



International
Labour
Organization



Get to know your new Labour Code 2019

Workers' representative organisations

Viet Nam has modernized its Labour Code to better protect workers' rights, reduce bureaucracy for employers, and help support the Government's drive for international integration, economic growth and prosperity for all. The new law, which was passed by the National Assembly in November 2019, is the result of extensive consultations with experts, national and local stakeholders, and the public at large. It will come into effect in January 2021.

This information sheet is an introduction to the rules on workers' representative organisations at the grassroots level (WROs). The 2019 law contains important changes to how workers can form, register and participate in representative organisations in the workplace and to workplace dialogue and collective bargaining.

What is a workers' representative organisation at grassroots level (WRO)?

A WRO is the term that applies to organisations that are established by workers at grassroots level to protect their lawful rights and legitimate interests in labour relations through collective bargaining or other in other ways stipulated in law.

The Labour Code recognises two types of organisations as WROs:

1. 'Trade unions at Grassroots Level' affiliated to the Vietnam General Confederation of Labour (VGCL) and established under the Trade Union Law. These organisations exist for a long time and are commonly referred to using the acronym GTU; and
2. 'Workers' Organisations at Enterprise Level' can be established under the Labour Code 2019 and must be granted a registration by a competent State agency. This is a new type of organisation and will be referred to using the acronym WO.

There may be more than one WRO in a single undertaking.

The Code explicitly provides that the two types of WROs have equal rights and obligations under the Labour Code. However, it is important to note that GTUs are established under, and subject to the legal requirements and conditions set out in, the Trade Union Law as well as the Labour Code. WOs, in contrast, are not regulated by the Trade Union Law. The information below refers only to the contents of the Labour Code 2019.

Rights in the Labour Code applying to all WROs

The Labour Code gives all legally established WROs the following rights:

- To conduct workplace dialogue and collective bargaining with employers in accordance with the Labour Code [See further Information Sheet: Workplace Dialogue and Collective bargaining]
- To be consulted in relation to the development of, and monitor the implementation of, wage scales and wage tables, labour norms, payment and bonus regulations and internal working regulations
- To consult with members on issues relating to their rights and interests
- To represent workers in labour disputes
- To organize and lead strikes in line with the Labour Code
- To receive technical support from lawfully operating agencies and organizations in Viet Nam in order to improve their understanding of labour laws, and formalities and procedures relating to the establishment and operation of WROs
- To be provided by the employer with a workspace, information, and other conditions necessary in order to operate in the workplace.

Box 1: Prohibited actions by employers

An employer must not:

- request employees join or not join, or leave a WRO as a requirement for their recruitment or extension of employment contracts
- dismiss, discipline, unilaterally terminate employment contracts, not renew or extend employment contracts or transfer employees to perform other jobs due to their actions relating to formation, joining and participation in activities of a WRO
- discriminate in wages, working hours and other rights and obligations, in the extent of labour relations, against employees or officials of WROs
- create obstacles and difficulties relating to employment of employees and officials of WROs in order to undermine their activities
- interfere in or manipulate the establishment, election, development, finances or activities of WROs or otherwise undermining their functioning and performance
- discriminate between WROs.

In addition, the Labour Code prohibits an employer from discriminating against workers and officials of WROs on the grounds of establishing, joining or operating a WRO; and from manipulating a WRO. These prohibitions are included to prevent the employer from interfering with the rights of workers/WRO members and WRO leaders or the establishment and operation of a WRO.

The Labour Code gives all leaders and members on the Leadership Board of a WRO the following rights:

- To meet with workers at the workplace when they perform representative roles (while ensuring the performance of these tasks do not affect the employer's normal operations)
- To meet with the employer to perform their WRO representative roles
- To have paid time away from their normal employment duties to perform their representative functions. Government regulations will provide details as to the minimum amount of time that an employer must provide to members of the Leadership Board of WRO(s) for these purposes. This minimum entitlement will be calculated according to the number of WRO members. The Labour Code provides that WROs and employers 'shall negotiate to increase the time in addition to statutory time' and reach arrangements so that officials can carry out this role in a 'proper and realistic' manner.

In addition to these rights, and as noted in Box 1, WRO leaders and members must not be discriminated against because they establish, join or operate a WRO. Protection from discrimination on the grounds of membership/leadership of a WRO is also included in general provisions in the Labour Code addressing discrimination. See the **Information Sheet: Discrimination and Sexual Harassment**.

Rights and duties in the Labour Code applying only to WOs

As already noted, WROs that participate in the VGCL system are referred to as GTUs and are established and organised in accordance with the Law on Trade Unions. This section focuses only on the establishment of WOs under the Labour Code 2019. For further information on GTUs, readers must refer to the Trade Union Law. Rules on the establishment of WOs and their rights to associate together

Rules on the establishment of WOs and their rights to associate together

'Workers' Organisations at Enterprise Level' (WO) are a new type of organisation introduced under the Labour Code 2019. In order to lawfully operate, a WO must be registered with a competent State agency. The Government will issue regulations on the process for registering a WO and related details.

WOs can only be established in enterprises and may not comprise both rank-and-file workers and workers with managerial authority. Workers with managerial authority are those engaging in decision-making processes relating to: working conditions, recruitment, labour discipline; and/or the transfer and termination of employment contracts.

WOs must operate in accordance with the law and with their own constitutions and rules. The code provides that the government will issue regulations on the right of WOs to associate together.

WOs may choose to join the VGCL system, in which case they will be regulated by the Law on Trade Union.

Conditions to be met when requesting registration of a WO

Workers of an enterprise can apply to the competent state authority for registration of a WO if the WO:

- has a certain number of members working at the enterprise which reaches the minimum threshold under government regulations; and
- has a written constitution, with certain mandatory content [See Box 2]. A WO constitution may have additional content, providing this is not contrary to the law.

The Labour Code provides that Government regulations will provide further detail on WO registration and on State management of WO finances and assets.

Who can lead a WO?

A workers' organization is governed by an elected Leadership Board. Only Vietnamese workers employed by the enterprise can be elected to a WO Leadership Board. A worker cannot be on a WO Leadership Board if he or she is serving out a term of punishment, or has a criminal record not yet sealed, that relates to any crime against national security; human freedoms, citizens'

Box 2: Contents of WO Constitutions

A WO must have a constitution that includes:

1. Name and address of the organisation; Organisation logo/symbol (if applicable)
2. Mandate, purposes and scope of the organisation. These must be to protect its members lawful rights and promote its members' legitimate interests in labour relations at the enterprise; to resolve issues with employers relating to rights, obligations and interests of workers and employers; and to establish advanced, harmonious and stable labour relations.
3. Requirements and formalities for workers to join and leave the organisation.
4. Organisational structure, formal representatives of the organisation and terms of office.
5. Principles governing the organisation, operation and decision-making processes of the organisation. These principles are compliance to the National Constitution, laws and the organisation's own constitution; voluntariness and self-management; and democracy and transparency.
6. Provision for certain matters to be decided by a majority of members. These include adoption and amendment of the constitution; election and dismissal of leaders and Board of leaders; unification, merger, separation, segregation and dissolution; and participation in the VGCL system.
7. Provisions detailing financial matters, including membership fees, property and financial management. Note: the financial operations (including expenditure) of a WO must be documented, monitored and reported annually to WO members
8. A complaint resolution mechanism.

democratic freedoms; or ownership rights in accordance with regulations under the Penal Code.

Rules on the revocation of registration, merger or dissolution of WOs

The Labour Code 2019 provides that the registration of a workers' organization will be revoked by the Government if the organization violates its mandate and purposes or if the enterprise ceases to operate. In certain situations where the WO joins with or becomes part of another WO the registration will also be revoked. Other details concerning the dissolution of workers' organizations will be provided in Government regulations.



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For more information

This leaflet describes the basic rights and duties provided under the Labour Code 2019. More details on all of the above matters, are set out in the following chapters of the Code: Chapter I: General Provisions; Chapter III: Employment Contract; Chapter VIII: Labour Disciplinary Regulations and Responsibilities regarding Equipment; Chapter XIII: Workers' Representative Organisation(s) at Grassroots Level; Chapter XIV: Resolution of Labour Disputes.

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