EMPLOYMENT MANUAL

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EMPLOYMENT MANUAL[1]

This Employment Manual is intended to be an easy desk-top reference for the Chief Representative, the General Director, the Human Resources Manager, and any person who wants a good understanding of Vietnam's labor laws. It is designed to orient management to issues with which it must be familiar. Even though the law on each subject is treated with considerably more depth in the 2012 Labor Code and its accompanying laws, decrees and circulars, this Manual should provide the reader with a good basic understanding. However, the Manual is a guide; it is not a substitute for a comprehensive understanding of the labor laws.

One recommendation for best addressing labor issues before they become problems would be to consider adopting a set of simple internal labor regulations ("**ILRs**"), and to have them registered with the local labor authorities. We discuss the importance of ILRs in more detail in this Manual.

1. Sources of employment and industrial relations laws

Sources of employment and industrial relations laws include:

- Constitution 2013, effective from….. ("Constitution 2013")
- Labor Code 2012, effective from May 1, 2013 ("**Labor Code 2012**");

2. Relevant statutes

Statutes that are relevant to labor and industrial relations include:

- Civil Code 2005.
- Civil Procedures Code 2004 (as amended in 2011);
- Law on Trade Unions 2012; and
- Law on Enterprises 2005.
- See also **Schedule 1**.

[1] This Employment Manual has been written by lawyers in the Vietnam offices of Russin & Vecchi and is current as of July, 2015. Several practical notes embedded in the text of the Employment Manual have been prepared by Navigos Search's consultants.
In various places, we refer to amounts in Vietnamese dong. The approximate current exchange rate is US$1.00 = VND 23,000.

3. Relevant government bodies, authorities, tribunals, agencies, commissions, councils or courts

3.1 Ministry of Labor, War Invalids and Social Affairs ("MOLISA")

The MOLISA is a Government body with authority to discharge the State's administration of labor, employment, and occupational safety and health issues. One of its major tasks is to assist the Government in drafting and issuing legal documents, including those that relate to labor and employment issues. It can also issue its own legal documents, like circulars, decisions, or rules that regulate the employment relationship.

The MOLISA has power to implement national policies on employment, provide guidance concerning such policies, and supervise those subject to the policies to ensure compliance.

3.2 Provincial Departments of Labor, War Invalids and Social Affairs ("DOLISA")

The DOLISA is under the People's Committee of a province or centrally-run city, which administers employment issues within its respective locality. A company is subject to the DOLISA of the province or city in which it is located. The DOLISA is responsible for registration of a company's Internal Labor Rules. It reviews applications for work permits for expatriates and reports on termination of employment, as discussed throughout this Manual.

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MOLISA is the ultimate authority on interpretation of the Labor Code. If clarification on the interpretation or implementation of an article in the Labor Code is needed, and depending on whether it is governed by MOLISA or locally by DOLISA, one can contact the authority by phone, in person or via mail to seek assistance. If the clarification will have a significant impact, it is recommended to submit the matter in writing and to receive a written reply before implementation. A written reply is generally issued within 10 working days unless the matter is complicated or controversial.

It is not uncommon to receive differing or conflicting opinions from different local DOLISA offices, especially when it comes to procedures. Our recommendation for day-to-day implementation is to follow the guidance of your local DOLISA office.

3.3 The Vietnam General Confederation of Labor

The Vietnam General Confederation of Labor, in conjunction with trade unions at all levels, supervises compliance with labor laws.

According to the Law on Trade Unions, trade unions are the unique representatives for collective labor in Vietnam.

3.4 People's Courts

The district level People's Court has jurisdiction to settle labor disputes that relate to an entity located within the district and do not involve a foreign element. Generally, these are disputes in which neither party is a foreigner. In particular, the district level People's Court

has jurisdiction in cases where the employee is not an expatriate or the employer is not a representative office or branch of a foreign company.[2]

The People's Court in a province or centrally-run city, on the other hand, has jurisdiction to settle labor disputes that involve a foreign element and relate to an entity located within that province or city.

4. Main statutes dealing with employment

4.1 Main statutes

Employment is specifically regulated by the Labor Code 2012 and its implementing instruments, including decrees, decisions, circulars, and related laws ("**labor law**"). We will refer to these instruments where appropriate in connection with each subject we discuss in this Manual. A list of such instruments is attached as **Schedule 1**.

4.2 Regulating employees, including foreign employees

Employees who are covered by the labor law include Vietnamese and foreign individuals who work for the following employers ("**employer**"):

- a company that is incorporated in Vietnam;
- a representative office or branch of a foreign or international organization or company in Vietnam;
- a Vietnamese organization or institution; or
- a Vietnamese individual.

In the following situations, it is uncertain whether and to what extent an employee is covered by the labor law of Vietnam.

a) An employee is recruited to be the legal representative or is authorized by the legal representative in accordance with the Law on Enterprises of a company that is incorporated in Vietnam.

According to the Law on Enterprises, a legal representative is appointed by a company's Board of Management, Chairman, or Members' Council. Upon such appointment, the Board of Management, Chairman, or Members' Council enters into a labor contract to engage the appointee to be the legal representative of the company.[3]

Legal representatives are covered by the labor law. However, unlike other employees, the rights and duties of a legal representative are not only specified in his labor contract, but

[2] According to the Civil Code, a representative office or a branch does not have legal status. The parent is liable before the law for the activities of the representative office or branch.
[3] The Law on Enterprises, Arts. 55.2, 70.2, 74.3, and 116.4.

also in the Law on Enterprises, its implementing regulations, and the company's charter (articles of association) and resolutions.[4]

It is unclear whether a foreign-invested company's General Director, if an expatriate transferred from the parent company, is covered by the labor law. Article 2 of the Labor Code 2012 suggests that he would be, as it provides that a foreigner who works in the territory of Vietnam is subject to the law of Vietnam. However, if he is not employed under a labor contract in Vietnam by an entity described in 4.2 above, he may not be fully subject to the Vietnamese Labor Code 2012.

b) A Vietnamese employee is recruited to be the chief representative of a foreign company's representative office or head of a foreign company's branch in Vietnam.

According to implementing regulations of the Labor Code 2012, a chief representative or the head of a branch represents the employer in the representative office's or the branch's employment relationship with its employees. In these circumstances, it is not clear how an individual can be in the position of both an employee and an employer, as chief representative or branch head, in a labor contract. This issue remains unresolved. However, if he is a foreigner and is engaged under a contract directly with the parent company, such a contract may not be subject to Vietnamese labor law. In such a case, the employment relationship is regarded as a civil relationship that involves a foreign element, and thus, the parties are permitted to choose a foreign law as the applicable law.[5]

4.3 Work permits for foreign employees

Foreign employees, with a few exceptions, are required to obtain work permits. Work permits are issued by the provincial DOLISA, and remain valid for a term of two years.[6] Work permits cannot be renewed, so a new application must be filed upon expiration.[7] Work permits are specific to a particular foreign employee and may not be transferred.

A work permit is not required if the expatriate:

a. is a contributing member/owner of a limited liability company;

b. is a member of the Management Board of a joint stock company;

c. is the head of either a representative office ("**RO**") or a project of an international organization or a foreign Non-Governmental Organization ("NGO") in Vietnam. A chief representative of a commercial RO is not included in this category; he is required to obtain a work permit;

d. enters and stays in Vietnam for less than three consecutive months to sell services. A work permit is required if a foreign service-sales-person stays in Vietnam for three or more consecutive months;

[4] Ibid.
[5] Art. 759.3 of the Civil Code.
[6] Art. 173 of the Labor Code 2012.
[77] Art.13.2 of Decree 102.

e. enters Vietnam and stays for less than three consecutive months, to handle an emergency matter or one that involves complicated technical or technological problems that affect production/business and cannot be adequately addressed within Vietnam. However, if the situation requires the expatriate to stay in Vietnam for over three months, a work permit is necessary after the initial three month period;

f. is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;

g. is a foreign pupil/student who is studying in Vietnam. The employer, however, must inform the provincial labor authority of its recruitment of a foreign pupil/student seven days prior to the recruitment;

h. is seconded to Vietnam as permitted under Vietnam's WTO Commitments. Under Appendices 1 and 2 of the Circular 41,[8] the 11 services include: business services (such as: professional services, computer and related services, research and development services, rental services without an operator), communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, medical and social services, tourism and related travel services, recreational, cultural and sporting services, and transport services;

i. provides expert and technical consultancy services or undertakes other tasks with respect to research, formulation, evaluation, monitoring and assessment, management and implementation of a program or project using official development aid;

j. has a media license issued by the Ministry of Foreign Affairs;

k. is appointed by a competent authority in a foreign country to teach at an international school which is managed by a foreign diplomatic office or an international organization in Vietnam;

l. is a volunteer. It means a foreigner working in Vietnam on a voluntary basis and without entitlement to a salary in order to implement an international treaty to which Vietnam is a signatory;

m. is a consultant, teacher, or researcher at a university or vocational college, and has a master's degree or higher (or similar qualification), and works in Vietnam for a period not exceeding 30 days; or

n. implements an international treaty to which a Vietnamese Government authority, a provincial body or a central socio-political organization is a signatory.

In order for an expatriate to be exempt from a work permit, the employer must file an application with the provincial labor authority to confirm the exemption.

[8] Circular No. 41/2014/TT-BCT of the Ministry of Industry and Trade dated November 5, 2014 regarding foreign employees seconded to enterprises belonging to one of the eleven services under the list of Vietnam's WTO Commitments

Last but not least, an employer must prepare a plan to recruit expatriates for each job for which a Vietnamese citizen does not qualify, and file such plan, 30 calendar days or more prior to the proposed recruitment. It must be filed with and approved by the provincial People's Committee. This is a compulsory step in order for an expatriate to be issued a work permit.[9]

5. Forming a Labor Contract

5.1 Types of labor contracts

According to Article 22 of the Labor Code 2012, there are 3 types of labor contracts:

- An indefinite term labor contract, in which the two parties do not pre-determine the term or termination date of the contract;
- A definite term labor contract, in which the two parties determine the term and the termination date, within a period of 12 months to 36 months; or
- A labor contract for a specific or seasonal job with a duration of less than 12 months.

The Labor Code 2012 prohibits parties from signing labor contracts for a term of less than 12 months for a job that is regular and has a duration of 12 months or more, except in the case of the temporary replacement of an employee.[10] However, the Code does not clarify when a job is considered regular.

When a definite term labor contract or a labor contract for a specific or seasonal job with a duration of less than 12 months expires, the two parties must enter into a new labor contract within 30 days from the date of expiry if the employee is to continue working. During the period prior to signing a new labor contract, the two parties must comply with the former contract. If a new labor contract has not been signed after 30 days, the existing definite-term labor contract automatically becomes an indefinite-term labor contract, and the existing specific or seasonal contract automatically becomes a definite term labor contract with a term of 24 months.

If the new labor contract is for a definite term, the parties may only sign one additional renewal contract. If the employee thereafter continues to work, an indefinite term labor contract must be signed.

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Upon completion of the probationary period, in order to register for social insurance, health insurance, and unemployment insurance, an executed employment contract must be registered with the Social Insurance Agency.

5.2 Forms of labor contracts

Under Article 16 of the Labor Code 2012, a labor contract must be in writing and include a duplicate, with each party retaining one copy. However, an oral agreement may be entered

[9] Article 4 of Decree 102 and Article 3 of Circular 03.
[10] Art. 22.3 of the Labor Code 2012.

into for temporary work with a duration of less than three months. The Labor Code 2012 does not specify a standard form of contract, so an employer may prepare a draft of the labor contract for internal use, provided that the draft contains certain principal clauses as outlined in the attached **Schedule 2**[11].

5.3 Major employment terms and conditions

Major employment terms, conditions and benefits are summarized in the attached **Schedule 2**. This is not a mandated form. It includes all required provisions but the format and content can be quite different. Additional provisions may be included.

5.4 Public policy

Article 7 of the Labor Code 2012 states that "*the employment relationship between an individual employee or labor collective and an employer is established through discussion, negotiation and agreement on the principles of voluntary commitment, goodwill, fairness, co-operation, and mutual respect for legal rights and benefits*." However, the Labor Code 2012, in contrast, provides many terms and conditions that are compulsory in an employment relationship and that are not subject to negotiation or waiver by an employee or an employer. Those compulsory terms and conditions are discussed throughout this Manual. Generally, negotiation is permitted only if the negotiated terms and conditions are more favorable for an employee than the compulsory terms and conditions. Matters not limited by the law may permit a flexible approach, and the employer is free to negotiate with its employees and to include such matters in a labor contract and/or the internal labor rules ("**ILRs**").

5.5 Local language

The Labor Code 2012 does not specify whether a labor contract may be made in another language, nor does it state whether an employer and employee may agree on a bilingual labor contract in which Vietnamese is the primary language.

5.6 Contracting with several employers

While the Labor Code 2012 permits an employee to enter into labor contracts with multiple employers, it also obligates an employee to maintain the confidentiality of business and technological secrets. Still, an employer is entitled to enter into a written agreement with an employee on the scope of confidential topics, the period during which information must be kept confidential, and compensation if the employee breaches his obligation.

The Labor Code 2012 requires that all employers who enter into labor contracts with an employee, regardless of whether or not the employee is employed by another employer, must contribute or pay social insurance and health insurance. The details of this obligation are discussed in **Section 8**.

[11] Schedule 2 prescribes main terms as regulated in Article 23.1 of the Labor Code 2012.

5.7 Keeping the confidentiality of business and technological secrets

The Labor Code 2012 allows an employer and employee to enter into an agreement that prohibits the disclosure of business secrets, technological secrets, and other benefits when the employee is involved in jobs that directly relate to those business and/or technological secrets. The term and scope of such secrets can be outlined in a non-disclosure clause. If an employer wishes to restrict an employee who leaves its employ, he or she may include a clause in the employment contract that prohibits that employee from the solicitation of customers, suppliers, and other employees. However, it is not clear whether an employer can include a non-competition clause in a labor contract under the Labor Code 2012.

Although there is no perfect solution, some measures can be taken to prevent an employee from working for another employer during the term of his employment. The first measure is to incorporate in the company's ILRs a clause stating that an employee must provide the employer with written notice in advance if he accepts a job from another employer. While the law permits an employee to sign contracts with several employers, the law expressly obligates an employee to notify its employers. The ILRs can then stipulate that failure to provide notice is a breach of labor rules and is subject to disciplinary action (including dismissal). This provision can only be enforced if the ILRs are registered.

6. Probation

Regulations on probation are provided in Article 26 of the Labor Code 2012.

An employer and an employee may enter into an agreement on probation within the following framework:

- If the employee is recruited for a position that requires a professional or technical college qualification or above, the probationary period cannot exceed 60 days;

- If the employee is recruited for a position that requires an intermediate-level qualification, or if he is recruited to be a technical worker or staff, the probationary period cannot exceed 30 days;

- For other positions, the probationary period cannot exceed six working days.

The Labor Code 2012 does not permit the use of a probationary period for an employee entering into a seasonal contract with a duration of less than 12 months.

During the probationary period, the employee is entitled to a salary of at least 85% of the salary that he would be entitled to receive if he were employed. The duration of the probationary period cannot be extended.

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In practice, very few employers offer less than 100% of starting salary during probation these days, especially in a tight labor market. Since there are no mandatory social and medical contributions during the probation period, more employers seem to pay the insurance premiums to employees during probation as a good faith gesture.

Upon expiration of the probationary period, if the employee's performance meets the requirements set out in the agreement on probation, the employer must enter into a labor contract with the employee. Unlike the Labor Code 1994, the Labor Code 2012 does not indicate whether the employee is deemed to have been hired if the employer does not give notice to the employee upon expiration of the probationary period and the employee continues to work. Further guidance may be forthcoming.

During the probationary period, either the employer or the employee may terminate the probation agreement, without notice or compensation. This would apply to the employer if, for example, the job is not performed satisfactorily in accordance with the agreement on probation. Neither party is obliged to pay compensation for termination during the probationary period.

Upon completion of the probationary period, the employer is responsible to notify the employee of the result of the probation. If the employee is deemed qualified, the employer must enter into an employment contract with the employee.

7. Overtime

7.1 Overtime working hours

Regulations on overtime working hours are provided in Article 106 of the Labor Code 2012. An employer and an employee may agree on overtime working hours, provided that the number of overtime hours is no more than 50% of the normal working hours per day, total working hours (including overtime) are no more than 12 hours per day, and total overtime hours are no more than 30 hours per month or 200 hours per year. This yearly allowance, however, is increased to 300 hours per year in specific industries, such as garment and textiles, leather and shoes, and seafood processing, or to meet certain deadlines. Otherwise, if the employer wishes to increase yearly overtime working hours to 300 hours and above, approval of the authorities is required. The authorities must state the reason if approval is not granted.

The Labor Code 2012 permits an employer to require employees to work overtime at any time in the following cases: (i) to perform mobilization orders in respect of national defense and security in a state of emergency; (ii) to perform work to protect human life and property in the case of disasters, fire and epidemics.

7.2 Payment for overtime and night work

Regulations on payment to employees who work overtime and at night are provided in Article 97 of the Labor Code 2012. Employees who work overtime will be paid:

- At least 150% of normal base salary for a normal work day;
- At least 200% of normal base salary for a weekly day off (e.g., weekends);
- At least 300% of normal base salary on a public holiday or during fully paid leave days, excluding salary on such holidays and paid leave days.

Employees who work at night are entitled to an additional payment of 30% of the normal base salary for a work day. In addition, for overtime work at night, they are entitled to the overtime payments listed above, as well as an additional 20% of the overtime salary during the daytime.

8 Social security

8.1 Social insurance

Compulsory social insurance is mandated by the revised Law on Social Insurance 2014 ("**Law on Social Insurance**")[12].

Compulsory social insurance applies to Vietnamese employees who work pursuant to indefinite term contracts or contracts with a term of at least three months. Starting January 1, 2018, compulsory social insurance will also apply to foreigners who work in Vietnam under a work permit and Vietnamese employees who work under an employment contract with a duration of one to three months. The employer is required to contribute an amount equal to 18% of an employee's salary to the Social Insurance Fund. The employee's contribution is 8%.

The Law on Social Insurance 2014 sets a ceiling on the salary that is used to calculate the contributions required of both employers and employees. Contributions and benefits are based on an employees' gross monthly salary. If this gross monthly salary is higher than 20 times the basic salary, then for the purposes of calculating social insurance contributions/benefits, the salary will be considered fixed at 20 times the basic salary ("**maximum contribution salary**")[13]. Thus, Social insurance contributions and benefits are subject to change depending on the basic salary fixed by the Government.[14]

For an employee who has labor contracts with multiple employers, only the employer for the first signed contract for which social and unemployment insurance applies is responsible to participate. Additional employers are responsible to pay the employee the amount of money equivalent to the level of compulsory social and unemployment insurance that they would pay if they were the first or sole employer, at the same time as they pay the employee's salary.

If the first signed contract is terminated or is amended, such that social and unemployment insurance no longer apply, then the employer of the next signed contract for which social and unemployment insurance apply is responsible to participate in the compulsory social and unemployment insurance schemes.

[12] The revised Law on Social Insurance was promulgated on November 20, 2014, with effect from January 1, 2016.
[13] The Law on Social Insurance, Art. 94.3.
[14] The current basic salary is VND 1,150,000 per month. See Article 1 of Decree 66/2013/ND-CP, dated June 27, 2012.

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*It used to be common for employers to offer a "net" salary, i.e., employer guaranteed take home pay, by absorbing all the employee's compulsory insurance contributions and personal income tax ("**PIT**") withholdings. This practice has changed. We now see a significant move by employers to fix salary in terms of gross payment, i.e., employer and employee will each be responsible for the compulsory insurance contribution as required in the law and PIT will be the employees' responsibility. The move is a result of the following:*

- *For budget purposes, net salaries are hard to benchmark to the market; i.e., net salaries are not the actual cost.*
- *To avoid the additional burden to business as legislation changes; for example, changes to PIT law, social insurance law, etc.*
- *The tax authorities have stated in recent years that they may not consider the costs assumed by employers as a deductible expense. They may consider them to be a voluntary, non-deductible expense. While there is no official guidance on the matter, the threat is real.*
- *The introduction of individual and dependent tax reduction credits creates controversy as to who should benefit when net salary is offered. Obviously, employees are entitled to the benefit, but employers often claim that since they are shouldering the burden, the benefits e.g., deduction for dependants, should pass through to them. Guidance from the relevant authorities has been mixed.*
- *Employers want to align with international practice and want employees to become aware of the taxes and social contributions which they pay.*

Under the Law on Social Insurance, benefits from compulsory social insurance include:

- *sick leave benefits;*
- *maternity leave benefits;*
- *pension benefits;*
- *allowance for work-related accidents and occupational diseases; and*
- *survivor's benefits.*

Under the Law on Social Insurance 2014, the quantum of salary on which contributions are based determines the amount that both employers and employees contribute, and also determines social security benefits for the employee.

Social insurance contributions and the payment of social insurance benefits are based on three elements:

- Contribution rate and level of benefits;
- Monthly gross base salary (the salary on which contributions are based, which is limited to a maximum of 20 times the basic salary); and

- The periods during which social insurance contributions or payments of benefits are made.

Changes to any of these elements will affect the social insurance contributions of both employers and employees, as well as the employee's social insurance benefits.

The Law on Social Insurance 2014 contains the same basic principles that also apply under the Labor Code 2012 for how to determine social insurance benefits. However, the payment of benefits under the Law on Social Insurance 2014 is based on the "maximum contribution salary." It is not based on 100% of an employee's contracted salary, if that salary is more than 20 times the basic salary.

Details on conditions and benefits are discussed in **Schedule 2** of this Manual.

8.2 Unemployment insurance

The unemployment insurance regime is set out in the Law on Employment 2013. The regime has since been elaborated on in Decree 28/2015/ND-CP of the Government. It applies to all employers that have Vietnamese employees under indefinite term labor contracts or contracts with a duration of at least three months. Specifically, the employer, employees, and the State each contribute 1% of the salary on which contribution is based, up to the maximum contribution, as discussed in Section 8.1.

Unemployment insurance compensates an employee when he loses his job or terminates his labor contract with the employer. In particular, unemployment insurance benefits include: (i) an unemployment allowance; (ii) re-training vocational support; and (iii) job-search support.

The characteristics of unemployment compensation are somewhat similar to those of the severance or job loss allowance that an employer pays to an employee upon the termination of his employment. In fact, unemployment compensation has partially replaced the severance or job loss allowance regime. Under the Labor Code 2012, from January 1, 2009, seniority for severance or job loss allowance purposes stopped accruing for Vietnamese employees participating in the unemployment insurance scheme. Any periods during which an employee and employer contribute to unemployment insurance will not be taken into account when determining the employee's severance or job loss allowance.

However, anyone employed after January 1, 2009, but not participating in the unemployment insurance scheme (e.g, an employee working in an enterprise with fewer than 10 employees, or a non-Vietnamese employee) remains entitled to receive a severance or job loss allowance for the entire period during which he worked for the company.

8.3 Health insurance

Regulations on health insurance are provided in the Law on Health Insurance of the National Assembly, dated November 14, 2008 ("**Law on Health Insurance**"). The regulations are elaborated upon by Decree 62/2009/ND-CP of the Government, dated July 27, 2009 ("**Decree 62**").

Under the Law on Health Insurance, there are two kinds of health insurance: (i) compulsory health insurance; and (ii) voluntary health insurance. We will discuss only compulsory health insurance.

Compulsory health insurance applies to employees who work under contracts of indefinite term or a term of three months or more. Unlike compulsory social insurance, compulsory health insurance applies to both Vietnamese employees and foreign employees. Decree 62 obligates the employer to contribute an amount equivalent to 3% of an employee's salary and the employee to contribute 1.5% of his salary to the Social Insurance Fund.

Health insurance covers hospital and medical treatment fees. An employee is entitled to reimbursement for hospital and medical treatment fees charged by the health insurance provider if he is treated by the clinic with which he has registered within the health insurance organization. An employee may transfer from one clinic to another.

For an employee who has labor contracts with multiple employers, the employer providing the highest salary for which compulsory health insurance applies is responsible for participation, as stipulated by the Law on Health Insurance. Additional employers are responsible for paying the amount of money equivalent to the level of compulsory health insurance they would be required to provide as sole employers when they pay the employee's salary.

If the contract providing the highest salary is terminated, or amended such that compulsory health insurance no longer applies, then the employer providing the next highest salary for which health insurance applies becomes responsible for participation, as stipulated by the Law on Health Insurance.

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*State health insurance provides very basic care and is generally seen to be insufficient if an employee requires serious medical care. Private medical insurance is fast becoming a norm in the benefit category, especially for foreign invested enterprises ("**FIEs**"). The cost is reasonable and there are many reputable local and international providers.*
The employer is responsible to withhold from the employee's salary the amount of social insurance, unemployment, and health insurance which the employee must pay, and to pay both the employer's and employee's portion to the Social Insurance Fund. The Social Insurance Fund is managed by MOLISA, which pays social insurance benefits and allowances to a beneficiary at rates prescribed by law.

9 Other withholdings

9.1 Withholding obligation

Under the Law on Personal Income Tax of the National Assembly, dated November 21, 2007, and the Amended Law on Personal Income Tax of the National Assembly, dated November 22, 2012 ("**Law on Personal Income Tax**"), an employer is obligated to withhold, on a monthly basis, personal income tax ("**PIT**") payable on the salaries and wages it provides to employees.

The Law on Personal Income Tax is elaborated upon by Decree 65/2013/ND-CP Providing Guidance to Implement the Law on Personal Income Tax, dated June 27, 2013, as amended by Decree 91/2014/ND-CP of the Government dated October 1, 2014, and Decree 12/2015/ND-CP of the Government dated February 12, 2015 ("**Decree 65**").

Income denominated in foreign exchange must be converted and paid in Vietnamese dong. The exchange rate is the average interbank foreign exchange rate of the State Bank of Vietnam at the time the income is paid to the employee.

Salaries of expatriate employees can be fixed in currencies other than the Vietnamese dong if both parties agree.

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It is recommended that the salary for a Vietnamese citizen be negotiated and offered in Vietnamese dong to avoid any argument on foreign exchange fluctuations, a sometimes controversial topic in FIEs. While there is no actual loss suffered by employees, if salaries have been negotiated in US dollars, employees often feel that their salary should be topped up to reflect each Vietnamese dong devaluation. Moreover, if the salaries are registered in US dollars in the labor contract, the authorities generally will adopt a different exchange rate than the actual market rate when calculating the contributions. This causes yet additional complications.

Under Decree 65, PIT taxable income includes:

- Salary/wages;
- Allowances and subsidies, including living allowances, subsidies for labor accidents and occupational diseases, one-off birth allowances, etc.;
- Certain commissions or remuneration for scientific research or patents, publication royalties, etc.;
- Remuneration for participation in professional or business associations, corporate boards of management or boards of supervisors, or project management boards;
- Monetary or non-monetary benefits other than salary, such as residential housing rent and payments for power, water and associated services; premiums for insurance not legally mandatory purchased by the employer for its employees; membership fees for cultural, artistic, professional and sports clubs, etc.;

Certain benefits are excluded from PIT. These include: one-off relocation allowances for expatriates moving to Vietnam, round trip air fares paid by the employer for its expatriate employees to return home each year, school tuition for the general education of the expatriate's children in Vietnam, etc.

9.2 Residents, Non-residents

Under the PIT regime, different tax rates apply to resident and non-resident employees. A

person is a resident if he satisfies one of the following conditions:

- Is present in Vietnam for 183 or more days in a calendar year or for 12 consecutive months commencing from the first date of arrival in Vietnam. The date of arrival and the date of departure will each qualify as one day. Certification of the immigration authority in passports is the basis for determining dates of arrival and dates of departure; or

- Has a regular residential location, including a registered residence or leased house in Vietnam for a fixed term.

An individual who does not meet these conditions is treated as a non-resident.

a) Resident employees

Resident employees are subject to the following tax rates:

Level	**Assessable income per year (VND million)**	**Assessable income per month (VND million)**	**Tax rate (%)**
1	Up to 60	Up to 5	5
2	Above 60 to 120	Above 5 to 10	10
3	Above 120 to 216	Above 10 to 18	15
4	Above 216 to 384	Above 18 to 32	20
5	Above 384 to 624	Above 32 to 52	25
6	Above 624 to 960	Above 52 to 80	30
7	Above 960	Above 80	35

Under the Law on Personal Income Tax, resident employees are entitled to a "family tax deduction" comprising: (i) a tax deduction for the taxpayer of VND 9 million per month (VND 108 million per year); and (ii) tax deductions for each dependent of VND 3.6 million per month. However, the definition of a dependent is rather narrow.

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Some employees would rather give up the dependent deduction than have to gather the necessary documentation. Assembling the required documents can sometimes involve travelling to their home provinces to complete the process. This creates yet another controversy in the case of net salaries whereby the employer will claim this is its benefit so the employees have neither desire nor incentive to document the deduction.

Assessable income is taxable income less the following items:

- Insurance premiums for compulsory social insurance, compulsory medical insurance, compulsory professional indemnity insurance (if any), and premiums for other compulsory insurance; compulsory insurance which an expatriate who resides in Vietnam must pay in accordance with the laws of his home country (e.g, social insurance, medical insurance, or unemployment insurance) can also be deducted from a resident expatriate's taxable income in Vietnam.

- Family tax deductions.

- Deductions for contributions to charitable or humanitarian causes or funds to encourage study.

b) Non-resident employees

A non-resident who receives taxable income arising in Vietnam is subject to a flat tax rate of 20% of the income from salary/wages without any deduction.

9.3 PIT declaration and finalization

The employer is required to file a PIT declaration with the tax authorities and pay any withheld PIT on a monthly basis. The employer must finalize PIT for its employees no later than the 90th day from the date the calendar year ends. Tax finalization is also required at the end of a resident expatriate's employment contract, before his departure from Vietnam.

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Employers are encouraged to calculate PIT finalizations for each departing employee upon departure even though the employer need not file any PIT finalizations until the 90th day after the end of the calendar year. Doing so avoids any loss in case a claw back from the departed employees is required. After the employee has departed, the employer may have no opportunity to offset the claw back.

10. Maternity

Regulations on maternity benefits are provided in Chapter X of the Labor Code 2012 and in the Law on Social Insurance. These regulations are further elaborated upon in Decree 152 and Circular 03.

10.1 Pregnancy and maternity leave benefits

An employee who is pregnant or gives birth is entitled to the following leave benefits:

- Five days off to attend five pregnancy examinations;

- In case of miscarriage, 10 days off work for a pregnancy of less than one month, 20 days for a pregnancy of one month to less than three months, 40 days for a pregnancy of three months to less than six months, and 50 days for a pregnancy of six months or more;

- Length of maternity leave:

Working conditions	Period of leave
➢ Normal conditions	Six months

➢ If the baby dies after birth	• 4 months (as of January 1, 2016) from the date of death, if the baby dies at 60 days of age or more; • 2 months (as of January 1, 2016) from the date of birth, if the baby dies before 60 days of age
➢ If the employee gives birth to twins or other multiples	An additional month for each baby beyond a single birth

If the employer agrees, a female employee may take additional, unpaid leave when the statutory paid maternity leave expires.

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In reality, an employer seldom has a valid reason to reject an application for maternity leave, and most doctors will gladly furnish a request to extend the leave for "medical" reasons.

A female employee may return to work prior to the expiration of her permitted maternity leave if: (i) she has taken at least four months leave after birth; (ii) she can present a doctor's confirmation that her resumption of work will not affect her health; and (iii) the employer agrees. In such cases, the employee continues to be entitled to the maternity leave allowance in addition to her normal salary.

10.2 Maternity leave allowance

During maternity leave, a female employee is not entitled to receive her normal salary. Instead, the employee receives a maternity allowance from the Social Insurance Fund, provided that she has paid social insurance for at least six months within the twelve months immediately preceding maternity leave. The employer is responsible to claim this from the Social Insurance Fund for the employee.

The maternity leave allowance is equal to 100% of the average monthly salary during the last six months in which the female employee contributed social insurance.

In addition to the maternity leave allowance, a female employee is entitled to an allowance equaling the national minimum salary for two months per baby.

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In practice, most employers front the allowance claim to avoid hardship. The employee agrees to furnish the paperwork within a certain period of time in order to complete the claim which is then used to reimburse the company.

10.3 Working conditions

A female employee is entitled to special working conditions if she is pregnant or if her

baby is below 12 months of age:

- A female employee who has reached her seventh month of pregnancy or whose baby is below 12 months of age does not have to work overtime or at night, or go on business to distant localities;

- A female employee who is employed in heavy work and has reached her seventh month of pregnancy must be transferred to a position with lighter duties; otherwise, she may work one hour less every day and receive full pay; and

- A female employee with a baby below 12 months of age is entitled to a break of 60 minutes every day, but must receive full pay.

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An employer is advised to take the nature of its workforce into account, since it will be affected by these regulations. While the labor market is tight, there are still a lot of temporary employees ready to cover women on maternity leave. Moreover, since maternity benefits are paid by the insurance fund, an employer's budget should support the hire of temporary employees without additional costs. Temporary workers permit business continuity and immediate continuous coverage if the new mother decides not to return.

10.4 Termination of the labor contract of a female employee during maternity

Unless the company ceases operation, an employer is not allowed to dismiss or unilaterally terminate the labor contract of a female employee if she is pregnant, on maternity leave, or has a baby who is below 12 months of age.

11. Retirement

Article 187 of the Labor Code 2012, the Law on Social Insurance, Decree 152 and Circular 03 regulate the retirement regime. Rules on the retirement regime are summarized in **Schedule 3**.

12. Disciplinary action

Disciplinary action can be taken by an employer against an employee in accordance with Chapter VIII of the Labor Code 2012.

12.1 Grounds for disciplinary action

In order to have solid grounds to take disciplinary action against an employee, the employer *must* have internal labor regulations ("**ILRs**") which are carefully worded and duly registered with the DOLISA. Disciplinary action will be regarded as unlawful unless the ILRs are followed. A discussion of ILRs is provided in Section 23 of this Manual.

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It is unclear whether the general terms of the Labor Code 2012 will apply in order to determine whether or not there are grounds for disciplinary actions in cases where a company does not have ILRs. To properly protect your rights as an employer and to help assure compliance, ILRs should be in place even if you have fewer than 10 employees (registration is required only when you have 10 or more employees).

While the penalty depends on the seriousness of the breach, an employee who breaches the ILRs may be disciplined in one of the following ways:

- *Reprimand, either oral or in writing*. This disciplinary action is for a first-time offense that constitutes only a minor breach.

- *Suspension of scheduled pay raise by not more than six months, or removal of the employee from the current position.* Such disciplinary action may be taken if an employee has been reprimanded in writing and commits another offense--the same or a different offense - during the three months following the written reprimand.

  The law also allows an employer to include in its ILRs other circumstances in which it can take disciplinary action. For example, an employer may dismiss an employee for a repeated breach of the ILRs. We suggest that the employer elaborate on this circumstance in the ILRs with as much detail as possible.

- *Dismissal*. Dismissal is possible only in the circumstances specified in the employer's ILRs. Grounds for dismissal will be discussed in **Section 14** of the Manual.

In addition to authorizing implementation of disciplinary action, the Labor Code 2012 allows the employer to claim compensation from an employee who damages or loses tools, equipment, or other assets of the company. Likewise, an employee may be required to compensate the employer if he uses work-related materials at an excessive rate. The compensation, depending on each case, is equal to all or a part of the market price of the assets. However, compensation is subject to the following limitations:

- If the damage is not serious (the value is less than the amount of 10 months of the regional minimum salary) and is due to the employee's negligence, the amount of compensation is limited to three months salary and must be deducted gradually at a maximum of 30% from the employee's monthly salary after withholding compulsory insurances.

- If the employee loses tools, equipment, or assets assigned by the employer, or uses work-related materials at an excessive rate (beyond the permitted limit), s/he must compensate for all or a part of such assets at the market price;

- If there is a "contract of responsibility" between the employer and the employee, compensation must be in accordance with such contract; and

- If damage is caused by force majeure, the employee has no obligation to compensate the employer.

12.2 Temporary suspension of work

The employer is entitled to temporarily suspend an employee from work when further work by the employee may jeopardize an investigation. An employer may suspend an employee from 15 to 90 days, but only after the employer consults with the trade union or other organization that represents the labor force in the company.

An employee will be advanced 50% of his/her monthly salary during the temporary suspension. In case such employee is subjected to a form of discipline, the advance is not required to be returned.

13. Termination of employment

Schedule 4 summarizes the rules on termination.

Some specific bases for termination are listed in the Labor Code 2012, and an employer may rely on any to unilaterally terminate a labor contract. Repeatedly failing to perform satisfactory work is the most common cause. Other causes include: (i) the employee suffering from sickness or an accident and does not recover after 12 consecutive months of treatment. This rule is applicable to labor contracts with an indefinite term. However, termination may occur after only six months for employees who work under a definite term labor contract. Employees under a casual labor contract or a regular labor contract with a term of less than 12 months may be terminated after half of the contract term; (ii) if the employer has to reduce production and there were no vacancies after taking all measures to overcome the consequences of a natural disaster, fire or other force majeure; or (iii) the employee is not present at the workplace after 15 days from the date that a labor contract suspension expires.

Previously, the law clearly provided that when an employee is warned in writing at least twice in a month, but fails to redress his/her shortcomings, the employee is considered to have failed to perform satisfactorily. The Labor Code 2012, however, no longer requires two written notices. Rather, the employer is permitted to regulate its own criteria for determining what qualifies as "failing to perform satisfactorily." The employer is not required to register these criteria with the labor authority, and they are enforceable as long as the employer consulted with the trade union or other organization that represents the labor force in the company before establishing them.

A terminated employee is entitled to receive a severance allowance for a period equaling the total number of years employed, excluding the time the employee participates in the compulsory unemployment insurance scheme (normally since January 1, 2009).

In practice, despite the requirements of advance notice and clear grounds to terminate a labor contract, termination is often not easy. A mutual termination agreement between the employer and the employee is often used. This helps to avoid any dispute that may arise or any shortcoming of the termination procedure. The employer and employees may reach agreements on the date of termination, compensation, etc. The time required to comply with termination procedures is reduced significantly when resolved through mutual agreement.

14. Dismissal

The term "dismissal," as used in Chapter VIII of the Labor Code 2012, should be distinguished from the term "termination by the employer," as used in Chapter IV of the Code. "Dismissal" means termination by the employer *for a breach of labor rules*.

The employer may dismiss an employee in the following circumstances:

- An employee steals, embezzles, gambles, is deliberately violent and the violence causes injury, discloses business or technological secrets, infringes intellectual rights of the employer, or engages in other conduct that causes serious damage or threatens to cause particularly serious damage to the assets or well-being of the employer. The law requires the employer to set out an amount of damage in the ILRs that would give rise to dismissal. In addition, it is worth specifying in the ILRs what the employer considers to be a business or technological secret, and what conduct is considered to cause serious damage to the assets or well-being of the company;

- An employee has been disciplined by suspension of a scheduled pay raise and repeats his breach--either through the same or a different offense--while he is still being disciplined for the first breach; or

- An employee takes an aggregate of five days off in one month or 20 days off in one year without the employer's permission and without plausible reason.

Such circumstances, however, must be discussed in the employer's ILRs in order to serve as grounds for dismissal.

Due to negative connotations for the employee, dismissal is generally subject to rather strict procedural requirements, e.g, having a meeting to deal with the dismissal which includes participation by the internal trade union.

15. Non-solicitation of employees, customers and suppliers

The labor law does not prohibit an employer from including a clause on non-solicitation of employees, customers and suppliers in the labor contract. An employer can include such a clause in both the labor contract and in its ILRs.

The employer may prohibit its employees from taking commissions from vendors. This is an employment matter, rather than a criminal matter, and the employer can establish its own policy.

16. Use of computers

The employer may monitor the use of computers at work and may take appropriate disciplinary action against an employee who makes unauthorized use of a computer. However, in order to do so, the employer must include in its ILRs' policies on the use of computers at work, what conduct constitutes a violation of such policies, which violations are subject to disciplinary action, and the disciplinary consequences.

17. Drug and alcohol testing, police and criminal background checks and general medical testing

The employer is allowed to conduct drug and alcohol testing, police and criminal background checks, and general medical testing of its employees. Although it is not a common practice, an employer can include certain tests as part of pre-employment health checks.

In a labor contract or in its ILRs, the employer may also require that an employee be tested or investigated during the course of his employment. However, mentioning such a requirement is not enough. In order to take action against an employee who abuses drugs or alcohol or who has committed a criminal offense, carefully worded ILRs are required. According to Article 126 of the Labor Code 2012, an employee who uses drugs at the workplace may be dismissed as a form of discipline.

18. Retrenchment

Retrenchment is a form of redundancy. The law permits an employer to retrench its employees under limited circumstances.

18.1 Retrenchment due to technological changes or organizational restructuring

Retrenchment due to technological changes or organizational restructuring is defined as: (i) changes to the organizational structure, reorganizing work; (ii) changes of products or product structure; and (iii) changes in connection with the process, technology, machinery, equipment for manufacturing, business operations associated with the business lines of the employer.

Rules on retrenchment due to technological changes or organizational restructuring are provided in Article 44.1 of the Labor Code 2012. Item 1.1 (a) of **Schedule 4** summarizes these rules.

18.2 Retrenchment due to merger, consolidation, division, separation, or transfer of assets of the employer

Rules on retrenchment due to merger, consolidation, division, separation, or transfer of the assets of the employer are provided in Article 45 of the Labor Code 2012. Item 1.1 (b) of **Schedule 4** summarizes these rules.

18.3 Retrenchment due to economic reasons

By law, retrenchment due to economic reasons includes: (i) crisis or recession; and (ii) implementation of a State's policy in order to restructure the economy or implementation of an international commitment.

Rules on retrenchments due to economic reasons are provided in Article 44.2 of the Labor Code 2012. Item 1.1 (b) of **Schedule 4** summarizes these rules.

19. Annual leave

An employee with 12 months of service is entitled to have annual leave with full pay. The total annual leave is:

- 12 working days for an employee who works in normal working conditions;
- 14 working days for an employee who does heavy, noxious or dangerous work, or who works in a locality with harsh living conditions, or who is under 18 years of age;
- 16 working days for an employee who does especially heavy, noxious or dangerous work or who works in a locality with especially harsh living conditions.

An employee is entitled to long service leave in accordance with Article 112, Section 2, Chapter VII of the Labor Code 2012. The number of annual leave days will increase in proportion to an employee's seniority or experience in a job, or in proportion to an employee's service with an employer. The increase is one additional day for every five years of service.

For an employee who does not work for the entire 12 months in a year, the amount of annual leave is calculated by the following formula: [total annual leave / 12] × actual working months (provided that any fraction will be rounded up to one day if it is equal or greater than 0.5). If the employee does not take annual leave, that unused annual leave must be paid in full.

The unused annual leave of an employee who resigns or is made redundant must also be paid in full.

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According to a recent survey, more and more companies are offering professionals more than 12 days as starting annual leave. Also, more FIEs are giving additional holidays for international festivities celebrated in their home countries, such as Christmas, Easter and national days. Some will even give an extra holiday to an employee on their birthday if it falls on a working day.

20. Unions

Chapter XIII of the Labor Code 2012 and the Law on Trade Unions 2012 regulate the activities of trade unions. A company is not responsible for setting up an internal trade union. Rather, the trade union in the province where the company is located must take the initiative.

Enterprises in both the public and private sectors are required to contribute to a fund, established within that enterprise, to support operation of the trade union. The rate of contribution is equal to 2% of the employee salaries.[15]

[15] Article 26 Law on Trade Union dated 2012.

The rights of union officers have been increased under the Law on Trade Unions 2012. Specifically, if a labor contract of an employee who is a part-time union officer expires while such officer is still within the term of his/her office, then the labor contract of such officer must be extended until the expiration of the period of such office.[16]

21. Collective negotiation

Based on the theory that it builds a good labor relationship between employees and the employer, shapes new labor conditions and resolves difficulties, the Labor Code 2012 grants the employer and employees the right to request collective negotiation. Collective negotiation may concern the following: (i) salaries, bonuses, allowances, pay rises; (ii) working hours, rest time, overtime working hours, breaks between shifts; (iii) assurances in connection with the employees' jobs; (iv) assurances of labor safety, occupational health and compliance with internal labor rules; and (v) other matters.

The Labor Code 2012 requires the employer to encourage dialogue in the workplace. The purpose of the dialogue is for the employees to share information and create a better understanding between the employer and the employees in order to formulate a good labor relationship. The dialogue is in the form of discussions and includes an annual labor meeting. A discussion in the workplace is required to be held at least every three months or by request of either the employer or the employees' collective labor representative (ie, the trade union at the grassroots level or the direct upper level trade union). A labor meeting must be held every 12 months, and any employer who hires up to 10 employees, is responsible to hold such meetings.

The topics at both the discussions in the workplace and labor meetings may include:

- The employer's production and business;
- Performance of labor contracts, collective labor agreement, ILRs, and other internal regulations, undertakings, and arrangements at the workplace;
- Working conditions;
- Requests of the employer to the employees and the labor collective; and
- Other matters in which the employer and employees are interested

Collective negotiation may be conducted at the industry level or at the corporate level. Neither the employer nor the employee is allowed to refuse a request for collective negotiation initiated by the other party. If a party refuses the request for collective negotiation, the other party is entitled to treat the matter as a labor dispute.

[16] Art. 25.1 of the Law on Trade Unions dated 2012.

22. Collective Labor Agreement ("CLA")

A CLA is a written agreement between the employees (as one party) and the employer (as the other party) with respect to the matters identified in Section 21 above. A CLA is made in accordance with Section 4, Chapter V of the Labor Code 2012.

Representatives of the employees and the employer negotiate and sign a CLA based on principles of voluntary commitment and fairness. The representative of the employees, under the Labor Code 2012, is the chairman of the company's trade union.

When the trade union or provisional trade union committee is established, the chairman is responsible for asking the employer, on behalf of its employees, to enter into a CLA and to propose its terms and conditions. Therefore, a CLA is not required unless and until a trade union is set up at a company, as discussed in Section 20 of this Manual, and its chairman requests that the employer enter into a CLA.

A CLA normally has a duration of one to three years. If a CLA is entered into for the first time in an enterprise, it may have a term of less than one year.

Each party is entitled to request an amendment or a supplement to the CLA. For a CLA of less than one year, an amendment or supplement can occur only after three months from its effective date. For a CLA covering a period of one to three years, an amendment or supplement can occur only after six months of implementation.

The Labor Code 2012 addresses CLAs at the industry level. If the regulations of the employer, or the rights, obligations, or legal interests of the employees as provided by the CLA at the corporate level are less favorable than those provided by the CLA at the industry level, the corporate-level CLA must be amended accordingly. It must be done within three months from the date on which the CLA at the industry level takes effect. The terms of CLAs at the industry level range from one to three years. CLAs at the corporate level have the same terms, but an initial term may be less than one year.

23. Compulsory worker's compensation or compulsory insurance schemes for work-related accidents

Compensation for work-related accidents is paid to an injured employee in accordance with Chapter IX of the Labor Code 2012. Criteria for the level of compensation are also provided in the Law on Social Insurance.

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Personal accident insurance is fast gaining popularity. The cost is reasonable. The insurance ensures that employees' medical costs and loss of salary are taken care of without any added burden to the company. There are many reputable service providers in the market and they have very flexible plan options for long term or even temporary employees.

23.1 Compensation by the employer

When a work-related accident occurs, and the employer participates in compulsory insurance, the employer and the Social Insurance Fund must jointly pay the compensation. The proportions of the allowance paid by the employer and the Social Insurance Fund are discussed in **Schedule 5**.

If a work-related accident occurs, and the employer has not participated in compulsory insurance, the employer must bear all medical expenses incurred from the point that first aid or emergency treatment is provided until completion of the medical treatment of the injured employee. The law also requires the employer to pay the full salary to the injured employee during the period he is absent from work for medical treatment. Furthermore, the employer must compensate an employee injured in a work-related accident, in accordance with Part I of **Schedule 5.**

The law also prevents the employer from unilaterally terminating the labor contract of an injured employee during the period of medical treatment, unless the employee remains unable to work after receiving treatment for a certain period of time (see **Schedule 4**).

The salary level used for calculating compensation is the employee's average salary for the six months immediately prior to the accident plus allowances. If the employee has been employed for less than six months, the salary level used for the calculation is the monthly salary at the time of the accident.

If the employer recruits a trainee or an apprentice, as outlined in Article 23.2 of Labor Code 2012, and a work-related accident occurs, the employer must compensate the trainee or apprentice as stipulated in **Part I of Schedule 5**. The salary level for calculating compensation is the minimum salary in the company at the time the accident occurs or the trainee/apprentice's actual salary, whichever is higher.

23.2 Allowances paid by the Social Insurance Fund

In addition to compensation from the employer as discussed above, an employee injured in a work-related accident is entitled to an allowance paid by the Social Insurance Fund.
If the company does not make a compulsory social insurance contribution to the Social Insurance Fund, as discussed in Section 8.1 of this Manual, it must pay the injured employee an allowance equal to the amount that would have been paid by the Social Insurance Fund had the social insurance contribution been made. The scale of this allowance is summarized in Part II of **Schedule 5**. This payment is in addition to the compensation discussed previously in this Section.

24. Employee handbook or Internal Labor Regulations (ILRs)

A company must have written ILRs registered with the DOLISA if it has 10 or more employees. A company located in an industrial/export processing/hi-tech zone should register its ILRs with the Board Management of the zone. After registration, all employees must be notified of the ILRs.

The ILRs must include the following major components:

- Working hours and rest breaks;
- Rules and discipline in the company;
- Occupational safety and hygiene in the workplace;
- Protection of assets and confidentiality of technology and business secrets of the company; and
- Conduct that is in breach of labor regulations, penalties imposed for those breaches, and responsibility for damages.

Carefully worded ILRs will enable the employer to take disciplinary action against an employee or terminate a labor contract in the case of poor performance by an employee (see the first bullet in Item 1.2 of **Schedule 4**). If an offense is not specified in a company's ILRs, or if the company does not have duly registered ILRs, it will be difficult to dismiss an employee.

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It is highly recommended for companies with fewer than 10 employees to have ILRs even though they may not be required by law. This allows them to implement the Labor Code 2012. An employer can adapt ILRs from the parent's global/regional employee handbook or draft them based on local regulations or MOLISA's template. Please note that the ILRs must be registered and disseminated to the employees in the Vietnamese language with an acknowledgement receipt kept on file. You may also want to have an English version for reference purposes.

25. Labor disputes

Labor disputes may be individual labor disputes, disputes between an individual employee and his employer, or collective labor disputes. There are two forms of collective labor disputes: (a) disputes regarding employees' rights, which is a dispute between a group of employees and their employer regarding the implementation of labor laws, the collective labor agreement, or ILRs that have been registered with the labor authorities; and (b) disputes involving employees' interests. The latter form usually involves a dispute between a group of employees and their employer in which the employees request that the employer give them new, better labor conditions relating to salary, bonuses, working time, or other benefits.

25.1 Labor dispute resolution

Resolution of most individual labor disputes must first be attempted by the company's mediation council or a labor mediator. If the attempt fails, disputes may be resolved by the appropriate court. However, certain kinds of individual labor disputes, such as disputes regarding dismissal, unilateral termination of a labor contract, and payment of allowances in the case of termination, may be resolved by the court first.

Collective labor disputes involving employees' rights may be resolved by:

- A labor mediator;
- Chairman of the People's Committee at the district level; and/or
- The relevant court.

Resolution of collective labor disputes that involve employees' rights must be carried out in the above order (ie, aggrieved employees must exhaust remedies at one level before proceeding to the next).

Collective labor disputes involving employees' interests may be resolved by:

- A labor mediator; and/or
- A council of labor arbitrators established by the People's Committee at the provincial level.

Resolution of collective labor disputes involving employees' interests must be carried out in the above order. In cases where resolution by a council of labor arbitrators fails, the employees have the right to go on strike.

26. Strikes

Legal strikes must be carried out in accordance with a process set forth in the law. A strike must be organized and led by an internal trade union, or, for cases in which an internal trade union has not been established, by the trade union at a superior level.
A strike is illegal if:

- It does not arise from a collective labor dispute involving employee's interests;
- The people on strike do not all work for the same company;
- Attempts to resolve the collective labor either have not been made, or the dispute is in the process of resolution;
- The employees have not voted on the strike, or the written request that the labor collective presents to the employer prior to the strike as required by law does not include required information;
- It has not been organized and led by the internal trade union or the representative of the employees;
- It occurs at an enterprise that is on the list of enterprises for which strikes are not allowed, such as enterprises in the following industries: electricity, petrol and gas, aviation, shipping, telecommunications, water supply and discharge, environmental hygiene, and national security; or

- There has been a decision to suspend or discontinue the strike.

During a strike or within three months from the conclusion of a strike, the internal trade union, the trade union at the superior level, and the employer each have the right to request that the relevant provincial court consider the legality of the strike. If the court concludes that a strike is illegal, the internal trade union, the trade union at the superior level, or the employees themselves may be required to pay damages to the employer.

The Labor Code 2012 provides a special procedure to resolve a strike that breaches orders and procedures regulated in Article 212 and Article 213 of the Labor Code 2012. That is, the Chairman of the People's Committee at the provincial level is entitled to declare that a strike has improper orders and procedures, and must then notify the Chairman of the People's Committee at the district level. Within 12 hours from the time he receives the notification, the Chairman of the People's Committee at the district level, together with the district labor authority and the trade union at the same level, must meet with the employer and the employees in order to resolve the dispute.

27. Transfer of business

According to Article 45 of the Labor Code 2012, if a company undergoes a change, including a merger, consolidation, division, split, or transfer of ownership, or transfers the right to manage or use its assets, the successor company must sustain the existing labor contracts of the employees. That is, the terms and conditions of employment that existed before the change will survive the change. No severance or redundancy allowances are paid to an employee if he continues to be employed. If there is a retrenchment as a consequence of a transfer of business, the current employer or its successor, depending on specific situation, is required to have a plan to use the same employees after consulting with the trade union or other organization that represents the labor force in the company.

28. Labor outsourcing

The term "labor outsourcing" as defined in the Labor Code 2012 means an arrangement involving "*an employee who is employed by a labor outsourcing enterprise, and is assigned to work for another organization, is subject to the management of the latter organization but remains under the labor relationship with the labor outsourcing enterprise*".[17]

With this new feature, employers will have another channel to engage skilled employees in order to secure and meet their manpower requirements, especially for a temporary increase of production or for other temporary positions. However, labor outsourcing is conditional under the Labor Code 2012. Among other things, labor outsourcing enterprises must have a specific license, issued by MOLISA,[18] and maintain a deposit of two billion Vietnamese dong. In addition, the types of jobs available for labor outsourcing are limited, and the maximum term for labor outsourcing is 12 months.

Details of conditions for issuing a labor outsourcing license and a list of the types of jobs available for labor outsourcing are provided in **Schedule 6** of this Manual.

[17] Article 53.1 of the Labor Code 2012
[18] Article 13 of Decree 55/2013/ND-CP

The Labor Code 2012 also requires the labor outsourcing enterprise to perform the obligations of an employer with regard to the employees it provides to other organizations. These obligations include the payment of salaries, unused leave, suspension and severance allowances, redundancy allowances and mandatory social, health and unemployment insurances.

The salary of an outsourced employee must not be less than the salary of an employee with the same professional qualifications performing the same or a similar job at the organization using the services. At any point, the organization using the services may agree with the employee and the labor outsourcing enterprise to recruit the employee.

The Labor Code 2012 requires the outsourced employee to obey the internal labor rules of the organization using the service. However, the organization using the service is not entitled to impose disciplinary actions on the outsourced employee. It can only send the employee back to the labor outsourcing enterprise, which is authorized to discipline the employee.

29. Administrative Sanctions

On August 22, 2013, the Government issued Decree 95/2013/ND-CP ("**Decree 95**"), which imposes administrative sanctions in a range of categories: labor, social insurance, and arrangement of a Vietnamese employee working overseas under contract. Before the adoption of Decree 95, administrative sanctions with respect to these three matters had been provided in separate decrees.

Under Decree 95, administrative penalties fines are higher than the fines stipulated under previous regulations. In addition, new acts and behaviors are listed as administrative violations and subject to penalties.

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SCHEDULE 1
A. List Of Current Cited Laws, Decrees, Circulars and Regulations

No.	Name of legal documents	Issued by	Issued on
1.	Constitution 2013	National Assembly	November 28, 2013
2.	Civil Procedures Code 2004 (as amended in 2011)	National Assembly	June 15, 2004
3.	Civil Code 2005	National Assembly	June 14, 2005
4.	Law on Enterprises 2005 (as amended in 2013)	National Assembly	November 29, 2005
5.	Law on Personal Income Tax 2007 (as amended in 2012)	National Assembly	June 29, 2006
6.	Law on Health Insurance 2008	National Assembly	November 21, 2007
7.	Labor Code 2012	National Assembly	June 20, 2012
8.	Law on Trade Union 2012	National Assembly	June 18, 2012
9.	Law on Employment 2013	National Assembly	November 16, 2013
10.	Law on Social Insurance 2014	National Assembly	November 20, 2014
11.	Decree 41/2013/ND-CP Providing Details of Article 220 of the Labor Code on list of enterprises which are not permitted to go on strike and resolving requests of labor collective in enterprises which are not permitted to go on strike	Government	May 8, 2013

12.	Decree 43/2013/ND-CP Providing Details of Article 10 on the Law on Trade Unions regarding rights and responsibilities of a trade union to represent and protect the rights and benefits of employees	Government	May 10, 2013
13.	Decree 44/2013/ND-CP Providing Details and Guiding on the Implementation of a number of Articles of the Labor Code on Labor Contracts	Government	May 10, 2013
14.	Decree 45/2013/ND-CP Providing Details on a number of Articles of the Labor Code on working time, rest time, labor safety and hygiene	Government	May 10, 2013
15.	Decree 46/2013/ND-CP Providing Details and Guiding on Implementation of a number of Articles of the Labor Code on labor disputes	Government	May 10, 2013
16.	Decree 49/2013/ND-CP Providing Details of a number of Articles of the Labor Code on salary	Government	May 14, 2013
17.	Decree 55/2013/ND-CP Providing Details on a number of Articles of the Labor Code on labor outsourcing	Government	May 22, 2013
18.	Decree 60/2013/ND-CP providing clarifications of the Labor Code implementing regulations on democracy in the workplace	Government	June 19, 2013
19.	Decree 65/2012/ND-CP Providing Guidance on Implementation of the Law on Personal Income Tax	Government	June 27, 2013

20.	Decree 66/2013/ND-CP Providing for National Basic Salary	Government	June 27, 2013
21.	Decree 95/2013/ND-CP Providing administrative sanctions in a range of categories: labor, social insurance, and arrangement of a Vietnamese employee working overseas on a contract basis	Government	August 22, 2013
22.	Decree 102/2013/ND-CP Providing Guidance on expatriates working in Vietnam	Government	September 5, 2013
23.	Decree 103/2014/ND-CP Providing for Regional Minimum Salary	Government	November 11, 2014
24.	Decree 03/2014/ND-CP Providing Details on a number of Articles of the Labor Code on employment	Government	January 16, 2014
25.	Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	Government	January 12, 2015
26.	Decree 28/2015/ND-CP Providing Details and Guiding Implementation of a number of Articles of the Law on Employment on Unemployment Insurance	Government	March 12, 2015
27.	Circular 08/2013/TT-BLDTBXH Guiding Decree 46/2013/ND-CP on labor disputes	MOLISA	June 10, 2013

28.	Circular 30/2013/TT-BLDTBXH Guiding Decree 44/2013/ND-CP on labor contract	MOLISA	October 25, 2013
29.	Circular 1/2014/TT-BLDTBXH Guiding Decree 55/2013/ND-CP on labor outsourcing	MOLISA	January 8, 2014

B. List Of Cited Laws, Decrees, Circulars and Regulations Classified by Subject

No.	Issue	Name of legal documents	Issued by	Issued on
1.	*Main statutes dealing with employment*	• Labor Code 2012 • Decree 102/2013/ND-CP Providing Guidance on expatriates working in Vietnam	National Assembly Government	June 18, 2012 September 5, 2013
2.	*Forming a labor contract*	• Labor Code 2012	National Assembly	June 18, 2012
3.	*Probation*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12, 2015
4.	*Overtime*	• Labor Code 2012 • Decree 45/2013/ND-CP Providing Details on a number of Articles of the Labor Code on working time, rest time and labor safety and hygiene • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government Government	June 18, 2012 May 10, 2013 January 12, 2015
5.	*Social Security*	• Revised Law on Social Insurance 2014 • Law on Health Insurance 2008	National Assembly National Assembly	November 20, 2014 November 14, 2008
6.	*Other Withholdings*	• Law on Personal Income Tax 2007 • Amended Law on Personal Income Tax 2012	National Assembly National Assembly	November 21, 2007 November 22, 2012

		• Decree 65/2013/ND-CP Providing Guidance on Implementation of the Law on Personal Income Tax	Government	June 27, 2013
7.	*Maternity*	• Labor Code 2012 • Law on Social Insurance 2014	National Assembly Government	June 18, 2012 November 20, 2014
8.	*Retirement*	• Law on Social Insurance 2014	Government MOLISA	November 20, 2014 January 30, 2007
9.	*Disciplinary Action*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12, 2015
10.	*Termination of Employment*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12, 2015
11.	*Dismissal*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12,2015
12.	*Retrenchment or Redundancy*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12,2015

14.	*Restraint of Trade/Non-compete*	• Labor Code 2012	National Assembly	June 18, 2012
15.	*Non-solicitation of Employees, Customers and Suppliers*	• Labor Code 2012	National Assembly	June 18, 2012
16.	*Confidentiality*	• Labor Code 2012	National Assembly	June 18, 2012
17.	*Drug and Alcohol Testing, Police and Criminal Background Checks and General Medical Testing*	• Labor Code 2012	National Assembly	June 18, 2012
18.	*Annual Leave*	• Labor Code 2012 • Decree 45/2013/ND-CP Providing Details on a number of Articles of the Labor Code on working time, rest time, labor safety and hygiene	National Assembly Government	June 18, 2012 May 10, 2013
19.	*Unions*	• Labor Code 2012 • Law on Trade Union 2012 • Decree 43/2013/ND-CP Providing Details on Article 10 of the Law on Trade Union regarding rights and responsibilities of a trade union to represent and protect the rights and benefits of employees	National Assembly National Assembly Government	June 18, 2012 June 20, 2012 May 10, 2013

20.	*Collective Labor Agreements ("CLA")*	• Labor Code 2012 • Decree 60/2013/ND-CP Providing clarification of Article 63.3 of the Labor Code on implementing regulations on democracy in the workplace • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government Government	June 18, 2012 June 19, 2013 January 12,2015
21.	*Compulsory Workers' Compensation or Compulsory Insurance Scheme for Work-related Accidents*	• Labor Code 2012 • Decree 45/2013/ND-CP Providing Details on a number of Articles of the Labor Code on working time, rest time, labor safety and hygiene • Law on Social Insurance 2014	National Assembly Government National Assembly	June 18, 2012 May 10, 2013 November 20, 2014
22.	*Employee Handbook or Internal Labor Rules (ILRs)*	• Labor Code 2012 • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012	National Assembly Government	June 18, 2012 January 12, 2015
23.	*Labor Disputes*	• Labor Code 2012 • Decree 46/2013/ND-CP Providing Details and Guiding Implementation of a number of Articles of the Labor Code on labor disputes • Decree 41/2013/ND-CP Providing Details on Article 220 of the Labor Code on list of enterprises which are not permitted to go on strike and resolving requests of labor collective in enterprises which are not permitted to go on strike • Decree 05/2015/ND-CP Providing Details on a number of Articles of the Labor Code 2012 • Circular 08/2013/TT-BLDTBXH Guiding Decree 46/2013/ND-CP on labor disputes	National Assembly Government Government Government MOLISA	June 18, 2012 May 10. 2013 May 8, 2013 January 12, 2015 June 10, 2013

24.	*Strikes*	• Labor Code 2012 • Decree 46/2013/ND-CP Providing Details and Guiding Implementation of a number of Articles of the Labor Code on labor disputes	National Assembly Government	June 18, 2012 May 10, 2013
25.	*Transfer of Business*	• Labor Code 2012	National Assembly	June 18, 2012
26.	*Labor Outsourcing*	• Labor Code 2012 • Decree 55/2013/ND-CP Providing Details and Guiding Implementation of Article 54 of the Labor Code on labor outsourcing	National Assembly Government	June 18, 2012 May 22, 2013
27.	*Administrative sanctions*	• Decree 95/2013/ND-CP Providing administrative sanctions in a range of certain categories: labor, social insurance and arranging Vietnamese employee working overseas on a contract basis	Government	August 22, 2013

SCHEDULE 2
Summary of Labor Conditions and Benefits

Working conditions	Number of days/hours	Payment to employees	Note
1. Working time: • Ordinary time	○ Maximum 8 hours/day, **or** 10 hours/day if the employer provides working time on a weekly basis; and ○ Maximum 48 hours/week	○ Day shift: 100% salary ○ Night shift (10pm to 6am): 130% salary of day shift	An employee may work more than eight hours/day (or 10 hours/day) provided that the overtime does not exceed 50% of the ordinary time or 30 hours/month. The total working time/day may not exceed 12 hours.
• Overtime	○ Maximum 4 hours/day or 200 hours/year. ○ Maximum 300 hours/year in special cases.	○ At least 150% on a normal work day ○ At least 200% on a weekly day off ○ At least 400% on a public holiday or during fully paid leave. ○ An additional night shift overtime payment of 20% of the day shift salary	If an employee works overtime at night, he gets an extra 30% for working the night shift, the same overtime bonus as the day shift, plus an additional overtime bonus of 20% of the day shift salary. For example: Assume VND5,000 salary/hr on a normal working day: * Overtime **day** salary: VND7,500/hr (150%×VND5,000) * Overtime **night** salary on a normal working day: ([150%×VND5,000] + [30%× VND5,000] + [20%×VND5,000]) * Overtime **night** salary on a weekly day-off: ([200%×VND5,000] + [30%× VND5,000] + [20%×VND5,000 x

			200%]) * Overtime **night** salary on a holiday or paid day: ([400%×VND5,000] + [30%× VND5,000] + [20%×VND5,000 x 400%])
2. Break time	○ At least one day off/week ○ A break of 30 minutes[19] if employee works 8 consecutive hours ○ A break of 45 minutes if the employee works at night ○ Additional 30 minutes if the employee works 10 hours a day (including overtime) ○ A break of 12 hours between each shift if the employee works in shifts		Include a break of 30 or 45 minutes when counting working time.
3. Leave: • Public holidays	10 days	100% of salary	
• Annual leave	○ 12 days for normal working conditions ○ 14 days for strenuous, dangerous, or toxic work, **or** harsh living conditions, and if under 18 years of age ○ 16 days for extremely strenuous, dangerous work, or in strenuous, dangerous or toxic jobs in places with harsh living conditions	100% of salary	One day of annual leave is added for every 5 years of employment.
• Personal leave	○ 3 days if employee gets married ○ 1 day if employee's children get	100% of salary	

[19] The law does not provide a clear purpose for the break. In practice, it is usually for meals, tea break, etc.

	married ○ 3 days if employee's parent (including parents-in-law), spouse or child dies		

SCHEDULE 3

RETIREMENT REGIME

- Age of retirement: Male: 60; Female: 55. Employees with high technical expertise and employees working as a manager and employees in a number of other special cases may retire at an older age, but not more than five (5) years later than the age prescribed above.[20]

  Note: If an employee reaches retirement age and has contributed to the social insurance fund for 20 years or more, he is entitled to a monthly pension. If the employee has not reached retirement age, but has contributed to social insurance for at least 20 years and satisfies certain additional conditions, the employee is entitled to a monthly pension, but at a lower rate. Alternatively, the employee may be eligible for a lump-sum insurance allowance.[21]

Age of employee	Period of social insurance contribution	Additional conditions	Rate of benefits	Comments
➢ Male: 60 ➢ Female: 55	20 years or more	None None	Male: 45% + [2% × (years of insurance contribution-15)] (from January 1, 2018 – December 31, 2018: 45% + [2% × (years of insurance contribution-16)]; from January 1, 2019 – December 31, 2019: 45% + [2% × (years of insurance contribution-17)]; from January 1, 2020 – December 31, 2020: 45% + [2% × (years of insurance contribution-18)]; from January 1, 2021 – December 31, 2021: 45% + [2% × (years of insurance	Maximum rate is 75%

[20] Article 187.3 of the Labor Code 2012.

[21] Lump-sum social insurance allowance: If an employee is not entitled to a monthly pension, and if he satisfies some conditions required by law, he is entitled to a one-time social insurance allowance. Alternatively, the employee can wait until he reaches retirement age and has made at least 20 years of social insurance contributions in order to receive a monthly pension. A one-time social insurance allowance is calculated according to the number of years the employee has contributed to social insurance. Each working year is calculated at 1.5 months times the average monthly salary on which the social insurance contribution was based.

			contribution-19)]; from January 1, 2022: 45% + [2% × (years of insurance contribution-20)]) Female: 45% +[3% × (years of insurance contribution-15)]; (from January 1, 2018: 45% + [2% × (years of insurance contribution-15)]);	
➢ Male: 60 ➢ Female: 55		None None	In addition to the benefits above, an employee has the right to receive a one-time allowance at retirement[22]	More than 75% More than 75%
➢ Male: 55 or more ➢ Female: 50 or more	20 years or more	Employee has spent: ○ 15 years doing strenuous work or in a stressful job; or ○ 15 years working in an area with an area allowance indexed at 0.7 or more	Male: 45% + [2% × (years of insurance contribution-15)] (from January 1, 2018 – December 31, 2018: 45% + [2% × (years of insurance contribution-16)]; from January 1, 2019 – December 31, 2019: 45% + [2% × (years of insurance contribution-17)]; from January 1, 2020 – December 31, 2020: 45% + [2% × (years of insurance contribution-18)]; from January 1, 2021 – December 31, 2021: 45% + [2% × (years of insurance contribution-19)]; from January 1, 2022: 45% + [2% × (years of insurance contribution-20)]) Female: 45% +[3% × (years of insurance contribution-15)]; (from January 1, 2018: 45% + [2% × (years of	Maximum rate is 75%

[22] One-time allowance at retirement is calculated according to the number of years the employee contributed to social insurance from the 31st year of contribution onward for male employees and from the 26th year of contribution onward for female employees. Entitlement to social insurance for each additional year of contribution is calculated at 0.5 months of the average monthly salary on which his social insurance was based.

			insurance contribution-15)]);	
➢ Male: 60 or more ➢ Female: 55 or more	Less than 20 years	None None	One-time allowance at retirement[23]	
➢ Male: from full 50 (from 2016 to 2020, increase 1 age/year, reach 55) ➢ Female: from full 45 to 50 (from 2016, increase 1 age/year, reach 50)	20 years or more	His capacity to work has been reduced by at least 61%	Male: 45% + [2% × (years of insurance contribution-15)] - [2% × (60-age at retirement)] Female: 45% +[3% × (years of insurance contribution-15)] - [2% × (55-age at retirement)]	
➢ Male: 50 or more ➢ Female: 45 or more	20 years or more	His capacity to work has been reduced by at least 81%	Male: 45% + [2% × (years of insurance contribution-15)] - [2% × (60-age at retirement)] Female: 45% +[3% × (years of insurance contribution-15)] - [2% × (55-age at retirement)]	
➢ Male: irrespective of age. ➢ Female: irrespective of age	Less than 20 years	His capacity to work has been reduced by at least 61%; or He discontinues social insurance payments after 12 months leave and requests a one-time social insurance benefit.	One-time social insurance allowance[24]	

[23] See Footnote 17.
[24] See Footnote 16.

SCHEDULE 4

TERMINATION OF EMPLOYMENT

Item No.	Type of termination	Final payment and entitlement to employees	Process to terminate	Note
1.	**Termination by the employer**			
1.1	**Termination for convenience without cause**			
1.1 (a)	Retrenchment due to technological changes, such as changes in part or all of the equipment, machinery, technology process, or changes in the organizational structure, such as merger, consolidation, dissolution of some departments (Articles 44.1 of the Labor Code 2012)	Redundancy allowance	If it is necessary to terminate labor contracts of **many** employees, the employer must announce the list of affected employees. For each affected employee, the employer must decide on termination upon consultation and agreement with the Trade Union at the enterprise, based on the employee's years of service, qualifications and skills, family conditions, etc. Notice must be sent to the DOLISA 30 days prior to termination.	○ Redundancy allowance is one-month's salary for each year of employment, but at least 2 months' salary; ○ Payable to an employee who has at least 12 full months of service; ○ Length of service excludes months of unemployment insurance contribution (since January 1, 2009); ○ Years of service are rounded up if at least 6 months.
1.1 (b)	Retrenchment due to economic reasons or due to merger, consolidation, division, separation, transfer of assets of the employer (Article, 44.2 and Article 45 of the Labor Code 2012)	Redundancy allowance	The employer must work out a plan to use employees after the event. Such a plan must include the following contents: ● Number of employees that continue to be employed; ● Number of employees that are re-	

			trained for employment in other positions; • Number of retired employees; • Number of employees that are transferred to part-time jobs; • Number of employees whose labor contracts must be terminated; and • Plan to pay retraining costs, allowances and other benefits to the affected employees. The Trade Union at the enterprise (if any) must review and comment on the plan, and then it must be sent to the DOLISA.	
1.1 (c)	Automatic termination (Article 36 of the Labor Code 2012) if: • Labor contract expires; • Task stated in the labor contract completed; • Employer and employee agree to terminate labor contract; • The employee satisfies the requirements of social insurance duration and pension age; • Employee is sentenced to serve a jail term or is prevented from performing the job in accordance with a decision of the court; or • Employee dies or is declared missing by a court; • The employer, if an individual: dies, is declared dead, missing or incapable of civil acts by the Court; the employer, if not an individual, stops the operation.	Severance allowance	No procedures required.	○ Severance allowance is one-half of one-month's salary for each year of employment; ○ Payable to an employee who has at least 12 full months of service; ○ Length of service for severance allowance purposes is calculated by total length of service (with the company) minus months of unemployment insurance contribution (after January 1, 2009); ○ If length of service is more than 12 months but length of service for severance allowance is under 12 months, round up rules are applied as

				follows: From 1 full month to under 6 months: round up, 0.5 year of service; 6 full months and above: round up to 1 year of service. ○ A year of service is added by rounding up every full 6 months.
1.2	**Termination for cause**			
	An employer may unilaterally terminate a labor contract on the following grounds (Article 38 of the Labor Code 2012):			
	• Employee repeatedly fails to perform his work in accordance with the terms of his contract	Severance allowance	The following notice must be given before termination: • A 45 day prior notice if his labor contract has an indefinite term; • A 30 day prior notice if his labor contract has a definite term of from 12 months to 36 months; or • A 3 working day prior notice if his labor contract is seasonal or has a term of less than 12 months.	Unilateral termination of an employee is difficult. However, with carefully worded Internal Labor Rules and labor contract, a company has a better opportunity to establish grounds for termination.
	• Employee is ill and remains unable to work after having received treatment for certain periods of time	Severance allowance	The following notice must be given before termination: • A 45 day prior notice if his labor contract has an indefinite term; • A 30 day prior notice if his labor contract has a definite term of from 12 months to 36 months; or • A 3 working day prior notice if his labor contract is seasonal or has a term of less than 12 months.	
	• Employer must reduce production after attempting all measures to recover from an event of force majeure	Severance allowance		
	• Employer ceases its operations	Severance allowance		
1.3	**Termination for disciplinary violations**			

	An employer may dismiss an employee if (Article 126 of the Labor Code 2012): • He commits an act of theft, embezzlement, gambling, intentionally causing injury, using drugs within the workplace, disclosing technology and business secrets, intellectual property infringement of the employer, causing serious damage or threatening to cause extremely serious damage to the property and interests of the employer; • He recommits an offence after he is disciplined by: delayed pay raise, transfer to another position, removal; • He takes an aggregate of 5 days off in one month or 20 days off in one year without acceptable reasons.	No severance allowance No severance allowance No severance allowance	The employer must hold a meeting to deal with disciplinary violation. The employee and the trade union are required to attend the meeting.	Termination of an employee in this case is difficult. Carefully worded Internal Labor Rules are necessary for a company to establish sound grounds for termination.
2.	**Termination by an employee**			
2.1	**Termination without cause**			
2.1 (a)	Automatic termination (Article 36 of the Labor Code 2012): See Item 1.1 (c) of this Schedule	Severance allowance	The employer must give at least 15 days prior notice in case the labor contract expires	
2.1 (b)	Unilateral termination of an indefinite term labor contract (Article 37.3 of the Labor Code 2012)	Severance allowance	The employee must give a 45 day prior notice The employee must give at least 3 working days prior notice if he is ill or a victim of an accident and has received medical treatment for 6 consecutive months	This type of termination can apply only to an indefinite term labor contract An employee is not required to give any reason in order to unilaterally terminate an indefinite term labor contract
2.2	**Termination for cause**			
	An employee with a definite term labor contract may unilaterally terminate the contract if (Article 37 of the Labor Code 2012):			Evidence of cause is essential for termination
	• He is assigned a duty or assigned work at a location inconsistent with his labor contract; or the working conditions agreed to under his	Severance allowance	The employee must give at least 3 working days prior notice	

	labor contract are not satisfied;			
	• He is not paid in full or on time as provided in his labor contract;	Severance allowance	The employee must give at least 3 working days prior notice	
	• He is maltreated or forced to do inappropriate tasks (e.g., tasks that are inappropriate in terms of gender or may affect health or dignity);	Severance allowance	The employee must give at least 3 working days prior notice	
	• He or his family faces such difficulty that he is unable to continue to work under his labor contract (e.g., moving to a locality from which commuting is difficult, moving abroad, caring for his spouse, parents, spouse's parents, or child, if ill for three months or more);	Severance allowance	The employee must give a 30 day prior notice	
	• He is appointed to a permanent position in a people's elective body or in a state authority;	Severance allowance	The employee must give a 30 day prior notice	
	• She is pregnant and must take rest as prescribed by a doctor; or	Severance allowance	Subject to a doctor's prescription	
	• He has suffered from an illness or accident and has been under treatment for 3 months but has not yet recovered his capacity to work.	Severance allowance	The employee must give at least 3 working days prior notice	

SCHEDULE 5

COMPENSATION/ALLOWANCES FOR WORK-RELATED ACCIDENTS

I. Compensation/allowances paid by the company to an injured employee

Item No.	Injured employee's reduced working capacity	Entitlement	
		Accident occurred without fault of the injured employee	Accident occurred due to the fault of the injured employee
		(A)	(B)
1.	By 5% to 10%	Compensation equal to at least 150% of each month's contracted salary and salary allowance (if any).	Allowance equal to 40% of the compensation in 1(A).
2.	By 11% to 80%	Compensation equal to 1(A), plus 40% of one month's contracted salary for every additional percentage of reduced working capacity.	Allowance equal to 40% of the compensation in 2(A).
3.	81% or more, or the employee dies[25]	Compensation equal to at least 30 months' contracted salary and salary allowance (if any).	Allowance equal to 40% of the compensation in 3(A).

II. Allowances paid by the Social Insurance Fund to an injured employee

1. Lump-sum allowance: for an employee whose working capacity is reduced by 5% to 30%

Injured employee's reduced working capacity	Lump-sum allowance = (C) + (D)	
	(C)	(D)
	Allowance calculated **based on reduced working capacity**	Additional allowance calculated **based on the number of years of social insurance contribution**
5%	5 months' national minimum wage	• If employee has

[25] If an employee dies in a work-related accident, the compensation is paid to his family.

Every additional percentage of reduced working capacity	Add 0.5 months' national minimum wage	contributed to the Social Insurance Fund for one year or less, he is entitled to receive half the monthly salary, based on the month just prior to taking time off for treatment. • Afterwards, for each additional year of contribution, he is entitled to receive an additional 30% of the monthly salary, based on the month just prior to taking time off for treatment. The salary used is the salary on which the social insurance contribution was based.

2. **Monthly allowance**: for an employee whose working capacity is reduced by 31% or more

Injured employee's reduced working capacity	**Monthly allowance = (E) + (F)**	
	(E)	**(F)**
	Allowance calculated **based on reduced working capacity**	Additional allowance calculated **based on the number of years of social insurance contribution**
31%	30 months' national minimum wage	• If employee has contributed to the Social Insurance Fund for one year or less, he is entitled to receive half the monthly salary, based on the month just prior to taking time off for treatment. • Afterwards, for each additional year of contribution, he is entitled to receive an additional 30% of the
Every additional percentage of reduced working capacity	Plus 2 months' national minimum wage	

Schedule 5

		monthly salary, based on the month just prior to taking time off for treatment. The salary used is the salary on which the social insurance contribution was based.

SCHEDULE 6

CONDITIONS AND SCOPE OF SERVICES FOR LABOR OUTSOURCING

1. Requirements to be issued a labor outsourcing license:

- Deposit of 2,000,000,000 Vietnamese Dong;
- Legal capital of 2,000,000,000 Vietnamese Dong;
- Having stable premises for at least two years;
- The legal representative of the enterprise must have: (i) full civil capacity; (ii) experience with respect to labor outsourcing of three years or more; and (jii) not had his business license withdrawn within the three consecutive years prior to applying for labor outsourcing license.

2. Scope of services for labor outsourcing

No.	Services
1	Interpretation/translation/shorthand services
2	Secretarial/administrative assistance services
3	Reception services
4	Tourist guide services
5	Sales assistance services
6	Support services for (investment) projects
7	Programming services for machinery production systems
8	Manufacturing or installation services for television and telecommunications equipment
9	Operating/checking/repairing services of construction engines or for electric systems for production
10	Cleaning services for buildings or factories
11	Document editing services
12	Bodyguard/security services
13	Marketing/customer care services by phone
14	Services to deal with financial issues or taxation
15	Repairing/testing car operation services
16	Scanning, industrial engineer drawing/interior decoration services
17	Driving services

ANNEX I

Template for a Labor Contract

THE SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Name of the Company: ____ date____
Ref. No.:

LABOR CONTRACT

We, from one side, Mr./Ms.: Nationality:
Position:
On behalf of: [the Company]
Address:
Telephone:

And from the other side, Mr./Ms.: Nationality:
Date of birth: [day/month/year] Place of birth:
Profession:
Resident address:
ID Card number: issued on: [day/month/year] by:
Reference number of the Employment Record Book (if any): issued on [day/month/year] at____

Agree to enter into this labor contract and commit to comply with the following terms and conditions:

Article 1: Duration and Contractual Works

- Type of contract: [indefinite or definite term]
- From: [day/month/year]
- Working location:
- Professional title:
- Position (if any):
- Duties:

Article 2: Working Regime

- Working time:
- Equipment to be provided:

Article 3: Benefits and Obligations of the Employee

1. Benefits:

- Means of transportation:
- Basic salary or remuneration:
- Method of payment:
- Allowances:
- Payment to be made monthly on _____ :
- Bonus:
- Salary promotion regime:
- Labor protection equipment to be provided:
- Resting time (weekends or weekdays off, annual leave, holidays, etc.):
- Social and medical insurance:
- Training policies:
- Other benefits:

2. Obligations:

- Fulfill the works as agreed under this labor contract.
- Comply with manufacturing or trading orders, labor discipline and safety regulations, etc.
- Compensation for violation of labor disciplines and material liabilities:

Article 4: Rights and obligations of the employer

1. Obligations:

- Provide the work and fulfill the commitments as agreed under this labor contract.
- Fully pay the employee the salary and other benefits as agreed under the labor contract or collective labor agreement (if any), in a timely manner.

2. Rights:

- Manage labor to fulfill the work as agreed under the labor contract (including arrangement, assignment, or temporary suspension of the work, etc.)
- Temporarily suspend or terminate the labor contract, punish the employee in accordance with the laws, collective labor agreements (if any) and the employer's working regulations.

Article 5: Implementing Provisions

- Other labor issues, which are not included in this labor contract, shall be subject to collective labor agreements, or the labor law if there are no collective labor agreements.
- This labor contract is made in two originals having equal validity. One original shall be kept by each party and effective as from [day/month/year]. If the parties also

execute annexes to this labor contract, the annexes shall have the same binding effect on the parties as does this labor contract.

This contract is made at _____ on _____ 200___

EMPLOYEE
[sign and full name]

EMPLOYER
[sign, seal and full name]