



International  
Labour  
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Get to know your new Labour Code 2019

# Employment contracts

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*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.*

## Who is a worker under the Labour Code 2019

If a person is working for an employer under an agreement, and is remunerated, managed, directed and supervised by the employer, they are a worker.

A **worker** is a person who is 15 years or older, subject to certain exceptions [See Information Sheet: Minor Workers]. Expatriates working in Vietnam must meet additional criteria before they can enter into a lawful employment contract. A worker can enter into employment contracts with more than one employer.

A worker usually enters into an employment contract directly, except in the cases of minor worker or a group of workers authorizing one person to sign the contract on their behalf.

## Who is an employer under the Labour Code?

An employer can be an enterprise, an institution, an agency, a cooperative, a household or an individual. In case the employer is a legal entity (enterprise, agency, organization, cooperative), its legal or authorized representative will sign the labour contract.

## What is an employment contract?

An employment contract is an agreement made between a worker and an employer and sets out the terms and conditions of employment. If a document has the nature of an 'employment contract' but is called something else, it will be considered an employment contract under the new law.

Except in the case of employment for less than one month, the employer must provide a written contract and give a copy to the worker. The employer will violate the law if this is not done. Domestic workers and workers under the age of 15 must always be given a written contract, even for short-term employment.

## Types of employment contract

There are only two types of employment contract: a contract for an indefinite period of time or for a definite period of time.

An **indefinite term contract** is an employment contract in which the date of contract termination is not fixed.

A **definite term contract** is a contract with a fixed term. The duration of a definite term contract must not exceed 36 months. Where a definite term contract reaches its expiry, the employer and worker can sign another definite term contract. Any third contract entered into by the parties must be an indefinite term employment contract. Exceptions to this general rule apply to individuals employed as directors of State-Owned Enterprises and other cases stipulated in the Code.

## An employment contract must respect minimum legal conditions

An employment contract cannot set wages or conditions of work that are lower than those set out in the Labour Code, are below the applicable minimum wage or terms agreed in collective bargaining agreements. Any contract that sets conditions below these minima will be wholly or partially invalid. The law provides that partially invalid contracts can be amended and gives the People's Court the power to declare a contract invalid. An invalid labour contract does not lead to termination of employment and has to be revised to comply with law and/or collective agreements.

## What must be put in an employment contract?

An employment contract should specify, at a minimum:

- who is the employer and employee (specific details are required);
- the work to be undertaken and place of work;
- the duration of the employment contract
- details on wages, method and time of payment, allowances and additional payments
- rules on promotion and wage increases
- working time and rest periods
- any personal protective equipment for the worker (if any)
- social insurance and health insurance
- opportunities for training and skill development.

Employment contracts may include other terms, provided these are consistent with the law.



## How can an employment contract be amended?

A party who wishes to change any terms in an employment contract should notify the other party at least 3 working days in advance. The parties may then sign an annex to the original contract, to record their new agreement. If the parties cannot agree upon new terms, then the employment contract will continue as before.

*Example: Worker W signed an employment contract with X Manufacturing Ltd in June 2019. A worked as an interpreter. For business reasons, in September 2019, X assigned W to work as a secretary for 30 days. After that, X asked W to work as secretary permanently. If W agrees, W and X must sign an annex to record the change of working position. If W disagrees, then W has the right to continue working as an interpreter under the original contract.*

## How can an employment contract be terminated?

The Labour Code sets out detailed rules on when and how an employment contract can be terminated by the worker and the employer. For more information, see Information Sheet: Termination of Employment

### Probationary periods of employment

An employer and worker may negotiate a probationary period at the beginning of the employment. An employee can only be asked to complete one probationary period. The probationary period can be dealt with as a separate 'probation' contract or included as part of the employment contract. An employer and worker may negotiate the wage to be paid during the probationary period, however this must be at least 85 per cent of the wage normally applicable to the work. The duration of the probation period may be negotiated by the parties on the basis of the nature and complexity of the work, but is subject to the following maximum periods:

- 180 days for management level positions within an enterprise (as defined in the Law on Enterprise)
- 60 days for work that requires technical qualification of a technical college diploma or above
- 30 days for work that requires technical qualification of a secondary certificate
- 6 days for other types of work.

It is unlawful for parties to agree on a probationary period of employment where the employment contract is less than 1 month in duration.

### Rules of termination during and at the end of a the probation period

During any probation period, either party can terminate the contract without notice and without incurring any obligation to pay compensation to the other party.

Upon completion of the probation period, the employer must inform the worker if he or she has completed the probation satisfactorily. If an employer fails to do this, the probation period will be considered as completed satisfactorily. If a worker continues to work for an employer following the expiry of the probation period, the parties must enter into an employment contract.

## Employers' responsibilities in recruitment

Employers must cover all expenses relating to recruitment. These include job advertisement, administration of applications, organization of skill testing and examination or any other expenses. Employers are prohibited to:

- Keep original copies of identity cards, educational certificates of workers
- Require workers to have mortgages (either money or kinds) to secure employment contract
- Force workers to implement employment contract to pay debts borrowed from the employers.







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#### For more information

This leaflet describes the basic rights and duties provided under the new Labour Code 2019. More details all of the above matters, are set out in the following chapters of the Code: Chapter I: General Provisions and Chapter III: Employment Contract.

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