

EMPLOYMENT MANUAL

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EMPLOYMENT MANUAL¹

This Employment Manual is intended to be an easy desk-top reference for the Chief Representative, the General Director, the Human Resources Manager, In-house Counsel, or any person who wants a good understanding of Vietnam’s labor law. 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 Labor Code and its accompanying laws, decrees and circulars, this Manual should provide the reader with a good basic understanding of the Labor Code which took effect on January 1, 2021 and its accompanying decrees. However, this Manual is not a substitute for a comprehensive understanding of the labor laws.

1. Sources of employment and industrial relations laws

Sources of employment and industrial relations laws include:

- Constitution 2013, effective from November 28, 2013 (“**Constitution 2013**”)
- Labor Code, effective from January 1, 2021 (“**Labor Code**”)

2. Statutes

Statutes that are relevant to labor and industrial relations include:

- Civil Code 2015
- Civil Procedures Code 2015
- Penal Code 2015
- Law on Enterprises 2020
- See also **Schedule 1 (List of Labor Regulations)**

3. Relevant government labor bodies, authorities

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

MOLISA discharges the State’s administration of labor, employment, and occupational safety and health responsibilities. One of its major tasks is to assist the Government to draft and issue 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 affect the employment relationship.

MOLISA has the power to implement national policies on employment, provide guidance concerning these policies, and ensure compliance.

¹ This Employment Manual has been written by lawyers in the Vietnam offices of Russin & Vecchi and is current as of January 2023. In various places, we refer to amounts in Vietnamese dong. The approximate current exchange rate is US\$1.00 = VND 24,650.

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

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

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.

Trade unions represent collective labor in Vietnam. In addition to the trade union, employees have the right to establish their own representative organization which is not a member of the Vietnam General Confederation of Labor. The Government will issue a new decree to provide guidance on procedures to establish employees’ representatives organization.

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 (eg, a party is a foreign person/entity or the contract is performed outside of Vietnam) and that relate to an entity located within that province or city.

4. Employee and Employer

4.1 Employer

The Labor Code defines an employer as an enterprise, agency, organization, a cooperative, a household or an individual who hires or employs employee under a labor contract. This definition is silent on whether a foreign entity located outside of Vietnam--say, a company licensed and headquartered abroad--can be an employer under Vietnamese labor law. In reality, there is no legal obligation for a foreign employer to comply with Vietnamese law on compulsory insurance, personal income tax withholding, filing, annual employment reports, etc.³ A foreign entity cannot employ a Vietnamese person in Vietnam under Vietnamese labor law. It can engage such a person as an independent contractor. If the foreign entity has a presence in Vietnam (ie, a representative office, or a branch), its presence is entitled to employ

² According to the Civil Code 2015, 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. In practice, a representative office of an offshore company can be considered as a defendant or plaintiff if there is a signed labor contract between the representative office and employee.

³ See Art. 6 of Labor Code.

a person and must fulfill its employer obligations, sponsor a work permit/visa for a foreign employee.

4.2. Employee

The labor law covers Vietnamese and foreign individuals who work for employers.

According to the Law on Enterprises 2020, a company may have one or many legal representatives. These legal representatives are appointed as specified in the company's charter.⁴ Legal representatives are also employees even if they do not have a day-to-day role. The employment relationship of a legal representative is set out in their labor contract and is governed by the labor law. However, unlike other employees, the rights and duties of legal representatives are not only specified in their labor contract, but also in the Law on Enterprises 2020, the company's charter (articles of association) and resolutions.

A foreign employee who is internally transferred from the foreign parent company to a Vietnamese subsidiary is subject to the law of Vietnam. However, if there is no local labor contract to be signed between the foreign employee and the Vietnamese subsidiary, Vietnamese labor law will not apply except for provisions on work permits.

According to the Labor Code, 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, there is some ambiguity as an individual can be in the position of both an employee and a representative of the employer, as chief representative or branch head as set out, in a labor contract. There is no attempt to resolve this under labor regulations. In practice, and to avoid doubt, the labor contract of a chief representative or a branch manager is often signed by the parent company. However, if the employee is a foreigner and is engaged under a contract directly with the parent company--an offshore company--such contract is not subject to Vietnamese labor law. In such a case, the foreign parties are permitted to choose foreign law to govern their labor contract.

5. Work permits for foreign employees

Most foreigners who work in Vietnam are required to have a work permit. To obtain it, the expatriate must be in good health, full 18 years of age, not subject to prosecution and must work as a manager/general director ("**GD**"), Chief Representative ("**CR**") of a Representative Office of a foreign organization in Vietnam ("**RO**") or an expert or a technician.⁵ Work permits are issued by the provincial DOLISA and remain valid for two years⁶.

However, in any one of the following circumstances, a foreign employee may work without a work permit:

- a. She is a member or owner of a limited liability company established in Vietnam and has contributed at least VND 3 billion in capital;

⁴ See Art. 13.2 of Law on Enterprises 2020.

⁵ See Art 2 of Decree 152/2020/ND-CP dated December 20, 2020 ("**Decree 152**").

⁶ See Art. 155 of Labor Code.

- b. She is a chairman or a member of the Management Board of a joint stock company established in Vietnam and has contributed at least VND 3 billion in capital;
- c. She is the head of either a 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; such a person is required to have a work permit;
- d. She enters and stays in Vietnam for fewer 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;
- e. She enters Vietnam and stays for fewer than three consecutive months, to handle an emergency matter or one that involves complicated technical or technological problems that affect production/business and the problems 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 months period;
- f. She is a foreign lawyer with a Certificate of Law Practice in Vietnam granted by the Ministry of Justice;
- g. She is a foreign student who is studying in Vietnam. The employer, however, must inform the provincial labor authority of its recruitment of a foreign student seven days prior to the recruitment;
- h. She is seconded to Vietnam as permitted under Vietnam’s WTO Commitments, to perform business services (such as: professional services, computer and related services, research and development services, rental services without an operator), communications 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. She provides advisory services and technical expertise or performs other tasks in respect of research, construction, appraisal, monitoring and evaluation, management and implementation of programs/projects funded with official development assistance agreements (“ODA”);
- j. She has a media license and journalism practicing certificate issued by the Ministry of Foreign Affairs;
- k. She is appointed by a competent authority in a foreign country to teach and research at an international school that is managed by a foreign diplomatic office or by the United Nations or at a facility or organization established under a treaty to which Vietnam is a signatory;
- l. She is a volunteer certified by a foreign diplomatic mission or an international organization in Vietnam;
- m. She works as an expert, manager, executive director or technical employee for a period of less than 30 days, and no more than three times in one year;

- n. She implements international agreements to which central and/or a provincial authority is a signatory;
- o. She is a student studying in a foreign school or institution that has an agreement for internships in agencies, organizations and enterprises in Vietnam; or a student who is a trainee or apprentice on a Vietnamese oceangoing ship;
- p. She is a relative⁷ of a member of a foreign representative agency in Vietnam who is permitted to work in Vietnam under an international treaty of which Vietnam is a party;
- q. She has an official passport to work for state agencies, social organizations and socio-political organizations;
- r. She is a foreign individual in charge of establishing a commercial presence in Vietnam;⁸
- s. She is married to a Vietnamese and living in Vietnam.

In order for an expatriate to be exempt from a work permit, the employer must file an application with the DOLISA to confirm the exemption, except in circumstances a, b, d, f, m, p and s above.

The Labor Code also provides guidelines to permit an employer to recruit a foreigner as (i) a manager, (ii) a GD; (iii) an expert or (iv) a technician:

A foreigner is considered to be a manager or a GD when she satisfies one of the following circumstances:

- A manager is an executive of an enterprise⁹, or is the head or deputy head of an office or organization; or
- A GD is the person who directly manages departments within an office, organization or enterprise.

A foreigner is an expert when she satisfies one of the following conditions:

- She has at least five years of working experience in her trained area and a diploma which is aligned with the job she will perform in Vietnam; or
- She possesses a university or higher degree and has at least three years of working experience in her trained area which area is aligned with the job she will perform in Vietnam.

⁷ There is no clear definition of “relative”, such as whether a relative means parents, spouse, children only or whether it includes parents in-law, cousins, nephews and nieces, etc.

⁸ See Article 5 of Decree 152.

⁹ According to Article 4.24 of the Law on Enterprises 2020, an executive of a company can be the Chairman, President, a member of the Board of Management or Members Council, GD and any other person who is authorized to conclude transactions on behalf of the company in accordance with its charter.

A foreigner is a technician if she satisfies the following requirements:

- She has been trained in a technical or other specific area for at least one year and has worked for at least three years in her trained area; or
- She has worked for at least five years in her trained area which area is aligned with the job she will perform in Vietnam.

The documents required to apply for a work permit include standard forms and documents which prove that the expatriate is qualified. The employer and the employee are specifically named and the work permit is not transferable. The work permit can be renewed one time only for a two year term. For renewal, some documents and procedures are waived. A new application must be filed after the renewed work permit expires.

Prior to obtaining a work permit for an expatriate, the employer must obtain an affirmation from the People's Committee that there is sufficient demand which necessitates recruitment of an expatriate. Some exemptions can be applied.

6. Probation

Regulations on probation are provided in Article 24 of the Labor Code.

An employer and an employee may enter into an agreement on probation:

If the employee is recruited for a managerial position (eg, Chairman, President, a member of the Board of Management or Members Council, GD or if a person is authorized to conclude transactions on behalf of the company in accordance with its charter), the probationary period cannot exceed 180 days;

- 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 does not permit use of a probationary period for an employee entering into a labor contract with a duration of less than 12 months. A probationary period cannot be extended.

During the probationary period, the employee is entitled to a salary of at least 85% of the salary that she would be entitled to receive if she were employed.

If a contract for probation is signed separately from a labor contract, there is no obligation to make the normal compulsory insurance contribution (including social insurance, health insurance and unemployment insurance). If, however, probation is part of the labor contract in which there is a term of probation, both the employer and the employee are required to contribute.

Either the employer or the employee may terminate the probation agreement without prior notice and without compensation for such termination. However, payment for time served must be made.

Upon the expiration of a probation period, the employer is responsible to inform the employee about the result of the probation. If the employee's performance meets the requirements set out in the probation contract, the employer must enter into a labor contract with the employee. The Labor Code 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. However, such a conclusion seems obvious.

7. Labor Contract

7.1. Types of labor contracts

Under the Labor Code, there are three types of labor contract:

- An indefinite term labor contract, in which the two parties do not predetermine the term or termination date of the contract;
- A definite term labor contract, in which the term and termination date, are 36 months or less.

When a definite term labor contract expires, the parties must enter into a new labor contract within 30 days from the date of expiration if the intention is for the employee to continue to work. Prior to signing a new labor contract, of course, the parties' rights and obligations under the former contract apply.

If a new definite-term labor contract is signed within 30 days from the date of expiration, the parties may only sign one more renewal contract. If the employee thereafter continues to work after the renewal expires, an indefinite term labor contract must be signed.

If a new labor contract has not been signed after 30 days from the date of expiration and if the employee continues working, the existing definite-term labor contract automatically becomes an indefinite-term labor contract.

The employer and employee are not allowed to extend a definite term contract by signing an appendix. The employer can sign a maximum of two definite-term labor contracts with each employee. The third labor contract must have an indefinite-term.

If the employee is a foreigner, the term of the labor contract must not exceed the term of her work permit. The employer can sign several definite-term labor contracts with a foreign employee and there is no automatic conversion to indefinite.

7.2. Forms of labor contracts

Under Article 14 of the Labor Code, a labor contract must be in writing, except a labor contract for less than one month.

The Labor Code does not specify a standard form of contract, so an employer may prepare its own template of labor contract, provided that the template contains certain principal clauses as outlined in the attached **Annex I**¹⁰. This is not a mandatory form. It includes all required provisions, but the format and contents can be quite different. Additional provisions may be included.

7.3. Major employment terms and conditions

Major employment terms, conditions and benefits are summarized in the attached **Schedule 2**.

7.4. Public policy

Article 7 of the Labor Code 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.*” The Labor Code 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 if the negotiated terms and conditions are not contrary to the law or 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.

7.5. Local language

The Labor Code 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 not the primary language. In practice, the authorities will refer to the Vietnamese version of a bilingual labor contract to resolve issues.

7.6. Contracting with several employers

While the Labor Code 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. 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 her obligation.

The Labor Code requires that all employers who enter into a labor contract 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 13**.

¹⁰ Annex I prescribes main terms as referenced in Art.21.1 of Labor Code.

8. Working time and Overtime

8.1 Working time

Normal working time is 8 hours per day and 48 hours per week. The Labor Code permits an employer to determine the working time on the basis of a week, but normal working time may not exceed 10 hours per day nor 48 hours per week.

Night working time is from 22:00 pm to 6:00 am.

8.2 Overtime working hours

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 40 hours per month or 200 hours per year¹¹. 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, approval of the authorities is required. The authorities must state the reason if approval is denied.

The Labor Code 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.

8.3 Payment for overtime and night work

Employees who work overtime will be paid¹²:

- At least 150% of actually paid salary for a normal work day;
- At least 200% of actually paid salary for a normal weekly day off (eg, weekends);
- At least 300% of actually paid salary for a public holiday or during fully paid leave days, plus her normal salary on these days.

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

Details on conditions and benefits in respect of overtime, breaktime and leave are discussed in **Schedule 2**.

9. Paid Leave

An employee is entitled to receive full salary during public holidays, annual leave, paid leave.

¹¹ See Art. 105 of Labor Code.

¹² See Art. 98 of Labor Code.

9.1 Public Holidays

The Labor Code provides the following holidays:

Holiday	Date
Solar New Year’s Day	January 1
Lunar New Year	Five days (the two final days of the old lunar year and the first three days of the new lunar year)
Hung King’s Day anniversary	March 10 (of the lunar year)
Victory Day	April 30
International Labor Day	May 1
Independence Day	September 2 and a day immediately preceding or succeeding September 2

Employees who are foreign citizens working in Vietnam, besides the holidays as prescribed above, are entitled to take an additional day of their traditional New Year (if different from January 1st) and one day to celebrate their country’s National Day.

Where public holidays, as described above, coincide with a weekly day off, the employee is entitled to take the succeeding compensated day off instead.

If an employee agrees to work on a holiday, the employee will be paid overtime salary of at least 300% of normal salary.

9.2 Paid Leave

An employee is entitled to leave with full salary in the following circumstances:

- Marriage: three days
- Marriage of employee’s child: one day
- Death of employee’s natural husband or wife; husband’s or wife’s parent; or employee’s child: three days

9.3 Annual Leave

An employee with 12 months of service is entitled to annual leave with full pay. Total annual leave entitlement 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 whose length of service is less than 12 months is entitled to annual leave proportional to the period of employment.

The employer is responsible to regulate the annual leave schedule after consulting with employees and must give notice to employees. An employee can agree with the employer to take annual leave in installments by combining no more than three years of annual leave into one leave.

When taking annual leave, if an employee must travel by road, railway or waterway and the number of days to go and return is over two, then from the third day onward, travel time is added to annual leave. This allowance applies to only one leave per year.

For every additional five years of service to the employer, the number of annual leave days increases by one day.¹³

An employee who, due to termination of employment, fails to take her annual leave or has not used up all her annual leave, must be paid salary for those days not taken.

10. Unpaid Leave

Beside paid leave as specified above, an employee may take one day of unpaid leave upon the death of her grandparents or a natural sibling, or when her parent or natural sibling gets married. In addition, the employee and employer may agree on other unpaid leave.

11. Maternity leave

Regulations on maternity benefits are provided in Chapter X of the Labor Code and in the Law on Social Insurance 2014. These regulations are further elaborated upon in Decree 115/2015/ND-CP dated November 11, 2015 (“**Decree 115**”) and Circular 59/2015/TT-BLDTBXH dated December 29, 2015 (“**Circular 59**”).

11.1 Pregnancy and maternity leave benefits

An employee who is pregnant or gives birth is entitled to the following 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;

¹³ See Art. 113 of Labor Code.

- Length of maternity leave:

Conditions	Period of leave
➤ Normal conditions	<ul style="list-style-type: none"> • Six months
➤ If the baby dies after birth	<ul style="list-style-type: none"> • Four months from the date of death, if the baby dies at age 60 days or more; • Two months 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

When the paid statutory maternity leave expires, a female employee is entitled to take from five to 10 days additional leave and is also entitled to receive a salary from the Social Insurance Fund equal to 30% of the basic salary. If the employer agrees, she may take additional, unpaid leave.

She may return to work prior to expiration of her permitted maternity leave if: (i) she has taken at least four months leave; and (ii) the employer agrees. In such case, the employee continues to be entitled to maternity leave allowance in addition to her normal salary. Of note, if her working days within a month are 14 days or more, both she and her employer are responsible to contribute to compulsory social insurance.

11.2. Maternity leave allowance

The employee is entitled to be paid a maternity allowance by the Social Insurance Fund, provided that she has paid social insurance for at least six months during the twelve months immediately preceding maternity leave. The employer is responsible to assist the employee to obtain this allowance from the Social Insurance Fund.

The maternity leave allowance is equal to 100% of the average monthly salary during the last six months during which the female employee contributed to social insurance plus an additional allowance of two-months basic salary¹⁴ per baby.

11.3. Working conditions

A female employee is entitled to special working conditions while she is pregnant and while

¹⁴ The basic monthly salary from July 1, 2022 is VND 1,490,000 equivalent to US\$ 60.

her baby is under 12 months of age:

- A female employee who has reached her seventh month of pregnancy and while her baby is under 12 months of age does not have to work overtime or at night or go on business trips to distant localities;
- A female employee who is normally employed doing heavy work and who 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 continue to 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, while receiving full pay.

11.4. 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 to terminate the labor contract of a female employee if she is pregnant, on maternity leave, or has a baby who is under 12 months of age.

11.5. Parental Leave

A male employee whose wife deliveries a baby is entitled to take parental leave within 30 days from delivery, as below:

- Five working days;
- Seven working days if his wife delivers by surgery or if the baby is delivered within its first 32 weeks;
- 10 working days if his wife gives birth to twins; three working days for each baby beyond the second baby;
- 14 working days if his wife gives birth to twins by surgery.

12. Salary

12.1. Regional minimum salary

There are two types of minimum salary: regional minimum salary and minimum salary specific to an industry. The regional minimum salary is announced by the government based on minimum living needs of the employee and their family, social and economic conditions and salary in the labor market. The minimum salary in an industry may be determined through collective negotiation within the industry and is specified in the industry's collective labor agreement. It may not be lower than the regional minimal salary announced by the government.

12.2. Wage Salary Scale

An employer is responsible to formulate its Wage Salary Scale (“WSS”) in consultation with the trade union and to publish it in the company's workplace. The employer is free to set a scale of salary which is suitable for its business. However, the lowest WSS wage or salary may not be lower than the minimum regional salary.

12.3. Payment method

The employer has the right to make salary payments on the basis of time, production or piece work. The form chosen must be maintained for a certain period; in case the payment is by bank transfer, the employer will bear the cost to open a bank account for the employee and bank charges for salary payment.

12.4. Deductions from salary

The employer may make deductions from salary as compensation for damage to tools and equipment. However, the amount deducted may not exceed 30% of monthly salary actually paid to the employee.

12.5. Bonus

A bonus is an amount that the employer pays to reward employees. It takes annual results and performance of individual employees into account. A bonus is not compulsory. The employer is free to decide bonus policies and to announce them after consulting the representative organization of the labor collective.

13. Social security

The Vietnamese social security system has three types of insurance: social insurance (“**SI**”), health insurance (“**HI**”) and unemployment insurance (“**UI**”). This section provides an overview of Vietnamese social security rules as they apply to both employers and employees.

13.1 Social insurance

Compulsory SI is mandated by the revised Law on Social Insurance 2014 (“**Law on SI 2014**”)¹⁵.

Compulsory SI applies to both Vietnamese and foreign employees who work pursuant to indefinite term contracts or contracts with a term of at least one month. There are some exemptions of foreign employees from participating in social insurance.

The employee’s monthly salary on which SI contributions are calculated, is her salary plus salary-based allowances and some other amounts. The salary used for SI contribution purposes, may not exceed 20 times the basic salary.

Under the Law on SI 2014, SI benefits cover sickness, maternity, retirement and mortality.

13.2 Unemployment insurance

The UI regime is set out in the Law on Employment 2013. The regime has since been elaborated upon in Decree 28/2015/ND-CP dated March 12, 2015. The UI regime applies to an employer that employs Vietnamese under indefinite term labor contracts or contracts with a duration of at least three months. The employer and employee both contribute to the UI fund.

¹⁵The revised Law on Social Insurance was promulgated on November 20, 2014, with effect from January 1, 2016.

UI compensates an employee who loses her job or who terminates her labor contract. UI benefits include: (i) an unemployment allowance, (ii) re-training vocational support, and (iii) job-search support.

The characteristics of unemployment compensation are similar to those of the severance or job loss allowance that an employer pays an employee upon termination of employment. In fact, unemployment compensation has partially replaced the severance or job loss allowance. Since January 1, 2009, seniority for severance or job loss allowance purposes stopped accruing for all Vietnamese employees who participate in the UI scheme. Any periods during which an employee and employer contribute to UI will not be taken into account when determining the employee's severance or job loss allowance. There are some minor variations.

There are certain circumstances under which an employee is not subject to UI contributions, such as a foreign employee, or a person with an employment contract of less than three months, or who is receiving a retirement allowance paid by the Social Insurance Fund, etc. In these cases, the employer is allowed to make a payment to the employee in lieu of UI contribution.

13.3 Health insurance

Regulations on HI are provided in the Law on Health Insurance dated November 14, 2008 ("**Law on HI**") and the amended Law on HI dated June 13, 2014. The Law on HI has been elaborated upon in Decree 62/2009/ND-CP dated July 27, 2009 ("**Decree 62**") as amended by Decree 146/2018/ND-CP dated October 17, 2018.

Compulsory HI applies to both Vietnamese and foreign employees who have labor contracts of an indefinite term or labor contracts with a duration of three months or more.

14. Withholding personal income tax

Under the Law on Personal Income Tax ("**PIT**") dated November 21, 2007, and the amended Law on Personal Income Tax dated November 22, 2012 ("**Law on PIT**"), an employer is obligated to withhold, on a monthly basis, PIT payable on the salaries and wages it pays to its employees.

The Law on PIT is elaborated upon in Decree 65/2013/ND-CP dated June 27, 2013 providing guidance on implementing the Law on PIT ("**Decree 65**").

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 non mandatory insurance

purchased by the employer for its employees; membership fees for cultural, artistic, professional and sports clubs, etc.

Certain benefits are excluded from PIT, including 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.

14.1 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 11 million per month (VND 132 million per year); and (ii) tax deductions for each dependent of VND 4.4 million per month. However, the definition of a dependent is rather narrow.

Assessable income is taxable income less the following items:

- Insurance premiums for compulsory social insurance, compulsory medical insurance, compulsory professional indemnity insurance, and premiums for other compulsory insurance; compulsory insurance which an expatriate who resides in Vietnam must pay in accordance with the laws of her home country (eg, 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.

a) 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. There are clear rules on how to determine whether a person is a resident.

14.2 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 her departure from Vietnam.

15. Termination of employment

15.1 Automatic Termination

The labor contract is automatically terminated in the following circumstances:

- labor contract expires;
- task stated in the labor contract is completed
- employer and employee agree to terminate the contract;
- the employee satisfies the requirements of social insurance duration and pension age;
- the employee is sentenced to serve a jail term or is prevented from performing the job in accordance with a judgement; or the employee dies or is declared missing by a court;
- the foreign employee is expelled from Vietnam in accordance with a judgement or decision of a Vietnamese authority;
- the employer, if an individual, dies, is declared dead, missing or incapable of civil acts by a court;
- the employer, if not an individual, ceases operation;

- the foreign employee's work permit becomes invalid;
- the employee does not pass the probationary period and the probation is a part of the labor contract.

No procedure is required by law. However, in appropriate cases, the employer is obligated to pay a severance allowance to the employee. Details on termination of employment including automatic termination are discussed in **Schedule 4**.

15.2 Unilateral termination by employee

An employee is not required to give any reason to terminate unilaterally, but is required to give prior notice to the employer. The notice period is at least 45 days if the labor contract has an indefinite term, 30 days if the labor contract has a definite term of from 12 to 36 months, and 3 working days if the labor contract has a term of less than 12 months.

A notice is not required if the employee unilaterally terminates the employment in the following circumstances¹⁶:

- the employee is assigned a duty or assigned work at a location inconsistent with her labor contract; or the working conditions agreed to under her labor contract have not been satisfied;
- the employee is not paid in full or on time as provided in her labor contract;
- the employee is maltreated or forced to do inappropriate tasks (eg, tasks that are inappropriate in terms of gender or may affect health or dignity);
- the employee is sexually harassed;
- the female employee is pregnant and must take rest as prescribed by a doctor;
- the employee reaches statutory retirement age;
- the employee has signed the labor contract based on untruthful information provided by the employer.

15.3 Unilateral termination by employer

The employer is entitled to terminate a labor contract unilaterally when:¹⁷

- employee repeatedly fails to perform her work in accordance with the terms of her contract;
- employee is ill and remains unable to work after a certain period of treatment;
- employer must reduce production after taking measures to recover from an event of force majeure;
- employee does not come to work after the temporary suspension¹⁸ of her labor contract;
- employee reaches statutory retirement age;
- employee voluntarily abandons her work for five consecutive working days without a legitimate reason.

The notice must be given before termination:

- 45-days notice if the contract has an indefinite term;
- 30-days notice if the contract has a definite term of 12 months to 36 months; or
- three-working-days notice if the employee's labor contract is seasonal or has a term of less than 12 months.

There are circumstances in which an employer is unable to terminate a labor contract:¹⁹

- employee is suffering an injury caused by a work-related accident or occupational disease, and is receiving medical treatment from a healthcare organization;
- employee is on her annual leave, personal leave as permitted by law, or other kind of leave as agreed by the employer; and

¹⁶ See Art. 35.2 of Labor Code.

¹⁷ See Art. 36 of Labor Code.

¹⁸ See Art. 30 of Labor Code.

¹⁹ See Art. 37 of Labor Code.

- a female employee if the grounds are marriage, pregnancy, maternity leave, or nursing a child under 12 months of age.

15.4 Financial obligation due to termination of the labor contract

Upon termination, the employer is obligated to pay:

- wages due up to the termination date;
- money equivalent to untaken annual leave;
- severance allowance, redundancy allowance (see discussion at Section 15.5);
- any contracted bonus; and
- amounts agreed in the labor contract.

Within 14 working days from the date of termination, both parties must pay sums due to each other. The period can be extended up to 30 days in certain circumstances (eg, termination due to restructuring, the employer's closure of operation, etc).²⁰

If the unilateral termination of a labor contract is unlawful, the employer is obligated to receive the employee back to her position and to pay:

- salary, social insurance and health insurance for the period the employee did not work.
- severance allowance if due;
- at least two months salary;
- severance allowance if due, in case the employee does not want to be re-employed; and
- at least two months additional salary in case the employer does not wish to receive the employee back and the employee agrees not to return.

An employee who unlawfully terminates her contract must pay employer:

- half month's salary; and
- training fees based on any vocational contract

15.5 Severance allowance and Redundancy allowance

A severance allowance is applicable in all cases of termination specified in Section 15.4, except for dismissal and unlawful termination of the labor contract by an employee. As indicated below, the conditions for payment have been much diminished since January 1, 2009 when unemployment insurance began. Severance allowance will be paid only upon existence of all of the following circumstances:

- an employee has at least 12 full months of service;
- length of service as calculated by total length of service minus any period covered by unemployment insurance (after January 1, 2009);
- severance payment is one-half month's salary for each year of service;

²⁰ See Art. 48 of Labor Code.

- severance allowance is calculated based on the average contractual salary during the six months prior to termination.

A redundancy allowance only applies in the case of retrenchment as specified in Section 15.6.²¹ Redundancy allowances will be paid upon existence of all of the following circumstances:

- an employee has at least 12 full months of service;
- length of service as calculated by total length of service minus the period covered by unemployment insurance (after January 1, 2009) and minus the period covered by the severance allowance;
- redundancy payment is one month's salary for each year of service;
- redundancy allowance is calculated based on the average contractual salary during the six months prior to termination.

15.6 Retrenchment

15.6.1 Due to technological changes, reorganization or economic reasons

Retrenchment due to technological changes or organizational restructuring means there have been changes in equipment, machinery, technology processes, or there has been a change such as a change in (i) organizational structure; (ii) products, product structure; or (iii) technological process, machinery, equipment.²²

Retrenchment for economic reasons includes one of the following circumstances: (i) economic crisis or recession; or (ii) implementation of governmental policy on restructuring the economy or implementing international commitments.²³

If it is necessary to terminate the labor contracts of two or more employees, the employer must together with the trade union prepare a labor usage plan. The labor usage plan must be sent to the local labor authority 30 days prior to termination of employment. See the discussion in Section 15.6.2.

As a consequence of such termination, the employee is entitled to a redundancy allowance. Calculation is described in Section 15.5 above.

15.6.2 Due to merger, consolidation, division, separation or sale of the employer's assets

Rules on retrenchment due to merger, consolidation, division, separation, or sale of the employer's assets²⁴ require the employer to work out a labor usage plan, in order, if possible, to employ its employees after the event. Such plan will include the following:

- number of employees who will continue to be employed;
- number of employees who will be re-trained for employment in another position;

²¹ See Art. 47 of Labor Code.

²² See Art. 42.1 of Labor Code.

²³ See Art. 42.2 of Labor Code.

²⁴ See Art. 44 of Labor Code.

- number of employees who will be retired;
- number of employees who will be transferred to part-time jobs;
- number of employees whose labor contracts must be terminated; and
- proposals to pay retraining costs, allowances and other benefits to the affected employees.

The trade union at the enterprise level (if there is one) must participate with the employer to prepare the plan. As a consequence of termination for retrenchment, the employee is entitled to a redundancy allowance. The calculation is described in Section 15.5 above.

16. Retirement

Article 148 of the Labor Code, the Law on Social Insurance, Decree 135/2020/ND-CP regulate retirement. Rules on the retirement regime are summarized in **Schedule 3**.

17. Labor Discipline

17.1. Rules on handling labor discipline

When handling a breach of labor discipline, the employer must follow certain rules²⁵:

- the employer must prove the employee's fault;
- a representative of the trade union must attend pertinent meetings;
- the employee must be present and may defend herself or ask a lawyer or another person to defend herself. If the employee is under 18 years old, a parent or at-law representative must participate;
- the handling of a violation of labor discipline must be recorded in minutes and be signed by all participants including the employee;
- it is prohibited to impose more than one form of discipline for a single breach of labor discipline;
- for an employee who simultaneously commits more than one breach of labor discipline, only the highest form of discipline corresponding to the most serious violation can be applied.

If the employer determines that it will be difficult to investigate a violation while the violated employee continues to work, the employer may suspend her with pay during the investigation.

17.2. Forms of labor discipline

Depending on the seriousness of a violation as provided under the internal labor regulations, the employer may consider applying one of three levels of sanctions, namely:

- Reprimand;
- Prolongation of the next (???) wage increase period, but for no more than six months; demotion;
- Dismissal.

The employer is strictly required to observe the rules on handling labor discipline. A labor discipline which has been imposed will be automatically removed if the employee does not

²⁵ See Art. 122 of Labor Code.

commit the breach for which labor discipline which was applied within a certain period, particularly:

- three months for a reprimand;
- six months for a prolongation of a wage increase;
- three years for a demotion.

17.3. Dismissal

The employer may terminate an employment relationship by way of dismissal which is a form of discipline. It may do so in the following circumstances:

- An employee commits an act of theft, embezzlement, gambling, intentional infliction of injury, use of drugs inside the workplace, disclosure of technological or business secrets or infringement of intellectual property rights of the employer, or commits acts which cause serious damage or threaten to cause serious damage to the assets or interests of the employer;
- An employee commits sexual harassment at the workplace;
- An employee repeatedly commits the breach on which a prolongation of the wage increase or demotion have been imposed and the sanction is still in effect; or
- An employee has been absent from work without permission or a plausible reason for a total of five working days within 30 days from the first absence or 20 days within 365 days from the first absence.

An employer is responsible for an unlawful dismissal as prescribed in Section 15.4.

17.4. Prohibited conduct when dealing with labor discipline

Labor discipline may not be imposed on an employee who is²⁶:

- taking illness or convalescence leave or is on leave with the employer's consent;
- in custody or temporary detention;
- waiting for results of verification and conclusion of a competent agency for acts of theft, embezzlement, gambling, intentional infliction of injury, use of drugs inside the workplace;
- a female employee who is pregnant or on maternity leave or rearing a child under 12 months of age.
- suffering a mental disorder or another disease which deprives her of the capacity to perceive or control her acts.

During the period that labor discipline is imposed, the employer is prohibited from:²⁷ (i) infringing on the employee's dignity; (ii) applying a fine or wage reduction instead of a disciplinary measure; and (iii) disciplining an employee for a violation which is not defined in the internal labor regulations nor regulated in the labor contract. See Section 20.

²⁶ See Art 122.4 and Art 122.5 of Labor Code.

²⁷ See Art.127 of Labor Code.

18. Compensation for damages

An employee who causes damage to tools and equipment or the employer's assets must pay compensation. In case of negligence, and if an employee causes minor damage valued at less than 10 months' of the regional minimum salary²⁸, the employee is obligated to pay compensation up to three months salary. The compensation can be deducted monthly from her salary. The deduction should follow Section 12.4.

19. Non-disclosure, non-competition and non-solicitation of employees, customers and suppliers

19.1 Non-disclosure agreement

The Labor Code allows an employer and employee to enter into an agreement that prohibits the disclosure of business secrets, technological secrets, and other matters. The scope of confidentiality as well as the rights and obligations of the employee can be outlined in a non-disclosure agreement ("NDA"). The NDA can be a part of the labor contract or it can be a separate contract. If the NDA is a part of the labor contract, the NDA may not be enforceable after the labor contract is terminated. To protect business secrets after employment ends, an employer should consider having an NDA that is separate from the labor contract. In such case, the NDA is considered as a civil agreement covered by the Civil Code, and so will survive termination of employment.

The employer can incorporate acts which are considered to be a breach of the NDA in its internal labor rules ("ILRs") to prohibit its employees from disclosing its business secrets. During the course of employment, an employee must comply with any provisions on intellectual property recorded in the ILRs. However, the ILRs do not apply after employment terminates.

19.2 Non-competition agreement

An employer may want to prohibit its employees from working for its competitor during the course of employment and after the employment ends. An agreement to this effect is called a non-competition agreement ("NCA"). While the Labor Code is silent on the enforceability of an NCA, there are some measures that can be taken to prevent an employee from working for the employer's competitor during the term of her employment. The first measure is to incorporate into the company's ILRs a clause which states that an employee must provide the employer with written notice in advance if he accepts a job - even a part-time job - from another employer. In addition, failure to provide notice is a breach of labor rules and it is subject to disciplinary actions. These provisions can only be enforced if the ILRs so provide and if they are registered.

However, ILRs are no longer applicable after an employee leaves. Another measure is that the employer and employee may enter into an NCA which is separate from the labor contract. In such a case the NCA does not expire when the employment relationship ends, because a separate agreement is subject to the Civil Code not the Labor Code.

²⁸ The regional minimum salary is defined in Section 12.1 of this Manual.

19.3. Non-solicitation agreement

An employer may want to prevent its employees from soliciting its employees, customers and suppliers during the course of employment as well as after employment ends. To address the matter in part, an employer should include rules against solicitation in its ILRs. In this way, the employer can apply labor discipline. However, the employer can do so only during the labor contract because the ILRs do not apply after the termination of employment.

The employer can enter into a non-solicitation agreement (“NSA”) which is separate from the labor contract and like an NDA and NCA as discussed above, is considered to be a civil agreement.

20. Internal Labor Regulations

Internal Labor Regulations are mandatory for an employer which has more than 10 employees. The employer must register its ILRs with the labor authorities and post them in the workplace.

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;
- Prevention of sexual harassment at the workplace and procedure to deal with sexual harassment;
- Protection of assets and confidentiality of technology and business secrets of the company;
- Regulations on temporary transfer of an employee to work at another job;
- Conduct that is in breach of labor regulations, penalties imposed for those breaches, and responsibility for damages; and
- Authority to deal with breach of labor regulations and responsibility for damages.

ILRs are much more than a simple legal requirement. They are a key to achieve labor harmony and clarity. Care should be taken in preparing the contents.

Carefully worded ILRs will enable the employer to take disciplinary action against an employee or unilaterally to terminate a labor contract in the case of, say, an employee’s poor performance. 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. Attention should be paid to contents and registration.

21. Trade Unions

A Trade Union is an organization which represents the Vietnamese employees to protect their rights and interests. An internal trade union can be established at the workplace if there are at least five Vietnamese employees who wish to organize it. The employer must facilitate establishment. A foreign employee cannot be a member of a trade union.

The employer is also required to make contributions of trade union fees regardless of whether an internal trade union is established. The rate of contribution by the employer is 2% of the

employee's salary²⁹. A Vietnamese employee who is a member of an internal trade union must contribute to trade union fees at least 1% of her basic salary³⁰.

The rights of union officers have been increased under the Law on Trade Unions 2012. For example, if the labor contract of an employee who is a part-time union officer expires while she is serving as a trade union officer, her labor contract must be extended until expiration of the trade union officer's term.³¹

22. Dialogue in the workplace

The Labor Code requires the employer to encourage dialogue in the workplace. The purpose of the dialogue is for employees to share information and to create better understanding between employer and employee. The dialogue can take many forms. Discussions are required at least every three months or by request of either the employer or the employees' labor representative (ie, the appropriate trade union).

The dialogue 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.

23. Collective negotiations and Collective Labor Agreements

Based on the belief that collective negotiations build a good labor relationship, shape new labor conditions and resolve difficulties, the Labor Code grants either the employer or employees the right to request collective negotiations. Collective negotiations may involve the following: (i) salaries, bonuses, allowances, pay raises; (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.

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

A Collective Labor Agreement ("**CLA**") is a written agreement between the employees and the employer after successful collective negotiations. A CLA is not mandatory. If there is a CLA, the employer must send one set of the signed CLA to the labor authorities within 10 days from the execution date.

²⁹ See Art.26 of Law on Trade Union 2012.

³⁰ See the basic salary in footnote no.17.

³¹ See Art.25.1 of the Law on Trade Unions 2012.

A CLA has a term 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 the CLA to be amended, but only after six months from the date of the CLA's execution.

24. Vocational training

According to the Labor Code, an employer can directly or indirectly organize vocational training for its employees before signing a labor contract and during the course of employment.

A vocational training contract between an employer and an employee is required. The contract must include terms, such as occupation for which training is provided, location and period, cost of training, period during which employee commits to work for the employer after finishing the training course, responsibility of employer to compensate for training costs.

In order to avoid misunderstanding, parties should consider specifying the position to which the employee will be assigned, new salary and the date on which the employee will start working after the training.

An employee is obligated to refund training costs if she breaches the terms by unlawfully terminating the labor contract.

While a commercial vocational training center must have an appropriate license to provide vocational training, an employer is not required to have a vocational training license when training its own employees.

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

An injured employee is entitled to receive work-related accident compensation that will be paid by the employer and/or the Social Insurance Fund. See detail in **Schedule 5**.

25.1. Compensation by the employer

If a work-related accident occurs, the employer must pay the injured employee as follows:

- all medical expenses incurred from the point that first aid or emergency treatment is provided until completion of the medical treatment. It can be reduced if the employer participates in compulsory health insurance for its employees;
- full salary to the injured employee during the period she is absent from work for medical treatment;
- compensation or allowance depending on the percentage of reduced working capacity. See detail in **Part I of Schedule 5**. It can be reduced if the employer participates in private insurance for its employees.

If the employer has not participated in compulsory social insurance, the employer will be responsible to pay compensation equal to what the Social Insurance Fund would pay the injured employee had she been covered.

Furthermore, the employer is prohibited unilaterally to terminate 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**).

25.2. 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 an employer has not made a compulsory contribution to the Social Insurance Fund, as discussed in Section 13, it must pay the injured employee an allowance equal to the amount that would have been paid by the Social Insurance Fund. The scale of this allowance is summarized in **Part II of Schedule 5**. This payment is in addition to other compensation previously discussed in this Section.

26. Labor disputes

Disputes may be between an individual employee and her employer, or they may be collective labor disputes. There are two forms of collective labor dispute: (a) dispute regarding employee rights, which is a dispute between a group of employees and their employer regarding implementation of the labor law, 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, different, better labor conditions relating to salary, bonuses, working time, or other benefits.

26.1. 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 taken directly to a court.

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

- A labor mediator;
- A council's labor arbitrators; and/or
- The relevant court.

Resolution of collective labor disputes that involves 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.

Again, 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.

27. 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 a public trade union at a superior level.

A strike is illegal if:

- It does not arise from a collective labor dispute involving employees' interests;
- The people on strike do not all work for the same company;
- Attempts to resolve the collective labor dispute either have not been made, or the dispute is in the process of resolution;
- 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.

A notice must be sent to the employer, the labor authority and public trade union at least five working days prior to the strike. The employer is entitled temporarily to close the work place before and during 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 provides a special procedure to resolve a strike that breaches orders and procedures regulated in Article 212 and Article 213 of the Labor Code. That is, the Chairman of the People's Committee at the provincial level is entitled to declare that a strike is improper, in which case she must notify the Chairman of the People's Committee at the district level. Within 12 hours from the time she 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.

28. Transfer of business

According to Article 43 of the Labor Code, 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 continue 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 she 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 the specific situation, is required

to have a labor use plan after consulting with the trade union or other organization that represents the employees in the company.

29. Labor outsourcing

The term “labor outsourcing”, as defined in the Labor Code, 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 employer but remains under the labor relationship with the labor outsourcing enterprise*”.³²

Labor outsourcing provides a channel to engage skilled employees in order to secure and meet a manpower requirement, especially for a temporary increase of production or for other temporary positions. However, labor outsourcing is conditional under the Labor Code. Among other things, labor outsourcing enterprises must have a specific license, issued locally by the Chairman of the People’s Committee at the provincial level where the labor outsourcing enterprise is located,³³ and must maintain a deposit of two billion Vietnamese dong. The types of jobs available for labor outsourcing are limited, and the maximum term for labor outsourcing is 12 months.

Conditions to receive a labor outsourcing license and a list of the types of jobs that may be outsourced are provided in **Schedule 6**.

The Labor Code also requires the labor outsourcing enterprise to perform the obligations of an employer vis-a-vis the employees it provides to other organizations. These obligations include the payment of salaries, unused leave, suspension and severance allowance, redundancy allowance and mandatory social, health and unemployment insurance.

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 engage the person directly as an employee.

The Labor Code 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.

³² See Art.52.1 of Labor Code.

³³ See Art.22 of Decree 145/2020/ND-CP dated December 14, 2020.

RUSSIN & VECCHI

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SCHEDULE 1: LIST OF LABOR REGULATIONS**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 2015	National Assembly	June 15, 2004
3.	Civil Code 2015	National Assembly	June 14, 2005
4.	Law on Enterprises 2020	National Assembly	June 17, 2020
5.	Law on Personal Income Tax 2007 (as amended in 2012, 2013 and 2014)	National Assembly	June 29, 2006
6.	Law on Health Insurance 2014	National Assembly	November 20, 2014
7.	Labor Code	National Assembly	November 20, 2019
8.	Law on Employment 2013	National Assembly	November 16, 2013
9.	Law on Social Insurance 2014	National Assembly	November 20, 2014
10.	Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code	Government	December 14, 2020

No.	Name of legal documents	Issued by	Issued on
11.	Decree 152/2020/ND-CP Providing regulations on work permit and hiring Vietnamese employee to work for a foreign employer	Government	December 30, 2020
12.	Decree 143/2018/ND-CP Providing for contribution of compulsory social insurance for foreign employees	Government	October 15, 2018
13.	Decree 135/2020/ND-CP Providing rules on retirement age	Government	November 18, 2020
14.	Circular 10/2020/TT-BLDTBXH Providing regulations on labor contracts	MOLISA	November 12, 2020

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

No.	Issue	Name of legal documents	Issued by	Issued on
1.	<i>Main statutes dealing with employment</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code • Decree 152/2020/ND-CP Providing regulations on work permit and hiring Vietnamese employee to work for a foreign employer 	National Assembly Government Government	November 20, 2019 December 14, 2020 December 30, 2020
2.	<i>Forming a labor contract</i>	<ul style="list-style-type: none"> • Labor Code; • Circular 10/2020/TT-BLDTBXH Providing regulations on labor contract 	National Assembly MOLISA	November 20, 2019 November 12, 2020
3.	<i>Probation</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly Government Government	November 20, 2019 December 14, 2020
4.	<i>Overtime</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly Government	November 20, 2019 December 14, 2020
5.	<i>Social Security</i>	<ul style="list-style-type: none"> • Labor Code • Law on Social Insurance 2014 • Law on Health Insurance 2008 (as amended in 2014) • Decree 143/2018/ND-CP Providing for contribution of compulsory social insurance for foreign employees 	National Assembly National Assembly Government National Assembly Government	November 20, 2019 November 20, 2014 November 11, 2015 November 14, 2008 October 15, 2018
6.	<i>Other Withholdings</i>	<ul style="list-style-type: none"> • Law on Personal Income Tax 2007 (as amended in 2012, 2013 and 2014) 	National Assembly	November 21, 2007

No.	Issue	Name of legal documents	Issued by	Issued on
		<ul style="list-style-type: none"> • Decree 65/2013/ND-CP Providing Guidance on Implementation of the Law on Personal Income Tax • Decree 126/2020/ND-CP Providing Guidance on Implementation of Taxes 	<p>Government</p> <p>Government</p>	<p>June 27, 2013</p> <p>October 19, 2020</p>
7.	<i>Maternity</i>	<ul style="list-style-type: none"> • Labor Code • Law on Social Insurance 2014 	<p>National Assembly</p> <p>National Assembly</p>	<p>November 20, 2019</p> <p>November 20, 2014</p>
8.	<i>Retirement</i>	<ul style="list-style-type: none"> • Labor Code • Law on Social Insurance 2014 	<p>National Assembly</p> <p>Government</p>	<p>November 20, 2019</p> <p>November 20, 2014</p>
9.	<i>Disciplinary Action</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	<p>National Assembly</p> <p>Government</p>	<p>November 20, 2019</p> <p>December 14, 2020</p>
10.	<i>Termination of Employment</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	<p>National Assembly</p> <p>Government</p>	<p>November 20, 2019</p> <p>December 14, 2020</p>
11.	<i>Dismissal</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	<p>National Assembly</p> <p>Government</p>	<p>November 20, 2019</p> <p>December 14, 2020</p>
12.	<i>Retrenchment or Redundancy</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	<p>National Assembly</p> <p>Government</p>	<p>November 20, 2019</p> <p>December 14, 2020</p>

No.	Issue	Name of legal documents	Issued by	Issued on
14.	<i>Restraint of Trade/Non-compete</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
15.	<i>Non-solicitation of Employees, Customers and Suppliers</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
16.	<i>Confidentiality</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
17.	<i>Drug and Alcohol Testing, Police and Criminal Background Checks and General Medical Testing</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
18.	<i>Annual Leave</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
19.	<i>Unions</i>	<ul style="list-style-type: none"> • Labor Code • 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	November 20, 2019 June 20, 2012 May 10, 2013

No.	Issue	Name of legal documents	Issued by	Issued on
20.	<i>Collective Labor Agreements ("CLA")</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly Government	November 20, 2019 December 14, 2020
21.	<i>Compulsory Workers' Compensation or Compulsory Insurance Scheme for Work-related Accidents</i>	<ul style="list-style-type: none"> • Labor Code • Law on Social Insurance 2014 	National Assembly National Assembly	June 18, 2012
22.	<i>Employee Handbook or Internal Labor Rules (ILRs)</i>	<ul style="list-style-type: none"> • Labor Code • Law on Social Insurance 2014 • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly National Assembly Government	November 20, 2019 November 20, 2014 December 14, 2020
23.	<i>Labor Disputes</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly Government	November 20, 2019 December 14, 2020
24.	<i>Strikes</i>	<ul style="list-style-type: none"> • Labor Code • Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	National Assembly Government	November 20, 2019 December 14, 2020
25.	<i>Transfer of Business</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019
26.	<i>Labor Outsourcing</i>	<ul style="list-style-type: none"> • Labor Code 	National Assembly	November 20, 2019

No.	Issue	Name of legal documents	Issued by	Issued on
		<ul style="list-style-type: none"> Decree 145/2020/ND-CP Providing details on a number of Articles of the Labor Code 	Government	December 14, 2020
27.	<i>Administrative sanctions</i>	<ul style="list-style-type: none"> Decree 12/2022/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	January 17, 2022

SCHEDULE 2: SUMMARY OF LABOR CONDITIONS AND BENEFITS

Working conditions	Number of days/hours	Payment to employees
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
Overtime	Maximum 50% of normal working hours/day (total normal working hours and overtime cannot exceed 12 hours/day), 60 hours/month and 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 300% on a public holiday or during fully paid leave, excluding 100% of normal paid work hour. An additional night shift overtime payment of 20% of the day shift salary
2. Break time	At least one day off/week; A break of 30 minutes ³⁴ 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.	
3. Leave: Public holidays	11 days	100% of salary

³⁴ The law does not provide a clear purpose for the break. In practice, it is usually for meals, tea break, etc.

Working conditions	Number of days/hours	Payment to employees
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
Personal leave	3 days if employee gets married; 1 day if employee's children get married 3 days if employee's parent (including parents-in-law); spouse or child dies	100% of salary

SCHEDULE 3: RETIREMENT REGIME

The age of retirement under Decree 135/2020/ND-CP dated November 18, 2020 is:

- *For male employees:* As of January 1, 2023, the age of retirement is 60 years and 9 months. In every succeeding year, the age increases by 3 months, until the retirement age for all male employees reaches 62 in 2028.
- *For female employees:* As of January 1, 2023, the age of retirement is 56 years. In every succeeding year, the age increases by 4 months, until the retirement age for all female employees reaches 60 in 2035.

An employee who does (extremely) heavy, hazardous or dangerous work can retire before she reaches the normal gender retirement age.³⁵ During the additional working period, she and her employer must continue to contribute to the Social Insurance Fund, until the employee is entitled to receive and does receive a monthly retirement pension.

If an employee leaves her job when she reaches retirement age and has contributed to the social insurance fund for 20 years or more, she is entitled to a monthly pension. If the term during which she has contributed to social insurance is more than 10 years but less than 20 years, the employee may participate in voluntary social insurance until her accumulated contribution to social insurance reaches 20 years and thus she is entitled to receive 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.

If there is no monthly pension entitlement, the employee may be eligible for a lump-sum insurance payment. She is entitled to a one-time social insurance allowance which is calculated according to the term which she has contributed to social insurance and the average monthly salary on which the social insurance contribution was based.

Additionally, an employee may be entitled to a one-time social insurance payment for the term of her contribution to social insurance if the term is more than 30 years of contribution. A lump-sum is paid separately from the monthly pension.

³⁵ See Art. 54 of Law on Social Insurance 2014.

Period of social insurance contribution	Age of employee (as of January 1, 2023)	Additional conditions	Rate of benefits		Comments										
<ul style="list-style-type: none"> ➤ 20 years or more 	<ul style="list-style-type: none"> ➤ Male: 60 and 9 months ➤ Female: 56 (“Retirement Age”) 	<p>None None</p>	<p><u>Male:</u></p> <table border="1" data-bbox="1323 539 1908 1102"> <tr> <td data-bbox="1323 539 1585 651">From January 1, 2018 – December 31, 2018</td> <td data-bbox="1585 539 1908 651">45% + [2% × (years of insurance contribution-16)]</td> </tr> <tr> <td data-bbox="1323 651 1585 762">From January 1, 2019 – December 31, 2019</td> <td data-bbox="1585 651 1908 762">45% + [2% × (years of insurance contribution-17)]</td> </tr> <tr> <td data-bbox="1323 762 1585 874">From January 1, 2020 – December 31, 2020</td> <td data-bbox="1585 762 1908 874">45% + [2% × (years of insurance contribution-18)]</td> </tr> <tr> <td data-bbox="1323 874 1585 986">From January 1, 2021 – December 31, 2021</td> <td data-bbox="1585 874 1908 986">45% + [2% × (years of insurance contribution-19)]</td> </tr> <tr> <td data-bbox="1323 986 1585 1102">From January 1, 2022 onwards</td> <td data-bbox="1585 986 1908 1102">45% + [2% × (years of insurance contribution-20)]</td> </tr> </table>		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 onwards	45% + [2% × (years of insurance contribution-20)]	<p>Maximum rate is 75%.</p> <p>Note: From the 31st year of contributing social insurance, an employee has the right to receive a one-time allowance at retirement.</p>
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 onwards	45% + [2% × (years of insurance contribution-20)]														

Period of social insurance contribution	Age of employee (as of January 1, 2023)	Additional conditions	Rate of benefits	Comments								
			<p><u>Female:</u></p> <table border="1" data-bbox="1323 467 1908 579"> <tr> <td>From January 1, 2018 onwards:</td> <td>$45\% + [2\% \times (\text{years of insurance contribution} - 15)]$</td> </tr> </table>	From January 1, 2018 onwards:	$45\% + [2\% \times (\text{years of insurance contribution} - 15)]$							
From January 1, 2018 onwards:	$45\% + [2\% \times (\text{years of insurance contribution} - 15)]$											
➤ 20 years or more	<ul style="list-style-type: none"> ➤ Male: Retirement Age - 5 years ➤ Female: Retirement Age - 5 years 	Employee has spent: <ul style="list-style-type: none"> ➤ 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 	As prescribed above	As prescribed above								
➤ 20 years or more	➤ From full 50 to full 55	Employee has spent 15 years working in coal mines	As prescribed above	As prescribed above								
➤ 20 years or more	<table border="1" data-bbox="517 1174 958 1359"> <thead> <tr> <th></th> <th>Male</th> <th>Female</th> </tr> </thead> <tbody> <tr> <td>From January 1, 2018 – December 31, 2018</td> <td>53</td> <td>48</td> </tr> </tbody> </table>		Male	Female	From January 1, 2018 – December 31, 2018	53	48	<ul style="list-style-type: none"> ➤ Her capacity to work has been reduced by from 61% to 81% 	Male: <table border="1" data-bbox="1323 1209 1908 1321"> <tr> <td>From January 1, 2018 – December 31, 2018</td> <td>$45\% + [2\% \times (\text{years of insurance contribution} - 16)] - [2\%$</td> </tr> </table>	From January 1, 2018 – December 31, 2018	$45\% + [2\% \times (\text{years of insurance contribution} - 16)] - [2\%$	As prescribed above
	Male	Female										
From January 1, 2018 – December 31, 2018	53	48										
From January 1, 2018 – December 31, 2018	$45\% + [2\% \times (\text{years of insurance contribution} - 16)] - [2\%$											

Period of social insurance contribution	Age of employee (as of January 1, 2023)			Additional conditions	Rate of benefits		Comments
	From January 1, 2019 – December 31, 2019	54	49			× (60-age at retirement)]	
	From January 1, 2020 onwards	55	50		From January 1, 2019 – December 31, 2019	45% + [2% × (years of insurance contribution-17)] - [2% × (60-age at retirement)]	
	From January 1, 2020 – December 31, 2020	45% + [2% × (years of insurance contribution-18)] - [2% × (60-age at retirement)]					
	From January 1, 2021 – December 31, 2021	45% + [2% × (years of insurance contribution-19)] - [2% × (60-age at retirement)]					
	From January 1, 2022 onwards	45% + [2% × (years of insurance contribution-20)] - [2% × (60-age at retirement)]					
	Female:						
	From January 1, 2018 onwards:	45% + [2% × (years of insurance contribution-					

Period of social insurance contribution	Age of employee (as of January 1, 2023)	Additional conditions	Rate of benefits		Comments
				15)] - [2% × (55-age at retirement)]	
➤ 20 years or more	<ul style="list-style-type: none"> ➤ Male: 50 or more ➤ Female: 45 or more 	<ul style="list-style-type: none"> ➤ Her capacity to work has been reduced by at least 81% 	As prescribed above		As prescribed above
➤ 20 years or more	➤ None	<ul style="list-style-type: none"> ➤ Employee has spent 15 years working in coal mines; and ➤ Her capacity to work has been reduced by at least 61%; 	As prescribed above		As prescribed as above
➤ Less than 20 years	<ul style="list-style-type: none"> ➤ Male: 60 and 9 months ➤ Female: 56 	<ul style="list-style-type: none"> ➤ None ➤ None 	One-time allowance at retirement		
➤ Less than 20 years	<ul style="list-style-type: none"> ➤ Male: irrespective of age. ➤ Female: irrespective of age 	<ul style="list-style-type: none"> ➤ Her capacity to work has been reduced by at least 61%; or ➤ She requests a one-time social 	One-time social insurance allowance		

Period of social insurance contribution	Age of employee (as of January 1, 2023)	Additional conditions	Rate of benefits	Comments
		insurance benefit for 12 months after she ceases to contribute to social insurance.		

SCHEDULE 4: TERMINATION OF EMPLOYMENT

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
<u>1.</u>	<u>Termination by the employer</u>			
1.1	Termination for convenience without cause			
1.1 (a)	Retrenchment due to technological changes, such as changes in part or in all of the equipment, machinery, technological process, or changes in the organizational structure, such as merger, consolidation, dissolution of some departments (Articles 42 of the Labor Code)	Redundancy allowance	<p>If it is necessary to terminate labor contracts of several employees, the employer must announce the list of affected employees.</p> <p>For each affected employee, the employer must decide on termination upon consultation with the Trade Union at the enterprise, based on the length of service, qualifications and skills, family conditions, etc.</p> <p>Notice must be sent to the affected employees and the DOLISA at least 30 days prior to termination.</p>	<ul style="list-style-type: none"> ○ <u>Redundancy allowance</u> 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.

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
1.1 (b)	Retrenchment due to economic reasons or due to merger, consolidation, division, separation, transfer of assets of the employer (Article, 42.2 of the Labor Code)	Redundancy allowance	<p>The employer must work out a plan to use employees after the event. Such a plan must include the following:</p> <ul style="list-style-type: none"> • Number of employees who will continue to be employed; • Number of employees who will be re-trained for employment in other positions; • Number of retired employees; • Number of employees who will be transferred to part-time jobs; • Number of employees whose labor contracts must be terminated; and • Plan to pay retraining costs, allowances and other benefits for the affected employees. <p>If there is a Trade Union at the enterprise level, it must review and comment on the plan, and the plan must then be sent to the DOLISA.</p>	
1.1 (c)	Automatic termination (Article 34 of the Labor Code) if:	Severance allowance	No procedures required.	○ <u>Severance allowance</u> is one-half of one-

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
	<ul style="list-style-type: none"> • Labor contract expires; • Task stated in the labor contract is 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, ceases the operation. 			<ul style="list-style-type: none"> ○ 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 the employee's 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 purposes is less than 12 months, round up rules are applied as follows: From 1 full month to under 6 months: round up, 0.5 year of service;

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
				<p>6 full months and above: round up to 1 year of service.</p> <ul style="list-style-type: none"> ○ A year of service is added by rounding up every full 6 months.

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
1.2	Termination for cause			
	An employer may unilaterally terminate a labor contract on the following grounds (Article 36 of the Labor Code):			
	<ul style="list-style-type: none"> Employee repeatedly fails to perform her work in accordance with the terms of her contract 	Severance allowance	The following notice must be given before termination: <ul style="list-style-type: none"> A 45 day prior notice if her labor contract has an indefinite term; A 30 day prior notice if her labor contract has a definite term of from 12 months to 36 months; or A 3 working day prior notice if her labor contract is seasonal or has a term of less than 12 months. 	Unilateral termination of an employee is difficult. However, with carefully worded ILRs and labor contract, a company has a better opportunity to establish grounds for termination. Because notice is an employer's obligation in case of termination for cause, a PILON (Payment In Lieu Of Notice) cannot apply, unless there is an agreement with a terminated employee.
	<ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> A 45 day prior notice if her labor contract has an indefinite term; 	

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
	<ul style="list-style-type: none"> Employer must reduce production after attempting all measures to recover from an event of force majeure 	Severance allowance	<ul style="list-style-type: none"> A 30 day prior notice if her labor contract has a definite term of from 12 to 36 months; or prior notice of 	
	<ul style="list-style-type: none"> Employee reaches statutory retirement age 	Severance allowance	<ul style="list-style-type: none"> 3 working days if her labor contract is seasonal or has a term of less than 12 months. 	
	<ul style="list-style-type: none"> Employee voluntarily abandons her job 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> Employee does not come to work after her suspension from working 	Severance allowance	Notice is not required	
1.3	Termination for disciplinary violations			
	<p>An employer may dismiss an employee under (Article 125 of the Labor Code) if:</p> <ul style="list-style-type: none"> She commits an act of theft, embezzlement, gambling, intentionally causes injury, uses drugs within the workplace, discloses technology and business secrets, infringes intellectual property of the employer, causes serious damage or threatens to cause extremely serious damage to the property and interests of the employer. 	No severance allowance	<p>The employer must hold a meeting to deal with disciplinary violation. The employee and the trade union are required to attend the meeting. The trade union’s agreement is not required, but it has the right to express its opinion.</p>	<p>Termination of an employee in such cases is difficult. Carefully worded Internal Labor Rules are necessary for a company to establish sound grounds for termination.</p>

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
	<ul style="list-style-type: none"> • She recommits an offence after she has been disciplined by a delayed pay raise, transfer to another position, removal. • She takes an aggregate of 5 days off in one month or 20 days off in one year without an acceptable reason. • She or he commits sexual harassment in the workplace. 	<p>No severance allowance</p> <p>No severance allowance</p> <p>No severance allowance</p>		
<u>2.</u>	<u>Termination by an employee</u>			
2.1	Termination with a prior notice			
2.1 (a)	Automatic termination (Article 35 of the Labor Code): See Item 1.1 (c) of this Schedule	Severance allowance	The employer must give prior notice even in case the labor contract expires	
2.1 (b)	Unilateral termination of labor contract (Article 35.1 of the Labor Code)	Severance allowance	<p>The following notice must be given before termination:</p> <ul style="list-style-type: none"> • A 45 day prior notice if her labor contract has an indefinite term; • A 30 day prior notice if her labor contract has a definite term of from 12 months to 36 months; or • A 3 working day prior notice if her labor contract is seasonal or has a term of less than 12 months. 	An employee is not required to give any reason in order unilaterally to terminate an indefinite term labor contract

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
2.2	Termination without notice			
	An employee may unilaterally terminate the labor contract if (Article 35.2 of the Labor Code):			Evidence of cause is essential for termination
	<ul style="list-style-type: none"> • She is assigned a duty or assigned work at a location inconsistent with her labor contract; or the working conditions agreed to under his labor contract are not satisfied; 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> • She is not paid in full or on time as provided in her labor contract; 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> • She is maltreated or forced to do inappropriate tasks (eg, tasks that are inappropriate in terms of gender or which may affect health or dignity); 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> • He or she is sexually harassed at the workplace; 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> • She reaches statutory retirement age 	Severance allowance	Notice is not required	
	<ul style="list-style-type: none"> • She is pregnant and must take rest as prescribed by a doctor; or 	Severance allowance	Notice is not required	

Item No.	Type of termination	Final payment and employee entitlement	Process to terminate	Note
	<ul style="list-style-type: none"> Employer provided the employee with false information when parties entered into a labor contract 	Severance allowance	Notice is not required	

SCHEDULE 5: COMPENSATION/ALLOWANCES FOR WORK-RELATED ACCIDENTS

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

Item No.	Type of accident	Entitlement	
		Accident occurred without fault of the injured employee	Accident occurred due to the fault of the injured employee
1.	An accident occurs on the way to/from the work place	Allowance	None
2.	An accident occurs at the workplace	Compensation	None
3.	An accident occurs while the employee works outside of the work place upon the employer's assignment	Compensation	Allowance

Compensation entitlement will be paid at one of the following rates depending on the percentage of reduced working capacity:

- From 5% to 10%: Compensation equal to at least 1.5 months of monthly salary;
- From 11% to 80%: Compensation equal to at least 1.5 months of monthly salary, plus 40% of monthly salary for every additional percentage of reduced working capacity.
- From 81% or more, or the employee dies: Compensation equal to at least 30 months of monthly salary. If an employee dies in a work-related accident, the compensation is paid to his family.

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

- 1. Lump-sum allowance³⁶:** 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 ("SI period")
5%	5 months	<ul style="list-style-type: none"> If SI period is one year or less, she is entitled to receive 0.5% of the monthly salary; Afterwards, for each additional year of contribution, she is entitled to receive an additional 30% of the monthly salary;
Every additional percentage of reduced working capacity	Add 0.5 month	
Note: The salary used to calculate (C) is the regional minimum wage. The salary used to calculate (D) is the salary on which the social insurance contribution was based just prior to taking time off for treatment.		

³⁶ If an employee dies in a work-related accident, the lump-sum is paid to her family equivalent to 36 months' national minimum wage.

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) + one month salary	
	(E)	(F)
	Allowance calculated based on reduced working capacity	Additional allowance calculated based on the number of years of social insurance contribution
31%	30 % of the regional minimum wage	<ul style="list-style-type: none"> • If SI period is one year or less, she is entitled to receive 0.5% of the monthly salary; • Afterwards, for each additional year of contribution, she is entitled to receive an additional 0.3% of the monthly salary; The salary used to calculate (F) is the salary on which the social insurance contribution was based just prior to taking time off for treatment.
Every additional percentage of reduced working capacity	Add 2% of the regional minimum wage for every additional percentage	

**SCHEDULE 6: CONDITIONS AND SCOPE OF SERVICES FOR LABOR
OUTSOURCING**

1. Requirements for an enterprise to be issued a labor outsourcing license:

- Deposit of 2,000,000,000 Vietnamese Dong;
- Labor outsourcing is its main business; and
- The legal representative of the enterprise must meet all of the following conditions: (i) holds a managerial position in the enterprise (eg, President or General Director or Director or equivalent position and has authority to execute contracts on behalf of enterprise); (ii) has full civil capacity; (iii) has no criminal record; (iv) has experience with respect to labor outsourcing of at least three years within 5 consecutive years preceding the submission; and (v) has not worked as legal representative for an enterprise whose labor outsourcing business license has been revoked within the 5 years prior to submission or which has been penalized for making a fake 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
18	Management/operation/maintenance/serving on ships
19	Management/supervision/operation/maintenance/serving on oil rigs
20	Pilots and flight attendants/maintenance and repair crews/dispatchers/flight trackers

ANNEX I
Outline of a Labor Contract³⁷

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 _____
Work permit No.:

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 of _____ years]
- From: [day/month/year]
- Working location:
- Professional title:
- Position:
- Duties:

Article 2: Working Regime

- Working time:
- Equipment to be provided:

Article 3: Benefits and Obligations of the Employee

1. Benefits:

- Means of transportation:

³⁷ There is no mandated form. Parties can create their own format.

- Basic salary or remuneration:
 - Type of salary:
 - Method of payment:
 - Payment to be made monthly on _____ :
 - 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, are subject to a collective labor agreement, or the labor law if there is no collective labor agreement.
- This labor contract is made in two originals each having equal validity. One original shall be kept by each party and is 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 _____ 20__

EMPLOYEE
[sign and full name]

EMPLOYER
[sign, seal and full name, position]