

LABOUR CODE 2012

**MINISTRY OF LABOUR, INVALIDS AND SOCIAL AFFAIRS
INTERNATIONAL COOPERATION DEPARTMENT**

LABOUR CODE, 2012*

** This English translation of the Labour Code (amended), 2012 made by the International Cooperation Department, Ministry of Labour, Invalids and Social Affairs of Vietnam is for reference. Nothing in this document shall be used to interpret or enforce of any provision of the law.*

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The International Cooperation Department of the Ministry of Labour, Invalids and Social Affairs translates this Labour Code (amended) into English to disseminate among foreign workers and employers in Vietnam, foreign investors, bilateral and multilateral partners, and to facilitate the country's international integration. This translation aims to provide the most accurate rendering of the Labour Code, after giving a careful consideration of the semantics of Vietnamese language and law-writing technique. This translation serves purely the purpose of reference and information. For legal application, the Vietnamese version is the only authoritative legal text.

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We welcome any comment and feedback on this translation. They will serve to produce a better translation for future editions.

INTERNATIONAL COOPERATION DEPARTMENT

CONTENTS

| | <i>Page</i> |
|--|-------------|
| ACKNOWLEDGEMENTS | 5 |
| Chapter I: GENERAL PROVISIONS | 9 |
| Chapter II: EMPLOYMENT | 13 |
| Chapter III: CONTRACT OF EMPLOYMENT | 15 |
| Section 1: Entering into an employment contract | 15 |
| Section 2: Performance of employment contracts | 20 |
| Section 3: Amendment, supplementation and termination of employment contracts | 22 |
| Section 4: Invalid employment contracts | 29 |
| Section 5: Labour dispatch | 30 |
| Chapter IV: APPRENTICESHIP, TRAINING AND OCCUPATIONAL QUALIFICATION AND SKILL IMPROVEMENT | 33 |
| Chapter V: DIALOGUE AT WORKPLACE, COLLECTIVE BARGAINING, COLLECTIVE BARGAINING AGREEMENTS | 35 |
| Section 1: Dialogue at workplace | 35 |
| Section 2: Collective bargaining | 36 |
| Section 3: Collective bargaining agreements | 39 |
| Section 4: Collective bargaining agreements at enterprise level | 41 |
| Section 5: Collective bargaining agreements at sectoral level | 43 |
| Chapter VI: WAGES | 44 |
| Chapter VII: WORKING HOURS AND REST PERIODS | 48 |

| | |
|--|-----------|
| Section 1: Working hours | 48 |
| Section 2: Rest periods | 50 |
| Section 3: Public holidays, personal leave and unpaid leave | 52 |
| Section 4: Working hours and rest periods for employees who perform work of special nature | 53 |
| Chapter VIII: LABOUR DISCIPLINARY REGULATIONS AND RESPONSIBILITIES REGARDING EQUIPMENT | 53 |
| Section 1: Labour disciplinary regulations | 53 |
| Section 2: Responsibilities concerning equipment | 58 |
| Chapter IX: OCCUPATIONAL SAFETY AND HEALTH | 59 |
| Section 1: General regulations on occupational safety and health | 59 |
| Section 2: Occupational accidents and diseases | 61 |
| Section 3: Prevention of occupational accidents and diseases | 64 |
| Chapter X: SEPARATE PROVISIONS CONCERNING FEMALE EMPLOYEES | 66 |
| Chapter XI: SEPARATE PROVISIONS CONCERNING MINOR EMPLOYEES AND CERTAIN TYPES OF EMPLOYEES | 69 |
| Section 1: Minor employees | 69 |
| Section 2: Elderly employees | 72 |
| Section 3: Vietnamese employees working overseas, employees of foreign organizations and individuals in Vietnam and foreign employees working in Vietnam | 72 |
| Section 4: Workers with disabilities | 75 |
| Section 5: Domestic workers | 76 |
| Section 6: Other types of workers | 77 |
| Chapter XII: SOCIAL INSURANCE | 78 |
| Chapter XIII: TRADE UNIONS | 79 |

| | |
|---|-----------|
| Chapter XIV: RESOLUTION OF LABOUR DISPUTES | 82 |
| Section 1: General provisions for the resolution of labour disputes | 82 |
| Section 2: Competence and procedures for the resolution of individual labour disputes | 84 |
| Section 3: Competence and procedures for the resolution of collective labour disputes | 86 |
| Section 4: Strikes and strike resolution | 89 |
| Section 5: Consideration of the lawfulness of strikes by the court | 93 |
| Chapter XV: STATE MANAGEMENT OF LABOUR | 97 |
| Chapter XVI: LABOUR INSPECTION AND DEALING WITH VIOLATIONS OF LABOUR LAW | 98 |
| Chapter XVII: IMPLEMENTATION PROVISIONS | 99 |

LABOUR CODE

Pursuant to the Constitution, 1992 of the Socialist Republic of Vietnam amended and supplemented under the Resolution No. 51/2001/QH10;

The National Assembly, hereby, adopts the Labour Code.

Chapter I **GENERAL PROVISIONS**

Article 1. Scope of Regulation

This Labour Code regulates labour standards, rights, obligations and responsibilities of employees, employers, employees' representative organizations, employers' representative organizations in labour relations and the other relations directly relating to labour relations and state management of labour.

Article 2. Subjects of application

1. Vietnamese employees, apprentices, trainees, and other workers stipulated in this Code.
2. Employers.
3. Foreign workers who work in the territory of Vietnam.
4. Other agencies, organizations, and individuals directly relating to the labour relations.

Article 3. Interpretation of terminologies

For the purpose of this Labour Code, the terminologies are interpreted as follows:

1. An "employee" shall mean a person who is at least 15 years of age, has the ability to work, works under an employment contract, is paid and is managed and controlled by the employer.

2. An “employer” shall mean an enterprise, an agency, an organization, a cooperative, a household, or an individual who hires or employs a worker or workers on the basis of an employment contract. In the case of an individual, that individual must have full capacity of civil acts.

3. “Worker’s collective” shall mean an organized group of employees working for one employer or in the same division within the organizational structure of an employer.

4. The “representative organization of the worker’s collective at grassroots level” shall be either the Executive Committee of grassroots trade union or the Executive Committee of the immediate upper level trade union in the case of a workplace where a trade union has not been established.

5. The “representative organization of employers” shall mean a lawfully established organization, which represents and protects the employers’ lawful rights and interests in labour relations.

6. “Labour relations” shall mean the social relations which arise in respect of the hiring, using labour and payment of wage between an employer and an employee.

7. A “labour dispute” shall mean a dispute on rights, obligations or interests which emerges between the parties in the labour relations. Labour dispute comprises of individual labour dispute between an employee and an employer, and collective labour dispute between a worker’s collective and an employer.

8. A “collective labour dispute on right” shall mean a dispute between a worker’s collective and the employer arising out of different interpretation and implementation of provisions of labour laws, collective bargaining agreements, internal working regulations, and other lawful regulations and agreements.

9. A “collective labour dispute on interest” shall mean a dispute arising out of the request of the worker collective on the establishment of new working conditions, as compared to the provisions of labour laws, collective bargaining agreements, or internal working regulations, or other lawful regulations and agreements, in the negotiation process between the worker’s collective and the employer.

10. "To extract forced labour" shall mean to use force, or to threaten to use force or a similar practice to force a person to work against his or her will.

Article 4. State’s policy on labour

1. To guarantee the legitimate rights and interests of workers; to encourage agreements providing workers with more favourable conditions than those stipulated

in the labour laws; and to have policies which enable workers to purchase shares and make capital contribution for the development of the business.

2. To guarantee the lawful rights and interests of employer; to guarantee democratic, fair and civilized labour management in accordance with labour laws and to promote corporate social responsibility.

3. To provide favourable conditions for job creation, self-employment, vocational training to improve employability, and labour intensive production and business.

4. To make policies on the development and distribution of human resources; provide vocational training, improvement of occupational skills and knowledge of workers; to offer incentives for highly skilled workers in order to meet the requirements of industrialization and modernization of the country.

5. To make policies on labour market development and diversify the means of connection between supply and demand of labour.

6. To guide employees and employers to have dialogue and bargain collectively to develop harmonious, stable and advanced labour relations.

7. To ensure gender equality principles and to stipulate labour and social policies to protect female workers and other workers such as disabled workers, elderly workers, and minor workers.

Article 5. Rights and obligations of workers

1. Workers shall have the following rights:

a) to work, to freely choose the work and occupation, to participate in vocational training and to improve their occupational skills without discrimination;

b) to receive a wage which is commensurate with their occupational skills and knowledge on the basis of an agreement reached with the employer; to work in a safe and healthy environment, to take leaves, paid annual leaves, and to receive collective welfare benefits;

c) to establish, join a trade union, to participate in trade union activities, occupational associations and other organizations in accordance with the law; to request and participate in dialogue with the employer, to implement regulations on democracy and consultation at the workplace to protect their lawful rights and interests; and to participate in the management in accordance with the employer's regulations;

- d) to unilaterally terminate the employment contract in accordance with the law;
- e) to strike.

2. Workers shall have the following obligations:

- a) to perform the employment contracts, collective bargaining agreements;
- b) to comply with labour discipline and internal work regulations, to follow lawful management orders of the employer;
- c) to comply with regulations of the laws on social insurance and health insurance.

Article 6. Rights and obligations of employers

1. An employer shall have the following rights:

- a) to recruit, arrange or supervise labour in accordance with the requirements of production and business; to reward and deal with breaches of labour disciplines;
- b) to establish, participate and operate in occupational associations and other organizations in accordance with the laws;
- c) to request the worker's collective to engage in dialogue, negotiate and sign a collective bargaining agreement, to participate in the process of resolution of labour disputes and strikes; to co-operate with trade union on issues relating to labour relations, to improve the material and spiritual lives of employees;
- d) to temporarily close the workplace.

2. An employer shall have the following obligations:

- a) to perform the employment contract, the collective bargaining agreement, and other agreements reached with employees; and to respect the honour and dignity of employees;
- b) to establish a mechanism for and engage in dialogue with the worker's collective at the enterprise; and to strictly comply with regulations on democracy at grassroots level;
- c) to establish a labour management book, wage book and present them when requested by competent authorities;
- d) to register for the use of labour within 30 days from the date of commencement of its operation, and to report periodically on changes in the workforce in the process of operating with the local State management agency of labour.

e) to comply with other provisions of the laws on labour, social insurance, and health insurance.

Article 7. Labour relations

1. The labour relations between an individual employee or worker's collective and the employer are established and developed through dialogue, negotiation and agreement on the basis of the principles of voluntary commitment, good faith, equality, co-operation, and mutual respect of each other's lawful rights and interests.

2. Trade unions and the representative organizations of employers, together with state authority, shall participate in the promotion of harmonious, stable, and advanced labour relations; monitoring the implementation of labour laws, protect the lawful rights and interests of workers and employers.

Article 8. Prohibited acts

1. Discriminating on the basis of gender, race, colour, social class, marital status, belief, religion, HIV status, disabilities or for the reason of establishing, joining trade union and participating in trade union activities.

2. Maltreating a worker, committing sexual harassment at the workplace.

3. Extracting forced labour.

4. Making use of apprenticeship or on-the-job training for the purpose of extracting benefits and exploiting labour, or enticing or compelling an apprentice or on-the-job trainee to commit an illegal activity.

5. Using an employee who does not have vocational training or national occupational skills certificate for the work which requires the worker to have relevant vocational training or a national occupational skills certificate.

6. Making enticement, false promises or false advertising to deceive a worker; or making use of employment service or activities on sending workers abroad to work on the basis of employment contract to commit illegal acts.

7. Using minor workers illegally.

Chapter II EMPLOYMENT

Article 9. Employment and creation of employment

1. Employment is any working activity which generates income and is not prohibited by law.

2. The State, employers and the society have the responsibility to create employment, and guarantee that every person, who has the capacity to work, has access to employment opportunities.

Article 10. Right to work of workers

1. A worker shall have the right to work for any employer in any location that is not prohibited by law.

2. A worker may directly contact an employer or through employment service institutions in order to find a job which meets his/her expectations, capacity, occupational qualification, and health.

Article 11. Right to recruitment of employers

An employer shall have the right to recruit workers directly or through employment service institutions, labour dispatch enterprises, and to increase or reduce the number of employees in accordance with production and business requirements.

Article 12. Supportive policies of the State for employment promotion

1. The State shall set a target of new employment creation in its annual and five-year socio-economic development plans.

Based on the socio-economic conditions in each period, the Government shall submit the National Employment and Vocational Training Target Program to the National Assembly for decision.

2. The State shall formulate the unemployment insurance policy, self-employment support policies, and assist employers who employ a large number of female workers, disabled persons, and people of ethnic minorities.

3. The State shall encourage and create favourable conditions for domestic or overseas organizations and individuals to invest in development of manufacturing and business to provide employment opportunities for workers.

4. The State shall encourage employers and workers to seek and expand overseas labour markets.

5. The State shall establish a National Employment Fund to provide preferential loans for employment creation and other activities as prescribed by law.

Article 13. Employment Programs

1. People's Committees of provinces and cities under central authority (herein after collectively referred to as provincial People's Committees) shall

develop and submit employment programs to the People's Councils at the same level for decision.

2. State bodies, enterprises, socio-political organizations and social organizations and employers shall, within the scope of their respective duties and competences, be responsible for participating in the implementation of employment programs.

Article 14. Employment service agencies?

1. Employment service agencies have the functions to provide job counselling and placement services, provide vocational training for the workers; supply and recruit workers at the request of employers; collect and provide information about the labour market; and perform other functions as stipulated by Law.

2. Employment service institutions include employment service centre and employment service enterprises.

Employment service centres are established and operate under the Government regulations.

Employment service enterprises are established and operate under the Enterprise Law and must have the license to conduct businesses in employment services granted by the labour management authority at provincial level.

3. The employment service institutions shall have the right to collect fees and to enjoy tax reduction and tax exemption in accordance with regulations of the laws on fees and tax.

Chapter III

CONTRACT OF EMPLOYMENT

Section 1

ENTERING INTO AN EMPLOYMENT CONTRACT

Article 15. Employment Contract

An employment contract is an agreement between a worker and employer on the remunerated work, working conditions, rights and obligations of each party in the labour relations.

Article 16. Forms of employment contracts

1. An employment contract shall be concluded in writing and made in two copies, of which the employee keeps one copy; the employer keeps one copy, except for the case regulated in clause 2 of this Article.

2. The two parties may conclude a verbal employment contract in respect of temporary work for a duration of less than 3 months.

Article 17. Principles in the conclusion of an employment contract

1. Voluntariness, equality, good faith, cooperation and honesty.

2. Freedom to enter into an employment contract which is not contrary to the law, the collective bargaining agreement and social morals.

Article 18. Responsibilities for concluding a contract of employment

1. Before hiring a worker, the employer and the worker shall directly conclude an employment contract.

Where a worker is between 15 and 18 years of age, the employment contract shall be concluded with the consent of his/her legal representative.

2. In respect of seasonal work, and certain work which has a duration of less than 12 months, a group of workers may authorize the representative of the group to enter into a written employment contract; in this case such employment contract shall be effective in the same manner as if it were entered into with each of the workers.

An employment contract which is concluded by the authorized person must be enclosed with a list clearly stating the full name, age, gender, permanent residential address, occupation and signature of all of the workers.

Article 19. Responsibilities of information disclosure before entering into employment contracts

1. An employer shall provide information to a worker regarding the work, working location, working conditions, working hours, rest time, occupational safety and health conditions, wage, forms of wage payment, social insurance, health insurance, regulations on business confidentiality, technological confidentiality, and other issues directly related to the conclusion of the employment contract if requested by the worker.

2. The worker shall provide to the employer information about his or her full name, age, gender, registered address, educational level, occupational skills and qualifications, health conditions and other issues related directly to the employment contract which are requested by the employer.

Article 20. Prohibited acts of employers when signing and implementing employment contracts

1. To keep the employee's original identification documents, degrees and certificates;

2. To request the employee to make a deposit in cash or asset to guarantee his/her compliance with the employment contract.

Article 21: Entering into employment contracts with more than one employer

A worker may enter into employment contracts with more than one employer, provided that all the contents in the concluded contracts shall be fully implemented.

Where a worker enters into employment contracts with more than one employer, his/her participation in social insurance and health insurance schemes shall be implemented in accordance with the Government's regulations.

Article 22. Types of employment contract

1. An employment contract shall be concluded in one of the following types:

a) Indefinite term employment contract.

An indefinite term employment contract is a contract in which the two parties do not determine the term and the time at which the contract terminates;

b) Definite term employment contract.

A definite term employment contract is a contract in which the two parties agree to fix the term of the contract for a duration of from 12 months to 36 months;

c) An employment contract for seasonal work or a specific task which has a term of less than 12 months.

2. Where an employment contract stipulated in items b and c of Clause 1 of this Article expires and the employee continues to work, during a period of thirty (30) days from the date of expiry of the contract, the two parties have to sign a new employment contract; if no new employment contract is entered into, the contract signed in accordance with Clause 1.b) of this Article shall become an indefinite term employment contract and the contract signed in accordance with

Clause 1.c) of this Article shall become a definite term employment contract with the term of 24 months.

Where the two parties conclude a new contract with a definite term, it shall be the one and only additional definite term employment contract to be signed; after that, if the employee continues to work, an indefinite term contract shall be signed.

3. It is prohibited to enter into a seasonal or work-specific employment contract of less than twelve (12) months to carry out regular work which has the duration of more than twelve (12) months, except in order to temporarily replace an employee who has taken leave for military obligations, pregnancy and maternity, sick leave, occupational accident or other temporary leaves.

Article 23. Contents of employment contracts

1. An employment contract shall include the following major particulars:

a) Name and address of the employer or of the legal representative of the employer;

b) Full name, date of birth, sex, address of residence, identity card number or other legal documents of the employee;

c) Work and the place of work;

d) Duration of the employment contract;

e) Wage, mode of payment, due date of payment, allowances and other additional payments;

f) Regimes for promotion, wage increase

g) Working time and rest periods;

h) Personal protective equipment for the employee;

i) Social insurance and health insurance;

j) Training, occupational skill improvement;

2. When the employee performs a work which is directly related to the business secret, technological secret as prescribed by law, the employer has the rights to sign a written agreement with the employee on the content and duration of the protection of the business secret, technology know-how, and on the benefit and the compensation obligation in case of violation by the employee.

3. Where an employee works in the sectors of agriculture, forestry, fishery, or salt production both parties may exclude some particulars of the employment

contract and negotiate and include additional agreements on settlement measures in the case when the contract execution is affected by natural disaster, fire or weather.

4. The contents of the employment contract with an employee who is recruited to work as the director of a state owned capital enterprise is stipulated by the Government.

Article 24. Annexes to employment contracts

1. An annex to an employment contract is an integral part of the employment contract and is as binding as the employment contract.

2. An annex to an employment contract is to stipulate in detail particular provisions or to amend or supplement the contract.

Where an annex to an employment contract stipulates in detail particular provisions of the contract, which may lead to a different interpretation of the employment contract, the contents of the employment contract shall apply.

Where an annex amends or supplements the employment contract, it should clearly states the provisions which are amended or supplemented, and the date on which it takes effect.

Article 25. Effectiveness of employment contracts

An employment contract shall be effective as of the date on which the contract is concluded by the parties, unless otherwise agreed by both parties or prescribed by law.

Article 26. Probation

1. An employer and an employee may negotiate on the probation, the rights and responsibilities of the two parties during the probation period. The two parties may conclude a probation contract if there is an agreement on the probation.

The probation contract must include the particulars as stipulated in item a, b, c, d, e, f, g of Clause 1, Article 23 of this Code.

2. Workers entering into a seasonal employment contract shall not be subjected to probation.

Article 27. Duration of probation

The probationary period shall be determined on the basis of the nature and complexity of the work and shall be applied only one time for each employment and must satisfy the following conditions:

1. The probationary period shall not exceed 60 days in respect of work which requires technical qualification of technical college diploma and above.

2. The probationary period shall not exceed 30 days in respect of work which requires technical qualification of secondary vocational certificate, secondary professional qualification; or specialized worker.

3. The probationary period shall not exceed 6 working days in respect of other work.

Article 28. Remuneration during probationary period

Remuneration for the employee during the probationary period shall be negotiated by the two parties but shall not be lower than 85% of the wage for the work.

Article 29. Termination of the probationary period

1. If the probation work meets the requirements, the employer shall conclude an employment contract with the employee.

2. During the probationary period, each party shall have the right to terminate the probation agreement without prior notice and compensation if the probation work fails to meet the requirements as agreed by both parties.

Section 2

PERFORMANCE OF EMPLOYMENT CONTRACTS

Article 30. Performing the work under an employment contract

The work under an employment contract shall be performed by the employee who directly enters into the contract. The place of work shall follow the stipulations in the employment contract or otherwise agreed by both parties.

Article 31. Assigning employees to perform a work which is not prescribed in the employment contracts

1. In the event of sudden difficulties such as natural disasters, fire, epidemic, the implementation of preventive and remedial measures for occupational accidents or diseases, electricity and water supply malfunctions, or for reasons of business and production demands, the employer may temporarily assign an employee to perform a work which is not prescribed in the employment contract provided that the assignment does not exceed 60 accumulated working days within one year unless otherwise agreed by the employee.

2. Where an employer temporarily assigns an employee to perform a work which is not prescribed in the employment contract, the employer shall give notice to the employee at least 3 working days in advance, which clearly indicates the duration of the temporary work, and the assigned work must be suitable for the health and gender of the employee.

3. The employee who performs the work as stipulated in Clause 1 of this Article shall be entitled to remuneration for the new work; if the wage for the new work is lower than the previous wage, the employee is entitled to receive the previous wage for a period of 30 working days. The wage for the new work shall be at least 85% of the previous wage but not less than the minimum regional wage regulated by the Government.

Article 32. Cases in which an employment contract can be temporary suspended

1. The employee is called up for military service.

2. The employee is held temporarily in custody or detention in accordance with the provisions of the Criminal Procedure Code.

3. The employee is sent to a correctional centre, compulsory drug rehabilitation centre, and compulsory education centre.

4. The employee is pregnant in accordance with Article 156 of this Code.

5. In other circumstances as agreed by both parties.

Article 33. Reinstatement of employees upon expiry of the temporary suspension of the employment contract

Within 15 days from the expiry of the suspension period of the employment contract as stipulated in Article 32 of this Code, the employee shall present him/herself at the work place and the employer shall reinstate the employee, unless otherwise agreed by both parties.

Article 34. Part-time employees

1. A part time employee is an employee who works for less than the usual daily or weekly hours of work as prescribed by law, the collective bargaining agreement of the enterprise or sector, or the employer's regulations.

2. A worker may negotiate with the employer to work on a part-time basis when entering into the employment contract with the employer.

3. The part time employee shall be entitled to the same remuneration, and rights and responsibilities as a full time employee. He/she shall be entitled to equality in opportunities and treatment, and to a safe and hygienic working environment.

Section 3

AMENDMENT, SUPPLEMENTATION AND TERMINATION OF EMPLOYMENT CONTRACTS

Article 35. Amendment and supplementation of an employment contract

1. During the implementation of an employment contract, any party who wishes to amend or supplement the contents of the employment contract shall notify the other party at least 3 working days in advance about the contents to be amended or supplemented.

2. In case where an agreement is reached between the parties, the amendment of or supplementation to the contents of the employment contract shall be carried out by signing an annex to the employment contract or signing a new employment contract.

3. In case the two parties fail to reach an agreement on the amendment of or supplementation to the employment contract, they shall continue to implement the concluded employment contract.

Article 36. Cases of termination of an employment contract

1. The employment contract expires, except for the case regulated in Clause 6 Article 192 of this Code.

2. The tasks stated in the employment contract have been completed.

3. Both parties agree to terminate the employment contract.

4. The employee fully meets the requirements of qualified contribution period of social insurance and reaches the age of retirement stipulated in Article 187 of this Code.

5. The employee is sentenced to imprisonment, capital punishment or is prohibited from performing the work stipulated in the employment contract by an effective conviction or judgment of the court.

6. The employee dies or is declared by the court to have lost the capacity of civil acts, or as missing or dead.

7. The employer, who is an individual, dies or is declared by the court as dead, missing, or has lost the capacity of civil acts; the employer, who is not individual, ceases operation.

8. The employee is dismissed in accordance with Clause 3 Article 125 of this Code.

9. The employee unilaterally terminates the employment contract in accordance with Article 37 of this Code.

10. The employer unilaterally terminates the employment contract in accordance with Article 38 of this Code; the employer terminates the employment contract due to structural and technological changes or because of economic reasons, merger, and acquisition, separation of the enterprise or the cooperative.

Article 37. The right of an employee to unilaterally terminate the employment contract

1. An employee with a definite term employment contract or an employment contract of seasonal work or specific task of less than 12 months shall have the right to unilaterally terminate the employment contract prior to its expiry in one of the following circumstances:

a) The employee is not assigned to the work or work place or not provided with the working conditions as agreed in the employment contract;

b) The employee is not paid in full or on time as agreed in the employment contract;

c) The employee is maltreated, sexually harassed or is subjected to forced labour;

d) The employee is unable to continue performing the employment contract due to personal or family difficulties;

e) The employee is elected to carry out full-time duties in an elected body or is appointed to hold a position in a State agency;

f) A female employee who is pregnant and must take leave as prescribed by a competent health care institution;

g) The employee is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days in the case of a definite term employment contract, or for a quarter of the duration of the contract in the case of an employment contract for seasonal work or specific task of less than 12 months.

2. When unilaterally terminating the employment contract as stipulated in Clause 1 of this Article, the employee shall inform the employer:

a) at least 3 working days in advance, in the cases stipulated in item a, b, c and g of Clause 1 this Article;

b) At least 30 days in advance, in the case of a definite term employment contract; at least 03 working days in the case of an employment contract for seasonal work or specific task of less than 12 months in the cases stipulated in item d and e of Clause 1 of this Article;

c) In the case stipulated in item e, Clause 1 of this Article, the advance notice shall be given to the employer in accordance with Article 156 of this Code.

3. An employee who has an indefinite term employment contract shall have the right to unilaterally terminating the employment contract provided that he/she notifies the employer at least 45 days in advance, except for the cases prescribed in Article 156 of this Code.

Article 38. The right of an employer to unilaterally terminate the employment contract

1. An employer shall have the right to unilaterally terminate the employment contract in the following cases:

a) The employee repeatedly fails to perform his/her work in accordance with the terms of the employment contract;

b) An employee is sick or has an accident and remains unable to work after having received treatment for a period of twelve (12) consecutive months in the case of an indefinite term employment contract, for six (6) consecutive months in the case of an definite employment contract, or more than half the duration of the contract in the case of an employment contract for seasonal work or a specific task of less than 12 months.

Upon recovery, the employee shall be considered for reinstatement or continue to work for the employer.

c) In the event of a natural calamity, fire or force majeure as prescribed by law and the employer has exhausted all possibilities, and is forced to scale down production and reduce the workforce;

d) The employee does not present him/herself at the workplace until the period stipulated in Article 33 of this Code expires.

2. When unilaterally terminating an employment contract an employer shall give notice to the employee as follows:

a) at least 45 days in the case of an indefinite term employment contract;

b) at least 30 days in the case of a definite term employment contract;

c) at least 03 working days in the case of an employment contract for seasonal work or for a specific task of less than 12 months' duration as stipulated in item b, Clause 1 of this Article.

Article 39. Cases in which the employer cannot unilaterally terminate an employment contract:

1. The employee is suffering from an illness or work accident, occupational disease and is being treated or nursed under the decision of a competent health institution, except for the cases stipulated in item b, Clause 1 Article 38 of this Code.

2. The employee is on an annual leave, personal leave, or any other type of leave permitted by the employer;

3. The female employee in the case stipulated in Clause 3 of Article 155 of this Code.

4. The employee on maternity leave in accordance with the Law on Social Insurance.

Article 40. Withdrawal of unilateral termination of employment contracts

Each party may withdraw their unilateral termination of an employment contract at any time prior to the expiry of the notice period by a written notification, provided that the withdrawal is agreed by the other party.

Article 41. Illegal unilateral termination of employment contracts

The unilateral termination of an employment contract is illegal in cases which are inconsistent with Article 37, Article 38, and Article 39 of this Code.

Article 42. Obligations of employers in cases of illegal unilateral termination of employment contracts

1. The employer shall reinstate the employee in accordance with the original employment contract, and shall pay the wage, social insurance and health insurance for the period during which the employee was not allowed to work, and additionally at least 2 month wage as stipulated in the employment contract;

2. Where the employee does not wish to return to work, in addition to the compensation stipulated in Clause 1 of this Article, the employer shall pay the severance allowance in accordance with Article 48 of this Code.

3. Where the employer does not wish to reinstate the employee, and the employee agrees, in addition to the compensation as stipulated in Clause 1 of this Article and the severance allowance as stipulated in Article 48 of this Code, the two parties shall negotiate additional compensation which shall be at least equal to two months' wage as stipulated in the employment contract, in order to terminate the employment contract.

4. Where there is no longer a vacancy for the position or work as agreed in the employment contract and the employee still wishes to continue working, the employer shall pay the compensation as stipulated in Clause 1 of this Article and both parties shall negotiate to amend and supplement the employment contract.

5. Where the employer fails to comply with the provisions on advance notice, the employee shall be paid a compensation equivalent to his/her wage for the number of days during which the notice is not given..

Article 43. Obligations of employees in cases of illegal unilateral termination of employment contracts

1. The employee shall not receive a severance allowance and must compensate the employer a half of his monthly wage as stipulated in the employment contract.

2. Where the employee does not follow the provisions on advance notice, the employer shall be paid a compensation equivalent to the employee's wage corresponding to the number of days during which the notice is not given.

3. The employee shall reimburse training costs to the employer in accordance with Article 62 of this Labour Code.

Article 44. Obligations of employers in cases of changes in structure, technology or due to economic reasons.

1. In cases there is a change in the structure or technology which affects the employment of multiple employees, the employer has the responsibility to establish and implement a labour utilization plan in accordance with Article 46 of this Code. In case there is a new vacancy, the priority shall be given to retraining the unemployed worker for the purpose of re-employment.

In case the employer is unable to create new employment and has to resort to dismissing employees, the employer shall pay job-loss allowance to the employees in accordance with Article 49 of this Code.

2. If more than one employee faces the risk of unemployment or dismissal due to economic reasons, the employer shall develop and implement a labour utilization plan as stipulated in Article 46 of this Code.

In case the employer fails to create employment and has to resort to dismissing employees, the employer shall pay job-loss allowance to the employees in accordance with Article 49 of this Code.

The dismissal of multiple employees in line with provisions of this Article shall only be implemented after discussion with the representative organization of the worker's collective at grassroots level and after giving prior notice of 30 days to the provincial labour management authority.

Article 45. Obligations of employers in cases of merger, consolidation, division, or separation of enterprises and cooperatives

1. In the event of merger, consolidation, division or separation of an enterprise or a cooperative, the succeeding employer is responsible for continuing the employment of the existing workforce and making amendments and supplementations to the employment contracts.

In case there is not enough work for the existing workforce the new employer has the responsibility to develop and implement a labour utilization plan in accordance with Article 46 of this Code.

2. In case of property use right transfer, or ownership transfer, the preceding employer shall establish a labour utilization plan as stipulated in Article 46 of this Code.

3. Where the employer dismisses employees as prescribed in this Article, the employer shall pay job-loss allowance to employees in accordance with Article 49 of this Code.

Article 46. Labour utilization plans

1. A labour utilization plan must include the following major contents:

a) The names and number of the employees to be maintained in employment and those to be re-trained for continued employment;

b) The names and number of employees to retire;

c) The names and number of employees to be maintained in employment on part-time basis and those to be dismissed;

d) The measure and financial sources to implement the plan.

2. The labour utilization plan shall be developed with the participation of the representative organization of the worker's collective at grassroots level.

Article 47. Responsibilities of employers in cases of termination of employment contracts

1. At least 15 days prior to the date of the expiry of a definite term employment contract, the employer must give a written notice to the employee regarding the time for such termination.

2. Within 07 working days following the termination of an employment contract, the two parties shall settle all payments in respect of their rights and interests of the two parties; in special cases, such period may be extended, but shall not exceed 30 days.

3. The employer shall be responsible for completing the verification procedure and return the social insurance book, and other documents of the employee which are kept by the employer.

4. Where an enterprise or cooperative ceases its operation, dissolves, enters into bankruptcy, the wage, severance allowance, social insurance, health insurance, unemployment insurance and other benefits of employees as stipulated in the collective bargaining agreement and the signed employment contracts shall be the priority payments.

Article 48. Severance allowance

1. In case an employment contract is terminated in compliance with the provisions in Clause 1, 2, 3, 5, 6, 7, 9 and 10, Article 36 of this Code, the employer is responsible for paying severance allowance to the employee who has worked regularly for a period of at least full 12 months. A half of the monthly wage is payable for each year of work.

2. The qualified period of work for the calculation of severance allowance shall be the total period during which the employee actually worked for the employer minus the period in which the employee participated in the unemployment insurance scheme in accordance with the Law on Social Insurance, and the period for which the employee has been already paid severance allowance by the employer.

3. The reference wage for the calculation of severance allowance shall be the average of the wages, which are stipulated in the employment contract valid for 06 months preceding the termination of the employment contract.

Article 49. Job-loss allowance

1. Where the employment contract is terminated according to Article 44 and 45 of this Code and the employee has worked on a regular basis for the employer

for at least 12 months, the employer shall pay a job-loss allowance to the employee. The job-loss allowance shall be one month wage for each year of employment, and shall not be lower than 2 months' wage.

2. The qualified period of work for the calculation of job-loss allowance shall be the total period during which the employee was employed by the employer minus the period during which the employee participated in the unemployment insurance scheme, in accordance with the Law on Social Insurance and the employment period for which the employee has been paid the severance allowance by the employer.

3. The reference wage for the calculation of job-loss allowance shall be the average of the wages, which are stated in the employment contract valid for 06 months preceding the termination of the employment contract.

Section 4

INVALID EMPLOYMENT CONTRACTS

Article 50. Invalid employment contracts

1. An employment contract shall be completely invalid in one of the following cases:

- a) The entire contents of the employment contract are illegal;
- b) The employment contract is concluded by a person without due competence;
- c) The work described in the employment contract is prohibited by law.
- d) The contents of the employment contract restrict or prevent the employee to exercise his/her right to establish, join trade unions and participate in trade union activities.

2. An employment contract shall be partially invalid when a part of its contents is illegal but does not affect the remaining contents of the employment contract.

3. Where the rights of the employee provided by a part or entire employment contract are less than those regulated in the labour law, internal working regulations, collective bargaining agreement that are currently effective, or where the contents of the employment contract restrict other rights of the employee, the part or entire employment contract shall be invalid.

Article 51. Authorities to declare employment contracts as invalid

1. The Labour inspector and People's Court have the right to declare an employment contract invalid.

2. The Government regulates the procedures and formalities, under which a labour inspector declares an employment contract as invalid.

Article 52. Dealing with invalid employment contracts

1. Where an employment contract is declared as partially invalid, it shall be dealt with as follows:

a) The rights, obligations and benefits of the parties shall be settled in accordance with the collective bargaining agreement or provisions of the law.

b) The invalid employment contract shall be amended and supplemented in accordance with the collective bargaining agreement or the labour law.

2. Where an employment contract is declared as entirely invalid, it shall be dealt with as follows:

a) In case the employment contract is concluded by a person without due competence as stipulated in Item b, Clause 1, Article 50, the state labour management authority shall guide the parties to conclude the employment contract again.

b) The rights, obligations and interests of the employee will be settled in accordance with the law.

3. The Government shall provide detailed regulations on this Article.

Section 5

LABOUR DISPATCH

Article 53. Labour dispatch

1. Labour dispatch is defined as an act in which an enterprise licensed to operate as a labour dispatch enterprise recruits an employee to work for another employer, and the employee works under the control of the latter employer, while maintaining labour relationship with the dispatch enterprise.

2. Labour dispatch is a conditional business, and applies only to certain types of work.

Article 54. Labour dispatch enterprises

1. A labour dispatch enterprise shall pay a deposit and obtain a license to operate labour dispatch business.

2. The maximum duration of labour dispatch is 12 months.

3. The Government shall regulate the issuance of labour dispatch license, making deposit, and the types of work in which the use of dispatched labour is allowed.

Article 55. Labour dispatch contracts

1. The Labour dispatch enterprise and the hiring party shall conclude a written labour dispatch contract, which is made in 02 copies; each party shall keep one copy.

2. A labour dispatch contract shall include the following particulars:

a) The work location, the vacancy which will be filled by the dispatched employee, detailed description of the work, and detailed requirements for the dispatched employee.

b) The labour dispatch duration; the starting date of the dispatch period.

c) The time of work and time of rest, specifications on occupational safety and health at the workplace.

d) Obligations of each party to the dispatched employee.

3. The labour dispatch contract shall not include any agreement on the rights and benefits of employees which are less favourable than those stipulated in the concluded employment contract between the employee and the labour dispatch enterprise.

Article 56. Rights and obligations of the labour dispatch enterprise

1. To provide a dispatched worker who meets the requirements of the hiring party and such provision complies with the terms and conditions of the employment contract signed with the employee.

2. To notify the dispatched employee about the contents of the labour dispatch contract.

3. To sign an employment contract with the employee in accordance with this Code.

4. To provide the hiring party with the curriculum vitae of the dispatched employee, and his/her requirements.

5. To comply with the obligations of an employer in accordance with this Code; to pay wage, wage for public holiday and paid annual leave, wage for

work suspension, severance allowance, job-loss allowance, premiums for compulsory social insurance, health insurance, and unemployment insurance for the dispatched employee in accordance with the law.

To ensure that the wage of the dispatched employee is not lower than the wage of a regular employee of the hiring party who has equal qualification and performs the same work or work of equal value.

6. To keep records of the number of dispatched employees, the hiring party, and dispatch fees and to report to the provincial labour management authority.

7. To discipline the dispatched employee for violating internal work regulations in cases where the hiring party returns the employee for the reason of having violated internal work regulations.

Article 57. Rights and obligations of the hiring party

1. To inform and guide the dispatched employee to understand its internal work regulations and other regulations.

2. Not to discriminate against the dispatched employees, in comparison with its regular employees in respect of the working conditions.

3. To negotiate with the dispatched employee on working at night or overtime when an agreement on such is not included in the contents of labour dispatch contract.

4. Not to send the dispatched employee to another employer.

5. To negotiate with the dispatched employee and the dispatch enterprise to officially employ the employee while the employment contract between the dispatch employee and the dispatch enterprise has not yet expired.

6. To return the dispatched employee who does not meet the conditions set out in the labour dispatch contract or who violates the labour discipline to the dispatch enterprise.

7. To provide the evidence of violation of work regulations by the dispatched employee to the dispatch enterprise for disciplinary action.

Article 58. Rights and obligations of the dispatched employee

1. To perform the work in accordance with the employment contract concluded with the labour dispatch enterprise.

2. To comply with the internal work regulation, labour disciplinary regulations, the lawful management and collective bargaining agreement of the hiring enterprise.

3. To be paid a wage, which is not lower than the wage of a regular employee of the hiring party who has equal qualification and performs the same work or work of equal value.

4. To make complaints to the dispatch enterprise in case the hiring party violates agreements in the labour dispatch contract.

5. To exercise the right to unilaterally terminate the employment contract with the dispatch enterprise in accordance with Article 37 of this Code.

6. To negotiate to conclude an employment contract with the hiring party after terminating the employment contract with the dispatch enterprise.

Chapter IV

APPRENTICESHIP, TRAINING AND OCCUPATIONAL QUALIFICATION AND SKILL IMPROVEMENT

Article 59. Apprenticeship and vocational training

1. An employee has the rights to choose a vocation, apprenticeship at a workplace which is appropriate to his/her employment demands.

2. The State encourages eligible employers to open vocational training centres, or vocational classes at the workplace in order to train, retrain, and to improve occupational qualifications and skills of its current employees and to provide vocational training for other trainees in accordance with the laws on vocational training.

Article 60. Responsibilities of employers with respect to training, occupational qualification and skill improvement

1. An employer shall develop annual training plans, allocate budget for, and organize training to improve occupational qualifications and skills for their current employees; to re-train employees before assigning them to another work.

2. The employer must report on the results of the occupational qualification and skills improvement training at the enterprise to the provincial labour management authority in its annual labour report.

Article 61. Apprenticeship and on-the-job training to work for the employer

1. An employer who recruits trainees or apprentices in order to employ them for work is not required to register such vocational training activity and shall not charge fees for such training.

In this case, the trainees or apprentices shall be of at least 14 years of age, and must be in appropriate health for the occupation except in the case of certain occupations as stipulated by the Ministry of Labour, Invalids and Social Affairs.

The two parties must enter into a vocational training contract, which shall be made in 02 copies and each party shall keep 01 copy.

2. During the period of apprenticeship or on-the-job training, if the apprentice or the on-the-job trainee directly makes, or participates in the making of qualified products, he/she shall be paid a wage at a rate agreed by the two parties.

3. Upon the expiry of the apprenticeship or on-the-job training period, both parties must enter into an employment contract when the conditions stipulated in this Code are satisfied.

4. The employer shall create favourable conditions for the employee to participate in an occupational skills exam in order to receive a national vocational certificate.

Article 62. Vocational training contracts between employers and employees and vocational training costs

1. The two parties must enter into a vocational training contract in case the employee is trained or re-trained for the improvement of occupational qualifications and skills domestically or abroad under the employer's budget, which includes the sponsorship from the employer's partner.

The vocational training contract shall be made into 02 copies; each party shall keep 01 copy.

2. A vocational training contract must include the following major contents:

a) The training occupation;

b) The training location; training period;

c) The costs of the training;

d) The period during which the employee commits to continue to work for the employer after having been trained

e) Responsibilities for the compensation of training costs.

f) Responsibilities of the employer.

3. The costs of training shall include those specified in valid documents on expenses covering the costs of trainers, training materials, training locations, machinery and equipment, practice materials, other supportive expenses for the learner as well as the wage, social insurance, and medical insurance paid for the learner for the duration of the training. In case the employee is sent to a foreign country for training, the costs of training also include the travelling and living expenses during the period of overseas stay.

Chapter V

DIALOGUE AT WORKPLACE, COLLECTIVE BARGAINING, COLLECTIVE BARGAINING AGREEMENTS

Section 1

DIALOGUE AT WORKPLACE

Article 63. Purposes and forms of dialogue at the workplace

1. Dialogue at the workplace aims at sharing information and strengthening understanding between employers and employees for the development of labour relations at the workplace.

2. Dialogue at the workplace is conducted through direct communication between employees and employers or between worker's collective representatives and employers, ensuring the implementation of the regulations on democracy at the workplace.

3. Employers and the employees are responsible for implementing regulations on grassroots democracy at the workplace in accordance with the Government regulations.

Article 64. Issues for dialogue at the workplace

1. Business and production situation of the employer.

2. Implementation of the employment contract, collective bargaining agreement, other commitments and agreements, as well as other regulations at the workplace.

3. Working conditions.
4. Request of employees and worker's collective to the employer.
5. Request of employer to the employees and worker's collective.
6. Other issues of concern to the two parties.

Article 65. Conducting dialogue at the workplace

1. Dialogue at the workplace is carried out periodically once every 3 months or at the request of either party.
2. The employer is responsible for arranging the venue and other material conditions for dialogue at the workplace.

Section 2 COLLECTIVE BARGAINING

Article 66. Purposes of collective bargaining

Collective bargaining is the discussion and negotiation between the worker's collective and the employer in order to:

1. Build harmonious, stable and progressive labour relations;
2. Establish new working conditions as the basis for the signing of a collective bargaining agreement;
3. Resolve obstacles and difficulties in the implementation of the rights and of obligations of each party in labour relations.

Article 67. Principles of collective bargaining

1. Collective bargaining shall be carried out on the basis of the principles of good faith, equality, cooperativeness, openness to the public and transparency;
2. Collective bargaining shall be carried out on a periodical or ad-hoc basis;
3. Collective bargaining shall be carried out at a place agreed to by the two parties.

Article 68. Right to request collective bargaining

1. Each party has the right to request collective bargaining and the requested party must not refuse the request. Within 07 working days from the

day on which the request is received the parties shall agree upon the starting time for the negotiation meeting.

2. In case a party is unable to participate in the negotiation meeting at the time specified in accordance with above agreement, that party has the rights to request to postpone the bargaining for a period of no more than 30 days from the date of receiving the request for collective bargaining.

3. In case one party refuses the bargaining or does not conduct the bargaining within the timeline indicated in this Article, the other party has the right to initiate the procedures to request labour dispute settlement as regulated by law.

Article 69. Representatives of the parties to the collective bargaining

1. Representatives of the parties to the collective bargaining are regulated as follows:

a) The representative for the worker's collective in collective bargaining at the enterprise level shall be the representative organization of the worker's collective at grassroots level; at sectoral level, this shall be the representative of the executive committee of the sectoral trade union.

b) The representative on the employer's side in collective bargaining at the enterprise level shall be the employer or the representative of the employer; at the sectoral level, this shall be the representative of sectoral employers' organization.

2. The number of representatives of each party participating in the negotiation meeting shall be agreed by the two parties.

Article 70. Issues for collective bargaining

1. Wage, bonus, allowance and wage increase.
2. Time of working and time of rest; overtime work, breaks between shifts.
3. Employment security for the workers
4. Occupational safety and health; the implementation of the internal work regulations;
5. Other issues of concern to the two parties.

Article 71. Process for collective bargaining

1. The preparatory process for collective bargaining is stipulated as follows:

a) At least 10 days before the negotiation meeting, at the request of the worker's collective, the employer shall provide information on the operation and business situation, with the exception of business secrets, technological secrets of the employer.

b) Collecting comments of the workers

The representative of the worker's collective shall solicit comments directly from the worker's collective or indirectly through a congress of the workers' delegates on the workers' proposals to the employer and employer's proposals to the worker's collective.

c) Notification of issues for collective bargaining.

No later than 05 working days prior to the start of the negotiation meeting, the party which has requested collective bargaining must notify the other party of the proposed issues for negotiation, in writing.

2. The process of collective bargaining is stipulated as follows:

a) Organization of negotiation meetings

The employer shall be responsible for arranging the negotiation meetings at the time and venue agreed on by both parties.

Minutes of the negotiation meetings must be taken and these must specify the issues which have been agreed upon by the two parties, as well as a tentative time for signing an agreement on these issues; and issues that remain controversial.

b) Minutes of the negotiation meetings must be signed by the representative of the worker's collective, the employer and the preparer of the minutes.

3. Within 15 days from the conclusion of the collective bargaining meetings, the representative of the worker's collective must widely and publicly disseminate the minutes of the negotiation meeting to the worker's collective for their information and organize a vote for workers to approve on the agreed issues.

4. In case the negotiation does not succeed, either party may request to continue the negotiation or may initiate the labour dispute settlement procedures as prescribed in this Code.

Article 72. Responsibilities of the trade union, the employer's representative organization and the labour management authority in collective bargaining

1. To organize training courses on collective bargaining skills for those who participate in collective bargaining.

2. To participate in the negotiation meetings when requested by either of the parties to the collective bargaining.

3. To provide and facilitate the exchange of information related to collective bargaining.

Section 3

COLLECTIVE BARGAINING AGREEMENTS

Article 73. Collective bargaining agreements

1. A collective bargaining agreement is an agreement in writing between the worker's collective and the employer on the working conditions which are established by the two parties through collective bargaining.

Collective bargaining agreements include collective bargaining agreements at enterprise level, collective bargaining agreements at sectoral level and other types of collective bargaining agreements as regulated by the Government.

2. The contents of the collective bargaining agreements must not be against the law and must provide for the terms and conditions for workers which are more favourable than those provided by law.

Article 74. The signing of collective bargaining agreements

1. A collective bargaining agreement is signed between the representative of the worker's collective and the employer or the representative of the employer.

2. The collective bargaining agreement shall be signed only when the parties have reached an agreement at the negotiation meetings and:

a) Over 50% of the worker's collective have voted in favour of the issues which have been agreed, in regard to collective bargaining agreements at enterprise level;

b) Over 50% of the representatives of the executive committee of the grassroots trade union or upper level trade union have voted in favour of the issues which have been agreed, in regard to sectoral collective bargaining agreements.

c) The signing of other types of collective bargaining agreements shall follow Government regulations.

3. The employer must make publicly available the concluded collective bargaining agreement to all employees.

Article 75. Submission of collective bargaining agreements to the state management authority

Within 10 days from the date of signing, the employer or the employer's representative must submit a copy of the collective bargaining agreement to:

1. The provincial labour management authority, in regard to collective bargaining agreements at the enterprise level.

2. The Ministry of Labour, Invalids and Social Affairs, in regard to sectoral collective bargaining agreements and other types of collective bargaining agreements.

Article 76. Effective date of collective bargaining agreements

The date on which a collective bargaining agreement comes into effect shall be indicated in the agreement. In case the signing date is not indicated in the collective bargaining agreement, the agreement shall take effect from the date of signing.

Article 77. Amendment and supplementation of collective bargaining agreements

1. The parties have the rights to amend and supplement a collective bargaining agreement within the following timeline:

a) After 03 months of implementation, with regard to collective bargaining agreements which have effective duration of less than 01 year.

b) After 06 months of implementation, with regard to collective bargaining agreements which have effective duration of from 01 year to 03 years.

2. In case a change in legal provisions results in the collective bargaining agreement being unsuitable with the new law, the two parties must make amendments and supplements to the collective bargaining agreement within 15 days from the date on which the legal provisions come into effect.

During the process of amending and supplementing the collective bargaining agreement, the rights and interests of the employees will be ensured in accordance with the law.

3. The amendment or supplementation to the collective bargaining agreement shall be made in accordance with the same provisions and procedures for the signing of the collective bargaining agreement.

Article 78. Invalid collective bargaining agreements

1. A collective bargaining agreement shall be partially invalid if one or a number of its contents are contrary to the law.

2. A collective bargaining agreement shall be entirely invalid in any of the following circumstances:

a) The whole contents of the agreement are contrary to the law;

b) The collective bargaining agreement was concluded by a person without due competence;

c) The signing of the collective bargaining agreement does not follow the prescribed collective bargaining procedure.

Article 79. Authority to declare collective bargaining agreements invalid

The People's Court has the right to declare a collective bargaining agreement invalid.

Article 80. Handling of invalid collective bargaining agreements

When a collective bargaining agreement is declared invalid, the rights, obligations and interests of parties specified in the invalid parts shall be handled in accordance with the provisions of the law and other lawful agreements as provided in the employment contract.

Article 81. Expiry of collective bargaining agreements

Within 03 months prior to the expiry date of a collective bargaining agreement, the two parties may negotiate to extend the duration of the collective bargaining agreement or to enter into a new collective bargaining agreement.

Where the collective bargaining agreement expires while the negotiation process is still on-going, it shall continue to be implemented for a maximum duration of 60 days.

Article 82. Expenses for collective bargaining activities and the signing of collective bargaining agreements

All expenses for organizing negotiation meetings and the signing, amendment, supplementation, submission and announcement of a collective bargaining agreement shall be covered by the employer.

Section 4

COLLECTIVE BARGAINING AGREEMENTS AT ENTERPRISE LEVEL

Article 83. The signing of collective bargaining agreements at enterprise level

1. The signatories to a collective bargaining agreement at enterprise level are regulated as follows:

a) The signatory on the worker's collective side shall be the representative of the worker's collective at grassroots level;

b) The signatory on the employer's side shall be the employer or the representative of the employer.

2. The collective bargaining agreement at enterprise level shall be made into 05 copies, of which:

a) Each party keeps 01 copy;

b) 01 copy shall be sent to the State management agency in accordance with Article 75 of this Code;

c) 01 copy shall be sent to the immediate upper level trade union, and 01 copy to the representative organization of which the employer is a member.

Article 84. Implementation of enterprise-level collective bargaining agreements

1. The employer and the employees, including new employees who are employed after the collective bargaining agreement has come into effect, shall be responsible for the full implementation of the collective bargaining agreement.

2. Where the rights, responsibilities and interests of the parties stipulated in the employment contract which were concluded before the effective date of the collective bargaining agreement are less favourable than those of the respective provisions provided in the collective bargaining agreement, the provisions of the collective bargaining agreement shall be applied. Internal work regulations of the employer which are not in compliance with the collective bargaining agreement shall be amended so as to be consistent with the provisions of the collective bargaining agreement within 15 days from the date on which the collective bargaining agreement comes into effect.

3. Where a party considers that the other party does not perform fully or violates the provisions of the collective bargaining agreement, the former has the right to request the latter to fully comply with the agreement, and both parties must jointly resolve the issue. In case of failure of the parties to resolve the issue, either party has the right to request a resolution of the collective labour dispute in accordance with the law.

Article 85. Duration of enterprise-level collective bargaining agreements

An enterprise-level collective bargaining agreement can have a duration of from 01 year to 03 years. In an enterprise where a collective bargaining

agreement is established for the first time, the duration of this agreement may be less than 01 year.

Article 86. Implementation of collective bargaining agreement in cases of transfer of ownership, management rights, right to use of enterprises, merger, unification, division or separation of enterprises

1. In cases of merger, unification, division or separation of enterprises, or transfer of ownership, right to manage, or right to use of an enterprise, the succeeding employer and the representative of the worker's collective shall, on the basis of the labour utilization plan, consider to agree to the continuous implementation or amendment of the old collective bargaining agreement or to enter into a new collective bargaining agreement.

2. In case the validity of a collective bargaining agreement is terminated because the employer ceases its operation, the rights and interests of the employees shall be dealt with in accordance with the labour law.

Section 5

COLLECTIVE BARGAINING AGREEMENTS AT SECTORAL LEVEL

Article 87. Signing of sectoral collective bargaining agreements

1. The signatories to a collective bargaining agreement at sectoral level are regulated as follow:

a) The representative of the worker's collective shall be the Chairperson of the Sectoral Trade Union.

b) The representatives on the employer's side shall be the representative of the employers' representative organization participating in the sectoral collective bargaining.

2. The collective bargaining agreement shall be made into 04 copies, of which:

a) Each party keeps 01 copy;

b) 01 copy shall be sent to the State agency in accordance with Article 75 of this Code;

c) 01 copy shall be sent to the immediate upper level trade union.

Article 88. Relationship between enterprise-level collective bargaining agreements and sectoral collective bargaining agreements

1. Where the contents of an enterprise-level collective bargaining agreement or other regulations of the employer on the lawful rights, responsibilities and

interests of the enterprise's employees are less favourable than those stipulated in the sectoral collective bargaining agreement, the enterprise-level collective bargaining agreement shall be revised accordingly within 03 months from the date on which the sectoral collective bargaining agreement comes into effect.

2. Enterprises which are subject to the governance of a sectoral collective bargaining agreement but have not established enterprise-level collective bargaining agreements may establish the enterprise-level collective bargaining agreements with more favourable terms and conditions for employees than those stipulated in the sectoral collective bargaining agreement.

3. Enterprises within the sector which have not participated in the sectoral collective bargaining agreement are encouraged to implement the sectoral collective bargaining agreement.

Article 89. Duration of sectoral collective bargaining agreements

A sectoral collective bargaining agreement can have a duration of from 1 to 3 years.

Chapter VI WAGES

Article 90. Wages

1. Wage is a monetary amount which is paid to the employee by the employer to perform the work as agreed by the two parties.

Wage includes remuneration which is based on the work or position, as well as wage allowances and other additional payments.

An employee's wage must not be lower than the minimum wage provided by the Government.

2. The wage shall be paid to the employee based on labour productivity and quality of the work performed.

3. Employers shall ensure that wage is paid equally without gender-based discrimination against employees performing work of equal value.

Article 91. Minimum wages

1. Minimum wage is the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family.

The minimum wage shall be determined on monthly, daily and hourly basis, and by regions and sectors.

2. Based on the minimum living needs of the employee and his/her family, social and economic conditions, and wage levels in the labour market, the Government shall announce the regional minimum wage on the basis of the recommendation of the National Wage Council.

3. Sectoral minimum wages shall be determined through sectoral collective bargaining and stated in the sectoral collective bargaining agreements, but shall not be lower than the regional minimum wage announced by the Government.

Article 92. The National Wage Council

1. The National Wage Council is an advisory body for the Government and is composed of representatives of the Ministry of Labour, Invalids and Social Affairs, Vietnam General Confederation of Labour, and employers' organizations at central level.

2. The Government shall provide detailed regulations on the functions, responsibilities and organizational structure of the National Wage Council.

Article 93. Development of wage scale, wage table and work norms

1. Based on the principles for the development of wage scale, wage table, and work norms that are stipulated by the Government, an employer shall develop the wage scale, wage table, and work norms which are to be used as the basis for the recruitment and employment of workers, and to negotiate the wage in the employment contract, and to pay wages to employees.

2. In developing the wage scale, wage table and work norms, the employer must consult the representative organization of the worker's collective at grassroots level and make this information publicly available at the workplace before implementation, and send the wage scale, wage table and work norms to the state labour management authority at the district level where the employer's office is located.

Article 94. Forms of wage payment

1. Employer has the right to select the form of wage payment by time, by piece rate or by piece work. The selected form of payment must be maintained for a certain period of time. The employer shall give an advance notice to the employees of at least 10 days for any change in the form of wage payment.

2. Wage is paid in cash or into the employee's personal bank account. In case the wage payment is made to a bank account, the employer must negotiate with the employee on any costs related to opening and maintaining the account.

Article 95. Wage payment due time

1. An employee who receives an hourly, daily or weekly wage shall be paid upon the completion of the hour, day or week of work, or paid in a lump sum as agreed by the two parties, but at least once every 15 days.

2. An employee who receives a monthly wage shall be paid once a month or once every fortnight.

3. The employee who receives wage for piece work or at piece rate shall be paid in accordance with the agreement of the two parties; if the work is done over a number of months, the employee is entitled to an advance wage payment every month for the work completed during the month.

Article 96. Principles for wage payment

An employee shall be fully paid on time as agreed and direct manner.

In exceptional cases where a timely payment is not possible, the delay in wage payment must not exceed 01 month and the employer must pay the employee an additional amount of at least equal to the deposit interest rate announced by the State Bank of Vietnam at the time of wage payment.

Article 97. Wages for overtime work and night work

1. An employee who performs overtime work shall be paid a wage calculated based on wage unit for piece work or piece rate, or the wage of his/her current work as follows:

a) On regular days, at least equal to 150%;

b) On the weekly day off, at least equal to 200%;

c) On public holidays and paid leave days, at least 300%, excluding the wage for public holidays and paid leave days if the employee receives a daily wage.

2. An employee who performs night work shall be paid an additional amount of at least 30% of the wage calculated according to the wage unit for piece work or piece rate or the wage for the work on a regular working day.

3. An employee who performs overtime work at night shall be paid according to both Clause 1 and Clause 2 of this Article. Furthermore, he/she shall

be paid an additional amount of 20% of the wage calculated according to the wage unit for piece work or piece rate or the wage for the work on a regular working day.

Article 98. Wage during work suspension

Where the work has to be suspended, the employee is paid as follows:

1. If due to the fault of the employer, the employee shall be paid the full wage;
2. If due to the fault of the employee, the employee shall not be paid; other employees in the same unit who had to suspend their work shall be paid a wage as agreed on by the two parties, which shall not be lower than the regional minimum wage as provided by the Government;
3. If due to the electricity or water supply malfunction which is not due to the fault of the employer or the employee, or in the event of *force majeure* such as natural calamities, fires, dangerous epidemics, wars, relocation of the workplace as requested by the competent State authority, or due to economic reasons, the wage paid during work suspension shall be agreed by the two parties, but shall not be lower than the regional minimum wage as provided by the Government.

Article 99. Wage payment through intermediary

1. Where an intermediary or a person of a similar intermediary role is used, the employer who is the principal owner must maintain a list of the intermediaries with their contact addresses and the list of the employees working with them, and must ensure that the intermediary comply with the law on wage payment and occupational safety and health.

2. In case an intermediary or a person of a similar intermediary role fails to pay or pays insufficient wages to the employees and does not ensure other rights and interests of the employees, the employer who is the principal owner shall be responsible for wage payment and for ensuring the rights and interests of the employees.

In this case, the employer who is the principal owner has the rights to request compensation from the intermediary or the person of a similar intermediary role, or to request the competent authority to resolve the dispute in accordance with the provisions of the law.

Article 100. Wage advances

1. An employee may receive a wage advance in accordance with conditions agreed on by the two parties.

2. An employer must make the advance payment to the employee for the number of days the employee is temporarily absent from work in order to perform citizens' obligations for a period of 01 week or longer, but the advance shall not exceed 01 month wage. The employee must reimburse the wage advance, except for the case where the employee performs military service.

Article 101. Wage deductions

1. An employer shall have the right to deduct from an employee's wage only for the compensation for the damage to the tools and equipment belonging to the employer, in accordance with Article 130 of this Code.

2. The employee has the rights to be informed of the reasons for his/her wage deductions.

3. Any monthly deduction shall not exceed 30% of the net monthly wage of the employee, after the payment of compulsory social insurance, health insurance, unemployment insurance premiums and income tax.

Article 102. Allowances, financial aids, advancement in wage grades and wage increases

Allowances, financial aids, advancement in wage grades, wage increases, and other types of incentives for an employee shall be agreed on in the employment contract or the collective bargaining agreement, or stipulated in the regulations of the employer.

Article 103. Bonuses

1. A bonus is an amount paid by an employer to reward his/her employees on the basis of the annual business results of the enterprise and the level of work performance of the employees.

2. A bonus regulation shall be decided and publicly announced at the workplace by the employer after consultation with the representative organization of the worker's collective at grassroots level.

Chapter VII

WORKING HOURS AND REST PERIODS

Section 1

WORKING HOURS

Article 104. Normal working hours

1. Normal working hours shall not exceed 08 hours per day or 48 hours per week.

2. An employer has the right to determine the working hours on an hourly, daily or weekly basis, provided that the daily working hours shall not exceed 10 hours per day and not exceed 48 hours per week where a weekly basis is applied.

The State encourages employers to implement a 40 hours working week.

3. The working hours shall not exceed 06 hours per day with regard to employees who carry out especially heavy or hazardous work, or who work under exposure to toxic substances as stipulated in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.

Article 105. Working hours at night

Working hours at night are counted from between 22 p.m. on the previous day to 6 a.m. on the following day.

Article 106. Overtime work

1. Overtime work is the duration of work performed at any other time than during regular working hours, as indicated in the law, collective bargaining agreement or internal work regulations of an employer.

2. The employer has the right to request an employee to work overtime when all of the following conditions are met:

a) Obtaining the employee's consent;

b) Ensuring that the number of overtime working hours of the employee does not exceed 50% of the normal working hours in 01 day; in case of applying regulation on weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 day; overtime working hour shall not exceed 30 hours per month and 200 hours in 01 year, except for some special cases as regulated by the Government, the total number of overtime working hours shall not exceed 300 hours in 01 year;

c) After a period of a number of consecutive days of overtime work during one month the employer must arrange for compensatory leave for the duration in which the employee has not taken the leave.

Article 107. Overtime working in special cases

An employer has the right to request any employee to work overtime on any day and the employee must not refuse in the following circumstances:

1. To implement the conscription order for the purpose of national security or national defence in emergency situations of national security and defence in accordance with the law.

2. To implement tasks to protect human life or the assets of agencies, organizations, or individuals in the prevention and recovery of natural calamities, fires, epidemics and disasters.

Section 2 REST PERIODS

Article 108. Rest breaks during working hours

1. An employee who works consecutively for 08 hours or 06 hours under Article 104 of this Code, shall be given an intersessional rest break of at least 30 minutes, which shall be included in the working hours.

2. In the case of night-time work, the employee shall be given an intersessional rest break of at least 45 minutes, which shall be included in the working hours.

3. In addition to the rest break prescribed in Clause 1 and Clause 2 of this Article, an employer shall determine other short breaks, as stipulated in the internal work regulations.

Article 109. Breaks between shifts

An employee who performs shift work is entitled to a break of at least 12 hours before beginning another shift.

Article 110. Weekly breaks

1. Each week an employee is entitled to a break of at least 24 consecutive hours. Where it is impossible for the employee to have a weekly day off due to the nature of the work, the employer has the responsibility to ensure that on average the employee has at least 04 leave days per month.

2. The employer has the right to determine and schedule the weekly breaks either for Sunday or for another specified day of the week, which must be recorded in the internal work regulations.

Article 111. Annual leave

1. Any employee who has been working for an employer for 12 months is entitled to fully-paid annual leave, which is stipulated in his/her employment contract as follows:

a) 12 working days for employees who work in regular working conditions;

b) 14 working days for employees who work in heavy or hazardous working conditions, or who work under exposure to toxic substances; and for employees who work in an area with harsh living conditions, as prescribed in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health; and for minor employees and disabled employees.

c) 16 working days for employees who are subject to extremely heavy or hazardous work or who work under exposure to toxic substances; employees working in an area with extremely harsh living conditions as prescribed in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.

2. The employer has the right to regulate the timetable for annual leaves after consultation with the employees and must give prior notice to the employees.

3. An employee may reach an agreement with the employer on taking annual leave in instalments or combining annual leave over a maximum period of up to 3 years.

4. When taking annual leave, should the employee travel by road, rail, water and the travel days, comprising of the time to go and to return, are more than 02 days, then, from the 3rd day onward will be calculated as additional travelling time, not counted as annual leave days, and this policy shall only be granted once for an annual leave in a year.

Article 112. Increased annual leave in accordance with the duration of employment

The annual leave of an employee as prescribed in Article 111 of this Code shall increase by 01 additional day for every 05 years of employment with the same employer.

Article 113. Advance wage payment, travel expenses for annual leave

1. When taking annual leave, an employee shall receive an advance payment of at least equal to the wage to be paid for the entitled days of leave.

2. Travel expenses and the wage paid for the travel days shall be agreed on by the two parties.

The employer shall pay travel expenses and wage for the travelling days to the employees who are from the lowland areas and work in the mountainous,

remote, border and island areas, or the employees who are from mountainous, remote, border and island areas and work in the lowland areas.

Article 114. Payment in lieu of untaken leave

1. An employee who, due to employment termination, redundancy or other reasons, has not taken or not entirely taken up his/her annual leave shall be paid in compensation for the untaken leave days.

2. An employee with less than 12 months of employment shall be entitled to annual leave in proportion to his/her period of employment. In cases where leave is not taken, the untaken leave days shall be compensated for with cash.

Section 3

PUBLIC HOLIDAYS, PERSONAL LEAVE AND UNPAID LEAVE

Article 115. Public and New Year holidays

1. Employees shall be entitled to fully paid days off on the following public and New Year holidays:

a) Gregorian Calendar New Year Holiday: 01 day (the first day of January of the Gregorian calendar);

b) Lunar New Year Holidays: 05 days;

c) Victory Day: 01 day (the thirtieth day of April of the Gregorian calendar);

d) International Labour Day: 01 day (the first day of May of the Gregorian calendar);

e) National Day: 01 day (the second day of September of the Gregorian calendar).

f) Commemorative Celebration of Vietnam's Forefather - King Hung: 01 day (the tenth day of March of the Lunar calendar)

2. Foreign employees in Vietnam are entitled to 01 traditional public holiday and 01 National Day of their country, in addition to the public holidays stipulated in Clause 1 of this Article.

3. Where the holidays referred to in Clause 1 of this Article coincide with a weekly day off, employees are entitled to take the following days off as compensation.

Article 116. Personal leave, leave without pay

1. An employee is entitled to take a fully paid leave of absence for personal reasons in the following circumstances:

- a) Marriage: 03 days;
- b) Marriage of his/her children: 01 day;
- c) Death of his/her natural father or mother; or death of his or her spouse's father or mother; or death of spouse, son or daughter: 03 days.

2. The employee is entitled to take 01 day off without pay and must inform the employer in the case of the death of his/her paternal grandfather or grandmother, maternal grandfather or grandmother, or natural sister or brother; marriage of father or mother, or natural brother or sister.

3. The employee may negotiate and agree with his/her employer on taking unpaid leave other than the leave stipulated in Clause 1 and Clause 2 of this Article.

Section 4

WORKING HOURS AND REST PERIODS FOR EMPLOYEES WHO PERFORM WORK OF SPECIAL NATURE

Article 117. Working hours and rest periods for employees who perform work of special nature

In case of special work in the areas of road, rail, water or air transportation; oil and gas exploration and exploitation on the sea; offshore work; in the fields of arts; use of radiation and nuclear techniques; application of high-frequency waves; diver's work, work in mines; seasonal production work and processing of goods under a specific order; and work that requires for 24/24 hours on duty, the responsible ministries and agencies shall stipulate the specific hours of work and rest periods after agreement with the Ministry of Labour, Invalids and Social Affairs and these must be in accordance with Article 108 of this Code.

Chapter VIII

LABOUR DISCIPLINARY REGULATIONS AND RESPONSIBILITIES REGARDING EQUIPMENT

Section 1

LABOUR DISCIPLINARY REGULATIONS

Article 118. Labour disciplinary regulations

Labour disciplinary regulations are provisions in the internal work regulations on the compliance in respect of time, technology, production and business management.

Article 119. Internal work regulations

1. An employer with at least 10 employees must have internal work regulations in writing.

2. The contents of internal work regulations shall not be contrary to the labour law or to other relevant legal provisions. The internal work regulations shall include the following key contents:

a) Working hours and rest periods;

b) Order at the workplace;

c) Occupational safety and health at the work place;

d) Protection of the assets and technological and business secrets and intellectual property of the employer;

e) Breaches of labour disciplinary regulations by employees; disciplinary measures against breaches of labour disciplinary regulations and responsibilities regarding equipment.

3. Prior to issuing internal work regulations, the employer must consult with the representative organization of the worker's collective at grassroots level.

4. Employees must be notified of the internal work regulations, and the major contents must be displayed in necessary areas at the workplace.

Article 120. Registration of internal work regulations

1. An employer must register the internal work regulations with the state labour management authority at the provincial level.

2. Within 10 days from the date of issuance of the internal work regulations, the employer must submit a dossier of the internal work regulations for registration.

3. Within 07 working days from the date of receipt of the dossier for registration of the internal work regulations, the provincial labour management authority shall notify elements, if any, in the internal work regulations that are contrary to the law, and guide the employer in making the necessary amendments or supplementation and for re-registration.

Article 121. Dossiers for registration of internal work regulations

A dossier for the registration of internal work regulations shall include:

1. An application for the registration of the internal work regulations;

2. The documents of the employer, which provide for labour disciplinary regulations and responsibilities concerning equipment

3. Minutes of the consultation meeting with the representative organization of the worker's collective at grassroots level.

4. The internal working regulations

Article 122. Validity of internal work regulations

An internal work regulations shall be effective from 15 days after the date the labour management authority at the provincial level receives the dossier of the internal work regulations for registration, except in the cases stipulated in Clause 3 Article 120 of this Code.

Article 123. Principles and procedures for settling violations of labour disciplinary regulations

1. Violations of labour disciplinary regulations shall be settled as follows:

a) The employer must demonstrate the culpability of the employee

b) There must be the participation of the representative organization of the worker's collective at grassroots level;

c) The employee must be physically present and is entitled to self-defence or to have a lawyer or other persons to assist in his/her defence; if the employee is under 18 years of age, his/her father, mother or a legal representative must be present.

d) Any settlement of violations of labour disciplinary regulations must be documented.

2. It is prohibited to impose more than one disciplinary measure for one violation of labour disciplinary regulations.

3. Where an employee simultaneously commits multiple violations of labour disciplinary regulations, he/she shall be subjected to the highest form of disciplinary measure corresponding to the most serious violation.

4. No disciplinary measure shall be taken against an employee for his/her violation of labour disciplinary regulations during the period when:

a) The employee is taking leave on account of illness or convalescence; or on other types of leave with the employer's consent;

b) The employee is being held under temporary custody or detention;

c) The employee is waiting for verification and conclusion of the competent agency for acts of violations, stipulated in Clause 1 Article 126 of this Code.

d) The employee is pregnant, or on maternity leave, or is breast-feeding children under the age of 12 months.

5. No disciplinary measure shall be taken against an employee who commits a violation of labour disciplinary regulations when suffering from mental illness or other diseases, which result in the employee losing self-awareness or the ability to control his/her behaviours.

Article 124. Time-limit for settling violations of labour disciplinary regulations

1. The time-limit for settling violations of labour disciplinary regulations shall be a maximum of 06 months from the date of the occurrence of the violation. The time-limit for dealing with violations of labour disciplinary regulations directly relating to finance, assets and disclosure of technological or business secrets shall be no more than 12 months.

2. Upon the expiry of the period stipulated in Items a, b, c, Clause 4, Article 123, and within the validity of the time-limit for dealing with violations of labour disciplinary regulations, the employer shall immediately apply the disciplinary measure. If the time-limit has expired, it can be extended, but for no more than 60 days from the expiry date as mentioned above.

Upon the expiry of the period stipulated in point d, Clause 4 Article 123, if the time-limit has expired, it can be extended, but for no more than 60 days from the expiry date as mentioned above.

3. The decision on settling violations of the labour disciplinary regulations shall be made within the time-limits stipulated in Clause 1 and Clause 2 of this Article.

Article 125. Forms of settlement of violations of labour disciplinary regulations

1. Reprimand;
2. Deferral of wage increase for no more than 6 months; demotion.
3. Dismissal.

Article 126. Application of dismissal as a disciplinary measure

Dismissal shall be applied by an employer as a means of disciplinary measure in the following circumstances:

1. Where an employee commits an act of theft, embezzlement, gambling, intentionally causing injury, using illicit drug inside the workplace, disclosing technological or business secrets or infringing the intellectual property rights of the employer, or commits acts which are seriously detrimental or posing seriously detrimental threat to the assets or interests of the employer;

2. Where an employee who is subject to the disciplinary measure of deferment of wage increase recidivates while the disciplinary measure is not yet repealed; or where an employee was demoted as a labour discipline and recidivates;

Recidivism means an employee recommitments the same breach of labour disciplinary regulations while the disciplinary measure has not been repealed in accordance with Article 127 of this Code.

3. Where an employee has been absent from work for 05 accumulated days in 01 month or 20 accumulated days in 01 year without a proper reason.

Proper reasons include: natural calamities or fires; the employee or his/her family member suffers from illness with a certification by a competent health care institution; and other reasons as stipulated in the internal work regulations.

Article 127. Repeal of disciplinary measures, reduction of the duration of disciplinary measures

1. Where the employee does not recidivate, the disciplinary measure of reprimand shall be automatically repealed after 3 months; and the disciplinary measure of deferment of wage increase shall be automatically repealed after 6 months since the date on which the disciplinary measure was imposed. Where an employee is demoted as a labour disciplinary measure, and recommitments the breach of labour disciplinary regulations after 3 years since the date of demotion, the act of recommitment shall not be considered as recidivism.

2. Where an employee, who is disciplined by deferment of wage increase, has completed half of the duration of the disciplinary measure, and has demonstrated improvement, the employee can be considered by the employer to have the duration of the disciplinary measure reduced.

Article 128. Prohibited acts when applying labour disciplinary measures

1. Infringing the physical integrity and human dignity of the employee.

2. Applying monetary fines or deducting wage in lieu of a disciplinary measure against the violation of labour disciplinary regulations.

3. Applying a disciplinary measure against an employee for having committed a violation which is not stipulated in the internal work regulations.

Article 129. Temporary work suspension

1. An employer has the right to temporarily suspend an employee from work if the violation is of a complicated nature and where the continued presence of the employee at the workplace is deemed to cause difficulties for the investigation. The temporarily suspension of an employee from work shall only be applied after consultation with the representative organization of the worker's collective at grassroots level.

2. The period of temporary work suspension shall not exceed 15 days, or 90 days in special circumstances. During the period of temporary work suspension, the employee shall be advanced 50 % of the wage to which he/she was entitled prior to the suspension.

Upon the expiry of the period of temporary work suspension, the employer shall reinstate the employee.

3. Where the employee is disciplined, he/she shall not be required to reimburse the wage advanced to him/her.

4. Where the employee is not disciplined, the employer shall pay the full wage for the period of temporary work suspension.

Section 2

RESPONSIBILITIES CONCERNING EQUIPMENT

Article 130. Compensations for damages

1. An employee, who causes damage to tools and equipment or has committed another act which causes damage to the assets of the employer, shall have to pay compensation in accordance with the law.

In case the employee causes damage which is deemed not to be serious due to negligence, and of a value not exceeding 10 months of the regional minimum wage announced by the Government and applied at the employee's workplace, the employee shall have to make a compensation of no more than 03 months of wage, which shall be deducted monthly from his/her wage in accordance with Clause 3 Article 101 of this Code.

2. An employee who loses tools, equipment, or assets of the employer or other assets assigned by the employer to the employee, or uses the materials beyond the permitted norms, shall be liable for compensation for the damage in full or in part at

the market price. Where a contract of responsibility has been signed between the two parties, the amount of compensation shall be in accordance with the contract of responsibility. In case this took place at the time of natural disasters, fires, wars, epidemics, calamities, or *force majeure* circumstances, which are unforeseeable and insurmountable, and all necessary measures and possibilities for avoidance have been taken, the compensation shall not required.

Article 131. Principles and procedures for handling compensation for damages

1. Consideration and decision on the level of compensation for damages shall be based on the nature of the offence, the actual extent of damages, the actual situation of his or her family, personal profile, and the properties of the employee.

2. The procedures, formalities and time limits for handling the compensation shall be in accordance with Article 123 and Article 124 of this Code.

Article 132. Complaints on labour disciplinary regulations and responsibilities concerning equipment

An employee who is disciplined for the violation of labour disciplinary regulations, temporarily suspended from work, or required to pay compensation in accordance with the regulations of responsibilities concerning equipment and is not satisfied with the decision, has the right to appeal to the employer, or to the relevant authorities stipulated in the Law, or to request for the resolution of the labour dispute in accordance with the procedures stipulated by law.

Chapter IX

OCCUPATIONAL SAFETY AND HEALTH

Section 1

GENERAL REGULATIONS ON OCCUPATIONAL SAFETY AND HEALTH

Article 133. Compliance with the law on occupational safety and health

Every enterprise, agency, organization and individual involved in production and labour shall comply with the regulations of the law on occupational safety and health.

Article 134. State policy related to occupational safety and health

1. The State shall invest in scientific research and provide assistance for the establishments that produce tools and equipment that enhance occupational safety and health and personal protective equipment;

2. The State shall encourage the development of occupational safety and health services.

Article 135. Occupational safety and health program

1. The Government shall decide on development of the National Programme on Occupational Safety and Health.

2. Provincial People's Committees shall develop and submit the local occupational safety and health programmes to the People's Councils of the same level for approval and shall include the local occupational safety and health programmes in the local socio-economic development plans.

Article 136. National technical standards on occupational safety and health

1. The Ministry of Labour, Invalids and Social Affairs shall take lead and coordinate with other ministries, agencies and provincial authorities to develop and issue guidance on the implementation of national technical standards on occupational safety and health

2. Based on the national technical standards and norms and local technical standards on occupational safety and health, employers shall develop their internal work regulations and procedures to ensure that occupational safety and health measures are suitable for each type of machinery, equipment and workplace.

Article 137. Ensuring occupational safety and health at the workplace

1. When constructing, expanding or renovating buildings to store machinery, equipment and materials that have strict occupational safety and health requirements, the investors and employers shall develop a plan on occupational safety and health measures at the workplace and for the environment.

2. The production, use, storage and transportation of machinery, equipment, materials, energy, electricity, chemicals, plant preservatives, as well as change of technology, and import of new technology must comply with the national technical standards on occupational safety and health or regulations on occupational safety and health at the workplace which have been announced and applied.

Article 138. Obligations of employers and employees on occupational safety and health

1. Employers shall have the following responsibilities:

a) To ensure that the workplace meets the occupational safety and health requirements pertaining to space, ventilation, dust, steam, toxic gas, radiation, electro-magnetic fields, heat, moisture, noise, vibration and other harmful factors as indicated in relevant technical standards. These factors must be checked and measured on a regular basis.

b) Ensure that the conditions on occupational safety and health for machinery, equipment and workshops meet the requirements of the national technical standards on occupational safety and health or the technical standards on occupational safety and health at the workplace which have been announced and applied.

c) Examine and evaluate hazardous and harmful elements at the workplace in order to propose measures to prevent and minimize dangers and risks, improve working conditions, and occupational health for employees.

d) Examine and maintain machinery, equipment, workshops and warehouses on a regular basis.

e) Have visible and readable instruction signboards at the workplace on occupational safety and health for machinery, equipment and workplaces.

f) Consult the representative organization of the worker's collective at grassroots level when developing the plan and implementing activities to ensure occupational safety and health.

2. Employees shall have the responsibilities to:

a) Comply with regulations and procedures on occupational safety and health which are relevant to the assigned work and tasks;

b) Use and maintain the provided personal protective equipment, tools and other equipment for occupational safety and health at the workplace;

c) Promptly report to the responsible persons any risks that may cause occupational accidents, diseases, toxic or hazardous problems; participate in the provision of first aid in emergency situations and overcome the consequence of occupational accidents under the orders of the employer.

Section 2

OCCUPATIONAL ACCIDENTS AND DISEASES

Article 139. Occupational safety and health officers

1. An employer shall assign officer(s) in charge of occupational safety and health. In production and business undertakings with high risk of occupational

accidents and diseases and employing at least 10 employees, the employer shall assign a qualified full-time professional officer on occupational safety and health.

2. The occupational safety and health officer must be trained in occupational safety and health.

Article 140. Dealing with breakdowns and emergencies

1. In dealing with break-downs and emergencies, the employer shall have the following responsibilities:

a) Develop a contingency plan to deal with the incidents and provide emergency responses and organize periodical trainings and practice;

b) Provide technical and health equipments to ensure timely first aid and responses when there is a break-down or occupational accidents.

c) Immediately take action or give orders to immediately stop the operation of machinery, equipment and the workplace which are at risk of causing occupational accidents and diseases.

2. An employee has the right to refuse to undertake the work or to leave the workplace whilst still receiving full wage payment and not be deemed to be violating labour disciplinary regulations when the employee is clearly aware of the imminent risk of occupational accidents or a serious threat to his/her life or health, and the employee shall immediately report to the direct supervisor. The employer shall not order the employee to resume such work, or return to the workplace if the risk has not been addressed.

Article 141. In-kind allowances for employees working in hazardous and harmful conditions

Employees working in hazardous and harmful conditions are provided with in-kind allowances in accordance with the regulations of the Ministry of Labour, Invalids, and Social Affairs.

Article 142. Occupational accidents

1. Occupational accidents are accidents which cause injury to any parts or functions of the body of the employee or cause death that occur during the performance of work and in connection with performing the assigned work or tasks.

This regulation shall also apply to trainees, apprentices and employees during probationary period.

2. Victims of occupational accidents must be provided with prompt emergency first aid and due treatment.

3. All occupational accidents, diseases and serious break-downs at the workplace must be declared, investigated, documented, included in statistics, and reported on a regular basis in accordance with the Government regulations.

Article 143. Occupational diseases

1. Occupational diseases are illnesses caused by the effect of harmful working conditions on an employee.

The Ministry of Health shall collaborate with the Ministry of Labour, Invalids and Social Affairs to issue a list of occupational diseases after consultation with the Vietnam General Confederation of Labour and the representative organizations of the employers.

2. Any person suffering from occupational diseases shall be given due treatment, periodical medical examinations and have a separate medical record.

Article 144. Employers' responsibilities towards employees who suffer from occupational accidents and diseases

1. An employer shall be responsible to pay part of the costs which are co-paid, and pay the full amount of the costs which are not paid by the health insurance scheme for an employee who is insured by the health insurance scheme. Where an employee is not covered by the health insurance scheme, the employer shall pay all medical expenses incurred, from emergency first aid to the completion of the medical treatment.

2. The employer shall pay full wage as stipulated in the employment contract to the employee suffering from occupational accidents or occupational diseases during the medical leave for the medical treatment.

3. The employer shall pay compensation to the employee who suffers from occupational accidents or occupational diseases in accordance to Article 145 of this Code.

Article 145. Rights of employees who suffer from occupational accidents or diseases

1. An employee who participates in the compulsory social insurance is entitled to the employment injury benefit in accordance with the Social Insurance Law.

2. Where an employee is covered by the compulsory social insurance scheme, but the employer has not paid insurance premiums to the social insurance agency, the employer shall pay an amount equal to the employment injury benefit in accordance with the Social Insurance Law.

The payment shall be made in a lump sum or on monthly basis as agreed by the parties.

3. The employee who suffers from occupational accidents or occupational diseases not due to his/her fault and whose ability to work has been reduced by at least 5% shall be compensated by the employer as follows:

a) At least equal to 1.5 month's wage as stipulated in the employment contract in cases where the employee's ability to work is reduced from 5.0% to 10%; an additional increase of 1.0% shall be compensated by an additional 0.4 month's wage stipulated in the employment contract in cases where the employee's ability to work is reduced from 11% to 80%;

b) At least equal to 30 months' wages as stipulated in the employment contract in case the employee's ability to work has been reduced by at least 81%, or for family members of the employee who have died as a result of occupational accidents.

4. In case of the employee's fault, he/she shall receive an allowance of at least equal to 40% of the amount stipulated in Clause 3 of this Article.

Article 146. Prohibited acts in occupational safety and health

1. Paying money to employees in lieu of in-kind allowances.
2. Concealing or falsely declaring or reporting occupational accidents and diseases.

Section 3

PREVENTION OF OCCUPATIONAL ACCIDENTS AND DISEASES

Article 147. Technical appraisal of machinery, equipment and materials which require strict occupational safety regulations

1. Machinery, equipment and materials which require strict occupational safety regulation must be appraised before they enter into operation and must be appraised on a regular basis when they are in operation by an authorized technical safety appraisal institution.

2. The list of machinery, equipment and materials which are subject to strict occupational safety regulations shall be issued by the Ministry of Labour, Invalids and Social Affairs.

3. The Government shall provide regulations for the operation of the technical safety appraisal institution.

Article 148. Occupational safety and health plans

Annually, when developing business and production plans, employers shall develop a plan and measures on occupational safety and health and for the improvement of working conditions

Article 149. Personal protective equipment at work

1. An employee engaged in hazardous and toxic work shall be adequately provided with personal protective equipment and shall use the provided personal protective equipment at work in accordance with the regulations of the Ministry of Labour, Invalids, and Social Affairs.

2. The personal protective equipment must meet quality standards.

Article 150. Training on occupational safety and health

1. Employers and an occupational safety and health officers shall participate in training courses on occupational safety and health, and will be examined, and granted a certificate by an occupational safety and health training institution.

2. The employer must organize training on occupational safety and health for employees, apprentices and trainees upon recruitment and work assignment; and provide guidance on occupational safety and health regulations for visitors to the workplace under their management.

3. An employee who performs work which require strict occupational safety and health regulations must participate in the training course on occupational safety and health, take the examination and be granted a certificate.

4. The Ministry of Labour, Invalids and Social Affairs shall provide regulations on the criteria for organizing and providing the training services on occupational safety and health, develop a curriculum framework on the occupational safety and health training and the list of work which is subject to strict occupational safety and health requirements.

Article 151. Information on occupational safety and health

An employer must provide adequate information to employees on the situation of occupational accidents and diseases, hazardous and harmful factors at the workplace and measures to ensure occupational safety and health at work.

Article 152. Health care for employees

1. Based on the health requirements of each type of work, an employer shall recruit and arrange work for an employee.

2. Annually, the employer shall be responsible for organizing periodical health check-up for employees, including apprentices and trainees. Female employees are entitled to obstetrics and gynaecology check-ups. With regard to employees who undertake work in heavy and harmful conditions, or employees with disabilities, minor employees or elderly employees, the health check-up shall be implemented at least once every 6 months.

3. Employees undertaking work in environments with a high risk of occupational diseases shall be examined for occupational diseases in accordance with the regulations of the Ministry of Health.

4. Employees who suffer from occupational accidents or occupational diseases shall undergo a medical assessment to determine the level of his/her injury and the degree of reduction in his/her ability to work, and shall receive treatment, recuperation and occupational rehabilitation in accordance with the law.

5. Where an employee continues to work after being injured in an occupational accident or contracting an occupational disease, the employee shall be assigned to a work suitable to his/her health based on the conclusions of the Labour Medical Assessment Council.

6. Employers must keep the health records of the employee and the general records in accordance with the regulations of the Ministry of Health.

7. Employers shall provide decontamination and sterilization measures for employees working in workplaces where there are toxic or contaminative elements after the working hours.

Chapter X

SEPARATE PROVISIONS CONCERNING FEMALE EMPLOYEES

Article 153. State policies on female employees

1. To protect the female employees' right to work on the basis of equality.

2. To encourage employers to create conditions for providing female employees with regular employment, and apply widely the systems of flexible working hours, part-time work, or home-based work.

3. To formulate measures to create employment opportunities, improve working conditions, increase occupational skills, provide healthcare, and strengthen the material and spiritual welfare of female employees in order to

assist them in developing effectively their vocational capacities and harmoniously combine their working lives with their family lives.

4. To formulate policies on tax reductions for employers who employ a large numbers of female employees in accordance with the tax laws.

5. To develop various forms of training to enable female employees to acquire additional occupational skills that are suitable to their physical and physiological characteristic and their motherhood functions.

6. To develop plans and measures to organize day care facilities and kindergartens in areas where a large number of female employees are employed.

Article 154. Obligations of employers toward female employees

1. Employers shall ensure the implementation of gender equality and measures to promote gender equality in recruitment, employment, training, working hours and rest periods, wages and other policies.

2. Employers shall consult with female employees or their representatives when taking decisions which affect the rights and interests of women.

3. Employers shall provide appropriate bathrooms and toilets at the workplace for female employees.

4. Employers shall assist and support in building day care facilities and kindergartens, or in covering a part of the childcare expenses incurred by female employees.

Article 155. Maternity protection for female employees

1. An employer must not require a female employee to work at night, or to work overtime or go on a long distance working trip in the following circumstances:

a) The employee reaches her seventh month of pregnancy; or when working in mountainous, remote, border and island areas, her sixth month of pregnancy;

b) The employee is nursing a child under 12 months of age.

2. A female employee who performs heavy work, on reaching her seventh month of pregnancy, is entitled to be transferred to lighter work or to have her daily working hours reduced by 01 hour while still receiving her full wage.

3. The employer must not dismiss a female employee or unilaterally terminate the employment contract of a female employee due to the employee's

marriage, pregnancy, maternity leave, or her nursing a child under 12 months of age, except when the employer, who is an individual, dies, or is declared by the court as having lost the capacity of civil acts, as missing or dead, or the employer, who is not individual, ceases its business operation.

4. During the time of pregnancy, maternity leave as regulated in the Social Insurance law, or when nursing a child under 12 months of age, labour disciplinary measures shall not be applied to the female employee.

5. During her menstruation period, a female employee shall be entitled to a 30 minute break in every working day; a female employee nursing a child under 12 months of age shall be entitled to 60 minutes breaks in every working day with full wage as stipulated in the employment contract.

Article 156. The rights of female pregnant employees to unilaterally terminate or suspend the employment contract

Where an employee is pregnant and obtains a medical certificate from a competent health care institution, which states that if the employee continues to work, it may adversely affect her pregnancy, the employee shall have the right to unilaterally terminate the employment contract, or to temporarily suspend the employment contract. The period of advance notice that the female employee must give to the employer shall depend on the period prescribed by the competent health care facility.

Article 157. Maternity leave

1. A female employee is entitled to 06 months of prenatal and postnatal leave.

In case of a multiple birth, the leave shall be extended by 01 month for each child, counting from the second child.

Prenatal leave should not be longer than 02 months.

2. During maternity leave, the female employee is entitled to maternity benefits as regulated in the Law on Social Insurance.

3. After the maternity leave as stipulated in Clause 1 of this Article expires, if so demanded, the female employee may be granted an additional leave without pay under terms agreed upon with the employer.

4. The female employee may return to work before the expiry of her statutory maternity leave as stipulated in Clause 1 of this Article, if so demanded and is agreed by the employer, provided that the female employee has taken at

least 04 months of prenatal and postnatal leave and she obtains a medical certificate from a competent health care institution which affirms that the early resumption of work does not adversely affect her health. .

In this case, besides the wage of the working days, paid by the employer, the female employee shall continue to receive the maternity allowance, in accordance with the Social Insurance Law.

Article 158. Employment security for female employees after maternity leave

A female employee shall be guaranteed to be reinstated to her previous work when she returns to work after the maternity leave as prescribed in Clause 1 and Clause 3 of Article 157 of this Code. In case the previous work is no longer available, the employer must arrange other work for the employee with a wage of not lower than the wage she received prior to the maternity leave.

Article 159. Allowances for leave for the care of sick children, pregnancy check-ups, and implementation of contraceptive methods.

When a female employee takes leave from work for pregnancy check-up, miscarriage, abortion, dead foetus in womb, implementation of contraceptive methods, taking care of a sick child who is under 07 years of age or for nursing an adopted child under 06 months of age, the employee is entitled to social insurance allowance in accordance with the law on social insurance.

Article 160. Work for which the employment of female employees is prohibited

1. Work that is harmful to child-bearing and parenting functions, as specified in the list of work issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.
2. Work that require regular immersion in water.
3. Regular underground work in mines.

Chapter XI

**SEPARATE PROVISIONS CONCERNING MINOR EMPLOYEES
AND CERTAIN TYPES OF EMPLOYEES**

Section 1

MINOR EMPLOYEES

Article 161. Minor employees

A Minor employee is an employee under 18 years of age.

Article 162. Employment of minors

1. Employer shall only employ a minor employee in work suitable to the health of the minor employee in order to ensure his/her physical, mental and personality development, and shall have the responsibility to take care of the minor employee in regard to his/her work, wage, health and study in the course of his/her employment.

2. When an employer employs a minor employee, the employer must have a separate record which writes in full of his/her name, date of birth, the work assigned, results of periodical health check-ups, and shall be presented at the request of the competent authority.

Article 163. Principles of employing minor employees

1. The employment of minor employees is prohibited for heavy and hazardous work, and work with exposure to toxic substances or in work and workplaces which create a harmful influence to their dignities, as described in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.

2. The working hours of minor employees from 15 full years of age to fewer than 18 years of age shall not exceed 08 hours in 01 day and 40 hours in 01 week.

The working hours of minor employees less than 15 years of age shall not exceed 04 hours in 01 day and 20 hours in 01 week and employers must not employ these minor employees to undertake overtime work or night work.

3. Minor employees from 15 full years of age to fewer than 18 years of age shall have the right to undertake overtime work or night work only in certain occupations and work as regulated by the Ministry of Labour, Invalids and Social Affairs.

4. The employer must not employ minor persons in the manufacture and trade of alcohol, beer or wine, cigarettes, stimulants or other addictive drugs.

5. The employer shall create opportunities for minor employees and those under 15 years of age to participate in education.

Article 164. Employment of minors under the age of 15 years

1. An employer is only entitled to employ persons from 13 full years of age to fewer than 15 years of age to undertake light work in accordance with the list issued by the Ministry of Labour, Invalids and Social Affairs.

2. When employing a person from 13 full years of age to less than 15 years of age, the employer shall comply with the following regulations:

a) Sign the employment contract in writing with the legal representative of a person from 13 full years of age to under 15 years of age and with his/her agreement;

b) Arrange the working hours so as not to affect the school hours of the minor;

c) Ensure that the working conditions, occupational safety and health are suitable to his/her age;

3. The employment of persons less than 13 years of age is prohibited except for certain specific work as regulated by the Ministry of Labour, Invalids and Social Affairs.

Where employing persons under 13 years of age, the employer must follow the provisions prescribed in Clause 2 of this Article.

Article 165. Prohibited work and workplaces for minor employees

1. An employer must not employ a minor employee to undertake the following work:

a) Carrying and lifting of heavy things which are beyond the physical capacities of the minor employee;

b) Manufacturing, using or transporting chemical substances, gas, or explosive substances;

c) Maintaining equipment or machinery;

d) Demolishing or disassembling construction works;

e) Moulding, founding, welding, fusing, melting or casting metals;

f) Marine diving, offshore fishing;

g) Other types of work which are harmful to the health, safety and dignity of the minor employee.

2. The employment of minor employees is prohibited in the following workplaces:

a) Underwater, underground, in caves, in tunnels;

b) Construction sites;

c) Slaughter houses;

d) Casinos, bars, discotheques, karaoke rooms, hotels, hostels, saunas, massage rooms;

e) Other types of workplaces which are harmful to the health, safety and dignity of the minor employee.

3. The Ministry of Labour- Invalids and Social Affairs shall provide the lists as stipulated in Clause 1.g) and Clause 2.e) of this Article

Section 2 ELDERLY EMPLOYEES

Article 166. Elderly employees

1. An elderly employee is a person who continues working after the age stipulated in Article 187 of this Code.

2. The elderly employee is entitled to reduce their daily working hours or to work on a part-time basis.

3. In the last year of work before retirement, the employee is entitled to reduced regular working hours, or work on a part-time basis.

Article 167. Employment of elderly employees

1. Where the employer has demand, the employer can negotiate with an elderly employee, who has sufficient health conditions, on the extension of the employment contract or the establishment of a new employment contract in accordance with the provisions of Chapter III of this Code.

2. In case a retired employee is employed under a new employment contract, he/she shall be entitled to the rights and interests as agreed in the employment contract, in addition to the rights and benefits to which they are entitled under the old-age scheme.

3. The employer must not employ the elderly employee in heavy or hazardous work or in work with exposure to toxic substances that adversely affect his/her health except in special cases as regulated by the Government.

4. The employer is responsible for taking care of the health of elderly employees at the workplace.

Section 3 VIETNAMESE EMPLOYEES WORKING OVERSEAS, EMPLOYEES OF FOREIGN ORGANIZATIONS AND INDIVIDUALS IN VIETNAM AND FOREIGN EMPLOYEES WORKING IN VIETNAM

Article 168. Vietnamese employees working overseas, employees of foreign organizations and individuals in Vietnam

1. The State shall encourage enterprises, agencies, organizations, and individuals to seek and expand the labour market for Vietnamese employees to work overseas.

Vietnamese employees working abroad must comply with the law of Vietnam and the law of the destination country except where an international convention to which Vietnam is a signatory provides differently.

2. Vietnamese citizens working in foreign enterprises in Vietnam, in industrial zones, economic zones, processing zones, in foreign or international agencies and organization in Vietnam, or working for individuals who are foreign citizens in Vietnam, shall comply with the law of Vietnam, and shall be protected by law.

Article 169. Conditions for foreign employees to work in Vietnam

1. A foreign citizen who enters Vietnam to work shall meet the following conditions:

- a) Has full capacity of civil acts;
- b) Has qualifications, occupational skills and health which are suitable to the work requirements;
- c) Is not a criminal or prosecuted for criminal liability in accordance with the law of Vietnam and foreign laws;
- d) Obtains a work permit granted by the competent authority of Vietnam, except in the cases stipulated in Article 172 of this Code.

2. Foreign employees working in Vietnam shall comply with the labour law of Vietnam, international conventions and treaties, to which Vietnam is a signatory and provide differently. Foreign workers in Vietnam shall be protected by Vietnamese law.

Article 170. Conditions for employment of foreign citizens

1. Domestic enterprises, agencies, organizations, individuals and contractors shall be entitled to employing foreign citizens only in the positions of managers, executive directors, specialists and technical workers, in which Vietnamese workers cannot meet the demands of production and trade.

2. Foreign enterprises, agencies, organizations, individuals and contractors before employing foreign citizens to work in the territory of Vietnam are required to provide an explanation of their demand to employ foreign workers and to obtain a written approval from the competent state authority.

Article 171. Work permits for foreign employees working in Vietnam

1. A foreign employee shall present his/her work permit when undertaking immigration procedures and when required by a competent state authority.
2. Any foreign employee working in Vietnam without a work permit shall be deported from Vietnam's territory as regulated by the Government.
3. An employer who hires a foreign employee without a work permit shall be sanctioned as regulated by the law.

Article 172. Work permit exemption for foreign citizens working in Vietnam

1. A foreign citizen who is a capital contributing member or owner of a limited liability company.
2. A foreign citizen who is the member of the Board of Directors of a joint stock company;
3. A foreign citizen who is the head of a representative office or a Project director of international organizations or of non-governmental organizations in Vietnam.
4. A foreign citizen who enters Vietnam for duration of less than 03 months to undertake marketing for a service.
5. A foreign citizen who enters Vietnam for a duration of less than 03 months to resolve complicated technical or technological problems which pose risks of affecting production and business activities, and which cannot be resolved by Vietnamese experts and foreign experts currently in Vietnam.
6. A foreign lawyer who is granted with a professional certificate in Vietnam in accordance with the Law on Lawyer.
7. In accordance with international conventions and treaties of which the Socialist Republic of Vietnam is a signatory.
8. Foreign students who are studying and working in Vietnam, but the employer must notify the labour management authority at provincial level 07 days in advance.
9. Other circumstances as regulated by the Government

Article 173. Validity period of work permit

The validity period of a work permit shall be no longer than 02 years.

Article 174. Cases in which the validity of the work permit is nullified

1. The work permit expires.

2. The employment contract is terminated.

3. The contents of an employment contract are inconsistent with the contents of the work permit that is granted.

4. The contract in the field of economics, trade, finance, banking, insurance, science and technology, culture, sports, education or medicine expires or is terminated.

5. There is a notice in writing by the foreign partner which terminates the employment of the foreign citizens in Vietnam.

6. The work permit is revoked.

7. The Vietnamese enterprise, organization, or partner, or foreign non-governmental organization in Vietnam ceases its operation.

8. The foreign employee is sentenced to imprisonment, dies or is declared dead or missing by the Court.

Article 175. Granting, re-granting, and revoking work permits

The Government shall specify the conditions for granting, re-granting, and revoking of work permits for foreign citizens working in Vietnam.

Section 4

WORKERS WITH DISABILITIES

Article 176. State policies for workers with disabilities

1. The State shall protect the rights to work and to self-employment of workers with disabilities, adopt policies to encourage and provide incentives for employers to create work for and to employ workers with disabilities in accordance with the Law on People with Disabilities.

2. The Government shall provide policies on preferential loans from the National Employment Fund for employers who employ workers with disabilities.

Article 177. Employment of workers with disabilities

1. Employers shall provide reasonable accommodation with respect to working conditions, working tools, and occupational safety and health measures, which are suitable for workers with disabilities and shall take care of their health on a regular basis.

2. Employers must consult with workers with disabilities before deciding on matters of relevance to the rights and interests of the workers with disabilities.

Article 178. Prohibited acts in employment of workers with disabilities

1. It is prohibited to employ workers with disabilities with at least a 51% reduction in their ability to work to perform overtime work and night work.

2. It is prohibited to employ a worker with disabilities to perform heavy or hazardous work, or work with exposure to toxic substances as stipulated in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.

Section 5

DOMESTIC WORKERS

Article 179. Domestic workers

1. A domestic worker is a worker who regularly carries out domestic work for one or more than one households.

Domestic work includes cooking, housekeeping, babysitting, nursing, caring for elders, driving, gardening, and other work for a household which is not related to commercial activities.

2. This Code does not apply to persons who perform domestic work in the form of piecework.

Article 180. Employment contracts for domestic workers

1. An employer shall enter into a written employment contract with a domestic worker.

2. The duration of the employment contract for the domestic worker is negotiated by both parties. Either party has the right to terminate the employment contract at any time provided that an advance notice of 15 days is given.

3. The employment contract must be agreed on by both parties and clearly specify the form of wage payment and the terms of payment, daily working hours and accommodation.

Article 181. Obligations of employers

1. Fully implement the agreement as indicated in the employment contract.

2. Pay the domestic worker an amount of his/her social insurance and health insurance premiums in accordance with the law, for the domestic worker to manage insurance by themselves.

3. Respect the honour and dignity of the domestic worker.

4. Provide clean and hygienic accommodation and dining place for the domestic worker, where there is such an agreement.

5. Create opportunities for the domestic worker to participate in educational and occupational training.

6. Cover the cost of the travel expenses for the domestic worker to return to their place of residence at the end of his/her service, except in cases where the domestic worker terminates the employment contract before its expiry date.

Article 182. Obligations of domestic workers

1. Fully implement the agreement signed by both parties in the employment contract.

2. Pay compensation in accordance with the agreement or in accordance with the law in cases of loss of or damage to the employer's assets and property.

3. Promptly notify the employer about risks and dangers of accident, health, life and property of the employer's family and his/her self.

4. Report to the competent authority if the employer commits acts of mistreating, sexual harassment, and extracting forced labour or other acts against the law.

Article 183. Prohibited acts of employers

1. Mistreating, sexually harassing, extracting forced labour, and using force or violence against the domestic worker.

2. Assigning work to the domestic worker which is inconsistent with the employment contract.

3. Keeping personal papers of the domestic worker.

Section 6

OTHER TYPES OF WORKERS

Article 184. Workers in the fields of arts and sports

Appropriate regulations relating to the vocational training age, employment contract, working hours and rest periods, wage, allowance, bonus, occupational safety and health as stipulated by the Government shall be applied to persons who work in the fields of arts and sports.

Article 185. Employees performing work at home

1. An employee may negotiate with an employer to perform regular work at home.

2. The employee who performs home- based work in the form of processing is not under the scope of application of this Code.

Chapter XII

SOCIAL INSURANCE

Article 186. Participation in social insurance and health insurance schemes

1. Employers and employees shall participate in compulsory social insurance, compulsory health insurance and unemployment insurance schemes, and enjoy the benefits in accordance with provisions of the law on social Insurance and health insurance.

The employer and the employee are encouraged to implement other supplementary social insurance schemes for employees.

2. The employer shall not be required to pay wage for an employee when the employee is on leave and receiving a social insurance benefit.

3. Where the employee who is not covered by compulsory social insurance, compulsory health insurance or unemployment insurance schemes in addition to the wage payment in accordance with the employee's work, the employer is responsible for paying, at the same time, an amount which is equivalent to the contribution rate of compulsory social insurance, compulsory health insurance, unemployment insurance schemes, and annual leave payment in accordance with the regulations.

Article 187. Age of retirement

1. Workers, who meet the condition of qualified period, as prescribed by the law on social insurance, shall receive an old-age pension at the age of 60 for men and 55 for women.

2. Workers whose ability to work has been reduced; or who undertake heavy, hazardous or harmful work; or work in mountainous areas, remote areas, border areas or island areas, as regulated in the List of the Government, can retire at a younger age than the age stipulated in Clause 1 of this Article.

3. Workers who obtain high technical qualifications or who hold management positions or those in other special circumstances can retire at a higher age, but shall not be 5 years higher than the age as stipulated in Clause 1 of this Article.

4. The Government shall provide detailed regulations for Clause 2 and Clause 3 of this Article.

Chapter XIII

TRADE UNIONS

Article 188. Roles of trade unions in labour relations

1. The trade union at grassroots level serves to represent and protect the lawful and legitimate rights and interests of trade union members and workers; participate in negotiating, signing, and monitoring the implementation of collective bargaining agreements, wage scales and wage tables, work norms, wage payment regulations and bonus regulations, internal work regulations and regulations on democracy at the workplaces, agencies or organizations; participate in resolving labour disputes; conduct social dialogue and cooperation with employers to build harmonious, stable and progressive labour relations in the enterprise, agency or organization.

2. The immediate upper level trade union shall be responsible to assist the trade union at grassroots level to perform its functions and tasks in accordance with Clause 1 of this Article; and to advocate, educate and improve the workers' understanding of labour law and trade union law.

3. In workplaces where the grassroots trade union has not been established, the immediate upper level trade union shall perform the tasks as stipulated in Clause 1 of this Article.

4. Trade unions at different levels shall work with the State management authority at the same level and with the employers' representative organization to discuss and solve matters related to labour affairs.

Article 189. Establishment, participation and operation of trade unions in enterprises, agencies, and organizations

1. Employees in enterprises, agencies, and organizations shall have the rights to establish, join, and participate in trade union activities in accordance with the Trade Union Law.

2. Upper level trade unions shall have the right and responsibility to mobilize workers to join the trade union and to establish grassroots level trade unions in the enterprises, agencies or organizations at which they work; the upper level trade union has the right to request the employer and the labour

management authority in the locality to create favourable conditions for, and to support the formation of, a grassroots level trade union.

3. When a grassroots level trade union is formed in accordance with the Trade Union Law, the employer shall recognize and create favourable conditions for the operation of the grassroots level trade union.

Article 190. Prohibited acts for employers related to the formation, joining and operation of trade union

1. Obstruct or create difficulties for workers to form, join or operate a trade union.

2. Coerce workers to form, join or operate a trade union.

3. Require workers not to join or to withdraw from a trade union.

4. Discriminate against a worker with regard to wages, hours of work and other rights and obligations in labour relations, to obstruct the workers to form, join trade unions or participate in trade union activities.

Article 191. Rights of grassroots level trade union officers in labour relations

1. Meet with employers to discuss and negotiate on employment and labour issues.

2. Visit workplaces to meet workers within their mandates of representation.

3. In workplaces where the grassroots trade union has not been established, the immediate upper level trade union officers are granted the rights as stipulated in this Article.

Article 192. Responsibilities of employers to trade unions

1. Create favourable conditions for workers to form, join trade unions or to participate in trade union activities.

2. Collaborate and create favourable conditions for upper level trade unions to advocate, develop trade union membership, form grassroots level trade unions, and arrange full-time trade union officers to work at the enterprise, agency or organization.

3. Guarantee conditions allowing for the operation of grassroots level trade unions as stipulated in Article 193 of this Code.

4. Cooperate with grassroots level trade unions to develop and implement regulations on democracy, regulations on cooperation which are suitable to the functions and tasks of each side.

5. Consult with Executive Committees of grassroots level trade unions before issuing regulations related to the rights, obligations, and policies for workers.

6. Where the employment contract of a worker, who is a part-time trade union officer, expires during the tenure, his/her employment contract shall be extended until the end of the trade union tenure.

7. Where a worker is a part-time trade union officer, the employer shall have to obtain an agreement in writing with the Executive Committee of the grassroots level trade union or the Executive Committee of the immediate upper level trade union in order to unilaterally terminate his/her employment contract, transfer him/her to another work, or dismiss him/her as a labour disciplinary measure.

In case the two parties cannot reach an agreement, they shall report to the competent agency or organization. After 30 days from the date of giving notice to the labour management authority in the locality, the employer has the right to make the decision and must be responsible for that decision.

In case of disagreement with the employer's decision, the Executive Committee of the grassroots level union and the worker have the right to request for labour dispute settlement in accordance with the procedures prescribed by law.

Article 193. Guaranteeing conditions for trade union operation in enterprises, agencies, and organizations

1. Employers shall provide a working station and information for grassroots level trade union and shall guarantee necessary conditions for the operation of the grassroots level trade union.

2. A part-time trade union officer shall be entitled to use his or her working hours to undertake trade union activities in accordance with the Trade Union Law and is remunerated by the employer.

3. A full time trade union officer in an enterprise, agency or organization shall be remunerated by the trade union and shall be provided by the employer with the welfare like other workers in the enterprise, agency or organization in accordance with the collective bargaining agreement or with the employer's internal working regulations.

Chapter XIV

RESOLUTION OF LABOUR DISPUTES

Section 1

GENERAL PROVISIONS FOR THE RESOLUTION OF LABOUR DISPUTES

Article 194. Principles for the resolution of labour disputes

1. Respect and guarantee the negotiation and determination between the disputing parties in the resolution of labour disputes.

2. Ensure the application of mediation and arbitration on the basis of respect for the rights and interests of the two disputing parties, and respect for the public interest of the society and in conformity with the law.

3. The labour dispute shall be resolved publicly, transparently, objectively, promptly, and lawfully.

4. Ensure the participation of the representative of each party in the dispute resolution process.

5. The resolution of labour disputes shall be initially implemented through direct negotiation by the two parties to harmoniously resolve the interests of the two disputing parties in order to maintain the stability of the production, business, and guarantee the public order and security.

6. The resolution of the labour disputes shall be carried out by a competent agency, organization or individual when one of the two parties submits a request due to the fact that one of the two parties refuses to negotiate, or does not negotiate successfully, or negotiates successfully but reneges on the agreement.

Article 195. Responsibilities of agencies, organizations and individuals for resolving labour disputes

1. The labour management authority shall co-ordinate with the trade union and employers' organization to guide and assist to the parties during labour dispute resolution.

2. The Ministry of Labour, Invalids and Social Affairs shall organize training to improve the professional capacity of labour mediators and arbitrators for labour dispute resolution.

3. The competent state authority must actively and promptly resolve right-based collective disputes.

Article 196. Rights and obligations of the two parties in labour dispute resolution

1. During the labour dispute resolution process, the two disputing parties have the rights to:

- a) Participate directly or through a representative in the labour dispute resolution process;
- b) Withdraw the petition or change the contents of the request;
- c) Request for a change of the person assigned to resolves the labour dispute where there is reason to believe that the said person may not be impartial or objective in dealing with the case.

2. During the labour dispute settlement process, the two parties have the responsibilities to:

- a) Promptly and adequately provide documents and evidence to support his/her request;
- b) Abide by the agreement, judgment, or decision which has come into effect.

Article 197. Rights of agencies, organizations and individuals who are competent in labour dispute resolution

The agencies, organizations or individuals who are competent in resolving labour disputes shall, within their mandates, have the rights to request the disputing parties, relevant agencies, organizations or individuals to provide documents and evidence; request verification; and invite witnesses and other relevant persons.

Article 198. Labour Mediators

1. Labour Mediators are assigned by the labour management authority of a district, urban district, town and provincial city to mediate labour disputes and disputes regarding vocational training contracts.

2. The Government shall specify the criteria and competence for the appointment of Labour Mediators.

Article 199. Labour Arbitration Councils

1. The Chairperson of People's Committees at provincial level shall decide on the establishment of a Labour Arbitration Council, consisting of a Chairperson who is the head of the labour management authority, a secretary, and

members who are representatives of trade unions at provincial level or of employers' representative organizations. The number of members of a Provincial Arbitration Council must be an odd number and shall not exceed 07 members.

When necessary, the Chairperson of the Labour Arbitration Council may invite representatives of relevant agencies organizations, or experienced experts in labour relations in the locality.

2. The Provincial Arbitration Council mediates the following collective labour disputes:

a) Interest-based collective labour disputes;

b) Collective labour dispute occurring in the undertakings where strikes are prohibited as stipulated by the Government.

3. The Provincial Arbitration Council shall make their decision through majority rule by secret ballot.

4. The Provincial People's Committee shall provide the necessary working conditions for the operation of the Provincial Arbitration Council.

Section 2

COMPETENCE AND PROCEDURES FOR THE RESOLUTION OF INDIVIDUAL LABOUR DISPUTES

Article 200. Agencies and individuals who are competent in the resolution of individual labour disputes

1. The Labour Mediator;

2. The People's Court.

Article 201. Procedures for the resolution of individual labour disputes by Labour Mediators

1. Individual labour disputes shall be resolved through mediation undertaken by a Labour Mediator before being brought to the Court, except for the following labour disputes, for which mediation is not mandatory:

a) Disputes over disciplinary measure in the form of dismissal or disputes over a unilateral termination of the employment contract;

b) Disputes over compensation for damages or allowances upon termination of the employment contract;

c) Disputes between a domestic worker and his/her employer;

d) Disputes over social insurance in accordance with the laws on social insurance and disputes over health insurance in accordance with the laws on health insurance;

e) Disputes over compensation for damages between the worker and an enterprise or a civil service agency engaged in sending Vietnamese workers to work overseas under contracts.

2. Within 05 working days from the date on which the application for mediation is received, the labour mediator shall complete the mediation process.

3. Both disputing parties must be present at the mediation meeting. The disputing parties may authorize another person to attend the mediation meeting.

The labour mediator shall help the parties to negotiate with each other. In case the two parties reach an agreement, the labour mediator shall prepare a written record of successful mediation.

In case the two parties do not reach an agreement, the labour mediator shall recommend a mediation option for the two disputing parties to consider. In case the two parties agree on the recommended mediation option, the labour mediator shall prepare a written record of successful mediation.

Where the two parties do not agree with the recommended mediation option or where one of the disputing parties is absent for the second time without a valid reason after having been legitimately summoned, the labour mediator shall prepare a record of unsuccessful mediation, which shall bear the signatures of the party present and the labour mediator.

Copies of the record of successful mediation or unsuccessful mediation shall be sent to the two disputing parties within 01 working day from the date on which the record is prepared.

4. In case of unsuccessful mediation, or when either party does not follow the agreement in accordance with the record of successful mediation, or when the statutory duration of the mediation is expired as stipulated in Clause 2 of this Article but the labour mediator does not conduct the mediation, each disputing party has the right to request the Court to settle the dispute.

Article 202. Time-limits for requesting the resolution of individual labour disputes

1. The time-limit to request a labour mediator to resolve an individual labour dispute is 06 months from the date on which the act, which a party claims has caused the infringement of the lawful rights or interests, is detected.

2. The time-limit to bring an individual labour dispute to the Court is 01 year from the date of detection of the act, which a party claims that their lawful rights or interests are infringed upon.

Section 3

COMPETENCE AND PROCEDURES FOR THE RESOLUTION OF COLLECTIVE LABOUR DISPUTES

Article 203. Agencies, organizations and individuals who are competent to resolve collective labour disputes

1. Agencies, organizations and individuals who are competent in resolving right-based collective labour disputes include:

a) The Labour Mediator;

b) The Chairpersons of the People's Committee at district, town and provincial city levels (herein referred to as Chairperson of the People's Committee at district level);

c) The People's Court.

2. Agencies, organizations and individuals who are competent in resolving interest-based collective labour disputes include:

a) The Labour Mediator;

b) The Labour Arbitration Council.

Article 204. Procedures for the resolution of collective labour disputes at grassroots level

1. Procedures for the mediation of collective labour disputes shall be implemented in accordance with Article 201 of this Code. The record of mediation must clearly indicate the form of the collective dispute.

2. In case of unsuccessful mediation or when either party does not follow the agreement as stipulated in the record of successful mediation, the following regulations shall be applied:

a) With regard to right-based collective labour disputes, any disputing party has the right to request the Chairperson of the People's Committee at district level to settle the dispute;

b) With regard to interest-based collective labour disputes, any disputing party has the right to request the Labour Arbitration Council to settle the dispute.

3. In case the Labour Mediator fails to mediate within the duration as stipulated in Clause 2, Article 201 of this Code, any disputing party has the right to submit a request to the Chairperson of People's Committee at district level to settle the dispute. Within 02 working days from the receipt of the request to settle a collective labour dispute, the Chairperson of the People's Committee shall identify whether the dispute is a rights based or an interest based dispute.

In case the dispute is a right based collective labour dispute, the dispute resolution will follow the procedures as stated in Clause 2.a of this Article and Article 205 of this Code;

In case the dispute is an interest - based collective labour dispute, the disputing parties shall be immediately instructed to resolve the dispute in accordance with Clause 2.b of this Article.

Article 205. Resolution of right-based collective labour disputes by Chairpersons of the People's Committees

1. Within 05 working days from the date on which the application for right-based collective labour dispute resolution is received, the Chairperson of the People's Committee shall conduct the labour dispute resolution.

2. The labour dispute resolution meeting shall be conducted with the participation of the representatives of both disputing parties. Where necessary, the Chairperson of the People's Committee at district level may invite representatives of other relevant agencies and organizations to participate in the meeting.

The Chairperson of the People's Committee at district level shall refer to the labour laws, collective bargaining agreements, registered internal work regulations, and other legitimate regulations and agreements when considering and resolving the labour dispute.

3. In case the parties disagree with the decision of the Chairperson of People's Committee at district level or the Chairperson of People's Committee fails to resolve the dispute within the statutory duration, the disputing parties have the right to request for the settlement of the dispute by the People's Court.

Article 206. Resolution of interest-based collective labour disputes by Labour Arbitration Councils

1. The Labour Arbitration Council shall complete the mediation process within 07 working days from the date on which the application for interest-based collective labour dispute resolution is received.

2. The meeting of the Labour Arbitration Council shall be conducted with the participation of the representatives of both disputing parties. Where necessary, the Labour Arbitration Council may invite representatives of relevant agencies or organizations and individuals to participate in the meeting.

The Labour Arbitration Council shall support both parties to negotiate with each other. Where the two parties fail to negotiate, the Labour Arbitration Council shall recommend a possible solution to both disputing parties for consideration.

If the two parties reach an agreement as a result of negotiation between themselves or the two parties agree with the recommended solution, the Labour Arbitration Council shall prepare a record of successful mediation, and make a decision to recognize the agreement of the two parties.

In case the two parties fail to reach an agreement or one of the disputing parties is absent for the second time without a valid reason after having been legitimately summoned, the Labour Arbitration shall make a record of unsuccessful mediation.

The record of mediation shall bear the signatures of the parties who are present, as well as those of the Chairperson and the secretary of the Labour Arbitration Council.

Copies of the record of successful or unsuccessful mediation shall be sent to both disputing parties within 01 working day from the date on which the record is prepared.

3. After 05 days from the date on which the Labour Arbitration Council makes the record of successful mediation, if either party does not follow the agreement, the worker's collective shall have the right to initiate the procedures to go on strike.

In case the Labour Arbitration Council makes a record of unsuccessful mediation, after 03 days the worker's collective shall have the right to initiate the procedures to go on strike.

Article 207. Time-limits for requesting resolution in right-based collective labour disputes

The time-limit to request for the resolution of a right -based collective labour dispute is 01 year from the date of detection of the act, which a party claims has infringed their lawful rights or interests.

Article 208. Prohibition of unilateral acts during the resolution process of a collective labour dispute

None of the disputing parties shall take unilateral actions against the other party while the collective labour dispute is being resolved by a competent agency, organization or individual within the time limit as prescribed by this Code.

**Section 4
STRIKES AND STRIKE RESOLUTION**

Article 209. Strikes

1. A strike is a temporary, voluntary and organized stoppage of work by the worker's collective in order to achieve the demands in the process of the labour dispute resolution.

2. The strike shall only be carried out in regard to interest-based collective labour disputes and after the statutory period as stipulated in Clause 3 of Article 206 of this Code expires.

Article 210. Organizing and leading strikes

1. In unionized undertakings, strikes must be organized and led by the Executive Committee of the grassroots level trade union.

2. In undertakings where the grassroots level trade union has not been established, strikes shall be organized and led by the upper-level trade union upon the request of the employees.

Article 211. Procedures for going on strike

1. Solicit the opinion of the worker's collective.
2. Issue a decision to go on strike
3. Go on strike

Article 212. Procedures for soliciting opinion of the worker's collective

1. In unionized worker's collective, opinion of the members of the Executive Committee of the grassroots level trade union and the heads of production units shall be solicited. In undertakings where the grassroots level trade union has not been established, the opinion of the heads of production units or employees shall be solicited.

2. The solicitation of opinion can be implemented by ballot or by signature.

3. Issues to solicit opinion on for the purpose of going on strike include:

a) The option suggested by the executive committee of the trade union on issues prescribed in items b), c) and d) of Clause 2, Article 213 of this Code

b) Whether the workers agree or do not agree to go on strike

4. The time and method of opinion solicitation for going on strike shall be determined by the Executive Committee of the trade union, and shall be notified to the employer at least 01 day in advance.

Article 213. Notice of the starting time of a strike

1. When over 50% of the persons whose opinion have been solicited agree with the option suggested by the Executive Committee of trade union, the Executive Committee of the trade union shall issue a written decision to go on strike.

2. The decision to go on strike must include the following issues:

a) The result of the opinion solicitation to go on strike

b) The starting time and the venue for the strike;

c) The scope of the strike;

d) The demands of the worker's collective;

e) Full name and address of the representative of the Executive Committee of the trade union.

3. At least 05 working days prior to the starting date of the strike, the Executive Committee of the trade union shall send the decision to go on strike to the employer; and simultaneously submit 01 copy to the provincial labour management authority, and 01 copy to the provincial Federation of Labour.

4. At the starting time of the strike, if the employer does not accept the demands of the worker's collective, the Executive Committee of the trade union shall organize and lead the strike.

Article 214. Rights of parties prior to and during a strike

1. The parties have the rights to continue negotiations to resolve the collective labour dispute or to jointly request for mediation to be undertaken by the labour management authority, the trade union organization, and the employers' representative organization at provincial level.

2. The Executive Committee of the trade union has the rights to:

a) Withdraw the decision to go on strike if the strike has not taken place or to end the strike if it is taking place;

b) Request the Court to declare the strike as lawful.

3. The employer has the rights to:

a) Accept the entire demands or part of the demands, and inform in writing the Executive Committee of the grassroots-level trade union which organizes and leads the strike;

b) Temporarily close the workplace during the strike due to the lack of necessary conditions to maintain the normal operations or to protect the employer's assets.

c) Request the Court to declare the strike as illegal;

Article 215. Cases where strikes are illegal

1. The strike does not arise from an interest-based collective labour dispute.

2. The strike is organized for employees who are not working for the same employer.

3. The strike occurs whilst the collective labour dispute is being resolved or has not been resolved by the competent agencies, organizations or individuals in accordance with this Code.

4. The strike occurs in an enterprise in the list of enterprises provided by the Government in which strike is prohibited;

5. The strike occurs when the decision to postpone or cancel the strike has been issued.

Article 216. Notice of the decision on temporary closure the workplace

At least 03 working days before the date of temporary closure of the workplace, the employer shall publicly post the decision on the temporary closure of the workplace, at the workplace, and shall notify the following agencies and organizations:

1. The Executive Committee of trade union which organizes and leads the strike

2. The Provincial trade union organization;

3. The employers' representative organization;

4. The labour management authority at provincial level.

5. The People's Committee at district level where the enterprise headquarters is located.

Article 217. Cases in which the temporary closure of the workplace is prohibited

1. 12 hours prior to the starting time of the strike as stated in the decision to go on strike.

2. After the worker's collective has stopped the strike

Article 218. Wages and other lawful rights of employees during strikes

1. Employees who do not take part in the strike but are forced to stop working due to the strike are entitled to work suspension allowance in accordance with Clause 2, Article 98 of this Code, as well as to other benefits as stipulated in the labour laws.

2. Employees who take part in the strike shall not be paid with wages or other benefits as stipulated by law, unless agreed otherwise by both parties.

Article 219. Prohibited acts before, during and after a strike

1. Obstructing employees in exercising their right to go on strike; inciting, inducing or forcing employees to go on strike; and preventing workers who do not take part in the strike from working.

2. Using violence; sabotaging machines, equipment or assets of the employer.

3. Violating public order and security.

4. Terminating employment contracts, imposing labour disciplinary measure on employees or strike leaders, or transferring employees and strike leaders to other work or other workplace on the ground of their preparation for or involvement in the strike.

5. Retaliating, inflicting punishment against employees who take part in strike or against strike leaders.

6. Taking advantage of the strike to commit illegal acts.

Article 220. Cases where strikes are prohibited

1. Strikes are prohibited in undertakings which are essential for the national economy and in which strikes may threaten the national security, defence, public health and public order. The list of such undertakings shall be provided by the Government.

2. The State management authority shall periodically organize sessions to receive the opinions of the worker's collective and of the employers in order to promptly support and resolve legitimate demands of the worker's collective.

Article 221. Decisions on postponing or cancelling strikes

When deemed that a strike presents a risk of serious damage to the national economy or public interest, the Chairperson of the People's Committee at provincial level shall decide to postpone or cancel the strike and assign the competent authority and organization to deal with the strike.

The Government shall provide regulations on postponing or cancelling the strike and addressing the rights and interests of the worker's collective.

Article 222. Resolution of strikes which do not follow the statutory procedures

1. The Chairperson of the People's Committee at provincial level shall issue a decision declaring a strike as violating the statutory procedures and immediately notify the Chairperson of the People's Committee at district level when the organization and leadership of the strike is inconsistent with the provisions as stipulated in the Article 212 and 213 of this Code.

2. Within 12 hours from the receipt of the notification of the Chairperson of the People's Committee at provincial level, the Chairperson of the People's Committee at district level shall collaborate with the labour management authority, trade unions at the same level and other relevant agencies and organizations to directly meet with the employer and the Executive Committee of the grassroots level trade union or upper-level trade union in order to consult and support the parties in finding a resolution to the case and in resuming the normal operation of the enterprise.

Section 5

CONSIDERATION OF THE LAWFULLNESS OF STRIKES BY THE COURT

Article 223. Request to the Court to consider the lawfulness of strikes

1. During the strike or within 03 months from the date on which a strike has ended, either party has the rights to submit a petition to the Court to consider the lawfulness of the strike.

2. The petition must include the following key issues:

- a) The date, month, year of the petition;
- b) The name of the Court receiving the petition;
- c) The name and address of the petitioner;

- d) The name and address of the organization which leads the strike;
- e) The name and address of the employer where the strike takes place;
- f) Issues of request the Court to resolve;
- g) Other information that the petitioner deems necessary for the resolution of the issues.

3. The petitioner must attach with the petition copies of the decision to go on strike, the mediation record or decision of the agency and organization which are competent to resolve the collective labour dispute, as well as evidence and documents relating to the reviewing of the lawfulness of the strike.

Article 224. Procedures for the submission of petitions to the Court and the consideration of the lawfulness of strikes

Procedures for the submission and receipt of the petitions and the burden of proof for the Court to –consider and decide on the lawfulness of strikes are in accordance with the procedures for the submission and receipt of petitions, the burden of proof at the Court, which are regulated in the Civil Procedures Code.

Article 225. Jurisdiction over the lawfulness of strikes

1. The provincial People’s Court in the location where a strike takes place has jurisdiction to consider the lawfulness of a strike.

2. The Supreme People’s Court has jurisdiction to resolve complaints regarding decisions on the lawfulness of a strike.

Article 226. Composition of the Council who consider the lawfulness of strikes

1. The Council who considers the lawfulness of a strike shall be comprised of 3 Judges.

2. The Council who resolves complaints on the decision on the lawfulness of the strike shall be comprised of 3 Judges designated by the President of the Supreme People’s Court.

3. Any change to the Judges who are members of the Council to consider the lawfulness of a strike shall be made in accordance with the Civil Procedures Code.

Article 227. Procedures for processing petitions to consider the lawfulness of strikes

1. Immediately after receiving a petition to consider the lawfulness of a strike, the President of the provincial People’s Court shall decide to form a

Council to consider the lawfulness of the strike and assign a Judge to preside over the resolution of the petition.

2. Within 05 working days from the date on which the petition is received, the Judge who is assigned to preside over the resolution of the petition must issue a decision to consider the lawfulness of the strike. The decision on holding a meeting to consider the lawfulness of the strike must be sent immediately to the Executive Committee of the trade union, to the employer and to relevant agencies and organizations.

3. Within 05 working days from the date on which the decision to consider the lawfulness of the strike is issued, the Council to consider the lawfulness of the strike shall hold the meeting to review the lawfulness of the strike.

Article 228. Termination of the consideration of the lawfulness of strikes

The Court will terminate the consideration of the lawfulness of a strike in the following cases:

1. The petitioner withdraws the petition;
2. The disputing parties reach an agreement on how to resolve the strike and make a written request to the Court to terminate its consideration;
3. The petitioner is absent after having been legitimately summoned for the second time.

Article 229. Participants of the meeting to consider the lawfulness of a strike

1. The Council reviewing the lawfulness of the strike, chaired by the Judge who is assigned to preside over the resolution of the petition; the secretary of the Court, who shall take the minutes of the meeting.
2. Representatives of the worker's collective and the employer.
3. Representatives of other organizations as requested by the Court.

Article 230. Postponement of the meetings to consider the lawfulness of strikes

1. The Judge assigned to chair the meeting to consider the lawfulness of a strike or the Council which is responsible for considering the lawfulness of the strike shall issue a decision on the postponement of the meeting, in accordance with the regulations on the postponement of a court hearing in the Civil Procedures Code.

2. The postponement of the meeting to review the lawfulness of the strike shall not exceed 03 working days.

Article 231. Procedures of the meetings to consider the lawfulness of strikes

1. The Chairperson of the meeting on the consideration of the lawfulness of a strike shall announce the decision to hold the meeting to review the lawfulness of the strike and present a summary of the petition.

2. The representatives of the worker's collective and the employer shall present their views.

3. The Chairperson of the meeting may request to hear the opinions of other agencies and organizations which participate in the meeting.

4. The Council reviewing the lawfulness of the strike shall discuss and issue a decision based on the rule of majority.

Article 232. Decisions on the lawfulness of strikes

1. The decision of the Court on the lawfulness of a strike must clearly state the reasons and the grounds for the conclusion in respect of the lawfulness of the strike.

The decision of the Court on the lawfulness of the strike must be publicly announced at the Court and immediately sent to the Executive Committee of the trade union, the employer, and the People's Procuracy at the same level. The worker's collective and the employer shall be responsible to implement the decision of the Court, but they are entitled to appeal in accordance with the procedures stipulated in this Code.

2. Once the decision of the Court on the lawfulness of the strike is issued, and in the case the strike is declared illegal the employees on strike must immediately stop the strike and return to work.

Article 233. Handling violations

1. Where the Court has issued a decision which declares that a strike is illegal, but the employees do not stop the strike and return to work, depending on the seriousness of the violation, the employees may be subject to labour disciplinary measures in accordance with labour law.

In case a strike is illegal and causes damages to the employer, the damages shall be compensated by the trade union who leads the strike, as stipulated by law.

2. Any person who takes advantages of the strike to cause public disorder, sabotage the machines and property of the employer, obstruct the execution of

the right to strike or incite, induce or force employees to go on strike; retaliate or inflict punishment on strikers and strike leaders, depending on the seriousness of the violation, shall be charged with administrative sanctions or criminal offences; and shall be liable to compensate for damages, if any, in accordance with the law.

Article 234. Procedures for the resolution of appeals on decisions concerning the lawfulness of strikes

1. Within 15 days from the date of receipt of the decision on the lawfulness of a strike, the Executive Committee of the trade union and the employer have the right to make an appeal to the Supreme People's Court.

2. Immediately after receiving the appeal on the decision concerning the lawfulness of a strike, the Supreme People's Court shall issue a written request to the Court which has considered the lawfulness of the strike to transfer the dossier of the case for its consideration.

3. Within 03 working days from the date of receipt of the written request, the Court who has issued the decision on the lawfulness of the strike shall transfer the dossier of the case to the Supreme People's Court for consideration.

4. Within 05 working days from the receipt of the dossier to consider the lawfulness of the strike, the Council shall settle the appeal on the decision concerning the lawfulness of the strike.

The decision issued by the Supreme People's Court is the final decision on the lawfulness of the strike.

Chapter XV STATE MANAGEMENT OF LABOUR

Article 235. Areas of State management of labour

State management of labour shall comprise the following key contents:

1. Adopt and implement legal documents on labour.

2. Monitor, make statistics and provide information on the labour supply and demand, the fluctuation of the labour supply and demand; make decision on policies, plans on human resources, vocational training, vocational skills development; development of a national level framework for vocational training, the distribution and utilization of workers across society; regulate the list of occupations in which only workers who have undertaken vocational training or have obtained the national certificate of vocational skills can be employed;

3. Organize and conduct scientific research on labour, statistics and information on labour and the labour market, and on the living standards and income level of employees;

4. Build mechanisms and institutions to support the development of sound, stable, and progressive labour relations.

5. Inspect, monitor, resolve complaints and denunciations, and handle violations of labour law, and resolve labour disputes in accordance with the law.

6. Implement international cooperation in the area of labour.

Article 236. State management of labour

1. The Government shall uniformly carry out the State management of labour nationwide.

2. The Ministry of Labour, Invalids and Social Affairs shall be responsible before the Government for carrying out the State management of labour.

Ministries and ministerial agencies, - within their respective mandates - shall be responsible for implementing and cooperating with the Ministry of Labour, Invalids and Social Affairs in the State management of labour.

3. People's Committees at all levels shall be responsible for the State management of labour within their respective localities.

Chapter XVI

LABOUR INSPECTION

AND DEALING WITH VIOLATIONS OF LABOUR LAW

Article 237. Responsibilities of labour inspectors

The Inspectorate of Ministry of Labour, Invalids and Social Affairs and Departments of Labour, Invalids and Social Affairs shall have the following key responsibilities:

1. Inspect compliance with the labour law;

2. Investigate occupational accidents and other violations related to the occupational safety and health;

3. Give guidance on the implementation of technical standards and norms of working conditions, occupational safety and health;

4. Handle complaints and denunciation in respect of labour issues as prescribed by law.

5. Deal with violations of labour law in accordance with their mandates or request other competent authorities to deal with violations of labour law.

Article 238. Labour Inspection

1. The Inspectorate of the Ministry of Labour, Invalids and Social Affairs and Department of Labour, Invalids and Social Affairs shall execute the specialized inspection function in respect of labour issues.

2. The inspection of occupational safety and health in regard to radioactive materials; oil and gas exploration and exploitation; railway, waterway, road, or air transportation; and units belonging to the armed forces shall be carried out by the state management agency in charge of the issue and with the cooperation of specialized labour inspection.

Article 239. Handling violations in the area of labour

Any person who commits an act that constitutes a violation of the provisions of this Labour Code shall, depending on the seriousness of the violation, be dealt with by disciplinary measures, administrative sanction or prosecuted for criminal liability; and is liable to pay compensation for the damages, if any, as stipulated by law .

Chapter XVII IMPLEMENTATION PROVISIONS

Article 240. Enforcement of the Labour Code

1. This Code shall enter into force as of 1st May 2013

The Labour Code dated 23rd June 1994, the Law on the revision and amendment of the Labour Code number 35/2002/QH10, the Law on the revision and amendment of Labour Code number 74/2006/QH11 and the Law on the revision and amendment of Labour Code number 84/2007/QH11 shall be annulled as of the date of entry into force of this Code.

2. From the date of entry into force of this Code:

a) Signed employment contracts, collective bargaining agreements, and other lawful agreements that have been signed and any agreement that provides employees with more favourable provisions than those provided in this Code shall remain in effect. Any agreement which is inconsistent with the provisions of this Code must be amended or supplemented;

b) Regulation on the duration of maternity leave as stipulated in the Law on Social Insurance number 71/2006/QH11 shall be implemented in accordance with this Code.

Any female employee who has taken maternity leave before the effective date of this Code and is still on maternity leave on 1st May 2012 in accordance with the Law on Social Insurance number 71/2006/QH11, the duration of her maternity leave shall be implemented in accordance with this Code.

3. Labour policies for civil servants, public employees, and other persons working in the People's Army, People's Police, or other social organizations, and members of cooperatives shall be regulated in other legal documents, but depending on each particular category, a number of provisions of this Code may be applied. The Government shall adopt specific wage policies to be applied for civil servants, public employees, and other persons working in the People's Army and the People's Police.

Article 241. Validity concerning the undertakings employing less than 10 employees

Employers who employ less than 10 employees shall follow regulations as stipulated in this Code, but are entitled to a reduction of, or exemption from, a number of standards and procedures as stipulated by the Government.

Article 242. Detail provisions and guidance for the implementation

The Government and competent agencies, as assigned, shall elaborate and guide the implementation of a number of articles and clauses of this Code. /.

This Labour Code is adopted on the eighteenth day of June, two thousand and twelve by the National Assembly of the Socialist Republic of Vietnam, term XIII, during the 3rd Session.

CHAIRMAN OF THE NATIONAL ASSEMBLY

Nguyen Sinh Hung