

THE PRESIDENT

No. 08/2019/L-CTN

THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Hanoi, December 03, 2019

ORDER

On the promulgation of law

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Articles 88 and 91 of the Constitution of the Socialist Republic of Vietnam;

Pursuant to Article 80 of the Law on Promulgation of Legal Documents,

PROMULGATES:

The Labor Code,

which was passed on November 20, 2019, by the XIVth National Assembly of the Socialist Republic of Vietnam at its 8th session.

President of the Socialist Republic of Vietnam

NGUYEN PHU TRONG

LABOR CODE ¹

*Pursuant to the Constitution of the Socialist Republic of Vietnam;
The National Assembly promulgates the Labor Code.*

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

The Labor Code prescribes labor standards; rights, obligations and responsibilities of employees, employers, grassroots-level employees' representative organizations, and employers' representative organizations in industrial relations and other relations directly associated with industrial relations; and state management of labor.

Article 2. Subjects of application

1. Employees, trainees, apprentices, and persons working without industrial relations.
2. Employers.
3. Foreign workers in Vietnam.
4. Other agencies, organizations and individuals directly involved in industrial relations.

Article 3. Interpretation of terms

In this Code, the terms below are construed as follows:

1. *Employee* means a person who works for an employer as agreed upon between the two parties, is paid wage, and is managed, directed and supervised by the employer.

¹ Công Báo Nos 993-994 (25/12/2019)

The minimum working age prescribed for an employee is full 15 years, except the cases prescribed in Section 1, Chapter XI of this Code.

2. *Employer* means an enterprise, an agency, an organization, a cooperative, a household or an individual that hires or employs employees as agreed upon between the two parties; for an individual employer, he/she must have full civil act capacity.

3. *Grassroots-level employees' representative organization* means an organization established voluntarily by employees at an employing unit for the purpose of protecting their lawful and legitimate rights and interests in industrial relations through collective bargaining or in other forms prescribed by the labor law. Grassroots-level employees' representative organizations include grassroots-level trade union organizations and employees' organizations at enterprises.

4. *Employers' representative organization* means a lawfully established organization that represents and protects the lawful rights and interests of employers in industrial relations.

5. *Industrial relation* means a social relation arising from the hiring of employees or employment and wage payment between employees and employers, representative organizations of involved parties, and competent state agencies. Industrial relations include individual industrial relations and collective industrial relations.

6. *Person working without industrial relations* means a person who works without a labor contract.

7. *Forced labor* means the use of force or threat to use force or other tricks to force an employee to work against his/her will.

8. *Labor discrimination* means an act of practicing discrimination, exclusion or preference based on race, skin color, national origin or social origin, nationality, gender, age, pregnancy status, marital status, religion, belief, political view, physical disability, family responsibility, or HIV infection status, or for the reason of establishing, joining, or operating in a trade union organization or an employees' organization at an enterprise, which affects equality in employment or career opportunities.

Acts of discrimination, exclusion or preference stemming from special requirements of a job and acts of maintaining and protecting jobs for vulnerable employees shall not be regarded as acts of discrimination.

9. *Sexual harassment at the workplace* means an act of sexual nature committed by any person toward another person at the workplace without the

latter's desire or consent. Workplace may be any place where an employee actually works as agreed upon with or assigned by the employer.

Article 4. State policies on labor

1. To guarantee the lawful and legitimate rights and interests of employees and persons working without industrial relations; to encourage agreements that provide employees with conditions more favorable than those prescribed by the labor law.

2. To guarantee the lawful rights and interests of employers, ensure lawful, democratic, fair and civilized management of labor, and promote their social responsibility.

3. To create favorable conditions for job creation, self-employment, and job training and learning activities in order to acquire employment, and for labor-intensive production and business activities; to apply a number of provisions of this Code to persons working without industrial relations.

4. To adopt policies on the development and distribution of human resources; to increase labor productivity; to provide training and further training to raise occupational qualifications and skills for employees; to support job maintenance and change for employees; to provide preferential treatment for highly professional and technically qualified employees who meet the requirements of industrial revolution and national industrialization and modernization.

5. To adopt policies to develop the labor market and diversify forms of linkage between labor supply and demand.

6. To encourage employees and employers to hold dialogues and collective bargains and establish progressive, harmonious and stable industrial relations.

7. To ensure gender equality; to prescribe labor regimes and social policies aiming to protect female as well as employees with disabilities and elderly and minor employees.

Article 5. Rights and obligations of employees

1. The employee has the following rights:

a/ To work; to freely choose a job, a workplace or an occupation, receive vocational training and improve occupational qualifications; to suffer no discrimination, forced labor or sexual harassment at the workplace;

b/ To receive a wage commensurate with his/her occupational qualifications and skills as agreed upon with the employer; to receive labor protection and to

work in conditions where their occupational safety and health are assured; to take leaves according to the prescribed regime and paid annual leaves, and enjoy collective welfare benefits;

c/ To form, join and operate in employees' representative organizations, occupational associations and other organizations in accordance with law; to request and participate in dialogues with the employer, implement democracy regulations, hold collective bargains with the employer, and be consulted at the workplace to protect his/her lawful and legitimate rights and interests; to participate in management work according to the employer's regulations;

d/ To refuse to work if emerges a clear risk directly threatening his/her life or health during job performance;

dd/ To unilaterally terminate his/her labor contract;

e/ To go on strike;

g/ To exercise other rights in accordance with law.

2. The employee has the following obligations:

a/ To perform his/her labor contract, the collective labor agreement and other lawful agreements;

b/ To observe labor discipline and internal working regulations; to abide by the employer's management, administration and supervision;

c/ To implement the laws on labor, employment, vocational education, social insurance, health insurance, unemployment insurance, and occupational safety and health.

Article 6. Rights and obligations of employers

1. The employer has the following rights:

a/ To recruit, assign tasks to, manage, administer and supervise employees; to perform commendation work and handle breaches of labor discipline;

b/ To form, join and operate in employers' representative organizations, occupational associations and other organizations in accordance with law;

c/ To request the employees' representative organization to hold bargains for the purpose of signing a collective labor agreement; to participate in the resolution of labor disputes and strikes; to hold dialogues and exchange opinions with the employees' representative organization on issues concerning industrial relations and improvement of material and spiritual lives for employees;

d/ To temporarily close the workplace;

dd/ To exercise other rights in accordance with law

2. The employer has the following obligations:

a/ To perform labor contracts, the collective labor agreement and other lawful agreements; to respect the honor and dignity of employees;

b/ To establish a mechanism for and hold dialogues and exchanges of opinions with employees and the employees' representative organization; to implement the regulations on grassroots-level democracy at the workplace;

c/ To provide training, retraining and further training for raising occupational qualifications and skills in order to maintain or change occupations or jobs for employees;

d/ To implement the laws on labor, employment, vocational education, social insurance, health insurance, unemployment insurance, and occupational safety and health; to work out and implement solutions for preventing and combating sexual harassment at the workplace;

dd/ To participate in developing national occupational skills standards, and evaluating or recognizing occupational skills for employees.

Article 7. Establishment of industrial relations

1. Industrial relations shall be established through dialogue, bargaining or agreement on the principles of voluntariness, goodwill, equality, cooperation and respect for each other's lawful rights and interests.

2. Employers, employers' representative organizations as well as employees and employees' representative organizations shall establish progressive, harmonious and stable industrial relations with the assistance from competent state agencies.

3. Trade union organizations shall join competent state agencies in facilitating the establishment of progressive, harmonious and stable industrial relations; supervise the implementation of the labor law; and protect lawful and legitimate rights and interests of employees.

4. The Vietnam Chamber of Commerce and Industry, Vietnam Cooperative Alliance and other lawfully established employers' representative organizations shall represent and protect the lawful rights and interests of employers and participate in establishing progressive, harmonious and stable industrial relations.

Article 8. Prohibited acts in the field of labor

1. Practicing labor discrimination.

2. Maltreating employees or practicing forced labor.

3. Committing sexual harassment in the workplace.
4. Making use of apprenticeship or on-the-job training for seeking personal gains, exploiting labor, or enticing, inducing or compelling apprentices or on-the-job trainees to carry out illegal activities.
5. Using untrained employees or employees who possess no national occupational skills certificates for occupations or jobs which require trained employees or require such certificates.
6. Enticing, inducing, promising, making false advertisements, or using other tricks to deceive employees or recruit employees for the purpose of trafficking in humans, or exploiting or forcing labor, or making use of employment services or the sending of guest workers to commit illegal acts.
7. Illegally using minor employees.

Chapter II

EMPLOYMENT, LABOR RECRUITMENT AND MANAGEMENT

Article 9. Employment and employment creation

1. Employment is any income-generating work that is not banned by law.
2. The State, employers and the society have the responsibility to create employment and guarantee that all people with working ability have access to employment opportunities.

Article 10. The right of employees to work

1. To freely choose a job and work for any employer in any place that is not banned by law.
2. To contact the employer directly or through an employment service institution in order to find a job that meets his/her aspiration and suits his/her ability, occupational qualifications and health.

Article 11. Labor recruitment

1. The employer has the right to recruit labor directly or through employment service institutions and labor leasing enterprises to meet its/his/her needs.
2. Employees are not required to pay fees for labor recruitment.

Article 12. Responsibilities of employers in labor management

1. To make, update, manage and use labor management books in paper or electronic form and produce them at the request of competent state agencies.

2. To report on the employment of labor within 30 days after commencing operation, and periodically report on labor-related changes during operation to specialized agencies in charge of labor affairs under provincial-level People's Committees and notify them to social insurance agencies.

3. The Government shall detail this Article.

Chapter III

LABOR CONTRACTS

Section 1

ENTRY INTO LABOR CONTRACTS

Article 13. Labor contracts

1. Labor contract is an agreement between the employee and the employer on a paid job, wage, working conditions, and rights and obligations of each party in industrial relations.

In case the two parties give another name to their agreement which has contents stating a paid job, wage and either party's management, administration and supervision, such agreement shall be regarded as a labor contract.

2. Before employing a person, the employer shall enter into a labor contract with such person.

Article 14. Forms of labor contracts

1. A labor contract shall be entered into in writing and made in 2 copies, one to be kept by the employee and the other by the employer, except the case specified in Clause 2 of this Article.

A labor contract entered into by electronic means in the form of a data message under the law on e-transactions is as valid as a written labor contract.

2. The two parties may enter into a verbal labor contract, for contracts of a term of under 1 month, except the cases specified in Clause 2, Article 18, at Point a, Clause 1, Article 145, and in Clause 1, Article 162, of this Code.

Article 15. Principles of entry into a labor contract

1. Voluntariness, fairness, goodwill, cooperation and honesty.

2. Freedom to enter a labor contract which must not be contrary to law, the collective labor agreement and social morality.

