

APPLICATION OF LABOR DISCIPLINE

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ABBREVIATIONS

- **ILR** : Internal labor rules
- **LD** : Labor discipline
- **EE** : Employees
- **LC** : Labor contract

RELEVANT LEGISLATION

- Labor Code No. 45/2019/QH14 dated November 20, 2019;
- Decree No. 145/2020/ND-CP dated December 14, 2020; and
- Decree No. 12/2022/ND-CP dated January 17, 2022.

INTERNAL LABOR RULES

The ILRs are a set of rules of conduct that employees need to comply with whilst working for an employer. Failure to comply can subject the employee to labor discipline.

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;
- Regulations on temporary transfer of an employee to work at another job;
- Conduct that is in breach of labor regulations, penalties imposed for breaches, and responsibility for damages; and
- Authority to deal with breaches of labor regulations and responsibility for damages.

INTERNAL LABOR RULES

- The company must promulgate written ILRs if there are 10 or more employees.
- The company needs to send ILRs (1) to all employee internal representative organizations and; (2) to the labor management agency where the Company has branches, representative offices, business locations, and production facilities; (3) to inform employees of the ILRs; and (4) must post major contents of the ILRs in the workplace.
- The ILRs come into effect 15 days from the date on which they are received by a competent authority for registration.
- Adopting ILRs is much more than a simple legal requirement. ILRs are a key for employees to have both clarity and broad understanding of the rules. Care should be taken in preparing the contents.
- Failing to prepare, consult with employees' representative organizations prior to the issuance of ILRs could result in an administrative fine of VND 10 – 20 million. Most importantly, without duly registered ILRs, it is difficult--indeed impossible--for the company to impose labor discipline.

FORMS OF LABOR DISCIPLINE

- Reprimand
- Deferment of a salary increase for up to 6 months
- Demotion
- Dismissal

Grounds for Dismissal

01

Theft

02

Embezzlement

03

Gambling

04

Deliberately inflicting of injuries

05

Use of drugs in the workplace

06

Disclosure of technological or business secrets or infringing on the intellectual property rights of the employer

07

Committing sexual harassment in the workplace

08

The employee, by himself/herself, abandons his/her job for a total of 05 days within 30 days, or for a total of 20 days within 365 days from the first day he/she fails to go to work without a legitimate reason.

09

A repeat violation (violation which has already been disciplined in the form of deferment of salary increase for up to 6 months, or a demotion).

10

Committing an act which causes serious damage or threatens to cause extreme damage to the employer's *assets or interests*

LABOR DISCIPLINARY PROCESS

Step 1: Define the violation

The violation must be documented and sent to the internal organization that represents the documentation employees

Collect evidence to prove allegations



Step 2: Labor disciplinary meeting

Testimony, proof, defense

Consider testimony, make decisions



Step 3: Issue a disciplinary decision

Inform the participants

DISCIPLINARY DOCUMENTS

Step 1



- Incident reports
- Notice of violation to employee and the internal trade union that represents the employees
- Documents/evidence to determine employee's fault

Step 2



- Notification of labor disciplining meeting
- Meeting attendance, testimony, writing
- Minutes of labor disciplinary meeting

Step 3



- Disciplinary decision
- Delivery of Disciplinary Decision

Other documents:

- Work suspension decision prior to final decision
- Internal investigation (testimony, documents, evidence, investigation report,...)
- Employee's lawyer's input
- If the employee being disciplined is a member of the employees' representative organization, the disciplinary dossier must include evidence of consultation and agreement with the employees' representative organization, as well as a report to the provincial labor office.

RESTRICTIONS ON LABOR DISCIPLINE

01

Harming the employee's health, life, honor or dignity.

02

Applying a monetary fine or making a deduction from the employee's compensation.

03

Imposing disciplinary measures on an employee for a violation not stipulated in the internal labor regulations or employment contract or labor law.

04

Apply many disciplinary measures for one violation

05

Imposing labor discipline on an employee when s/he (a) is taking leave on account of illness or convalescence; or on other types of leave with the employer's consent; (b) is being held under temporary custody or detention; (c) is waiting for action by a government agency for various acts, stipulated in Article 125 of the Labor Code (theft, embezzlement, gambling, disclosure of business secrets,...); (d) is pregnant, on maternity leave or is raising a child under 12 months of age; (e) is suffering from mental or physical infirmity.

OTHER MATTERS:

- Statute of limitations for imposing labor discipline: 6 or 12 months from the date of of the violation.
- Absolution of violations: An employee's violation is absolved after 03 months (After the employee is reprimanded, after salary increase has been deferred for 06 months), or after 03 years (in case of demotion). If her violation has been absolved, and if she re-commits that violation, it cannot be considered to be "a repeat violation".
- The competence to impose disciplinary measures: must be clearly stated in the internal labor regulations.

- Thank you -