New Labor Code of Vietnam


The New Labor Code revises and supplements several provisions across all chapters of the current Labor Code. All these changes are expected to have a significant impact on enterprises and organizations that recruit labor in Vietnam. We have highlighted the main changes in the New Labor Code as below:

1. Scope of the New Labor Code

The New Labor Code expands the scope of application of certain regulations to "workers without labor relations", which is defined as workers who are working on a non-employment basis. In addition, the definition of an employee has been broadened. In particular, any person working under an agreement who satisfies the following three factors: (i) having a job, (ii) getting paid and (iii) working under the supervision of an employer, will be considered to be an employee under the scope of the New Labor Code, regardless of the names and forms of the agreements.

2. Labor Contract

The New Labor Code provides the below changes to the forms, types and contents of labor contracts:

- The New Labor Code recognises the validity of labor e-contracts that are established in the form of data messages in accordance with e-transactions laws.

- There are now only two types of labor contracts: definite term labor contracts, with terms of 36 months or less; and indefinite term labor contracts.

- Definite-term labor contracts can be signed multiple times for directors of enterprises having state capital, elderly employees, foreign employees and members of executive boards of employee representative organizations. Definite-term labor contracts can no longer be extended by using appendices.

- Employers and employees can now sign a separate probation agreement or include a probation clause in labor contracts. In addition, the probationary period applied to managerial positions of enterprises can now reach 180 days.

3. Termination of Labor Contracts

The New Labor Code provides more bases for both employers and employees to unilaterally terminate labor contracts, as outline below:
Labor contracts with foreign employees will be terminated if the employee is expelled due to judgements or decisions of courts and competent authorities, or if their work permits expire.

Either employers or employees can unilaterally terminate labor contracts upon employees reaching the retirement age.

Providing falsified information at recruitment or being absent from work for five consecutive working days without permission or legitimate reason, are now bases for employers to unilaterally terminate labor contracts.

Employees, regardless of the term of contract, can unilaterally terminate a labor contract without providing reasons, provided that they serve the required advance notice.

The New Labor Code also revises provisions on responsibilities upon the termination of labor contracts with the below notable changes:

- Increase the statute of limitations for employers to pay termination benefits to employees from 7 working days to 14 working days from the termination date.
- Employers are responsible for providing employees with copies of documents relating to their working period upon request. Incurred costs of copies and deliveries are paid by employers.

4. Working Time, Rest Time and Salary

- Overtime Cap
  The New Labor Code continues to regulate the monthly overtime cap which has been increased from 30 hours to 40 hours. In addition, the New Labor Code supplements cases where employers are permitted to organize overtime work of up to 300 hours in a year, including:
  - Manufacture and/ or processing for export of electric and electronic products;
  - Work requiring employees with high technical qualifications, who are not readily available on the labor market.

- Additional Public Holidays
  The New Labor Code adds one day off to the National Independence Holiday, on 1 or 3 September. The schedule of National Independence Holidays and Tet Holidays will be decided annually by the Prime Minister.

- Salary Scheme
  Employers are still required to set up salary schemes and consult with employee representative organizations. However, the schemes are no longer require registration and notification with the labor authorities.
5. Labor Disciplinary Procedures

Sexual harassment at the workplace will be an additional ground for dismissal, but must be specified in the internal labor regulations.

6. Term of a work permit

The New Labor Code limits the term of work permits and extensions. In particular, the term of a work permit is limited to a maximum of two years. Work permits can now only be extended once for a further two-year term. Expats who want to continue working in Vietnam after the expiry of the extended work permit will have to apply for a new work permit.

7. Retirement Ages

The New Labor Code provides the below significant changes:

- The retirement age will be gradually increased to 62 for males and 60 for females.
- Employees doing heavy, hazardous or dangerous works or extremely heavy, hazardous or dangerous works may retire at a younger age, but shall not be more than 5 years earlier than the retirement age of employees working in normal labor conditions.

8. Employee Representative Organizations

To date, Vietnam's only representative organization of laborers is VGCL. To comply with Vietnam's commitments under the CPTPP, EVFTA and ILO Conventions, the New Labor Code now recognises the right of employees to set up their own representative organisations.

Under the New Labor Code, the definition of employee representative organizations at grassroots level has been revised to include trade unions at grassroots level and employee organisations at companies. As a result, in case there is no employee representative organization at grassroots level, employers are no longer required to consult with the intermediate upper level trade union before issuing internal regulations related to employees’ rights and benefits, e.g. internal labor regulations, salary schemes, performance management policies.

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It is expected that various Decrees and Circulars implementing the current Labor Code will also be revised to comply with the New Labor Code. Baker McKenzie is closely monitoring this process and will be involved in the public consultation on these regulations. We will keep you posted of any updates related to the New Labor Code.

Baker McKenzie has been deeply involved in the process of revising the Labor Code and understands the underlying rationale and context of the regulations and changes. If you would like to obtain further information or want to discuss issues in relation to the New Labor Code in further detail and the impact of the changes on your business, please do not hesitate to contact us.
To supplement this alert, we will be hosting on 14th January, an Employment and Compliance Roundup event, taking a look back at the labor and compliance environment of 2019, and discussing what we can expect to see in 2020, including a comprehensive breakdown of the New Labor Code. If you’d like more information, or to join, you can RSVP here.