

# The New Labor Code

## What is new?

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# General Overview

- **Effective date:**
  - 1 May 2013.
- **Governing scope:**
  - All Vietnamese full-time and part-time employees and apprentices;
  - All foreign employees working in Vietnam;
  - Employers of all types; and
  - Other organizations, state agencies and individuals involved with labor-related matters.
- **Relevant authorities:**
  - Ministry of Labor, War-Invalids, and Social Affairs (MOLISA),
  - Provincial/City Departments of Labor, War-Invalids, and Social Affairs (DOLISA),
  - Industry Zones' Labor Departments, and
  - People's Committees.

# Guiding Decrees/Circulars Issued

1. Labor Contracts
  - Decree **No. 44/2013/ND-CP** (will take effect on 15 July 2013)
2. Labor Outsourcing
  - Decree **No. 55/2013/ND-CP** (will take effect on 15 July 2013)
  - Draft Circular specifying licensing conditions is being discussed.
3. Working Hours and Labor Safety
  - Decree **No. 45/2013/ND-CP** (will take effect on 1 July 2013)
4. Wages
  - Decree **No. 49/2013/ND-CP** (will take effect on 1 July 2013)
5. Labor Disputes
  - Decree **No. 46/2013/ND-CP** (will take effect on 1 July 2013)
  - Circular **No. 08/2013/TT-BLDTBXH** guiding Decree No. 46 (will take effect on 1 July 2013)
6. Strikes
  - Decree **No. 41/2013/ND-CP** (will take effect on 23 June 2013)

# Expected Guiding Legislation

1. Decree guiding the Labor Code on management of foreigners working in Vietnam.
2. Decree guiding the Labor Code on the administrative sanctioning of violations of labor law.
3. Decree guiding the Trade Union Law on financial matters of the trade union.
4. A number of Circulars issued by MOLISA guiding the issued Decrees.

# Topics To Be Covered

1. Labor Contract
2. Labor Outsourcing (or labor sub-leasing)
3. Tightened Management of Foreign Workers
4. Changes in Work Hours and Rest Breaks
5. Changed Financials for Union and More Pressure Towards Unionization
6. Salary Reform
7. Labor Dispute Resolution
8. Other Matters
9. Recent Issues Regarding Implementation of New Labor Code/Union Law

# 1. Labor Contract

## Part-time jobs

- First time recognized by law.
  - However, the regulations are still very general and in need of more guidance.

## Termination of labor contract

- New Termination cases:
  - Retirement of employees;
  - Massive lay-offs due to an “*economic reason*.”
    - However, there is no definition of “*economic reason*.”

# 1. Labor Contract (cont'd)

**An employee signs multiple labor contracts with multiple employers** (*Decree No. 44*)

– Insurance issues:

- *Social insurance and unemployment insurance:*
  - Employer of the first signed contract must contribute.
- *Health insurance:*
  - Employer of the signed contract with highest salary must contribute.
- *Other employers who do not contribute compulsory insurance:*
  - Employers must pay equivalent amounts of employer's contribution to compulsory insurance to the employee.

# 1. Labor Contract (cont'd)

## An employee signs multiple labor contracts with multiple employers *(Decree No. 44)*

—Work-related accidents or occupational diseases:

- *If occur while working for an employer who provides compulsory social insurance?*
  - Employer and social insurance fund will compensate employee.
- *If occur while working for an employer who does not provide compulsory social insurance?*
  - Employer must:
    - Pay all medical expenses;
    - Pay salary for days that the employee can not work due to treatment;
    - Compensate for reduction of working ability in accordance; and
    - Inform other employers on the health status of employee.



# 1. Labor Contract (cont'd)

## Invalid labor contracts *(Decree No. 44)*

- Right to declare invalid labor contracts:
  - The People's Court; and
  - Chief Inspector of DOLISA.
  
- Consequences of invalid contracts:
  - Partially invalid labor contracts.
  - Totally invalid labor contracts.
  - Comparison to consequences of totally invalid transaction under the Civil Code.

## 2. Labor Outsourcing (aka labor sub-leasing)

**First time recognized by the law!**

**Use of labor outsourcing service** (*Decree No. 55*)

– Purpose:

- Sudden increase of labor force in a certain period;
- Temporary replacement of employees taking maternity leave, suffering from work related accidents, occupational accidents, or being entitled to working time reduction; or
- Need for high technique/ high quality employees.

– Categories of Work (17 groups of work).

– Maximum Term (12 months).

## 2. Labor Outsourcing (aka labor sub-leasing)

### **Labor outsourcing license** *(Decree No. 55)*

– Conditions:

- Deposit of VND2 billion (approx. US\$95,924).
- Legal charter capital of VND2 billion (approx. US\$95,924).
- Stable office.
- Qualified head person.

– License issued by MOLISA.

- Maximum term is 36 months.

## 3. Tightened Management of Foreign Workers

### **Reinforcement of “No expatriate if Vietnamese can do” policy**

- Employers may recruit foreigners when the local workers do not meet business needs.
- Subject to authority’s approval in regards to recruitment plan of foreign employees.

### **Work Permit**

- No more exemption for employees working in Vietnam for less than 3 months.
- Maximum term of 2 years.

## 4. Changes in Work Hours and Rest Breaks

### Normal work hours

- Elderly employee = reduce 1 hour in the last year before retirement.  
*(Decree No. 45)*

### Overtime

- Overtime without employee's consent permissible in certain cases.
- If work hours determined on a weekly basis, then overtime must not exceed 10 hours per day.
- Overtime must not exceed 30 hours per month or 200 hours per year.
- Overtime during holidays and weekly days-off = maximum 12 hours per day. *(Decree No. 45)*

## 4. Changes in Work Hours and Rest Breaks (cont'd)

### **Special overtime from 200 to 300 hours per year** (*Decree No. 45*)

#### – Permitted cases:

- Manufacture, or processing for export textiles, leather, footwear, agricultural, forestry and aquatic products;
- Power generation and supply, telecommunications, oil refinery; water supply and water discharge; and
- In other cases to resolve urgent work which is unable to be postponed.

#### – Procedure:

- Must notify the labor authority at Provincial level before arranging overtime.

## 4. Changes in Work Hours and Rest Breaks (cont'd)

### Leave

- Increase of maternity leave from 4 months to 6 months.
- Increase of Lunar New year holiday from 4 days to 5 days.
  - Employer can decide if the leave starts 1 day or 2 days prior to the Lunar New Year. (*Decree No. 45*)
  - Employer must notify employees of schedule at least 30 days in advance. (*Decree No. 45*)
- Additional paid holidays for foreigners are provided.
  - Foreign workers entitled to 1 traditional public holiday and 1 national day of their country.
- Additional short breaks are provided.
  - Working 10 hours per day (including overtime) = additional minimum break of 30 minutes. (*Decree No. 45*).

## 5. Changed Financials for Union and More Pressure Towards Unionization

- Employers' contribution of 2% to their union fund is required for all enterprises, regardless of the existence of corporate unions.
- Consultation with immediate upper management of union is required in enterprise without corporate union.
- Upper level management of union to represent employees at enterprise without corporate unions.
  - *Default right or at request of employees?*
- Part-time union officers are ensured a labor contract with their employer until the expiration of the union office term.



## 6. Salary Reform

- **Salary during probationary period:**
  - Increase from 75% to 85% of official salary.
- **Overtime during holiday:**
  - 300% + normal salary of such holiday.
- **Overtime during night shift:**
  - Additional 20% of salary for day shift.
- **Regional minimum salary increase:**
  - Approximately 16 to 18%.

## 6. Salary Reform (cont'd)

- **National Wage Council** (*Decree No. 49*)
  - Function
  - Duties
  - Organizational structure
- **Formulation of salary scale/ table** (*Decree No. 49*)
  - Minimum level = at least equal to the regional minimum wage set out by the Government
  - Minimum level for trained employees = at least 7% higher than the regional minimum wage
  - Gap between adjoining grades = at least 5%
  - Consultation with trade union
  - Announcement to all employees
  - Send a copy to labor authority at district level

## 7. Labor Dispute Resolution

- Removal of the enterprise conciliation council.
- Strikes are only allowed for interest-based disputes.
- Employees granted temporary lock-up rights.
- Categories of enterprises/ units where strike not permitted. (*Decree No. 41*).
- Labor Conciliator (*Decree No. 46*)
  - Criteria
  - Appointment/ removal
- Postponing a Strike (*Decree No. 46*)
  - Cases
  - Procedure
- Suspending a Strike (*Decree No. 46*)
  - Cases
  - Procedure

## 8. Other Matters

- **Extension of dismissal cases:**

- Gambling, assault causing injuries, using drugs during working hours, infringing IP rights of employers or acts threatening to cause serious damages to employers' assets and/or interests.

- **Dialogue at work:**

- First time recognized by the law.

## 9. Recent Issues Regarding Implementation of New Labor Code/Union Law

- **Union fees contribution request by upper level union:**
  - HCMC PC and Union Confederation have instructed the collection of 2% union fees.
- **Registration of Internal Labor Regulations (ILRs):**
  - Required evidence of trade union consultation (corporate or upper level unions) to register ILRs.
- **Representation of Upper level union in enterprise without grassroots union:**
  - Default rights or at employee's request?
- **Assessment of impact of labor outsourcing regulations:**
  - Purpose of use of labor outsourcing.
  - Categories of work where labor outsourcing is permitted.
  - Outsourcing term.



# Q & A?



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