online attendance trackers and several suggestions, it hopes that enterprises have a better overview of online attendance tracker in order to have the most suitable solutions for their owns.

## 6. **Using applications (Apps) on a smartphone to remotely managing employees' attendance**

From a business perspective, applications (Apps)<sup>14</sup> with management and attendance tracker purposes bring many benefits to enterprises although this was the low-cost option. On the other hand, since focusing too much on solutions for instant problems

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<sup>14</sup> *App is an acronym for "Application".*

as well as the quickness of applications, the enterprises routinely ignored legal risks related to the personal data of their employees.

Personal data protection is currently still not governed by specialised law but by scattered provisions in laws at different levels from the Constitution, Laws, Decrees and there is no consistency in determining violations among these laws. Accordingly, the Constitution 2013 just stipulates that “*everyone has the right to inviolate private life, personal secrets and family secrets, and other relevant information protected by the laws*”<sup>15</sup>. The Civil Code 2015 also stipulates that “*private life, personal secrets, family secrets are inviolable and protected by the law*”<sup>16</sup>. Regarding specific laws, Law on Information Technology 2006 stipulates that organisations and individuals may not perform any of the following acts: “*Hacking into, modifying, or deleting information of other organisations or individuals in the network environment*”<sup>17</sup> or Law on Cyber Information Security also stipulates that “*personal information is data associated with the identification of a particular person. Any organisations or individuals that process the personal information are responsible for ensuring cyber information security for the ones they are processing, and they must formulate and publicise measures to process and protect the personal information. Personal information-processing organisations and individuals only collect personal information after the personal information subjects agree on the scope and purpose of such collection and use; – shall not provide, share, distribute any personal information collected, accessed, controlled for third parties, etc*”<sup>18</sup>

Recently, the digital transformation and the advent of new forms of technologies are rapidly taking place over the world in general and in Vietnam in particular, which has comprehensively altered the way that enterprises process employees’ personal data. The application of new forms of network infrastructure, using applications on smartphones (Apps) at the workplaces has allowed a large amount of employees’ personal data to be collected and connected by the enterprises within a reasonable time in extremely low cost of use. Applications (Apps) specialising in systematic data collection and processing can remotely monitor employees, posing significant challenges in protecting the information and privacy of employees. Whereas, unfortunately, in the field of employment law, the Labour Code 2019 and its legal instruments have no detailed regulations governing the personal data protection of employees and the sanction to handle violations. Hence, at the moment, to protect employees’ personal data, depending on each circumstance, the Civil Code, the Law

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<sup>15</sup> Article 21 of the Constitution 2013.

<sup>16</sup> Article 38.1 Civil Code 2015.

<sup>17</sup> Article 72.2 (a) Law on Information Technology 2006.

<sup>18</sup> Article 16 and Article 17 of Law on Cyber Information Security 2015.

on Cyber Information Security, the Law on Information and Technology, and several other laws for each specific area, that are often quoted by competent State authorities to handle the violations when they are detected or denounced.

To catch up with the world's trends of protecting personal data, the Ministry of Public Security has recently drafted and released the Draft Decree on data protection of individuals to consult Ministries, State agencies and citizens. If enacted by the Government, this Draft Decree will both ensure the operation of e-Government that has been developed by the Government during the recent time, and also guarantee the legality concerning the implementation of the protection of personal data in Vietnam. Accordingly

### **The definition and classification of Personal data (Basic personal data and Sensitive personal data)**

In particular, sensitive personal data will only be processed after employees have registered with the Personal data protection committee. For the first time, the definitions such as "Data subject", "Personal data processor", "Third parties", "Processing personal data", be defined so clearly that they could be effortlessly identifiable.

### **The responsibility of the enterprises regarding candidates' personal data when recruiting**

Enterprises have to provide some of the specific information regarding processing personal data for candidates before proceeding to collect their data. Therefore, enterprises should publicly announce on their recruitment website and at the same time send a private email to every candidate to protect the privacy of their information.

### **The internal administration involves the personal data of employees**

If enterprises use services of third parties such as service providers relating to recruitment, payroll, accounting and tax in order to process employees' personal data, enterprises should ensure that service contracts between the parties contain a clause in which those third parties must comply with the provisions on employees' personal data protection in the process of performing assigned works under the service contracts signed with such enterprises.

### **The rights of employees regarding their personal data**

In particular: – agree or disagree for enterprises to process the personal data: – request

enterprises to modify, review, provide a copy version of the personal data, terminate the processing of personal data; – restrict the right to access the personal data; – terminate the disclosure or allow enterprises to access the personal data; and – erase or close the personal data collected.

### **The sanction of violations**

The Draft Decree clearly stipulated about employees’ “the sensitive data” and the very high rate of the administrative fine, namely up to 100 million VND or 5% of the total profit of the revenue, applied to enterprises that seriously or repeatedly violate the regulations of this policy. And even in some cases, criminal prosecution and additional penalties are imposed.

Therefore, as the controller of employees’ personal data, before deciding to choose and use applications (Apps) for remote work management purposes, enterprises need to consider carefully performing other necessary tasks. For example, enterprises are obligated to notify employees of the types of personal data collected, the purpose of the data collection, and when enterprises terminate such personal data use. In fact, this notification may be transferred to employees through the inclusion of notices in enterprises’ ILRs or employee handbooks, pasting the notices on the notice boards located at the workplace or posting them on enterprises’ internal Internet network.

In addition, when implementing, enterprises need to take some appropriate technical measures such as de-identity, encryption, anti-virus or archiving, backing up, extracting, and protecting the archive of personal data processing, at the same time, enterprises should regularly check security measures in order to ensure compliance with the obligation to protect employees’ personal data. Enterprises are also indirectly recommended that they should store only employees’ personal data for the reasonable time to complete the jobs according to enterprises’ rights to collect or as required by law, and enterprises should have the retention policies for employees’ personal data in order to account reasonably for why enterprises must retain such employees’ data. In addition, employees have the right to know about the personal data collected in their profiles and request enterprises to modify them if any of them are incorrect. Furthermore, enterprises shall organise periodic training sessions for employees regarding the personal data protection policies, thus, employees have all relevant information in order to collaborate with enterprises in terms of protecting their data reasonably as well as enterprises ensure compliance with the applicable laws

- To learn more about this issue, please see more legal articles:

[Personal Data Protection Of Employee - Enterprise Shall Notice](#)



## 7. Conclusion, extension and termination of labour contracts and evaluation of employees' working performance

### 7.1. Concluding labour contracts

Although the Covid-19 pandemic has affected enterprises' production and business activities, which causes several enterprises to cut a large number of employees, some enterprises (especially in the manufacturing and supply chain operations) still have the need to recruit some new employees or extend labour contracts with their employees. Regarding concluding or extending the labour contracts, it is not impossible to mention the identity confirmation through signing in order to express the signatory's willingness. And in the case that employees have to work remotely due to the Covid-19 pandemic in particular and as the fourth industrial revolution 4.0 is developing rapidly in general, labour contracts tend to be popular in the form of data messages - electronic labour contracts.

According to the labour law, labour contract is an agreement between enterprises and employees on paid work, salary, working conditions, and the rights and obligations of each party to labour relation<sup>19</sup>. Meanwhile, "data message" are information created, sent, received and stored by electronic means.<sup>20</sup> Under the specialised law, the concept of "electronic means" is explained as means operating on electrical, electronic, digital, magnetism, wireless transmission, optical and electromagnetic technologies, etc<sup>21</sup>. Pursuant to the above provisions, the electronic labour contract can be commonly understood as follows: (i) it is an agreement between enterprises and employees on paid work, salary, working conditions, and the rights and obligations of each party to labour relation; (ii) it is created, sent, received and stored by one of the electronic means including phone, fax, internet, etc. in order to record the labour relation; and (iii) it is signed with electronic signatures of the contracting parties.

An electronic signature has the legal validity if it meets the followings conditions of authenticity and reliability, particularly: (i) it is created by a method that allows to verify the signatory's identity and consent to the contract (ii) such method is reliable and appropriate to the purpose for which the contract is created and sent out<sup>22</sup>. At the same time, under Article 14.1 of the Labour Code: "*A labour contract is concluded*

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<sup>19</sup> Article 13.1 of Labour Code.

<sup>20</sup> Article 4.12 of Law on Electronic Transactions 2005.

<sup>21</sup> Article 4.10 of Law on Electronic Transactions 2005 and Article 3.17 of Law on Accounting 2015.

<sup>22</sup> Article 24.1 of Law on Electronic Transactions 2005.

*by electronic means in the form of data messages under the law on electronic transactions has the same value as a written labour contract.”*

The Law on Electronic Transactions 2005 stipulates that electronic signatures can be created in the form of words, letters, numbers, symbols, sounds or other forms by electronic means<sup>23</sup>. In fact, the parties involved in a transaction can conclude a contract with electronic signatures in one of the 03 popular manners as follows:

Firstly, the conclusion of a contract with a digital signature is possible when the digital signature satisfies all of the following conditions<sup>24</sup>:

- The digital signature is created during the validity period of digital certificate and is verifiable by the public key included in the certificate
- The digital signature is created by using a private key corresponding to the public key included in the digital certificate which is issued by digital signature authentication service providers; and
- The private key is under sole control of the signatory at the time of signing.

*Secondly*, a labour contract with an image signature is signed in the following process: a party will insert an image of signature into an electronic form of the contract and then send this signed electronic contract to the other party via email. Thus, not being authenticated by authorities, the legal validity of contracts signed with image signatures has not been specified by law, which will take some legal risks of determining the signatory's willingness, whether the signature image must be inserted by the signatory or could be inserted by someone else and whether the signatory is voluntary and free from coercion is difficult to determine

*Thirdly*, concluding a labour contract with a scanned signature: the contract will be printed out, when a party sign and then scan this signed contract which will be converted into electronic form and be sent via email to the other party. In fact, scanned signatures are often applied in cases where there is a physical barrier between the parties. Similar to image signatures, this type of signatures has been used more commonly than digital signatures since their respective signatures are not required to authenticate at a digital signature authentication service provider.

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<sup>23</sup> Article 21.1 of Law on Electronic Transitions 2005.

<sup>24</sup> Article 9 of Decree No. 130/2018/ND-CP on detailing the implementation of the law on electronic transactions regarding the digital signatures and digital signature authentication services.

With the above-mentioned three manners, the Vietnamese law only recognises the legal validity of electronic labour contracts concluded with secure digital signatures. Image signatures and scanned signatures have not yet been recognised by laws, thus, it will be difficult to conclude that contracts with such signatures have the legal validity.

The development of electronic labour contracts is similar to the payment of salary for employees from traditional cash to banking many years ago, the connection between enterprises and banks has helped accelerate non-cash method in paying salaries. Therefore, in order to implement this regulation, enterprises also need to cooperate with digital signature authentication service providers to create a specialised platform and equipment in order to create digital signatures. After a digital signature is successfully created, it is used not only for signing labour contracts but also for substituting for traditional wet-ink signature in employees' other personal transactions when working at enterprises in the future.

- *To learn more about this issue, please see more legal articles:*

[Using Electronic Signatures in Concluding Labour Contracts: Is it feasible?](#)



## 7.2. Evaluating the working capacity, the level of work completion of employees

It will be difficult for enterprises to let their employees quit jobs due to their incompetence at work when working remotely. Thus, enterprises shall need to have a specific measurement index as a basis for determining whether employees' performance of labour contracts meets enterprises' requirements, thenceforth there is a legal ground to make a decision to terminate labour contracts with employees.

According to Article 36.1 (a) of the Labour Code, enterprises have the right to unilaterally terminate the labour contract with their employees if they regularly failed to perform the work in accordance with the criterion for assessing the level of work completion as set out in criteria for assessing the work completion. The formulation and application of criteria for assessing the work completion in enterprises' management in Vietnam have been increasingly common, but criteria for assessing the work completion have been developed more commonly for enterprises that have quantitative nature of evaluating employees' working performance based on specific numbers, through criteria such as sales, the number of real properties purchased, insurance contracts awarded, customer relationships. As for specific qualitative jobs such as secretarial, accounting, legal, administrative, despite being formulated, these indicators have not been applied accurately and effectively in measuring employees' working performance.

For the criteria to be formulated in accordance with the provisions of labour law, take effect, be effectively applied, and be able to apply appropriate sanctions for violations in the process of employees' remote work, the enterprises should pay attention to the following specific principles when formulating criteria for assessing the work completion:

- *Firstly*, criteria for assessing the work completion need to be formulated in accordance with each enterprise' specific production and business activities. Depending upon the specification of production, business activities, labour force, employees' qualifications and specific circumstances, each enterprise will set standards of criteria for assessing the work completion, which is qualitative or quantitative specifically not only for each department, team, group or unit but also for each position and title in enterprises' personnel organisation chart. The indicators of criteria for assessing the work completion shall be suitable to enterprises' production, business activities and simultaneously, be appropriate and fair to all employees (except for special cases). Enterprises should also note that depending on specific characteristics of production and business activities, enterprises may set different criteria for

evaluating employees. For instance, any enterprise operating in the production and sales field, of which job completion criteria may be assessed based on specific numbers for easy quantification. As for enterprises with qualitative work such as service provision, the assessing criteria may be biased towards the result, work management ability or client feedback on the quality of services provided by enterprises;

- *Secondly*, although based on a legal perspective, the provisions of the labour law do not require enterprises to have job descriptions when signing labour contracts, enterprises should note that job descriptions will be designed not only for each department, team, group or unit but also for each position and job title specifically in enterprises' personnel organisation chart. The job description is usually designed and signed simultaneously with signing the labour contract and is considered as an appendix to the labour contract and an integral part of the labour contract. According to the job descriptions, enterprises will have enough basis to compare with the criterion specified in criteria for assessing the work completion;
- *Thirdly*, formulating criteria for assessing the work completion as a criterion to be applied internally within enterprises shall consult collective employees in accordance with the provisions of the labour law. Specifically, enterprises shall implement regulations on democracy at the workplace by organising a discussion with the collective employee to discuss and collect opinions of the collective employees on the content of criteria for assessing the work completion and recording that consultation in writing. Employees have the right to directly give opinions on the formulation of enterprises' internal policies related to their rights, obligations and interests, or through enterprises' grassroots representative organisation of employees or other consulting forms which are not prohibited by laws;
- *Fourthly*, consultation with the representative organisation of employees at grassroots level (including GTU and employees' organisation at the enterprises) before regulating criteria for assessing the work completion is required;
- *Fifthly*, criteria for assessing the work completion should be flexibly regulated not only through qualitative or quantitative nature as above-mentioned, but also through \ employees' particular job or project completed within a specified period. Moreover, the criterion for discipline, self-discipline, ability to communicate effectively with superiors and other employees in enterprises

should also be prescribed in criteria in a specific and detailed way; and

- *Finally*, the content of criteria for assessing the work completion shall be disseminated to all employees publicly and transparently through the notice board at the workplace, the intranet or the file via email for all employees could understand and follow

➤ *To learn more about this issue, please see more legal articles:*

**How to Formulate and Apply Effectively the Policy on the Assessment of the Levels of Working Completion**



## 8. Terminating remote labour contract

As mentioned above, enterprises may also terminate labour contracts in case “employees regularly failed to perform the work in accordance with the labour contracts”. Nevertheless, a common mistake is that enterprises only base on employees’ working process and performance results which are not in line with expectations of enterprises, but forget more requirements of the labour law:

- The frequency of non-completion of employees shall be determined according to criteria for assessing the work completion in policies of enterprises; and
- Criteria for assessing the work completion will be issued by enterprises but shall consult with the representative organisation of employees at grassroots level for enterprises having the representative organisation of employees at grassroots level.

Thus, when using the reason “employees regularly failed to perform the work in accordance with the labour contracts” to terminate employees’ labour contracts, enterprises shall regulate criteria for assessing the work completion in accordance with the provisions of the labour law for legal ground. Although enterprises have regulated criteria for assessing the work completion, in the context of the Covid-19 pandemic that employees have to work remotely, those criteria shall be amended and supplemented to suit the remote work model of employees

If the Covid-19 pandemic continues spreading and all necessary measures having been taken, enterprises are forced to scale down production and business, reduce the number of employees, resulting in forced procedure to unilaterally terminate labour contracts with employees. Some helpful options for enterprises to overcome the Covid-19 pandemic will be analysed in more detail along with other additional options that enterprises may refer to in Part B of this Labour handbook.

## II. The “3 on-site” option – Anticipatory risks

On 14 July 2021, the MOLISA, Vietnam General Confederation of Labour and Vietnam Chamber of Commerce and Industry (VCCI) issued Official dispatch 2242/LDTBXH-TLD-PTM on Implementing both isolation and production in enterprises, production and business establishment. Accordingly, the above-mentioned Official dispatch has had guidelines and recommendations for enterprises, production and business establishments to organise production and business activities meeting "3 on-site" requirements (i.e. on-site production, on-site dining and on-site rest).

Nevertheless, in the process of implementing "3 on-site", employees' labour rights will be difficult in avoiding the risk of being violated. Typically, the right to ensure labour safety and hygiene during the working process at the workplace, since it is one of the basic rights of employees in accordance with the Constitution and law<sup>25</sup>.

Nevertheless, the “3 on-site” option has been the most optimal solution to date, “unwillingly” applied in the context of a serious outbreak of the Covid-19 pandemic and the circumstance that from the level of authorities to the leadership of enterprises, there is still a novelty to the prevention of infectious diseases. The burden is almost on the shoulders of enterprises implementing the “3 on-site” option when they have to maintain the factory's operation to meet the orders signed with partners and customers/clients, whereas balancing output, “overlap fees” to ensure standards of the “3-on-site” option (including weekly testing costs, equipping workers with conditions for eating, sleeping, working at the factory costs, extra salaries for employees staying at the factory costs, supporting employees when they take leave costs). The worry that the workplace will become a new outbreak when enterprises implement the “3 on-site” option also increases.

Then which way will be the most suitable one for employees to safely perform their assigned work, whereas ensuring to meet the need of maintaining production and business activities of the enterprises implementing the “3 on-site” option? In such a difficult situation, the most important things for the enterprises are to get consensus and support from employees.

### ❖ Solutions - Respecting employees' choice

The “3 on-site” option will help enterprises maintain production activities, meet order

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<sup>25</sup> Article 6.1 (a) of Labour Code; Article 19, Article 20.1 of the Constitution 2013 and Article 33 Civil Code 2015 (amended and supplemented in 2017).

requirements and maintain the supply chain of products and services. Nevertheless, the implementation of the “3 on-site” option requires a huge resources mobilisation, as well as organisational capacity of enterprises to convert a factory’s use into an area of accommodation, hygiene and rest for employees, maintain the regular flow of materials in and out of the factory whereas ensuring employees being completely isolated. And no matter how high the investment level and care is, there has been the risk of employees being infected and enterprises being forced to close. Therefore, enterprises should carefully consider the above-mentioned resources and factors before deciding to implement the “3 on-site” option.

### **1. Ensuring consensus from employees**

Employees’ stay in enterprises to work under the “3 on-site” option shall be based on their voluntary and consensus. According to International labour standards, restricting employees’ movement is only allowed in some special exceptions and shall be limited in time. Thus, employees need to agree and voluntarily implement the “3 on-site” option. Many enterprises will have to hold many rounds of discussion and explanation encouraging employees to get such consensus. This is also a favourable opportunity for enterprises to fully inform their employees about the pandemic and prepare for difficult situations that may arise. Enterprises need to regularly update the information to their employees and pay attention to promptly deal with issues causing concern to their employees during the implementation of the “3 on-site” option. Employees may also take leave even though they have previously agreed to stay under the “3 on-site” option. This is the case that is likely to happen in practice because many employees are having different circumstances and different lengths of staying time at the enterprises. Enterprises should prepare and support employees, e.g. during the relocation process. Enterprises may refuse to let their employees return to work if they do not have enough time and number of Covid-19 tests.

### **2. Option when not reaching consensus from employees**

Maintaining production and business activities to generate income and increase profits is the top goal of enterprises, whereas participating in labour to generate income is the ultimate destination of employees. Nevertheless, in the context of the Covid-19 pandemic, it is understandable that employees are aware of the pandemic risk that may affect their working capacity and refuse to implement the “3 on-site” option. For this case, the MOLISA has regulated Official dispatch No. 2844/LDTBXH-PC guiding some entanglements in the implementation of the “3 on-site” option to solve this issue as follows:

*The first option*, enterprises may let their employees cease work and pay salaries for work cessation according to article 99.3 of the Labour Code. Employees will be supported with the policy on work cessation when being eligible in accordance with Chapter V (from Article 17 to Article 20) of Decision no. 23/2021/QĐ-TTg dated 07 July 2021 of the Prime Minister;

- *The second option*, enterprises agree with employees on the suspension of labour contracts according to Article 30.1 (h) of the Labour Code or the two parties shall reach a mutual agreement to let employees take unpaid leave according to Article 115.3 of the Labour Code; or
- The third option, applying “other cases in accordance with the provisions of the labour law”, such as (i) the agreement to terminate the labour contract according to Article 34.3 of the Labour Code; or (ii) the right to unilaterally terminate the labour contracts with employees according to Article 36.1 (c) of the Labour Code.

Options to agree or unilaterally terminate the labour contract from enterprises are “easier said than done”. Specifically, the way to formulate and implement these options will be analysed more closely in Part B of this Labour Handbook.

➤ *To learn more about this issue, please see more legal articles:*

**Official dispatch guiding enterprises to implement the “3 on-site” option – The solution or entanglement difficult to solve?**



### **III. Enterprises accompany employees to overcome difficulties caused by the Covid-19**

#### **1. Work productivity of employees infected with the Covid-19 virus – enterprises are in a difficult position**

When employees were infected with the Covid-19 virus, their health status has been reduced and the ability to work has no longer been guaranteed, leading to employees' work performance (also known as labour productivity) being affected and not reaching the effect as agreed.

In practice, there are some enterprises having had cut salaries of their employees, who are F0 infected when working from home, on the ground that the infected employees' labour productivity has been significantly reduced, adversely affecting job completion indicators. Nevertheless, enterprises should note that according to Article 95.1 of the Labour Code: "Employers pay salaries to employees based on the agreed salary, labour productivity and quality of work performance". Thus, the salary payment for employees will have to be based on the agreed salary, productivity and quality of work performance, not on the health status of employees. Therefore, if employees have the same productivity and work quality as or better than those before being infected, enterprises are not entitled to cut salaries but must pay full salaries to employees as agreed. Enterprises cutting the infected employees' salaries shall need to provide grounds and proof that employees have not reached the agreed productivity and work quality, otherwise, enterprises shall face the risk of going to court for this violation.

In case employees ceases working due to concentrated isolation, social distancing or blockade at the request of the competent State authorities<sup>26</sup>, employees' salaries during work cessation period will be freely paid based on mutual agreement in accordance with Article 99.3 of the Labour Code:

- If work must be ceased for less than 14 working days, the salaries in ceasing work shall be agreed upon by both parties but not lower than the regional minimum wages; or
- If work must be ceased for more than 14 days, it is ensured that the salaries in

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<sup>26</sup> *In this case, it is understood as employees' workplace and/or residence in the blocked area at the request of the competent State authorities, including "social distancing" according to Directive 16/CT-TTg dated 31 March 2020 of the Prime Minister or in the "medical isolation area to prevent the Covid 19 epidemic" - Section 3 of Official Dispatch 2844/LDTBXH-PC.*

ceasing work for the first 14 days shall be agreed upon by both parties and not lower than the regional minimum wages.

In addition, employees in this case are also entitled to receive supports of 1,000,000 VND per person if they meet the following conditions: (i) working under the labour contracts regulating the work cessation according to Article 99.3 of the Labour Code and falling under the target group undergoing medical isolation or staying in blocked areas at the request of competent State authorities for 14 days or more during the period from 01 May 2021 to the end of 31 December 2021; and (ii) participating in compulsory SI in the month adjacent to the month in which employees ceased working according to Article 99.3 of the Labour Code<sup>27</sup> under the support policy for employees ceasing working due to the Covid-19 impact.

## **2. Vaccination requirements for employees when returning to work after the Covid-19 epidemic**

### **2.1. Vaccination is an individual right, but a collective obligation**

According to prevailing regulations, Covid-19 is not currently on the list of infectious diseases to utilise vaccines and medical bio-products<sup>28</sup>, which also means that people have the right to refuse vaccination without any administrative penalty. Along with that, there is still a situation in which employees are picky or afraid to get vaccinated for various reasons. In that context, if enterprises regulate the policy to compel only employees who are eligible for vaccination to get vaccinated, it may be considered as not complying with the law<sup>29</sup>.

Even though it is impossible to “firmly” employees to vaccinate, the introduction of regulations and policies in accordance with the provision of the labour law, minimising labour accidents caused by Covid-19, in order to ensure that production and business activities are no longer an intrinsic issue of each enterprise but also an urgent requirement of the country in keeping the value chain, global supply to maintain economic development in the medium and long term<sup>30</sup>.

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<sup>27</sup> Article II.5 of Resolution 68/NQ-CP and Section 1 Chapter V – From Article 17 to Article 20 of Decision 23/2021/QD-TTg.

<sup>28</sup> Article 2 of Circular 38/2017/TT-BYT on Introducing lists of infectious diseases, scope and recipients of compulsory vaccines and biologicals

<sup>29</sup> Article 75.2 of Labour Code.

<sup>30</sup> Official Dispatch no. 4580/BCT-CN on Proposing priority vaccination for certain subjects. The Ministry of Industry and Trade proposes to prioritize vaccination for transport and logistics labour (2021) –

Currently, all the kinds of vaccines licensed by the Ministry of Health for use in Vietnam, are effective in preventing the progression of symptoms when infected to reduce the risk of death, while protecting injected people against Covid-19 is only 75% – 90%<sup>31</sup> of effectiveness that depending on the effectiveness of each kind of vaccine. This means that some people have got vaccinated but still have the virus and will transmit it to others. Nevertheless, it shall be admitted that the vaccination has greatly reduced the infection risk compared to not being vaccinated. Thus, enterprises' vaccination requirement for employees when returning to work after the Covid-19 is considered an effective measure to prevent the epidemic during the working process in accordance with the law.

Regarding the right of enterprises under the Law on Occupational Safety and Health 2015 (LOSH), which states *“Request employees to conform to internal regulations, process and measures for occupational safety and hygiene at the workplace”*<sup>32</sup>, matching with this right, employees are also obliged to *“Conform to internal labour regulations, process and measures for occupational safety and hygiene at the workplace; stick to agreements on occupational safety and hygiene in their labour contracts or collective bargaining agreements”*<sup>33</sup>.

In addition, employees who are unvaccinated during the Covid-19 epidemic period causes antagonism not only between enterprises and employees but also between each other employees in the same enterprises. On the other hand, employees have the right to *“refuse to work or leave the workplace but still receive full salary without consideration as violations against labour discipline if recognising the hazards of labour accidents that seriously threaten their life and health”*<sup>34</sup> coming from other employees or working environment without ensuring labour safety and hygiene, but shall notify their direct manager for a plan to deal with and only continue to work since the hazard(s) have been remedied.

## 2.2. Solutions

For enterprises to have the right to require vaccination from the when returning to work after the Covid-19 and to ensure a safe working environment for the collective

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<https://moit.gov.vn/tin-tuc/hoat-dong/bo-cong-thuong-hoa-toc-de-nghi-uu-tien-tiem-vaccine-cho-lao-.html>

<sup>31</sup> Why is the vaccine against COVID-19 still positive for SARS-CoV-2 virus? (2021) – <https://vncdc.gov.vn/vi-sao-tiem-vaccine-phong-COVID-19-van-duong-tinh-voi-virus-sars-cov-2-nd16150.html>.

<sup>32</sup> Article 7.1 of LOSH

<sup>33</sup> Article 6.2 (a) of LOSH

<sup>34</sup> Article 6.1 (đ) của of LOSH

employee, enterprises may perform the following tasks:

### **2.2.1. If enterprises have specific regulations on requiring employees to get vaccinated:**

For any enterprise having had regulations on vaccination requirements for employees when returning to work in ILRs which have been registered and taken effect<sup>35</sup>:

- a. Enterprises have the right to require vaccinated employees to provide certificates proving that they have got vaccinated in their residence in order to be eligible to work at enterprises' workplaces. This requirement is an indirect measure to encourage employees to vaccinate and create a safe working environment for the collective employee.
- b. If any employee has not got vaccinated, the enterprises should consider employees' subjective will, specifically as follows:
  - i. If any employee does not belong to the group eligible for vaccination<sup>36</sup>, the labour discipline is not applied under the ILRs, and enterprises may agree with such employees on:
    - Temporarily assigning employees to do work other than that specified in the labour contract but not for a period in excess of an aggregate 60 working days in any one year; if more than an aggregate 60 working days in the one year, employees shall provide written consent;<sup>37</sup> and
    - Paying employees' ceasing work salary (not lower than regional minimum wages in the first 14 days).<sup>38</sup>
  - ii. In contrast, if employees belong to the group that are eligible for vaccination but refuse to get vaccinated, enterprises may consider applying the labour discipline under the ILRs and may assign employees to do work other than that specified in the labour contracts according to Article 29.1 of the Labour Code.

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<sup>35</sup> Article 121 of Labour Code.

<sup>36</sup> Decision no. 3802/QĐ-BYT of the Ministry of Health on promulgating temporary guidance on pre-vaccination screening for COVID-19 vaccination.

<sup>37</sup> Article 29.1 of Labour Code.

<sup>38</sup> Article 99.3 of Labour Code.

If employees do not approve of enterprises' decision and cease working, enterprises will have a legal ground to apply Article 99.2 of the Labour Code to employees ceasing working without paying salaries due to employees' fault

### **2.2.2.If enterprises do not have specific regulations on requiring employees to get vaccinated:**

For enterprises that do not have specific regulations on requiring employees to get vaccinated when returning to work, they shall strictly follow the steps in accordance with the provision of the labour law on organising dialogues with employees at the workplace to make a requirement for supplementing ILRs at the grassroots level<sup>39</sup> (notifying the request for dialogue agendas, the number of participants in the discussion, duration, negotiation time, method of conducting, consulting, etc.). Afterwards, enterprises register the amendment and supplement of the ILRs<sup>40</sup>. It should be noted that only after the ILR has taken effect, enterprises have the right to handle cases in which employees refuse to get vaccinated.

Currently, after many months of social distancing, Ho Chi Minh City is starting to plan to gradually reopen in order to restore the economy in the city, typically by implementing the "green card" and "yellow card" serve as a "passport" confirming that people who have a vaccination against the SARS-CoV-2 virus have the right to move during the epidemic period. The issuance of a "green card" and a "yellow card" will be based on two criteria, one is that a person is F0 who has been cured of Covid-19, the other is that the person has been vaccinated from 01 to 02 doses of vaccine. This trend has also been applied in countries around the world in the context that vaccines have proven a key role in repelling the Covid-19 epidemic. When the next policies will be enacted, no one can say in advance whether people who are not vaccinated will have the right to move freely or not. Accordingly, even if enterprises cannot force employees to get vaccinated, the refusal and choice of employees to receive the vaccine at this time may cause difficulties for employees themselves when returning to normal work. Therefore, both enterprises and employees should pay attention to update the next policy of the competent State authorities to take appropriate steps

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<sup>39</sup> Article 41 of Decree 145/2020/NĐ-CP.

<sup>40</sup> Article 119 and Article 120 of Labour Code.

➤ *To learn more about this issue, please see more legal articles:*

[Could enterprises requests employees to get vaccinated? Related Labour and Civil issues?](#)



### **3. Support policies for enterprises and employees to overcome the Covid-19 pandemic**

#### **3.1 The policy of tax exemption and reduction, extending tax payment time and supporting enterprises during the epidemic**

##### **3.1.1 For personal income tax**

In order to encourage the spirit of fighting the Covid-19 epidemic, a number of enterprises specialising in the healthcare industry have issued allowance policies for medical officers of health and any employees participating in the prevention and control of the epidemic. Accordingly, the allowances for employees include *"toxic and dangerous allowances for industries, occupations or jobs in the workplace with toxic and dangerous elements"*<sup>41</sup> and *"speciality occupation allowances"*<sup>42</sup> will not be included in employees' taxable income. Thus, when there are enough documents as prescribed, employees receiving the anti-epidemic allowance will not be subject to PIT<sup>43</sup>.

In addition, the epidemic has also forced enterprises to apply measures to reduce salaries and bonuses for employees in order to reduce labour costs and relieve the financial burden. Of course, this will make it difficult for employees to maintain the required living conditions, accommodations, food, and medicine to combat epidemic risks. This difficulty is evident for employees whose salaries are equal to or slightly higher than the regional minimum wages. Consequently, in parallel with that, many enterprise have also developed policies to assist employees in difficult circumstances during the pandemic by providing support money to offset the loss of earnings. Nevertheless, at present, the competent State authorities have not yet promulgated specific guidance documents related to employees' PIT payment for these allowances during the Covid-19 epidemic period. From the legal perspective, these allowances or supports may be considered as income from wages, salaries<sup>44</sup>, in the form of monetary or non-monetary benefits in addition to salaries and wages paid by the employers and enjoyed by taxpayers<sup>45</sup>, specifically *"expenses of other services for individuals in health care, entertainment, aesthetic entertainment, etc. if the payment content specifies the name of the person entitled to it. In case the content of service*

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<sup>41</sup> Article 2.2 (b.4) of Circular 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance.

<sup>42</sup> Article 2.2 (b.11) of Circular 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance..

<sup>43</sup> <http://baohinhphu.vn/Tra-loi-cong-dan/Phu-cap-chong-dich-co-tinh-thue-thu-nhap-ca-nhan/433043.vgp>.

<sup>44</sup> Article 2.2 of Circular 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance

<sup>45</sup> Article 2.2 (đ) of Circular 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance.

*fee payment does not include the name of the person entitled to it but is shared among employees, it is not included in the taxable income”<sup>46</sup>.*

Accordingly, these allowances, depending upon each enterprise’ identification way, whether it is an expenditure (with the clear content specifying employees’ names) for health care services, medical equipment, or allowances for living expenses during the social distancing period, all have the same meaning of supporting employees’ life in the spirit of the above-referenced regulations. Therefore, these supports are incomes from salaries and wages, not in the cases in which PIT is excluded, employees receive allowances for hardship support from enterprises with clear content specifying the beneficiary’s names, accordingly, it will still be in the case of having to declare and pay PIT.

### **3.1.2 For corporate income tax**

The above-mentioned expenses are direct expenditures for employees in addition to the salary and bonus payments as agreed in labour contracts, labour collective agreement, bonus regulations and in accordance with the law, as well as a written notice to improve and enhance material and spiritual life for employees is determined as a deductible expense when determining corporate taxable income<sup>47</sup> with the total welfare expenditure no more than 01 actual average monthly salary in enterprises’ tax year<sup>48</sup>.

### **3.2 Tax exemption and reduction policies, extending tax payment time and supporting businesses during the epidemic period.**

Decree No. 52/2021/ND-CP of the Government dated 19 April 2021 on extending the deadline of VAT, CIT and PIT payments in 2021 was issued to create the best condition for taxpayers to extend the deadlines of VAT, CIT and PIT payments to ensure timely, right subjects, fastest support for enterprises and employees affected by the Covid-19 epidemic. According to regulations, 30 July 2021 is the deadline for extending procedures of VAT, CIT and PIT payments.

Currently, the Covid-19 epidemic is still complicated, enterprises are still facing many difficulties and challenges to maintain operations every day. Thus, the Government has submitted a report to the Standing Committee of the National Assembly for consideration and approval according to the one-session process for the

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<sup>46</sup> Article 2.2 (đ.3.2) of Circular 111/2013/TT-BTC dated 15 August 2013 of the Ministry of Finance.

<sup>47</sup> Article 4 amending and supplementing Article 6.1 and Article 6.2.30 of Circular 96/2014/TT-BTC.

<sup>48</sup> Article 3.4 Circular 25/2018/TT-BTC.

Draft Resolution, including the following 05 policies.

<b>30%</b>  CORPORATE <hr/> INCOME TAX	<b>EXAMPT FROM</b>  SOME <hr/> TAXES	<b>30%</b>  TAX <hr/> RATE	<b>EXAMPT FROM</b>  LATE <hr/> PAYMENT	<b>3<sup>mil</sup></b>  BUSINESS <hr/> HOUSEHOLDS
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Continuing to reduce 30% of payable CIT in 2021 for CIT payers whose total revenue in 2021 is not more than 200 billion VND and is reduced compared to the total revenue in 2019.

PIT, VAT and other payable taxes arising from production and business activities of months in the third and fourth quarter of 2021 for business households and individuals doing business in all fields, locations, forms and methods of tax declaration and payment.

Reducing 30% of tax rate and percentage to calculate VAT for business activities in fields which have been heavily affected by the Covid-19 pandemic such as tourism, transportation, accommodation, dining, sports, entertainment; composing, art; newspapers, television, libraries, archives, museums, and other cultural activities, etc

Exemption from late payment penalties of tax, land use/land rent arising in 2020 and 2021 (two years directly affected by the Covid-19 pandemic) for enterprises and organisations (including dependent units, business location) incurring losses in 2020, not applicable to cases that late payment has been paid.

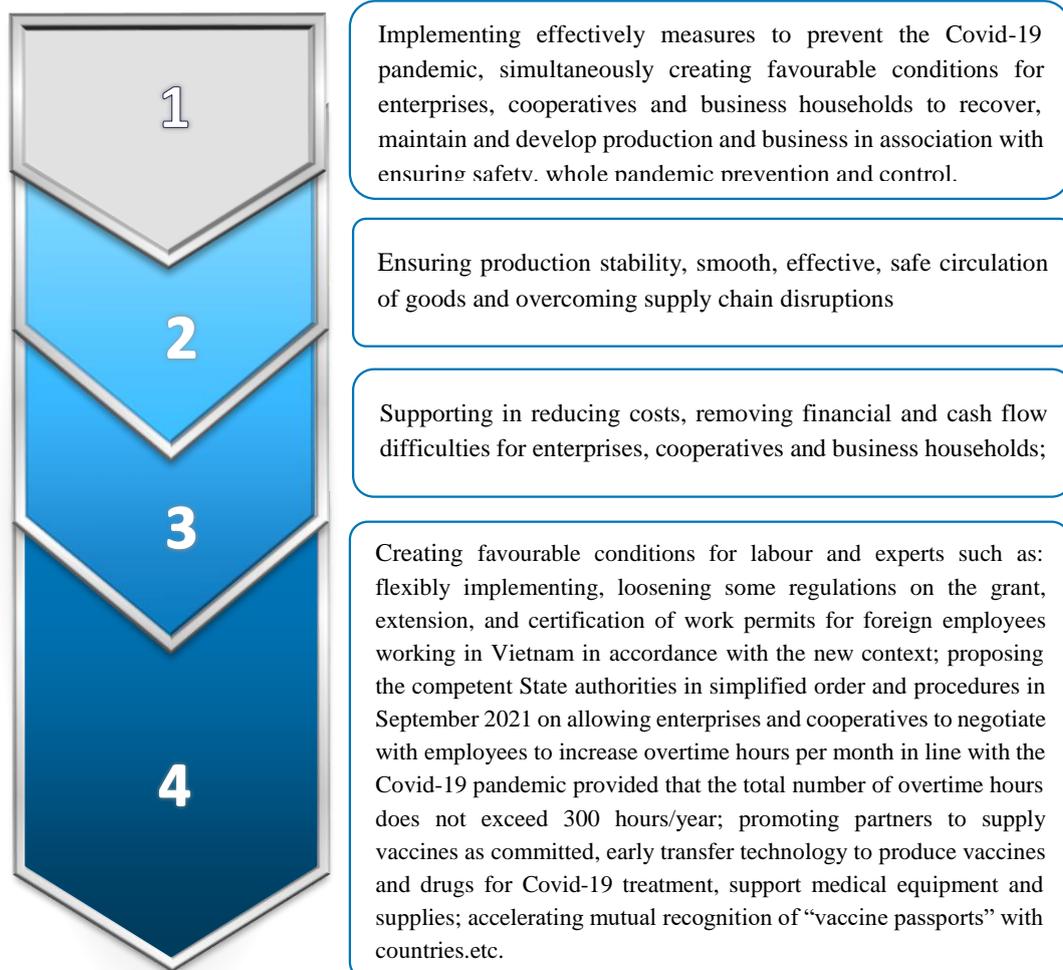
Policy to support business households, having business registration, tax registration (with tax code); stop operating for 15 consecutive days or more from 01 May 2021 to 31 December 2021 at the request of competent State authorities to prevent the Covid-19 pandemic, is 3 million VND per business household, according to

\*\*\* *Support policies for business households*<sup>49</sup>.

Following that, on 9 September 2021, the Government regulated Resolution No.

<sup>49</sup> Article 35 of Decision 23/2021/QĐ-TTg dated 07 July 2021 of the Prime Minister.

105/NQ-CP on supporting enterprises, cooperatives and business households in focusing on restoring and developing products and business activities of enterprises, cooperatives and business households in association with ensuring safety in the Covid-19 prevention; promptly support and remove difficulties, obstacles and bottlenecks hindering production and business activities, minimising the number of enterprises, cooperatives and business households that temporarily cease, dissolve, or bankrupt due to the Covid-19 impact. By the end of 2021, striving to accumulate at least 1 million turns of customers who are enterprises, cooperatives and business households who are entitled to credit support policies. The vast majority of enterprises, cooperatives and business households shall temporarily cease their businesses to return to operation; fully and promptly implement tax payment extension policies; exempt or reduce taxes, fees and land rents; support in reducing electricity, water, telecommunications charges, policies to support employees, enterprises, labour training... for enterprises, cooperatives and business households facing difficulties due to the Covid-19 impact. The Government decides on 05 main groups of tasks and solutions as follows:



## **B. ACCOMPANY WITH ENTERPRISES TO OVERCOME DIFFICULTIES CAUSED BY THE COVID-19**

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*The Covid-19 pandemic is the manifestation of normality in for an unusual manner, it is normal since the Covid-19 pandemic is not a new issue and inevitable for any society, but the anomaly here is that neither enterprises nor employees themselves can anticipate the serious affects that Covid-19 brings to the economy, enterprises' survival and each employees' life. In the middle of the pandemic, enterprises should not be heedless once again and should be careful when applying any new policies to minimise the Covid-19 impact on enterprises' financial situation. "Small sinkholes" often talk about the immediate things that can lead to unforeseen risks in the future. Indeed, in the current Covid-19 pandemic, the absence of transparency from salaries, bonuses to policies applied to employees such as leave, insurance, or the process of terminating labour contracts can completely push enterprises to unforeseen legal risks when the pandemic passes. So what is the way for enterprises to remove some of the burden during the Covid-19 pandemic, please refer to some of the following options:*



## I. The immediate solutions

Facing the strong and prolonged outbreak of the fourth Covid-19 pandemic, enterprises are confronting many difficulties such as not being able to reach customers/clients, supply chain disruption, sharply reduced revenue, limited financial resources, etc. Therefore, the act of reducing expenses and optimising resources from finance to people is considered the best option for enterprises in this period to maintain minimal operations to bring enterprises to “survive” after the pandemic. Here are some policies that enterprises may consider applying to retain employees while minimising operating expenses that are still within the legal framework allowed.

### 1. Delaying the payment of employees’ salaries

Article 97.4 of the Labour Code allows enterprises to be entitled to delay the payment of employees’ salaries for no more than 30 days if there is a force majeure reason that they have tried to overcome but cannot pay salaries on time as agreed in the Labour Contract or CLA if salaries are paid 15 or more days late, employers must pay an additional amount equal to at least interest on the amount paid late at commercial banks’ rate for raising deposits with a term of 01 months, where enterprises open trading accounts to notify at the time of salary payment.

Herein, enterprises often assume that enterprises can be late in paying salaries in all cases but the law stipulates **only in case as a result of a force majeure events** and those events must directly affect the salary payment, otherwise, employees have the right to unilaterally terminate the labour contracts without having to provide advance notice to enterprises<sup>50</sup> without compensating and still having labour benefits such as salary payment, annual leave, retrenchment allowance, severance allowance.

Due to the tough application of social distancing, most enterprises are now affected by the Covid-19 pandemic. On the other hand, some enterprises - in the context of the Covid-19 pandemic and even when there is a decision to blockade from the competent State management authorities in some localities - can still operate normally, such as enterprises dealing in food, agricultural products, essential foods, medical products, transportation, etc, stemming from many reasons such as enterprises are eligible to apply the “3 on-site” plan to operate, the enterprises have many flexible business locations in districts in the city. Therefore, enterprises should note that it is impossible to only invoke the reason for the Covid-19 pandemic as a legal basis for the delay in payment of employees’ salaries for force majeure reasons.

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<sup>50</sup> Article 35.2 (b) of Labour Code

Article 156.1 of the Civil Code 2015 provides that “*An event of force majeure is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken*”. In order to be able to cite force majeure reason applied to this case, enterprises need to prove the factors of the above force majeure event, specifically, enterprises’ obligation to pay salaries on time has not been able to be fulfilled even though enterprises have sought all methods and reasons of the unable duty to implement stemming directly from the Covid-19 pandemic in reality. Thus, in the Covid-19 situation and the current long social distancing period, enterprises may consider reaching an agreement with employees on delay the payment of part or all of the salaries without interest to maintain enterprises’ operation as an option that both sides benefit.

## 2. **Adjusting the flexible annual leave policy**

Article 113.4 of the Labour Code allows enterprises the right to stipulate employees’ annual leave schedule after consulting employees and must notify a reasonable period in advance so that employees may arrange the effective use of their annual holidays. There are enterprises, due to the specific nature of production and business activities, often announce in advance the annual leave schedule for employees within a reasonable period of time and consult employees’ representative organisation at grassroots level, commonly referred to as “Annual leave plan” or “Annual leave schedule” and employees will rely on this calendar to apply for their annual leave. On the contrary, if enterprises do not offer any annual leave plan, in accordance with enterprises’ ILRs, employees who want to take annual leave will have a separate agreement with enterprises as long as that agreement must be within the ILRs scope.

Under the condition of the Covid-19 pandemic and current prolonged social distancing, employees do not often use their annual leave as they have no demand. However, some enterprises require employees to take annual leave so that they do not have to pay salaries for the days that have not yet taken the full number of annual leave days. However, the annual leave is one of employees’ labour rights and stems from employees’ actual demands; therefore, enterprises cannot arbitrarily require employees to use up the number of annual leave days in this case. At that time, such enterprises’ requirement is inconsistent with the ILRs if there are regulations on limiting the time off on a monthly, quarterly basis, etc., and infringes on employees’ rights. Thus, enterprises are forced to agree with employees to take annual leave.

Therefore, enterprises may consider introducing a new annual leave plan (if they do not have an annual leave plan) or amending it (if they have issued an annual leave plan) and agree with employees on the use of all the annual leave in the current year.

Enterprises may even consider proposing to employees who have long-term labour contracts to use part of the annual leave of the following year.

In addition to the annual leave policy, Article 115 of the Labour Code also stipulates that employees take personal leave of absence and unpaid leave. In the spirit of the Labour Code, taking unpaid leave is often caused mainly by employees' actual demands, usually when there is an unexpected job, for personal reasons that employees are forced to take unpaid leave for a short period. If due to the Covid-19 pandemic, employees may take an urgent leave for reasons such as getting vaccinated, getting tested, or suddenly having to take care of other family members with F0. At that time, enterprises may flexibly negotiate with employees to adjust the annual leave policy accordingly or in combination with a more flexible online working policy so that employees may both maintain their jobs but may also simultaneously fulfil family responsibilities such as spending time with their children and supporting their education.

### **3. Suspension from payment of SI to the retirement and survivor allowance fund**

Compulsory SI payment is an expense that enterprises are obliged to comply with Article 88.1 of the Law on SI 2014. In the current Covid-19 pandemic, enterprises may consider suspending the payment of SI to the retirement and survivor allowance fund as a plan to reduce operating costs for enterprises. Accordingly, Decision 23/QĐ-TTg dated 07 July 2021 and Resolution 68/2021 dated 01 July 2021 stipulated conditions for enterprises to temporarily suspend the payment of SI to the retirement and survivor allowance fund, specifically as follows: (i) enterprises that have fully paid SI, health insurance, unemployment insurance for employees until the end of April 2021; and (ii) enterprises that have reduced their employees by 15% in the month make the application to suspend the SI payment to the retirement and survivor allowance fund compared to the number of employees in April 2021. In addition, enterprises may apply the payment rate equal to 0% of the salary fund as a basis for the SI payment contributed to insurance covering a labour accident or occupational disease for 12 months (from 01 July 2021 to 30 June 2022), including newly established enterprises after 01 July 2021. For sickness, maternity and unemployment insurance funds, the enterprises must pay as normal.

The time for suspension of SI to the retirement and survivor allowance fund is 06 months from the date enterprises submit the application. For enterprises that have been resolved to suspend the SI payment to the retirement and survivor allowance fund according to Resolution No. 42/NQ-CP dated 09 April 2020 and Resolution No. 154/NQ-CP dated 19 October 2020 of the Government, if eligible and is resolved for suspension of payment to the retirement and survivor allowance fund, they may

suspend the SI payment to the retirement and survivor allowance fund within 12 months.

After the expiration of the suspension period as above, enterprises will have to continue to make normal payments and compensate at the closing stop period. The amount of compensation will not be charged late interest as prescribed in Article 122.3 of the Law on SI 2014. From the end of the suspension time of SI to the retirement and survivor allowance fund, if any enterprise does not make compensation for the suspension period, it will be charged late interest as prescribed in Article 122.3 of the Law on SI 2014. During the suspension of SI to the retirement and survivor allowance fund, employees eligible for retirement, survivor allowance or termination of the labour contract will make compensation for the suspension period to resolve the regime for employees.

#### **4. Suspending, cutting, reducing bonuses**

Another way to minimise labour costs for enterprises is to suspend, cut or cancel bonuses for employees. When implementing this plan, enterprises need to adjust enterprises' bonus regulations through employees' representative organisation at grassroots level. In addition, enterprises can also adjust the bonus regulations to each employee (if enterprises do not have employees' representative organisation at grassroots level) and the bonus regulations are stated in the labour contracts by agreeing separately with employees to amend the bonus regulation content by the labour contract annexe. Note that enterprises must consult with employees if they want to suspend, cut or cancel bonuses unless the bonus according to the bonus provisions or the bonus policy under the agreement is determined to be completely dependent on the enterprises' decision at each specific time.

#### **5. Temporarily assigning employees to do work other than that specified in the labour contracts**

Enterprises may also consider temporarily assigning employees to a different job than those stated in the labour contracts to meet the timely demands for production and business and to assign employees whose workload is reduced due to the impact of Covid-19. Accordingly, the labour law stipulates that those enterprises may only transfer employees to work other than those stated in the labour contract when falling into one of the following cases:

- Enterprises encounter unexpected difficulties due to natural disasters, fires and dangerous pandemics;
- Applying measures to prevent and remedy occupational accidents and

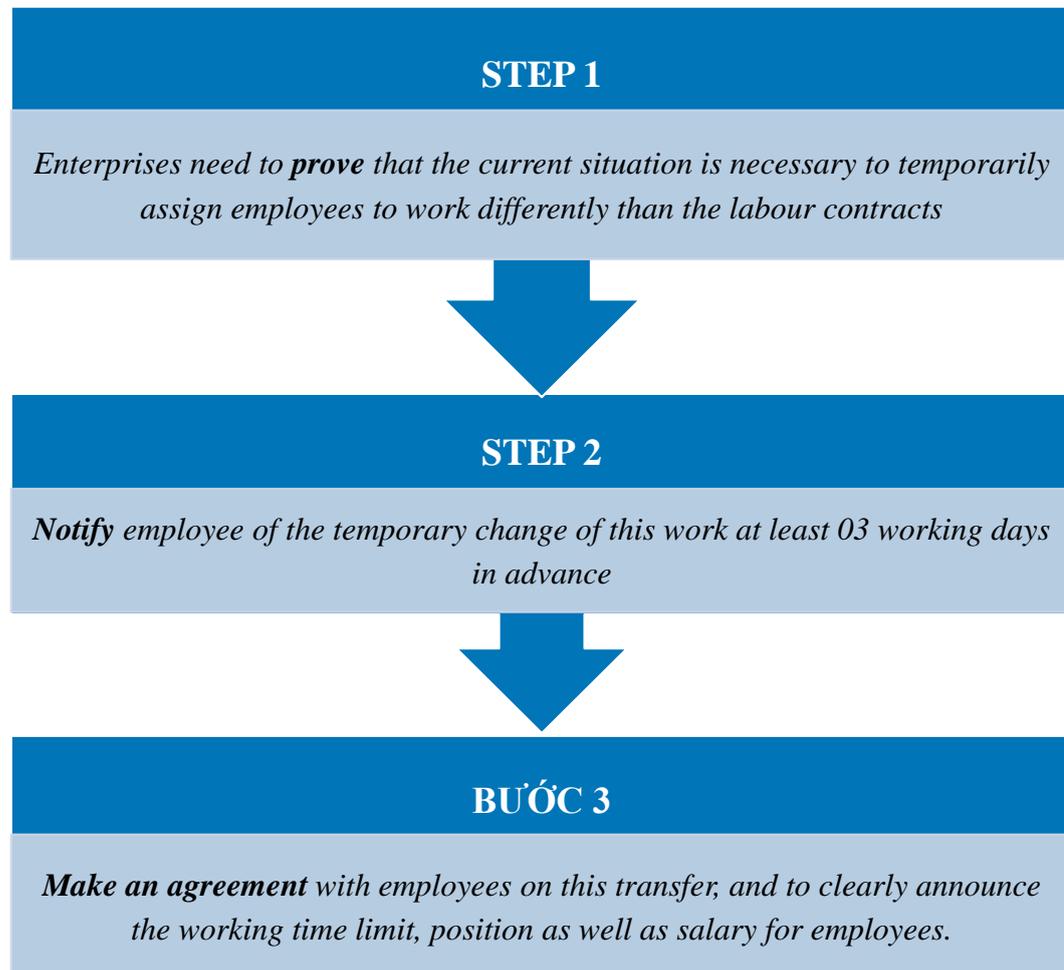
occupational diseases;

- Occurrence of electricity and water problems disrupting production and business; or
- Due to the production and business demands of enterprises.

Enterprises should notice that, when temporarily assigning employees to work other than the work stated in the labour contract, they must notify employees at least 03 working days in advance, and inform the temporary working term and arrange the work in accordance with the health as well as the gender of employees at once. In addition, the time enterprises can assign employees to do work other than the labour contracts must not exceed 60 working days accumulated in 01 year. If the above-mentioned time limit is exceeded, such decision shall be made only if employees agrees in writing.

If the new job has a salary lower than the salary of employees' old jobs, the salaries that employees receive in the first 30 working days under the new jobs will be the salaries of the old jobs. For the next 30 days after the first 30 days, employees will receive a new job salary of at least 85% of the old job salary and must not be lower than the regional minimum wages.

**Steps to be taken to temporarily assign an employee to a job other than that stated in the labour contract:**



**Note:** In order to strictly implement the above steps and minimise legal risks arising for enterprises later, enterprises must comply with the above procedures and must fulfil the obligations required by labour law within the prescribed time or a reasonable period.

Otherwise, if employees do not agree with having to temporarily do a job other than the one stated in the labour contract more than 60 working days accumulated in 01 year and comes to the decision to stop working, enterprises must pay the salaries for work cessation as prescribed in Article 99 of the Labour Code.

Thus, if enterprises have to suspend their operation according to the decision from the competent State authorities, which leads that enterprises to face unexpected difficulties and unable to arrange enough jobs for their employees, it may be possible to reassign employees to other jobs. On the contrary, for enterprises that are only

indirectly affected, it will be difficult to cite the reason for the Covid-19 pandemic to assign employees to other jobs, but can only consider applying the transfer of employees due to enterprises' production and business demands provided that enterprises must include this reason in the ILRs with the competent labour management authorities in order to have enough legal basis for the application. If the ILRs do not have this content, enterprises must add it and carry out the re-registration procedure, then the new ILRs can be applied. For the first option, if enterprises have tried to find other jobs for employees within the scope of the enterprise but still has no other work, the enterprises can consider one of the other options that will be analysed below.

## **6. Agreement to reduce normal working hours**

Normal working hours are the period that employees use to fulfil their labour obligations according to the labour contracts or the collective labour agreement. Based on the relevant provisions of the Labour Code, employees' normal working hours shall not exceed 08 hours in 01 (one) day and 48 hours in 01 (one) week. Enterprises have the right to stipulate the normal working hours on a daily or weekly basis and must notify employees in advance. Salary is the amount of money that enterprises must pay employees according to the agreement concluded in the labour contracts on a specific job, according to work productivity and quality.

The reduction of working hours is carried out based on the agreement between enterprises and employees. For employees who wish to reduce working hours for personal reasons, the government encourages employers to implement the 40-hour working week policy for employees. Under the Labour Code, employers and employees must negotiate to reach an agreement on reducing working hours as well as determining the corresponding salary for the new working hours.

Another case of reducing working hours applied to senior employees, according to Article 148.2 of the Labour Code, senior employees have the right to negotiate with enterprises on reducing the daily working hours or applying the part-time work regime based on Article 32 of the Labour Code.

**Note:** When employees have decided to reduce the working hours, it is necessary to concretise the above provisions by signing an addendum to a labour contract as prescribed in Article 33 of the Labour Code.

Due to the Covid-19 impact on the production and business activities, employees' workload will also be significantly reduced. However, employees' working hours

reduction must be agreed upon by both enterprises and employees to be legally valid.

## 7. Suspension of labour contracts

A labour contract suspension is an agreement between enterprises and employees to stop the implementation of the labour contracts for a certain period. The labour contract suspension can be based on the mutual agreement or in accordance with the law. The fact that enterprises and employees agree to suspend the labour contract performance will not affect the legal validity of the labour contract.

During the labour contract suspension period, employees are not get paid, and other related rights and benefits agreed in the labour contracts, such as benefits of the regime on salary increases, upgrades, weekly leave, annual leave, public holidays, etc. and not entitled to SI if employees do not work for 14 days or more and do not receive the salaries of that month (except for female employees who take leave due to maternity)<sup>51</sup>, unless the two parties have an agreement on employees' salaries and other labour benefits under the labour contracts.

Within 15 days from the expiration of the period for labour contract suspension, employees must be present at the workplace, and enterprises must re-accept employees back to work according to the work concluded in the labour contracts (if the labour contracts are still valid). If enterprises refuse to accept employees back to work, enterprises will be considered as violating the law on refusing to give back work to employees after the expiry of the period of temporary labour contract suspension<sup>52</sup>. Enterprises are forced to pay salaries to employees during the days when employees are not accepted back to work. If employees cannot be present at the workplace for personal reasons at the prescribed time, they must agree with enterprises on the present time to continue performing the work. In cases of temporary suspension, the labour contracts will be implemented as prescribed in Article 30 of the Labour Code. During the social



Employee is a foreigner who has not yet returned to the enterprise to work at the request of the competent State authorities



Employee must cease working during the period of quarantine at the request of the competent State authorities.



Employee must cease working as the enterprise or the part of the enterprise cannot operate since the employer or other employees of the same enterprise are in quarantine or have not been able to return to work.

<sup>51</sup> Article 42.2 of the Decision No. 595/QĐ-BHXH.

<sup>52</sup> Article 10.2 (b) of the Decree No. 28/2020/NĐ-CP.

distancing implementation under the Government's Directive 16/CT-TTg, any enterprise has the nature of work associated with the business location, such as manufacturing and assembling products that cannot be worked remotely by employees, and enterprises can choose one of the following two ways: (i) to cease employees' work due to a dangerous pandemic and to pay employees to cease working; or (ii) to suspend the labour contracts.

*In the first case*, the two parties will agree on work cessation salary but not less than regional minimum wages prescribed by the Government in case employees have to cease work due to the direct Covid-19 impact as below<sup>53</sup>:

*In the second case*, if the prolonged work cessation period affects enterprises' production and business situation as well as the ability to pay salaries, enterprises may propose plans to suspend the labour contracts. In addition, enterprises should also note that the Government currently promulgated a support policy for employees who have to suspend the labour contracts due to the Covid-19 pandemic impact<sup>54</sup>, specifically: VND1,855,000 per person for employees who suspend the labour contracts, take unpaid leave for 15 consecutive days or more to less than 01 month (30 days) and VND3,710,000 per person for cases from 01 month (i.e.30 days) or more.

**To be supported by the State, employees who have to cease working due to their enterprises being suspended at the request of competent State authorities to prevent and control the Covid-19 pandemic must meet the following conditions:**



Employees suspend the labour contracts or take unpaid leave within the term of the labour contract, from 15 consecutive days or more, from 01 May 2021 to the end of 31 December 2021 and the application period is from 01 May 2021 to 31 December 2021..



Employees are participating in compulsory SI in the month immediately preceding the time when employees suspend the labour contracts, leaves without pay.

➤ *To learn more about this issue, please see legal articles:*

**Suspension of Labour Contract: A Lifebelt to Keep Afloat Enterprises During the COVID-19 Storm?**



<sup>53</sup> Section 2 of the Official Letter No. 1064/LDTBXH-QHLDLTL.

<sup>54</sup> Article 13 of the Decree No. 23/2021/QD-TTg.

## 8. Agreement on work cessation

Due to the impact of the Covid-19 epidemic, enterprises still have to make every effort to find ways to stay in the market. However, the implementation of the Government's social distancing order caused business market demand to narrow, so the enterprises faced many difficulties and were forced to negotiate with employees on temporary ceasing work. Thus, the enterprises can choose the option for employees to cease working due to the direct impact of the Covid-19 epidemic such as <sup>55</sup>:

### The reasons that enterprises let employees cease working due to the direct impact of COVID-19



Employees have to cease working as they are in the period of implementing social isolation at the request of competent State authorities.



Employees have to cease working due to the blockade of their workplaces or residences due to the pandemic at the request of competent State authorities



Employees have to cease working as the enterprises or a department of the enterprises ceases working to effectively combat the pandemic



Employees have to cease working as enterprises or departments can not operate since the enterprise and other employees are in quarantine or have not returned to perform the jobs.

For all the above-mentioned cases, employees will receive salaries for work cessation in accordance with the provision of the labour law. Although employees do not have a specific notion of “salary for work cessation” but can be drawn from the provisions of Article 99 of the Labour Code, *the salaries for work cessation is employees’ salaries receiving for the reason of not working but not employees’ fault, calculated according to the law or the agreement between employees and enterprises.*

<sup>55</sup> Section 2 of the Official Dispatch 264/QHLDTL-TL.

**The salaries in ceasing work paid to employees due to the direct impact of the Covid-19 pandemic is calculated as follows:**



Work must be ceased for less than 14 working days, the salaries in ceasing work shall be agreed upon by both parties but not lower than the regional minimum wages.



Work must be ceased for more than 14 days, it is ensure that the salaries in ceasing work for the first 14 days shall be agreed upon by both parties and not lower than the regional minimum wages.

Except for the statutory cases mentioned above, if the Covid-19 impact and if enterprises and employees have previously agreed on the work cessation and prolonged work cessation has affected the ability to pay salaries of enterprises, the enterprises and employees may agree on the “suspension of performing the labour contracts”<sup>56</sup>.

It can be seen that some of the above-mentioned options are based on agreement, negotiation, and the ability to persuade employees. However, there is a fact that “So many men, so many minds”, so it will be difficult to satisfy and secure the best interests of all employees in the collective amid the challenging context of the Covid-19 pandemic as today. Therefore, regardless of the application choice, enterprises must plan to the situation that will not be able to win the consent of the entire collective of employees, which means the negotiation is not successful. At that time, enterprises are forced to consider other solutions such as the plan to reduce the scale of production, reduce working space as it is impossible to agree with employees.

➤ *To learn more about this issue, please see more legal article*

**Retrenchment of Employees During the Covid Pandemic – Solution to Save Business or Risk of Lawsuit Later**



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<sup>56</sup> Article 30 of the Labour Code and Section 3 of the Official Dispatch 1064/LDTBXH-QHLDTL.

## II. Enterprises are forced to terminate the labour contracts

Under the broad impacts of the fourth wave of the Covid-19 pandemic, not all enterprises have enough potential finance to maintain stable revenue to overcome the pandemic with their employees. Many enterprises have found themselves in a tight corner, forced to terminate the labour contracts with some employees, with the motto of sacrifice for the greater benefit and survival of enterprises.

In order to terminate labour contract with employees in the Covid-19 pandemic, enterprises may consider one of the following three options: (i) *negotiating with employees to reach an agreement on labour contract termination*; (ii) *unilaterally terminating the labour contract due to restructuring*; or (iii) *unilaterally terminating labour contract due to the pandemic*.

### 1. Termination of labour contract due to the bilateral agreement between enterprises and employees

TITLE	DETAIL
<b>CONDITIONS</b>	<ul style="list-style-type: none"> <li>• Only possible in case employees sympathise with the difficulties of enterprises and understand that the termination of labour contracts is a reluctant option of enterprises;</li> <li>• Agreement on termination of labour contract signed between the two parties (Article 34.3 of the Labour Code); and</li> <li>• Enterprises fully complied its payment obligations related to employees' interests in accordance with the regulations of labour laws</li> </ul>
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>• Due to the legal termination of labour relations, enterprises are less risk of labour disputes in the future.</li> </ul>
<b>PROCEDURE</b>	<ul style="list-style-type: none"> <li>• Due to the principle of agreements, the result of the agreement on termination of the labour contract depends on the will of the parties. Employees have the right to agree or refuse, especially in case enterprises refuse to pay a satisfactory sum of money for employees to sign an agreement on the termination of the labour contracts. Especially for enterprises in the manufacturing sector with a large number of employees, it is impossible to come up with an agreement on termination of labour</li> </ul>

TITLE	DETAIL
	contract with each employee.
<b>PROCEDURE</b>	<ul style="list-style-type: none"> <li>• Enterprises often have to offer a “termination package”, which a reasonable “one-time-only” payment to convince an employee into agreement, for the purpose of limiting the probability of dispute and lawsuits with employees later on.</li> <li>• The value of the “termination package” will depend on many factors: (i) the remaining term of labour contracts; (ii) work permits of foreign employees (if any); and (iii) unpaid allowances and other labour benefits according to the labour contracts and the internal policies of enterprises.</li> <li>• In addition, any employee who legally terminates labour contract from 1 May 2021 to the end of 31 December 2021 and is participating in social insurance up to the month immediately before labour contract termination but does not eligible for unemployment benefits may receive a support amount of VND3,710,000/person. Enterprises may assist such employees in carrying out this procedure.</li> </ul>

**2. Termination of labour contract due to restructuring, change of technology, or economic reasons**

TITLE	DETAIL
<b>CONDITIONS</b>	<ul style="list-style-type: none"> <li>• The termination of labour contract due to restructuring, change of technology, or economic reasons under Article 42 of the Labour Code includes the following cases: (i) change of organisational structure or employee/staffing structure; (ii) change of the production or business processes, technology, machinery or equipment associated with the production and business industry or trade of the employer; or (iii) change of products or product structure.</li> </ul>

TITLE	DETAIL
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>• In accordance with the labour law (Article 42 of the Labour Code) and the social context</li> <li>• <b>Note:</b> Enterprises generally tend to change the organisational structure, employee/staffing structure instead of changing modern production or business processes, technology, machinery or equipment. The reason is that the complicated developments of the COVID-19 pandemic with other financial difficulties due to the prolonged social distancing order, consumers or clients also tighten their spending. Therefore, enterprises also delay the launch of new goods/services or incur high investment costs</li> </ul>
<b>DISADVANTAGES</b>	<ul style="list-style-type: none"> <li>• There are no specific legal documents guiding the restructuring or reorganisation of labour is understood as merging or consolidating a department within the enterprise scope or there are other meanings broader or even narrower meaning. Enterprises have to conduct an explanation and provide a specific plan for such reasons. Therefore, there are risks that in case the explanation of enterprises does not coincide with the view of competent State authorities in a dispute settlement process, enterprises that dismiss employees LĐT BXH-QHL ĐTL be considered as illegal unilateral termination of labour contracts.</li> </ul>
<b>PROCEDURE</b>	<ul style="list-style-type: none"> <li>• In addition, a change of organisational structure or employee/staffing structure shall also be proven to take place in reality. To do so, enterprises must perform the following steps:               <ol style="list-style-type: none"> <li>(i) Developing a labour usage plan with the participation of the representative organisation of employees at the grassroots level and implementing such labour usage plan in accordance with the labour laws;</li> <li>(ii) Priority on retraining employees for further employment in case there are new workplaces within enterprises; and</li> <li>(iii) Before implementing the retrenchment of employees, enterprises must discuss the</li> </ol> </li> </ul>

TITLE	DETAIL
	representative organisation of employees at the grassroots level and notify 30 days in advance to the provincial people's committee.

### 3. Termination of the labour contract due to the epidemic

TITLE	DETAIL
<b>CONDITIONS</b>	<ul style="list-style-type: none"> <li>The spreading of a pandemic. The Covid-19 pandemic shall be considered as a dangerous disease according to the provisions of laws, specifically           <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="background-color: #0056b3; color: white; padding: 5px; margin-right: 10px;">Decision No. 219/QĐ-BYT</div> <div style="background-color: #a6c9ec; padding: 5px; margin-right: 10px;">Decision No. 447/QĐ-TTg</div> <div style="border: 1px solid #ccc; padding: 5px; font-size: 0.9em;">             COVID-19 has been added to the list of particularly dangerous infectious diseases with a high mortality rate, rapid transmission, widespread distribution, or unknown pathogens, and no decision has been made to announce the end of the translation in accordance with the regulations of the laws           </div> </div>  </li> <li>Enterprises shall prove that they have found all measures to overcome the consequences caused by the Covid-19 pandemic, but are still forced to reduce the number of employees, such as documents, letters contacting partners to loan or search for raw production materials, documents of competent State authorities on the blockade or suspension of production and business activities due to the epidemic, financial statements proving business decline etc.</li> </ul>
<b>ADVANTAGES</b>	<ul style="list-style-type: none"> <li>Under the provisions of laws (Article 36.1 (c) of the Labour Code) and social contexts.</li> </ul>
<b>DISADVANTAGES</b>	<ul style="list-style-type: none"> <li>There are no specific regulations on remedial measures due to the Covid-19 pandemic that the enterprises must implement before unilaterally terminating labour</li> </ul>

TITLE	DETAIL
	<p>contracts with employees due to the pandemic. In this regard, the Ministry of Labour, War Invalids and Social Affairs have issued Official Dispatch No. 1064/LĐTBXH-QHLĐTLTBXH-QHLĐTBXH-QHLĐTLTL dated 25 March 2020, guiding the payment for salaries on ceasing work and settlement of benefits for employees during the work cessation period due to the Covid-19 pandemic (shown in the chart below).</p> <ul style="list-style-type: none"> <li>• Official Dispatch No. 1064/LĐTBXH-QHLĐTLTBXH-QHLĐTBXH-QHLĐTLTL does not clarify whether enterprises must apply all the above-mentioned measures and then finally have the right to unilaterally terminate labour contracts with employees due to the epidemic, or enterprises can directly terminate the labour contracts with employees without having to apply these above measures. Obviously, if the enterprises must follow such steps in order, it will take 04-05 months for the termination of labour contracts due to the pandemic, and that is something unexpected for enterprises in this difficult and urgent period.</li> <li>• Enterprises should anticipate that if any dispute arises with employees, the labour dispute settlement authorities will be inclined to protect employees' interests because employees are typically seen as the weaker party in the labour relationship. Accordingly, the court may likely have a view that enterprises need to complete all the above-mentioned procedures as remedial measures that need to be applied before moving on to unilateral termination of labour contracts with employees due to the epidemic. In case enterprises skip any of the above steps, it may be considered non-compliance with the orders and procedures for unilateral termination of labour contracts with employees. As a result, unilaterally terminating labour contracts with employees faces high-risks of being declared illegal.</li> </ul>

TITLE	DETAIL
<b>PROCEDURE</b>	<ul style="list-style-type: none"> <li>The Official Dispatch No. 1064/LĐTBXH-QHLĐTLTBXH-QHLĐTBXH-QHLĐTLTL dated 25 March 2020 on guidance on the payment of salaries on ceasing work and settlement of benefits for employees during the work cessation period due to the Covid-19 pandemic is shown in the chart below.</li> </ul>

## OFFICIAL DISPATCH NO. 1064/LĐTBXH-QHLĐTL



### WORK CESSATION DUE TO CENTRALISED QUARANTINE

Enterprises whose employees are forced to work cessation for any of the following reasons: (i) employees are in quarantine at the request of competent State authorities; or (ii) enterprises (or any department of enterprises) have to suspend the operation because enterprise owner (s) or other employees of those enterprises (or any department of enterprises) are in the period of quarantine or cannot return to work; or (ii) enterprises are blocked: In these circumstances, enterprises shall choose the option of work cessation according to Article 99.3 of the Labour Code:

- (i) If the suspension does not exceed 14 working days, the wage for the work cessation shall be agreed by the parties and not lower than the regional minimum wages as required by the labour law;
- (ii) If the suspension is longer than 14 working days, the salary for the work cessation shall be agreed by the parties. In addition, it must ensure that the salary for work cessation in the first 14 days is not lower than the regional minimum wages.

### PROLONGATION OF WORK CESSATION

If the prolongation of work cessation affects the ability of enterprises to pay the salaries on ceasing work, enterprises shall choose the option of suspending the labour contracts according to Article 30 of the Labour Code:

- (i) Enterprises and employees can agree whether to pay salaries or not pay wages during the suspension of the labour contracts (according to Article 30 of the Labour Code);
- (ii) This agreement must be in writing.



### ENTERPRISES FACING WITH DIFFICULTY



In case enterprises have difficulties due to supply shortage or market reduction, leading to the inability to provide adequate employment, enterprises shall choose the option of temporarily reassigning employees against their labour contracts according to Article 29.1 of the Labour Code if satisfying the following conditions:

- (i) Employees are temporarily reassigned to perform a work which is not prescribed in their labour contracts with a period not exceeding 60 cumulative working days in 01 year, unless otherwise agreed in writing by employees
- (ii) Enterprises must notify employees at least 03 working days in advance, clearly notify the temporary working period and only assign works that are suitable for employees' health and gender;
- (iii) The reassigned employees are paid a salary appropriate for new jobs. If the new salary is lower than the previous one, the previous one shall be maintained for 30 working days. The new salary must equal at least 85% of the previous salary but not lower than the regional minimum wages

### SCALING DOWN OF PRODUCTION AND BUSINESS



If enterprises have to narrow production, leading to a reduction in the number of employees at the workplaces, and rearrangement of labour structure, enterprises shall choose the option of termination of labour contract due to the epidemic (Article 36.1 (c) of the Labour Code) or due to restructural, change of technology, or economic reasons (Article 42 of the Labour Code):

- (i) Enterprises develop and implement a labour usage plan with the participation of the representative organisation of employees at the grassroots level and must notify 30 days in advance to the provincial people's committee before retrenchment of employees.
- (ii) Enterprises must pay severance allowance (Article 46 of the Labour Code) or Redundancy allowance (Article 47 of the Labour Code). The representative organisation of employees at the grassroots level shall guide employees in carrying out the procedures to enjoy insurance regimes (if any).

#### 4. Notes for enterprises when implementing the above options:

In the process of implementing the above options, enterprises may face a lot of pressure, and it is difficult to avoid common mistakes. Consequently, it may lead to legal risks, so to limit the risk that may arise, the enterprises shall note the following issues:

##### 4.1. Organisation of dialogue at the workplaces

- i** This procedure is stipulated in the Labour Laws that requires enterprises to observe it when developing labour usage plans before terminating a labour contract with employees due to restructuring; changes in technology. However, due to the prolonged social distancing situation in many localities, organising of dialogue at the workplace is clearly impossible.*
- i** The Labour Laws does not prohibit collecting employees' opinions via email; via post, but this causes many difficulties for enterprises, such as (i) waste time, costly, and sometimes, loss; (ii) enterprises that use the majority of unskilled employees will not be familiar with office works like using computers.*
- i** The Labour Laws still does not have specific regulations on whether enterprises are allowed to organise a discussion when the enterprise and employees' discussion representative members have not collected enough employees' opinions. There is no specific legal process for enterprises to change the structure; further, it is to ensure the process of unilateral termination of labour contract with an employee for reasons of restructural in accordance with the labour laws*

##### 4.2. Regarding agreement on termination of labour contract with employees

- i** In all cases, reaching agreements on the termination of labour contracts with employees is always the first option that enterprises consider. Thus, before applying the option to terminate labour contracts with employees due to restructuring, enterprises generally propose a bilateral agreement on the termination of the labour contract. In case this agreement fails, enterprises shall unilaterally terminate the labour contract due to restructuring. At this time, employees have the right to sue enterprises*

*because they suspect that the restructuring is just an excuse for enterprises to legally unilaterally terminate the labour contract with them, but not for the actual demand of enterprises.*

- i** Therefore, the solution for this problem is that if enterprises intend to reach bilateral agreements with employees first and then move on to unilateral termination of labour contracts due to restructuring in case such agreements fail, enterprises should carry out internal procedures to get through a plan of restructuring. Thereafter, enterprises actively meet and discuss with employees the plan of restructuring of enterprises. Accordingly, to assist redundant employees, enterprises actively propose to sign agreements on the termination of labour contracts with employees so that employees will receive a higher payment package from enterprises than the upcoming restructuring plan. Preparing a clear process before unilaterally terminating labour contracts with employees helps enterprises be more proactive in case of disputes with employees, and such cases are resolved by courts.*

#### **4.3. Legal procedure compliance before application**

- i** Typically, in case of enterprises terminate labour contracts with employees due to restructuring, enterprises shall meet the necessary conditions for reasons of the termination of labour contracts and the sufficient conditions for legal procedural steps. Accordingly, the reason for termination of labour contracts of employees is due to the restructuring of enterprises, and the restructuring must actually take place in a reasonable manner and in accordance with the situations of enterprises. As for the legal procedural steps, enterprises should prepare and publicise a labour usage plan to employees and send the labour usage plan to the provincial people's committee.*
- i** If there is a breach of the requirements of the labour laws, enterprises may face legal risks that the termination of labour contracts with employees could be considered illegal by the competent courts (if there are disputes with employees). In this case, enterprises must bear the legal consequences, including receiving employees whose labour contracts were unilaterally terminated back to work, compensating a sum of money equal to 02 months salary and paying full salaries to employees from the period of the decision on the illegal termination of labour contracts until employees return to*

*work. Thus, enterprises shall carefully review the legal aspect before making decisions on the implementation of the above options.*

- i** *Enterprises shall consider implementing the steps of each option within a reasonable period depending on the specific situation of production and business activities of each enterprise. If a reasonable period of time is not considered, courts will consider legal consequences such as the above analysis.*

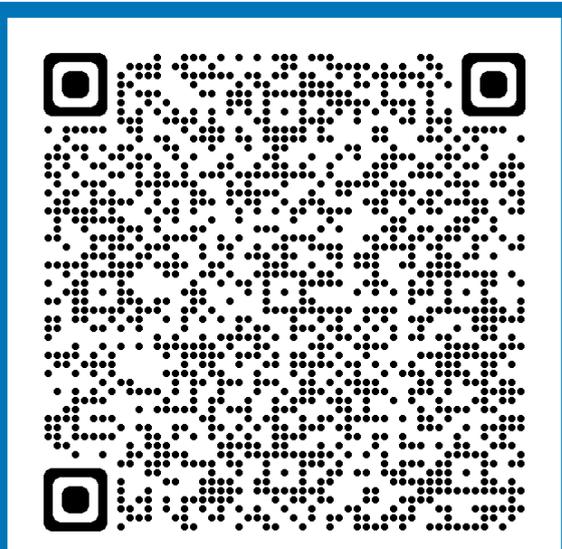
#### **4.4. Priority of application of other solutions to overcome difficulties before coming to decisions on the termination of labour contracts with employees**

- i** *In addition to the aforementioned statutory cases, enterprises also shall pay attention to thoroughly apply alternatives that may overcome the difficult situations of enterprises according to the provisions of the Official Dispatch No. 1064/LĐTBXH-QHLĐTL before moving on to the final decision on the termination of labour contracts with employees, specifically: (i) Assigning employees to do work other than that specified in the labour contracts; (ii) Negotiating with employees on work cessation salary; (iii) Negotiating with employees to diminish their working hours and cut down their salaries accordingly; (iv) Agreement on the suspension of labour contracts with employees.*

*(Details as analysed above)*

## C. APPENDIX TO THE POLICIES TO SUPPORT EMPLOYERS AND EMPLOYEES TO OVERCOME THE COVID-19 PANDEMIC

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➤ *To learn more and regularly update about support policies, please see more here:*

**The support policies shall be constantly aggregated and updated by Phuoc & Partners**



## I. For Employees

### 1. Financial supports for Employees

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
1	<b>SUPPORT FOR EMPLOYEES ON SUSPENSION OF LABOUR CONTRACTS OR UNPAID LEAVE</b> <sup>57</sup>	<p>Employees work for enterprises, cooperatives, public sectors, educational institutions suspended upon request by competent State authorities for the Covid-19 pandemic prevention and control;</p> <p>Employees work for enterprises that fail to meet the "03-on-site" condition and forced to suspend operations during the local "03-</p>	<p><b>1. Support amount:</b></p> <p><i>a) For employees have labour contract suspension or unpaid leave ranging from 15 consecutive days to less than 01 month (30 consecutive days): VND1,855,000 per person;</i></p> <p><i>b) For employees who temporarily suspend the labour contracts, take unpaid leave from work for 01 month (30 days) or more: VND3,710,000 per person.</i></p> <p><b>2. Additional support:</b></p>	<p>Employees meeting all the below eligibility requirements shall be given financial support:</p> <p>1. Be suspending the labour contracts or taking unpaid leave during the term of labour contracts from 01 May 2021 to the end of 31 December 2021 with the starting time of suspending the labour contracts, taking unpaid leave from 01 May 2021 to 31 December 2021;</p> <p>2. Be participating in compulsory social insurance up to the month immediately before the time of suspending the labour contracts or taking unpaid leave.</p>	<p><b>1. Support method:</b> A lump-sum payment to employees..</p> <p><b>2. Dossiers:</b> Details as prescribed in Article 15 of Decision 23/2021/QĐ-TTg.</p> <p><b>3. Procedural order:</b> Details as prescribed in Article 16 of Decision 23/2021/QĐ-TTg.</p>

<sup>57</sup> Article II.4 of Resolution 68/NQ-CP and Section 1 Chapter IV – From Article 13 to Article 16 of Decision No. 23/2021/QĐ-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		<p>on-site" regulation period<sup>58</sup>.</p> <p>Employees work at enterprises located in quarantined areas, facing difficulties in supplying materials and exporting goods, are forced to temporarily suspend operations<sup>59</sup>.</p>	<p>a) <i>Pregnant employees</i> shall get an additional amount of VND1,000,000 per person</p> <p>b) <i>Employees raising biological or adoptive child or taking care of child under 06 years old on behalf of their parents</i> shall get an additional amount of VND1,000,000 per child under 6 years old, <b>and either mother or father or caregiver shall get additional support.</b></p>		
2	<b>SUPPORT POLICY FOR EMPLOYEES ON WORK CESSATION PERIOD</b> <sup>60</sup>	Employees working under the labour contract.	<p><b>1. Financial support amount:</b> VND1,000,000/person.</p> <p><b>2. Additional support:</b></p>	<p>Employees meeting all the below eligibility requirements shall be given financial support:</p> <p>1. Working under a labour contract and ceasing work under Article 99.3 of the Labour Code and being subject to mandatory quarantine or in a blockade area as</p>	<p><b>1. Support method:</b> A lump-sum payment to employees.</p>

<sup>58</sup> Section 2 Official Letter 2844/LDTBXH-PC.

<sup>59</sup> Section 2 Official Letter 2844/LDTBXH-PC.

<sup>60</sup> Article II.5 Resolution 68/NQ-CP and Section 1 Chapter V – Articles 17 to 20 of Decision 23/2021/QD-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
			<p>a) <i>Pregnant employees</i> shall get an additional amount of VND1,000,000 per person;</p> <p>b) <i>Employees raising the biological or adoptive children or taking care of children under 06 years old on behalf of their parents</i> shall get an additional amount of VND1,000,000 per child under 6 years old, <b>and either mother or father, or caregiver shall get additional support.</b></p>	<p>required by the competent State authorities for 14 days or more during the period from 01 May 2021 to the end of 31 December 2021.<sup>61</sup></p> <p>2. Contributing compulsory social insurance up to the month immediately before the work cessation month as prescribed in Article 99.3 of the Labour Code.</p>	<p><b>2. Dossiers:</b> Details as prescribed in Article 19 of Decision 23/2021/QD-TTg.</p> <p><b>3. Procedural order:</b> Details as prescribed in Article 20 of Decision 23/2021/QD-TTg.</p>
3	<b>SUPPORT POLICY FOR EMPLOYEES TERMINATING LABOUR CONTRACTS BUT</b>	Employees working for enterprises, cooperative, public non-business units self-finance their own	<p><b>1. Financial support amount:</b> VND3,710,000/person.</p> <p><b>2. Additional support:</b></p>	<p>Employees meeting all the below eligibility requirements shall be given financial support:</p> <p>1. Being participating in social insurance up to the month immediately before labour contract termination.</p>	<p><b>1. Support method:</b> A lump-sum payment to employees.</p>

<sup>61</sup> This case is understood as the workplace and/or the residence of employee in the blocked area at the request of the competent State authorities, including “social distancing” according to Directive 16/CT-TTg dated 31 March 2020 of the Prime Minister or in the "medical isolation area to prevent and control Covid 19" - Section 3 Official Dispatch 2844/LDTBXH-PC.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
	<b>INELIGIBLE FOR UNEMPLOYMENT BENEFITS</b> <sup>62</sup>	recurrent investment or recurrent expenditures people-founded and private educational institutions at the educational level from preschool to high school and vocational education institutions are forced to suspend operations at the request of competent State authorities for the COVID-19 pandemic prevention and control from 01 May 2021 to the end of 31 December 2021.	<p>a) <i>Pregnant employees</i> shall get an additional amount of VND1,000,000 per person</p> <p>b) <i>Employees raising the biological or adoptive children or taking care of children under 06 years old on behalf of their parents</i> shall get an additional amount of VND1,000,000 per child under 6 years old, <b>and either mother or father or caregiver shall get additional support.</b></p>	<p>2. The labour contract termination period is from 01 May 2021 to 31 December 2021 but they are ineligible for unemployment benefits, except for the following cases:</p> <p>a) Employees are on monthly pension or work-capacity loss allowance;</p> <p>b) Employees are on monthly pension or work-capacity loss allowance.</p>	<p><b>2. Dossiers:</b> Details as prescribed in Article 23 of Decision 23/2021/QD-TTg.</p> <p><b>3. Procedural order:</b> Details as prescribed in Article 24 of Decision 23/2021/QD-TTg.</p>

<sup>62</sup> Article II.6 Resolution 68/NQ-CP and Section 1 Chapter VI – Articles 21 to 24 Decision 23/2021/QD-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
4	<b>SUPPORT POLICY FOR TOUR GUIDES</b> <sup>63</sup>	<p>A tour guide meeting all the below eligibility requirements shall be given financial support:</p> <ol style="list-style-type: none"> <li>1. Obtaining a tour guide's card as prescribed in the Law on Tourism</li> <li>2. Having an labour contract with a tour operator or a tourist guide service provider, or being a member of a tour guide socio-professional organisation if he/she is an international or domestic tour guide;</li> </ol>	<p><b>Support amount:</b> VND3,710,000 per person.</p>		<ol style="list-style-type: none"> <li>1. <b>Support method:</b> A lump-sum payment to employees.</li> <li>2. <b>Dossiers:</b> Details as prescribed in Article 33 of Decision 23/2021/QD-TTg.</li> <li>3. <b>Procedural order:</b> Details as prescribed in Article 34 of Decision 23/2021/QD-TTg.</li> </ol>

<sup>63</sup> Article II.9 Resolution 68/NQ-CP and Section 2 Chapter VIII – From Article 31 to Article 34 of Decision 23/2021/QD-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		<p>or obtaining an assignment made by the managerial corporate or individual of a tourist resort or tourist attraction if he/she is an on-site tour guide.</p>			
5	<p><b>SUPPORT POLICY FOR PUBLIC EMPLOYEES WORKING IN ARTS SECTOR</b> <sup>64</sup></p>	<p>Public employees that meet all the below eligibility requirements shall be given financial support:</p> <ol style="list-style-type: none"> <li>1. Being art directors, actors, painters holding the class IV professional title;</li> <li>2. Be working for public sector entities engaged in performing</li> </ol>	<p><b>Support amount:</b> VND3,710,000/ person.</p>		<ol style="list-style-type: none"> <li><b>1. Support method:</b> A lump-sum payment to employees.</li> <li><b>2. Procedural order:</b> Details as prescribed in Article 30 of Decision 23/2021/QD-TTg.</li> </ol>

<sup>64</sup> Article II.9 Resolution 68/NQ-CP and Section 1 Chapter VIII – Articles 28 to 30 of Decision 23/2021/QD-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		arts (excluding art units of the armed forces) and forced to suspend to perform arts for 15 days or more from 01 May 2021 to the end of 31 December 2021 by the order of the competent State authorities for prevention and control of Covid-19 pandemic.			
6	<b>SUPPORT POLICY FOR PEOPLE IN COVID-19 TREATMENT OR MANDATORY QUARANTINE</b> <sup>65</sup>	People in Covid-19 treatment (F0) or mandatory quarantine for Covid-19 prevention and control (F1) under a decision of the competent state authorities.	<b>1. Financial support amount:</b> <i>a) For patients in Covid-19 treatment (F0) from 27 April 2021 to 31 December 2021: VND80,000/person/day, with the duration of support depending on the actual treatment time but not exceeding 45 days.</i>		<b>1. Implementation period:</b> from 24 April 2021 to 31 December 2021 inclusive.  <b>2. Procedural order:</b> Details as prescribed in

<sup>65</sup> Article II.7 Resolution 68/NQ-CP and Chapter VII – Articles 25 to 27 Decision 23/2021/QĐ-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
			<p><i>b) For people in medical quarantine (F1) according to the decision of the competent State authorities from 27 April 2021 to 31 December 2021: VND80,000/person/day, with the support duration of up to 21 days.</i></p>		<p>Article 27 of Decision 23/2021/QD-TTg.</p>
7	<p><b>FINANCIAL AID FOR EMPLOYEES AFFECTED BY THE COVID-19 PANDEMIC FROM THE SURPLUS OF UNEMPLOYMENT INSURANCE FUND</b><sup>66</sup></p>	<p>- Employees who are paying unemployment insurance (“UI”) contributions as of 30 September 2021 (excluding employees currently working at state agencies, political organizations, socio-political organisations, units of people’s armed forces, and public service</p>	<p><b>1. Support amount:</b> based on the UI contribution period during which employees have not yet received till 30 September 2021:</p> <p><i>a) UI contribution period of less than 12 months: VND1,800,000 per person.</i></p> <p><i>b) UI contribution period between full 12 months and less than 60 months: VND2,100,000 per person.</i></p> <p><i>c) UI contribution period</i></p>	<p>*** To find out the amount of support that can be received, employees can look up information about their UI participation period through:</p> <p>(1) Social insurance books of employees.</p> <p>(2) VssID Application – Social insurance code on the smartphone (See here for the instruction on finding the Social insurance code on: <a href="https://youtu.be/R3dqKZ5gJEY">https://youtu.be/R3dqKZ5gJEY</a>).</p> <p>(3) On the National Public Service Portal, Public Service Portal of Vietnam Social Security: <a href="https://baohiemxahoi.gov.vn/tracuu/Pages/tracuu-dong-bao-hiem.aspx">https://baohiemxahoi.gov.vn/tracuu/Pages/tracuu-dong-bao-hiem.aspx</a>).</p>	<p><b>1. Payment method:</b> A lump-sum payment to employees through their bank accounts, specifically: (1) bank account number and the name of the bank where employees open an account (including the branch name) (2) ID number or Citizens</p>

<sup>66</sup> Part II.1 Resolution 116/NQ-CP.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		<p>delivery units whose recurrent expenditures are financed by the State budget).</p> <p>- Employees who have stopped paying UI contributions due to the termination of labour contracts or employment contracts in the period from 01 January 2021 to the end of 30 September 2021, with whose UI contribution periods are reserved in accordance with the law on employment, excluding persons who are enjoying to monthly pensions.</p>	<p><i>between full 60 months and less than 84 months: VND2,400,000 per person.</i></p> <p><i>d) UI contribution period between full 84 months and less than 108 months: VND2,650,000 per person.</i></p> <p><i>e) UI contribution period is between full 108 months and less than 132 months: VND2,900,000 per person.</i></p> <p><i>f) UI contribution period of at least 132 months or more: VND3,300,000 per person.</i></p>	<p>(4) SMS service to look up via Call Center 8079 – with the syntax: “BH_QT_SI code” to 8079. (Note that the social insurance code is the number on the social insurance book or the last 10 digits on employees’ health insurance card).</p> <p>▪</p> <p>(5) Customer Care and consulting service of Vietnam Social Insurance: 19009068.</p> <p>*** In addition, employees need to provide the social insurance agency with a phone number to facilitate the contact between the social insurance agency and employees in case of necessity.</p>	<p>Identity Card that employees use to open a bank card.</p> <p><b>Note:</b> The name of the bank account holder must match the name of the recipient of the support.</p> <p>Employees' ID numbers must match those used to open bank accounts.</p> <p><b>2. Implementation period:</b> from 01 October 2021 to 31 December 2021 inclusive.</p>
7a	FINANCIAL AID FOR EMPLOYEES	<b>PROCEDURAL ORDER</b>			
		<b>Employees who are paying UI</b>	<b>Employees who have stopped paying UI</b>		

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
	<p><b>AFFECTED BY THE COVID-19 PANDEMIC FROM THE SURPLUS OF UNEMPLOYMENT INSURANCE FUND (continue)<sup>67</sup></b></p> <p><b>Note:</b> After 30 November 2021, if employees who are participating in UI does not receive support, employees must a request for consideration as with employees who have ceased to participate in UI.</p>	<p><i>Step 1:</i> No later than 20 October 2021, the Social insurance agencies shall send a list of employees who are unemployment insurance participants according to Form No. 01 to all employers and <i>public on the website of the provincial social insurance agency.</i></p> <p><i>Step 2:</i> Within 05 working days from receipt of the list from the social insurance agency, the employers shall publicise the list to employees who are eligible beneficiaries and provide supplementary information if required, and: (i) preparing &amp; sending a list of employees with correct and qualify information and employees voluntarily not receiving support under Form No. 02 to the social insurance agency; (ii) sending the list of employees information need to supplement information under Form No. 03 with proof dossier no later than 10 November 2021.</p> <p><i>Step 3:</i> Within 10 working days from the receipt of the list of employees whose information is correct and adequate, and within 20 days from the receipt of the list of employees whose information is revised, the social insurance agency is responsible for paying the support amount to employees through their bank account. In case of rejection, the social</p>		<p><i>Step 1:</i> No later than 20 December 2021, employees shall submit applications to the social insurance agency at the provincial/district level where employees want to receive support according to Form No. 04.</p> <p><i>Step 2:</i> Within 10 working days from the date from the receipt of employees' applications, the social insurance agency <b>is responsible for paying the support amount to employees through their bank accounts.</b> This payment will be completed no later than 31 December 2021.</p>	

<sup>67</sup> Article 3 of Decision No. 28/2021/QĐ-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		insurance agency must send a written notice and provide explanation.			

## 2. Supports from Trade Unions

NO.	TITLES	SUBJECT	SUPPORT AMOUNT	REMARKS
7	<b>PROVIDING MEAL ALLOWANCES FOR MEMBERS OF GRASSROOTS TRADE UNIONS AND EMPLOYEES IMPLEMENTING THE "03-ON-SITE"</b> <sup>68</sup>	Members of grassroots Trade unions and employees of enterprises paying Trade union funds and implementing the "three (03)-on-site" working regime for production within provinces and cities applying social distancing measures under the Directive No. 16/CT-TTg.	<b>1. Financial support amount:</b> VND1,000,000/person paid in a lump-sum manner.	<b>1. Support method:</b> A lump-sum payment to employees.  <b>2. Procedural order:</b> Details as prescribed in Article 1 (đ) of Decision 3089/QĐ-TLĐ.

<sup>68</sup> Decision No. 3089/QĐ-TLĐ.

NO.	TITLES	SUBJECT	SUPPORT AMOUNT	REMARKS
8	<b>SUPPLEMENTARY SUBJECTS EXEMPTED FROM TRADE UNION FEE PAYMENT</b> <sup>69</sup>	Members of grassroots Trade unions of service providers and enterprises whose pay rates are lower than regional minimum wages.	<b>1. Support method:</b> Trade union fee payment exemption.	<b>1. Implementation period:</b> from 01 May 2021 to 31 December 2021 inclusive.
9	<b>EMERGENCY SUPPORT POLICY FOR MEMBERS OF GRASSROOTS TRADE UNIONS AND EMPLOYEES AFFECTED BY THE COVID-19 PANDEMIC</b> <sup>70</sup>	Members of grassroots Trade unions and employees affected by the Covid-19 pandemic in the fourth outbreak from 27 April 2021 (Decision 2606/QD-TLD).	<b>1. Financial support amount:</b> Members of grassroots Trade unions and employees who do not violate regulations and Law on the prevention and control of infectious diseases in the following cases: <ul style="list-style-type: none"> <li>a) Member of grassroots Trade unions and employees who have working relations (including enterprises and entities that have not established trade unions): <b>maximum of VND 3,000,000/person</b></li> <li>b) Member of grassroots Trade unions and employees who work for agencies, units, and enterprises that have paid Trade union funds and are F1, must be quarantined according to decisions of the competent State authorities: <b>maximum of VND1,500,000/person</b></li> </ul>	<b>1. Support method:</b> A lump-sum payment to employees.  <b>3. Support principle:</b> Details as prescribed in Article 3 of Decision 2606/QD-TLD.

<sup>69</sup> Official Dispatch 2475/TLD.

<sup>70</sup> Decision No. 2606/QD-TLD and Decision 3022/QD-TLD.

NO.	TITLES	SUBJECT	SUPPORT AMOUNT	REMARKS
			<p>c) Member of grassroots Trade unions who are officials and public employees, are F1 cases, are facing difficulties, must be quarantined according to decisions of the competent State authorities: <b>maximum of VND1,500,000/person</b></p> <p>d) Member of grassroots Trade unions and employees (in agencies, units, and enterprises that have paid Trade union funds) who must stop working for medical isolation or are residing in blockade according to decisions of competent State authorities and meet any of the following conditions are entitled to <b>up to VND500.000/person</b>: (i) Having difficult circumstances; (ii) Being pregnant or raising a child under 6 years old;</p> <p>e) Member of grassroots Trade unions and employees (in agencies units, and enterprises that have paid Trade union funds) who are deceased due to Covid-19, from 27 April 2021 are entitled to <b>VND5,000,000/person</b>;</p> <p>g) Member of grassroots Trade unions and employees (in agencies, units, and enterprises that have paid Trade union funds) who left Southern provinces to go back to their hometowns from 01 August 2021, must be quarantined according to decisions of competent local authorities and are facing difficulties, shall be considered and supported by the federation of labour of the province or city where returnees are received: <b>maximum of VND500,000/person</b></p> <p>h) <i>Other special cases requiring support</i> shall be considered, supported, and reported based on the policies and regulations of the General Confederation of Labour.<sup>71</sup></p>	

<sup>71</sup> For Ho Chi Minh City: Official Letter No.693/LĐLĐ-CSPL of the Ho Chi Minh City Confederation of Labour.

For Thu Duc City: Official Letter No. 80/LĐLĐ and Official Letter No. 141/LĐLĐ of the Thu Duc City Confederation of Labour.

### 3. Supports from local authorities

NO.	TITLES	SUBJECT	SUPPORT AMOUNT	CONDITIONS	REMARKS
10	<b>SUPPORT POLICY FOR EMPLOYEES WITHOUT LABOUR CONTRACT (FREELANCERS) WHO LOST THEIR JOBS DUE TO THE IMPACT OF THE COVID-19 PANDEMIC IN HCMC</b> <sup>72</sup>	Employees without labour contract (freelancers) who lost their jobs due to the impact of the Covid-19 pandemic.	<b>Financial support amount:</b> VND50,000/person/day	<p>Employees fully meeting the below eligibility requirements shall be given financial assistance:</p> <ul style="list-style-type: none"> <li>- Losing a job, having no income or an income under VND4,000,000 per month (the city's near-poverty level for the period of 2021-2025).</li> <li>- Having a legal residence in Ho Chi Minh City (in case of temporary residence, a temporary residence registration must be confirmed by the police authorities).</li> <li>- Doing one of the following 06 types of work: (i) street vendors, small businesses on streets without a fixed location (trafficking); (ii) collection of garbage and scrap; (iii) porters, transporting goods by tricycles, rudimentary vehicles; (iv) mobile retailing of lottery tickets; (v) self-employed or work for household enterprises in food and beverage,</li> </ul>	<p><b>1. Implementation period:</b> from 27 March 2021 đến ngày 31 December 2021.</p> <p><b>2. Procedural order:</b> Details as prescribed in Part IV, Article 4 of Official Letter 2209/UBND-KT of the Ho Chi Minh City People's Committee.</p>

<sup>72</sup> Resolution No. 09/2021/NQ-HDND and Official Letter 2209/UBND-KT.

NO.	TITLES	SUBJECT	SUPPORT AMOUNT	CONDITIONS	REMARKS
				accommodation, tourism, health care (including security) sector; (vi) do jobs in industries and fields forced to suspend under the Official Dispatch No. 1749/UBND-VX of the Ho Chi Minh City People's Committee.	
11	<b>SUPPORT POLICY FOR EMPLOYEES WITHOUT LABOUR CONTRACT (FREELANCERS) WHO LOST THEIR JOBS DUE TO THE IMPACT OF THE COVID-19 PANDEMIC IN HANOI CITY</b>	Employees specified in Article 3.1 of the Law on Employment working in the industries that lose their jobs due to suspension of operations as required in the directing documents of the City People's Committee; Employees in quarantine period or reside in a blockaded area according to a decision of competent State authorities, except for the case where employees are receiving a monthly pension or allowance for loss of working capacity. <sup>73</sup>	1. <b>Financial support amount:</b> VND1,500,000/person/time	Employees fully meeting the below eligibility requirements shall be given financial support:  1. Having lawful residence; and  2. Losing a job due to having to suspension of operations from 01 May 2021 to 31 December 2021.	1. <b>Support method:</b> Direct payments to employees.  2. <b>Procedural order:</b> Details as prescribed in the Appendix attached to Decision No. 3642/QĐ-UBND.

<sup>73</sup> Decision No.3642/QĐ-UBND.

## II. For Employers

### 1. Loans for Financial Support

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
1	<b>LOAN POLICY FOR EMPLOYERS TO PAY SALARIES ON CEASING WORK, SALARIES FOR PRODUCTION RECOVERY</b> <sup>74</sup>	<p>1. Employers fully meeting the eligibility requirements shall be entitled to borrow a loan to pay salaries on ceasing work.</p> <p>2. Employers fully meeting the below eligibility requirements for each case shall be entitled to borrow capital for salary payments of employees in production recovery:</p> <p>a) For employers that are forced to suspend operations during the</p>	<p><b>1. Loan for work cessation salaries payment:</b> The maximum loan amount is equal to the regional minimum wages for the number of employees according to the actual payment period of salaries on ceasing work but not exceeding 03 months; the loan term is less than 12 months.</p> <p><b>2. Loan to pay salaries for production recovery:</b> The</p>	<p><b>1. Employers fully meeting the below eligibility requirements shall be entitled to borrow loan to pay salaries on ceasing work:</b></p> <p>a) Their employees working under labour contracts and have contributed social insurance up to the month immediately before the work cessation month for 15 consecutive days or more as prescribed in Article 99.3 of the Labour Code, from 01 May 2021 to the end of 31 March 2022.</p> <p>b) It has no bad debts at any credit institution and foreign bank branch at the time of applying for a loan.</p> <p><b>2. Employers fully meeting the below eligibility requirements shall be entitled to borrow loan to pay salaries for production recovery):</b></p> <p>a) <i>For employers that are forced to suspend operations during the period from 01 May 2021 to the end of 31</i></p>	<p><b>1. Dossiers and procedure:</b> Details as prescribed in Article 40 of Decision No. 23/2021/QD-TTg.</p> <p>a) Loan application form prescribed by law;</p> <p>b) List of employees contributing SI according to the form prescribed by law</p> <p>c) A certified copy or a copy enclosed with the original for comparison of one of the following papers: Enterprise Registration Certificate/ Cooperatives/Business Households Registration Certificate; Establishment</p>

<sup>74</sup> Article II.11 Resolution 68/NQ-CP and Chapter X – Articles 38 to 43 Decision 23/2021/QD-TTg.

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		<p>period from 01 May 2021 to the end of 31 March 2022 by order of the competent State authorities to prevent and control the COVID-19 pandemic</p> <p>b) For employers operating in transportation, aviation, tourism, accommodation services, and sending Vietnamese employees abroad under contracts to restore production and business</p>	<p>maximum loan is equal to the regional minimum wages for employees working under labour contractd but not exceeding 03 months; the loan term is less than 12 months.</p> <p>3. The disbursement of the Vietnam Bank for Social Policies to Employers for May, June and July of 2021 is a lump-sum disbursement; the disbursement period is until the end of 05 April 2022 or when the disbursement is completed when all VND7,500 billion refinanced by the State Bank of Vietnam has been disbursed, whichever</p>	<p><i>March 2022 by order of the competent State authorities to prevent and control the COVID-19 pandemic</i></p> <ul style="list-style-type: none"> <li>- Employers that are forced to suspend operations at the request of competent State authorities for the COVID-19 pandemic prevention and control from 01 May 2021 to the end of 31 March 2022.</li> <li>- Their employees working under labour contracts contributed SI up to the time of applying for a loan;</li> <li>- Having a plan for production and business recovery.</li> <li>- Having no bad debts at any credit institution and foreign bank branch at the time of applying for a loan</li> </ul> <p><i>b) For employers operating in transportation, aviation, tourism, accommodation services, and sending Vietnamese employees abroad under contracts to restore production and business:</i></p> <ul style="list-style-type: none"> <li>- Their employees working under labour contracts contributed social insurance up to the time of applying for a loan.</li> <li>- Having a plan for production and business recovery..</li> <li>- Having no bad debts at any credit institution and foreign</li> </ul>	<p>Decision of a competent State authorities (if any); Business License/Operation License/Practising certificate (for conditional business lines or prescribed by law);</p> <p>d) Power of attorney (if any);</p> <p>e) A copy of the document stating that the employer must suspend operation during the period from 01 May 2021 to the end of 31 March 2022 by order of the competent State authorities to prevent and control the COVID-19 pandemic (<i>for loans to pay salaries for production and business recovery</i>);</p> <p>f) Plan for production recovery for the entities specified in Article 38.2 of this Decision (<i>for loan to pay salaries for production and business recovery</i>).</p> <p>g) A copy of the tax authority's notice of the 2020 corporate</p>

NO.	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
			comes first.	bank branch at the time of applying for a loan.	income tax finalisation for the employer specified at Article 38.2 (b) of this Decision (for employers operating in of transportation, aviation sector...).

## 2. Supports in Insurance Regime

STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
1	<b>REDUCTION IN INSURANCE PREMIUMS FOR OCCUPATIONAL ACCIDENTS AND DISEASES</b> <sup>75</sup>	Employers have contributed to the Insurance Fund for Occupational Accidents and Diseases for employees eligible for occupational accident and disease insurance as prescribed in Law on social insurance and occupational safety and hygiene (except for	<p><b>1. Support method:</b> Reducing the contribution to the fund.</p> <p><b>2. Support level:</b> 0% of the salary fund as the basis for paying social insurance premiums.</p> <p><b>Note:</b> The employers will provide the monetary support obtained from the reduction in premiums to the Insurance fund for occupational accidents and diseases for employees</p>		<p><b>1. Implementation period:</b> 12 months, from 01 July 2021 to 30 June 2022 inclusive</p> <p><b>2. Procedural order:</b> Details as prescribed in Article 3 of Decision No. 23/2021/QD-TTg.</p>

<sup>75</sup> Article II.1 Resolution 68/NQ-CP and Chapter I – From Articles 1 to Article 3 Decision 23/2021/QD-TTg.

STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		officials, public employees, people in the people's armed forces, employees in the agencies of the Party, the State, administrative agencies, public sector entities on the payroll of the State budget)..	in order to combat the Covid-19 pandemic		
2	<b>SUSPENSION OF CONTRIBUTIONS TO THE RETIREMENT AND SURVIVORSHIP FUND</b> <sup>76</sup>	Employers and employees are required to contribute social insurance prescribed in Article 2 of the Law on Social insurance 2014.		<p>1. Employers: (i) have fully paid SI or are suspending contributions to the retirement and survivorship fund <b>until the end of April 2021</b>; (ii) <b>affected by the Covid-19 pandemic</b>; (iii) leading to a <b>reduction of 15% or more in the number of employees participating in SI</b> at the time of application submission <b>compared to April 2021</b>.</p> <p><b>2. The number of employees on social insurance considered to be downsized includes:</b></p>	<p><b>1. Duration of suspension:</b> a 06 - month suspension of payment to the retirement and survivorship fund from the date of application submission. For the employers has been approved to suspend retirement and survivorship fund contribution according</p>

<sup>76</sup> Article II.2 Resolution 68/NQ-CP and Chapter II – From Articles 4 to Article 8 Decision 23/2021/QĐ-TTg.

STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
				<p>a) The number of employees who terminate labour contracts or labour contracts as prescribed by law minus the number of new employees who enter into labour contracts or employment contracts from 01 May 2021 to the date of application submission.</p> <p>b) The number of employees who are suspending the labour contract and the suspension period is 14 working days or more per month.</p> <p>c) The number of employees who are taking unpaid leave but the unpaid leave period is 14 working days or more per month.</p> <p>d) The number of employees who are ceasing work but the work cessation period is 14 working days or more per month</p> <p><b>3. The number of reduction of employees participating in the SI includes</b> (i) employees working under employment contracts, labour contracts</p>	<p>to Resolution No. 42/NQ-CP and Resolution No. 154/NQ-CP, the total suspension duration of retirement and survivorship fund contribution due to the impact of the Covid-19 pandemic shall not exceed 12 months.</p> <p><b>2. Dossiers and procedure:</b> Details as prescribed in Article 8 of Decision No. 23/2021/QD-TTg.</p>

STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
				with indefinite term or with definite term of at least 1 month or more; (ii) the enterprise manager, the executive manager of the cooperative with paid salaries; (iii) Excluding employees who are on pension from 01 May 2021.	
3	<b>SUPPORT POLICY FOR EMPLOYERS TO PROVIDE JOB RETENTION TRAINING PROGRAMS FOR EMPLOYEES</b> <sup>77</sup>	The Employers specified in Article 43.3 of the Law on Employment shall submit an application for support from 01 July 2021 to the end of 30 June 2022.	<p><b>1. The maximum monthly support</b> of training, retraining and skill enhancement is VND 1,500,000/employee/month. The specific amount of support shall be determined based on the actual training time of each job or each course</p> <p>2. In case the duration of training, retraining and skill enhancement has <i>odd days that are not full months</i>, the dates shall be rounded to nearest month as follows: <i>Less than 15 days is rounded to a half of month, 15 days or more is rounded to 01 month for</i></p>	<p>The Employers fully meeting the below eligibility requirements shall be given financial support:</p> <p>1. It had fully paid unemployment insurance for employees eligible to participate in unemployment insurance for the full 12 months or more up to the time of application submission;</p> <p>2. It has to restructure change the technology structure according to Article 42.1 of the Labour Code;</p> <p>3. The revenue in the preceding quarter has decreased by 10% or more compared</p>	<p><b>1. Support duration:</b> Up to 06 months.</p> <p><b>2. Payment method:</b> Direct payment to employers according to the approved plan on training, retraining and skill enhancement that has been approved</p> <p><b>3. Dossiers:</b> Details as prescribed in Article 11 of Decision No. 23/2021/QD-TTg.</p>

<sup>77</sup> Article II.3 Resolution 68/NQ-CP and Chapter III – From Articles 9 to Article 12 of Decision 23/2021/QD-TTg.

STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
			<p><i>the purpose of determining the financial support.</i></p> <p>3. If the cost of training, retraining and skill enhancement <b>with a cost higher than the support amount as prescribed in this Clause</b>, employer shall cover the amount in excess itself.</p>	<p>to the same period in 2019 or 2020 at the time of requesting support.</p> <p>4. It has developing plan or cooperates with vocational education institutions in developing a plan for training, retraining and skill enhancement to maintain jobs for employees.</p>	<p><b>4. Procedural order:</b> Details as prescribed in Article 12 of Decision No. 23/2021/QĐ-TTg.</p>
4	<b>REDUCTION IN CONTRIBUTION RATES TO THE UNEMPLOYMENT INSURANCE FUND MADE BY EMPLOYERS AFFECTED BY THE COVID-19 PANDEMIC</b> <sup>78</sup>	The employers specified in Article 43 of the Law on Employment (excluding state agencies, political organisations, socio-political organisations, people's armed forces units and public non-business units of people's armed forces and public service delivery units whose recurrent	<p><b>1. Support level:</b> reducing the contribution rate from 1% to 0% of the monthly salary fund for any employees who have participated in UI.</p>		<p><b>1. Implementation period:</b> 12 months, from 01 October 2021 to 30 September 2022 inclusive.</p> <p><b>2. Payment method:</b> Every month, from 1 October 2021 to 30 September 2022, social insurance agency will pursuant on the</p>

<sup>78</sup> Part II.2 of Resolution 116/NQ-CP

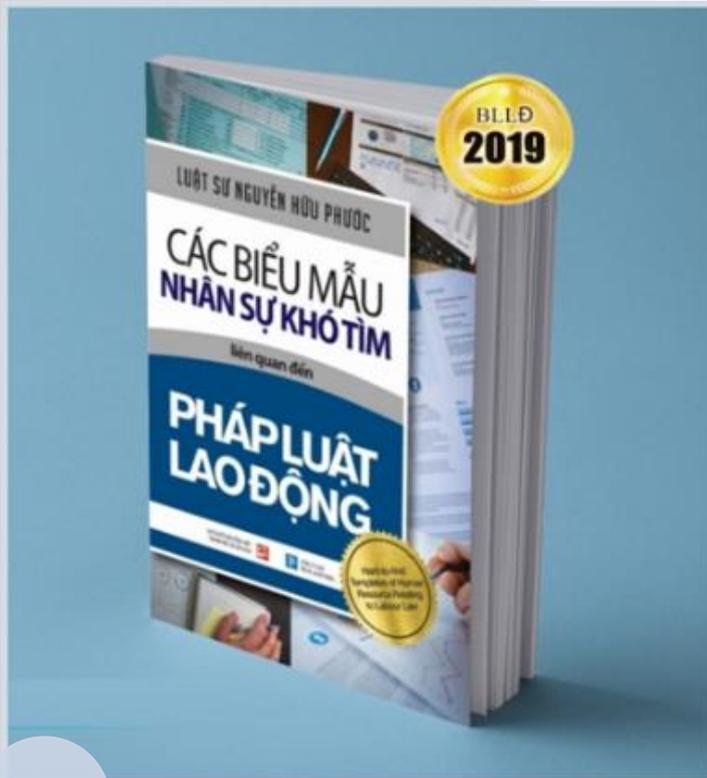
STT	TITLES	SUBJECTS	SUPPORT AMOUNT	CONDITIONS	REMARKS
		expenditures are financed by the state budget) that are participating in UI until 01 October 2021.			available data synthesised in the software for management of SI, HI and UI collection to reduce the contribution rate by 0% of the monthly salary fund of employees who are participating in unemployment insurance under the responsibility of the employers. <sup>79</sup>

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<sup>79</sup> Article 5 of Decision No. 28/2021/QĐ-TTg.

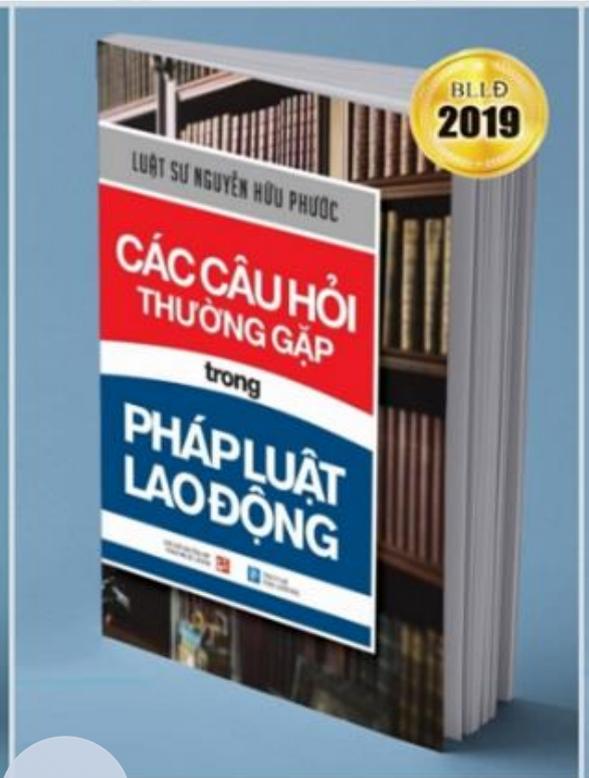
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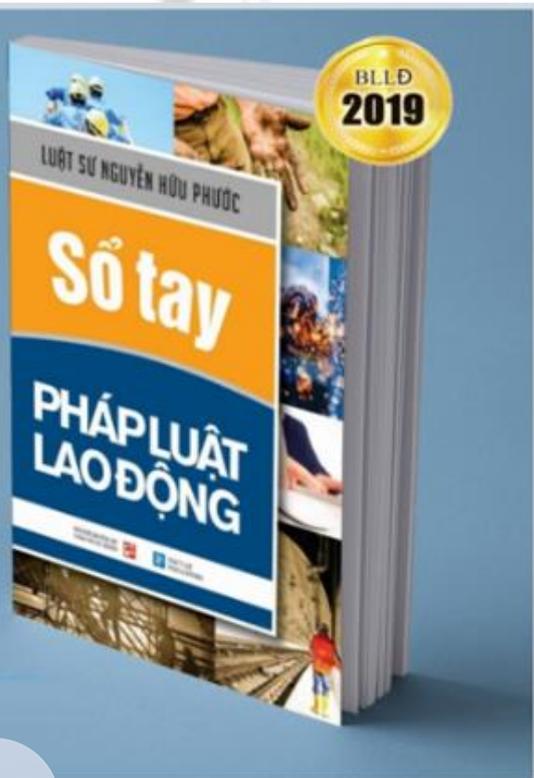
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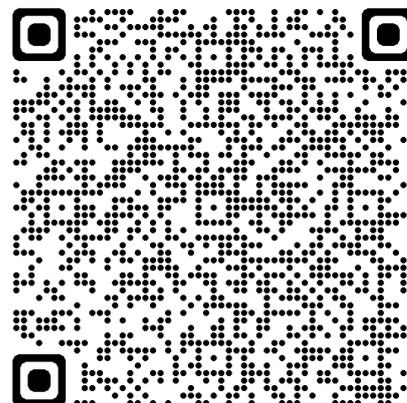
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# INTRODUCTION OF PHUOC & PARTNERS LLC

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