

Vietnam Employment Law Update 2016

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Agenda

Module 1

- NEW SOCIAL INSURANCE LAW

Module 2

- NEW REGIONAL AND GENERAL MINIMUM WAGES

Module 3

- NEW LAW ON LABOUR SAFETY AND HYGIENE

Module 4

- FEMALE EMPLOYEES

Module 5

- NEW GUIDANCE ON VARIOUS PROVISIONS IN THE LABOR CODE

Module 6

- NEW ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF LABOR LAW

Module 7

- DRAFT LEGISLATION AND UPCOMING CHANGES IN LABOR LAW



1. New Social Insurance Law

New Social Insurance Law

- Adopted on 20 November 2014
- Takes effect on **1 January 2016**, with some provisions taking effect on **1 January 2018**
- Impacts:
 - Employers: increase in labour costs (direct and indirect costs)
 - Employees: more benefits

Key changes – Scope & Salary

- Extended scope of application as of **1 Jan 2018**:
 - Employees with definite term (1 to 3 months) contracts
 - Foreign employees legally working in Vietnam
- Extended coverage of salary for premium calculation

Milestone	Social Insurance Salary
Before 1 January 2016	Base salary (“ <i>Lương cơ bản</i> ” in Vietnamese) only (practically interpreted by social insurance authorities)
From 1 January 2016	Salary level + salary allowances (“ <i>Mức lương + phụ cấp lương</i> ” in Vietnamese)
From 1 January 2018	Salary level + salary allowances + other supplemental payments (“ <i>Mức lương + phụ cấp lương + các khoản bổ sung khác</i> ” in Vietnamese)

Key changes - Salary

Items	Explanation in English	Explanation in Vietnamese
Salary level (“ <i>Mức lương</i> ” in Vietnamese)	Provided in: <ul style="list-style-type: none"> • Labour contracts • Salary scale and table. 	Quy định trong: <ul style="list-style-type: none"> • Hợp đồng lao động • Thang bảng lương.
Salary allowances, including: (“ <i>phụ cấp lương</i> ” in Vietnamese)	Compensation for: <ul style="list-style-type: none"> • Working conditions • Complexity • Living conditions • Undesirability of the job. 	Khoản tiền bù đắp các yếu tố về: <ul style="list-style-type: none"> • Điều kiện lao động • Tính chất phức tạp của công việc • Điều kiện sinh hoạt • Mức độ thu hút lao động.
Other supplemental payments: (“ <i>các khoản bổ sung khác</i> ” in Vietnamese)	Other payments, excluding: <ul style="list-style-type: none"> • Bonuses • Payment for shift meal • Other supporting payment not related to the job. 	Các khoản thanh toán khác, ngoại trừ: <ul style="list-style-type: none"> • Tiền thưởng • Tiền ăn giữa ca • Các khoản hỗ trợ, trợ cấp khác không liên quan đến thực hiện công việc hoặc chức danh trong hợp đồng lao động.

Key changes – Contribution rates

➤ Contribution rate:

Old Law					New Law
	2007-09	2010-11	2012-13	2014	1/12016
Employer	15%	16%	17%	18%	18%
Employee	5%	6%	7%	8%	8%
TOTAL	20%	22%	24%	26%	26%

Key changes – Announcements

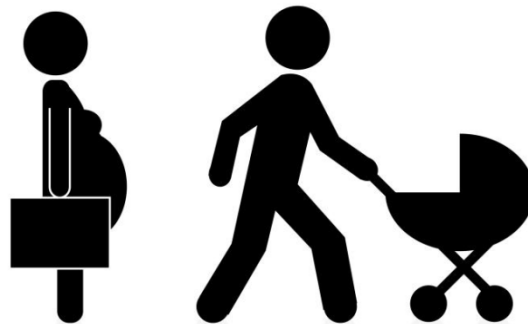
- Employer's obligations to publicly announce the following information at the workplace:
 - Every six months or at the request of employees and the trade union: information about social insurance payments for employees
 - Annually: information received from the social insurance authority.

More benefits for employees



Key changes – Maternity allowances

- Paternity leave:
 - 5 – 14 working days, depending on the number of children born and the circumstances of the birth.
- Maternity leave in the case of adopting a child:
 - If the child is under 6 months old, the mother may take leave until the child is 6 months old.





2. New regional and general minimum wages

Key changes

- Increase of Regional Minimum Wages (“RMW”);
- Increase of General Minimum Wages (“GMW”); and
- Impact of changes on labor costs

Increase of Regional Minimum Wages (“RMW”)

- Decree No. 122/2015/ND-CP stipulating regional minimum wages for employees of enterprises, co-operatives, farms, family households, individuals and other agencies and organizations hiring labor pursuant to a labor contract (“**Decree No. 122**”)
- Adopted on **14 Nov 2015**
- Takes effect on **1 Jan 2016**
- Replaces Decree No. 103/2014/ND-CP

Increase of Regional Minimum Wages (“RMW”) (Cont.)

DETAILED INCREASE OF RMW FROM 2012 TO 2016

**RMW in millions of Vietnamese dong*

	2012		2013		2014		2015		2016	
		RMW	% Increase	RMW	% Increase	RMW	% Increase	RMW	% Increase	
Region I	2	2.35	17.5%	2.7	14.9%	3.1	14.8%	3.5	12.9%	
Region II	1.78	2.1	18%	2.4	14.3%	2.75	14.6%	3.1	12.7%	
Region III	1.55	1.8	16%	2.1	16.7%	2.4	14.3%	2.7	12.5%	
Region IV	1.4	1.65	17.9%	1.9	15.2%	2.15	13.2%	2.4	11.6%	

Increase of General Minimum Wages ("GMW")

- Resolution No. 99/2015/QH13 regarding the State budget estimates for the year of 2016 ("**Resolution No. 99**")
- Adopted on **11 Nov 2015**
- Takes effect on **1 May 2016**
- Key changes: The GMW will **increase by 5%** (i.e., from VND1,150,000 to VND1,210,000) as of **1 May 2016**

Impact of Changes on Labor Costs

- **Impact of new RMW: Increase to payroll, higher unemployment insurance contributions**
 - Increase of employers' payroll;
 - Unemployment insurance contributions are capped at 20 times of RMW: (e.g., increase from VND62 million to VND70 million for Region I).
- **Impact of new GMW: Increase in contribution to statutory social insurance and contribution to the trade union fees for employers.**
 - Contributions to social and health insurance are capped at 20 times the GMW
 - Under previous GMW, the capped amount was VND 23 million
 - Under new GMW, the capped amount will be VND 24.2 million
 - Trade union fees contributed by companies are equal to 2% of its employees' salaries used to calculate social insurance contributions (now capped at VND 24.2 million, rather than VND 23 million)



3. New Law on Labour Safety and Hygiene

New Law on Occupational Hygiene and Safety

- The Law on Occupational Hygiene and Safety No. 84/2015/QH13
 - Adopted on 15 June 2015
 - Effective on 1 July 2016
 - Consolidates regulations on occupational safety and hygiene from other laws/ regulations

Broader application

- Applies to “individuals not working under a labor contract” in addition to employees
- Broader definition of labor accidents:
 - labor accidents occurring at the workplace during working hours specifically includes breaks and rest-time
 - labor accidents occurring outside the workplace or outside working hours but on assignment from the employer
 - travelling between the employee’s residence and workplace within a reasonable period of time and on a reasonable route.

More obligations for employers

- Consult with trade union to formulate internal regulations/policies on occupational safety and hygiene;
- Participate in compulsory insurance on occupational safety and hygiene
 - Allocate this contribution from compulsory social insurance
 - Contribution rate: 1% of payroll used to contribute statutory social insurance premiums
- Fund for compulsory insurance on occupational safety and hygiene is part of Social Insurance Fund

New regulations for Outsourced Employees

Obligations of the Labor Providers:

- Must carry out obligations of the official employer regarding occupational safety and hygiene towards outsourced employees
- Labor outsourcing contract must specify parties' obligations on occupational safety and hygiene

Obligations of the Labor Users:

- Fully implement its commitments on occupational safety and hygiene under the signed labor outsourcing contracts
- Upon discovery of labor accidents, inform the Labor Provider immediately and report to the authorities
- Provide periodic training on occupational safety and hygiene to outsourced employees



4. Female employees

New Decree Regarding Female Employees

- Decree No. 85/2015/ND-CP sets out new obligations to female employees, **effective 15 November 2015**
- Employers are encouraged to provide facilities for women to pump breastmilk, and have adequate shower and toilet facilities.
- Employers employing many female employees may enjoy corporate income tax incentives under the tax regulations
 - “Employers employing many female employees”
 - Employers employing from 10 to under 100 female employees, with the total number of female employees being 50% or more of the total number of employees;
 - Employers employing from 100 to below 1,000 female workers, with the total number of female employees being 30% or more of the total number of employees; or
 - Employers employing 1,000 or more female employees.

New Decree Regarding Female Employees, Ctd.

- The Representative of Female Employees
 - Corporate trade union has been established => considered to be the representative of the company's female employees.
 - Corporate trade union has not been established => the upper level trade union, upon the request of the female employees, will be considered the representative.
 - There is no such request, the employer will collect the opinions from over 50% of the female employees.
- Reiterates existing rights of female employees
 - 30 minute rest break per day for menstruation for at least 3 days per month; 60 minute rest break per day for nursing when raising a baby under 12 months
 - Female employees can terminate or suspend their labor contracts if recommended by a doctor for the health of her foetus
 - Period of notice for termination and the suspension depend on the advice from the medical facility

5. New guidance on various provisions in the Labor Code



Recent Regulations

- Decree No. 05/2015/ND-CP
 - Issued on 12 Jan 2015
 - Effective on 1 March 2015
- Circular No. 23/2015/TT-BLDTBXH
 - Issued on 23 June 2015
 - Effective on 8 August 2015
- Circular No. 47/2015/TT-BLDTBXH
 - Issued on 16 Nov 2015
 - Effective on 1 Jan 2016
- Scope of guidance
 - Labor contract
 - Collective bargaining
 - Wages
 - Labor disputes
 - Labor discipline

Labor Contracts

- The authorization from the legal representative to another person to sign labor contracts must follow a prescribed POA form
- Decree No. 05 sets out detailed guidance on mandatory contents for labor contracts (failing to include all required contents → subject to a fine up to VND40 million)
- A fixed term contract can only be renewed once but the type of contract must not change.

Labor Contracts (cont'd)

- **Temporary assignment** (60 days per year): employers must define its “business needs” for such transfer in its internal regulations
- **Termination due to poor performance:** employers must consult with the employee representative to formulate a policy on how employees’ performance will be assessed.

Labor Contracts (cont'd)

- Further guidance on legal basis for redundancy:
 - Structural or technological changes: (i) change of organizational structure and reallocation of labor; (ii) change of products or scale of products; and, (iii) change of process, technology, machinery or equipment
 - “Economic Reasons” is one of the permitted grounds for a redundancy termination, and means:
 - Economic recession or crisis; or
 - Implementation of governmental policy on restructuring the economy or implementation of international commitments.

Collective Bargaining

- Employers and employees must engage in it once a year
- Gap between 2 negotiations cannot exceed 1 year
- Collective Labor Agreements will be reviewed by the labor authority, which may require the parties to amend or re-negotiate certain aspects
 - *Presently, collective bargaining is only required if one party requests it*

Salary

- "Salary" = salary level + salary allowances + other supplemental payment
(*"Mức lương + phụ cấp lương + các khoản bổ sung khác"* in Vietnamese)
- The above concept of "salary" used to calculate overtime payment, unused annual leave, and severance pay.

Labour discipline

Employers with less than 10 employees:

- Internal Labour Regulations (“ILRs”) come into effect without registration, but the employer must consult with the employee representative
- Without the written ILRs, labour discipline and material liabilities may be agreed in the employment contracts

6. New Administrative Penalties for Violations of Labor Law



New administrative penalties

Decree No. 88/2015/ND-CP amending Decree No. 95/2013/ND-CP

- Issued on 7 October 2015
- Effective on 25 Nov 2015
- Amends administrative penalties for violations of labor law

Work permit violations

Penalties for employers:

- Failure to apply for work permit exemption: the same penalties apply as for those applicable to failing to apply for a work permit
 - fine of up to VND150 million
 - possible suspension of the employer's operation for a period of one to three months (in serious cases)

Violations in Trade Union Contributions

Penalties for employers:


- Failure to fully contribute trade union fees or to do so in a timely manner: fine of from 24% to 30% of the total union fees due (capped at VND 150 million) and interest for late payment; and
- Failure to contribute trade union fees for all employees: fine from 36% to 40% of the total union fees due (capped at VND 150 million) and interest for late payment

7. Draft Legislation and Upcoming Changes in Labor Law



Draft decree and circulars guiding the implementation of the Law on Occupational Safety and Hygiene

1. Decree guiding the implementation of the Law on Occupational Safety and Hygiene;
2. Circular providing the criteria for labor classification according to working conditions;
3. Circular promulgating the list of heavy, hazardous and dangerous jobs and list of extremely heavy, hazardous and dangerous jobs;
4. Circular providing the implementation of labor safety activities for businesses and production organizations;
5. Circular providing statistics forms for labor accidents and the announcement of labor accident status;
6. Decree on technical inspection activities regarding labor safety, training on labor safety, and monitoring of work environment;
7. Decree guiding the Law on Occupational Safety and Hygiene on compulsory insurance regarding labor accidents and occupational diseases.



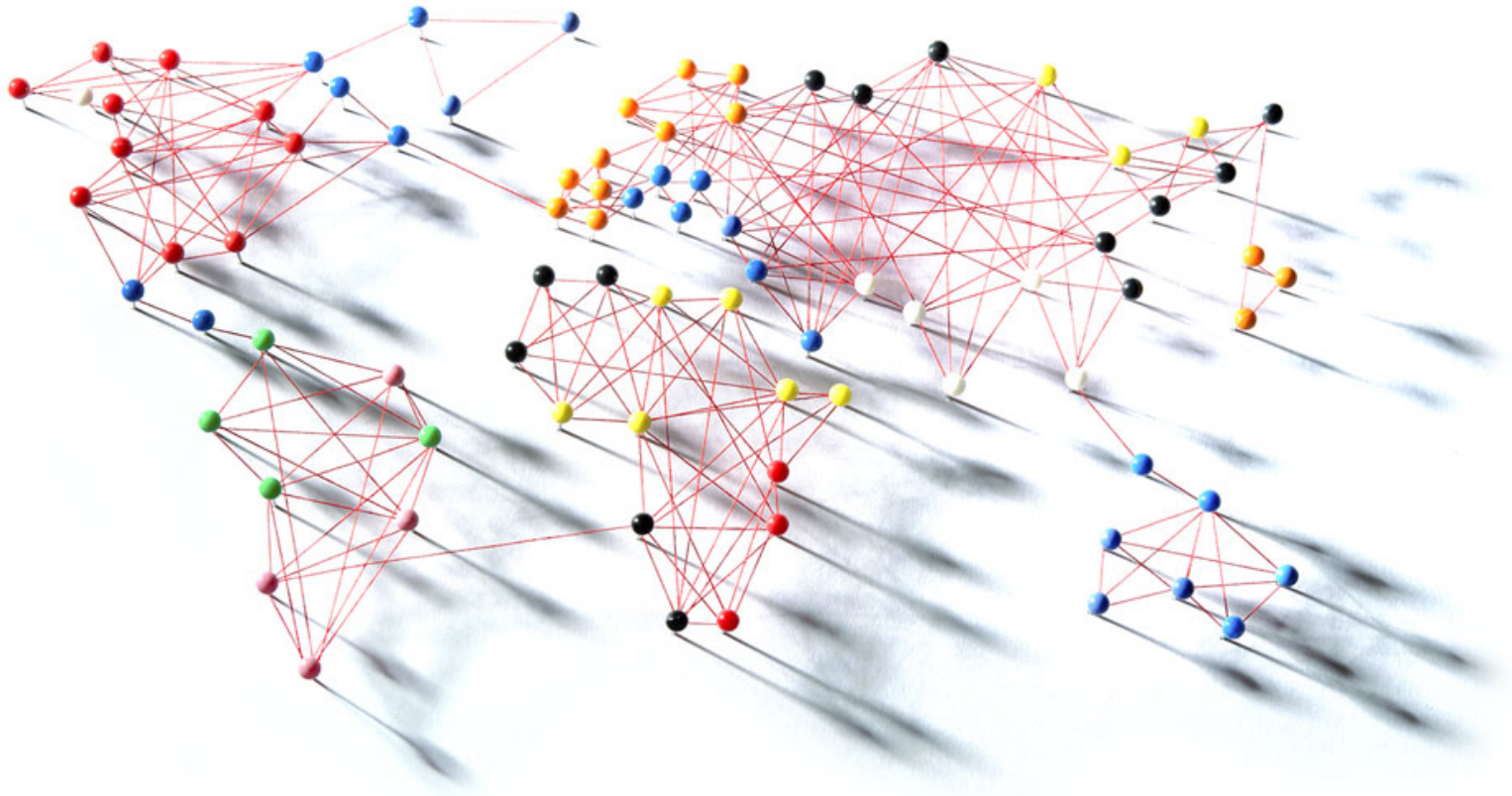
Draft circular guiding Decree No. 11/2016/ND-CP
on management of foreigners working in Vietnam
(draft not yet available).

Plan to adopt and ratify a number of United Nation Conventions and ILO Conventions during the period of 2016-2020

1. Freedom of Association and Protection of the Right to Organise Convention (Convention No. 87);
2. Right to Organise and Collective Bargaining Convention (Convention No. 98);
3. Abolition of Forced Labour Convention (Convention No. 105);
4. Labour Inspection (Agriculture) Convention (Convention No. 129);
5. Employment Service Convention (Convention No. 88);
6. Protection of Wages Convention (Convention No. 95);
7. Minimum Wage Fixing Convention (Convention No. 131);
8. Vocational Rehabilitation and Employment (Disabled Persons) Convention (Convention No. 159);
9. Private Employment Agencies Convention (Convention No. 181);
10. Domestic Workers Convention (Convention No. 189).

Questions

Thank you!



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