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Get to know your new Labour Code 2019

Termination of employment contracts

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 provisions in the Labour Code 2019 on when and how employment can be lawfully brought to an end and the responsibilities of the two parties at that point.

When and how can employment be terminated?

The Labour Code lists the grounds upon which an employment contract can come to an end:

- The employment contract expires.
- The tasks stated in the employment contract have been completed.
- Both parties agree to terminate the employment contract.
- Unsatisfactory probation or cancellation of a probation agreement by either party.
- The worker is imprisoned and not subjected to discharged sentence; is subject to capital punishment or is prohibited from performing the work under a court's decision.
- The worker is missing, or is declared missing, deceased or has lost the capacity for civil acts by the court.
- The employer is missing or deceased (if an individual) or ceases to operate, officially or in practice.
- The foreign worker is engaged under a labour permit that expires.
- The foreign worker is deported.
- The worker unilaterally terminates the employment contract.
- The employer unilaterally terminates the employment contract.

The grounds upon which termination of employment is effected determines the procedures that must be followed under the Labour Code.

When and how can a worker unilaterally terminate an employment contract?

A worker can terminate their employment contract providing they give the employer advance notice of their intention to do so. The period of notice required depends on the type of employment contract the person is working under:



However, the law provides that a worker can lawfully terminate an employment contract without giving notice where:

- The worker is not being paid in full or on time as agreed in the employment contract (except in rare circumstances where payment can lawfully be delayed. See Information Sheet: Wages).
- The worker is assigned a type of work or to a workplace, or being subjected to working conditions, different from those agreed upon by the parties in the employment contract.
- The worker is being mistreated, sexually harassed or subject to forced labour.
- The worker is pregnant and required to take leave (on the advice of a competent health care institution).
- The worker fully qualifies for retirement, as prescribed in the Labour Code.
- The employer provided inaccurate information that affects the implementation of employment contract.

When can an employer unilaterally terminate an employment contract?

An employer may unilaterally terminate an employment contract on a number of grounds set out in the Labour Code. The Code sets out procedural requirements that the employer must follow, which vary according to the grounds on which termination is taking place.

(i) Termination of employment contract for poor performance, prolonged sickness and other certain reasons

Type of employment contract	Minimum notice period
Workers on indefinite term contracts	45 days
Workers on definite term employment contracts, with a duration of 12 – 36 months	30 days
Workers on definite term employment contracts with a duration of under 12 months	3 working days
Note: No notice is required during probation periods. Government regulations may impose longer periods of notice for specific occupations or types of work.	

An employer may terminate an employee's employment where:

1. The worker has reached the age of retirement;
2. The worker consistently performs the work below the standard of work performance detailed in the employer's internal rules;
3. The worker is sick or injured for a certain period of time and has not recovered;
4. The worker fails to return to work following temporary suspension;
5. The worker fails to attend work (without justification) for more than 5 consecutive days;
6. The worker has dishonestly provided inaccurate information that has impacted upon the recruitment process;
7. The worker has no alternative but to scale down production and reduce the workforce due to one of the following situations: a natural calamity; fire; epidemic; enemy-inflicted devastation or; where the employer has been ordered to move or downsize production by a competent State agency.

In all above cases of unilateral termination by the employer, the employer must give notice to the worker, as follows:

Type of employment contract	Minimum period of notice
Worker on indefinite term contract	45 days
Worker on definite term contract with a duration of 12 – 36 months	30 days
Worker on definite term employment contract with a duration of less than 12 months	3 working days

Where a worker is absent from work due to sickness or injury, termination is only lawful if the worker has received specified periods of treatment as set out below.

Type of employment contract	Requirement period of treatment
Indefinite term contract	12 consecutive months
Definite term contract with a duration of 12 – 36 months	6 consecutive months
Definite term contract with a duration of less than 12 months	More than half of the contract period

(ii) Dismissal of a worker for wrong-doing

A worker may be dismissed as a disciplinary measure where:

1. The worker has committed an act of theft, embezzlement or gambling, intentionally injured another person or used illicit drugs in the workplace
2. The worker has disclosed technological or business secrets or infringed the intellectual property rights of the employer
3. The worker has committed other acts seriously detrimental or posing seriously detrimental threat to the assets or interests of the employer
4. The worker has engaged in sexual harassment in the workplace; or
5. The worker has committed the same breach of labour discipline for which he or she is already subject to the disciplinary measure of deferred wage increase or demotion, in the period when that has not yet been repealed.
6. The worker does not present at work for 05 days within a period of 30 days, or for 20 days within a period of 365 days, as calculated from the first day of absence without justification.

The Labour Code sets out processes that the employer must follow to carry out such a dismissal.

First, to prevent unjustified dismissal and ensure that workers have the chance to defend themselves, the employer must provide evidence of employee's wrongdoing and (where the worker is a member of a workers' representative organization (WRO)) consult with the worker's WRO. The worker must be physically present at any disciplinary hearing and have the chance to defend themselves and to have a lawyer or WRO representative present.

(iii) Termination of employment contracts due to natural emergencies, State-imposed changes, changes in structure, technology or economic reasons

An employer may lawfully terminate an employment contract because of:

1. changes in organizational or work structure,
2. changes in technological process/orders, machines, equipment and system of production relating to business of such employer,
3. changes in products,
4. an economic crisis or recession, or
5. State policies on restructuring the economy or realizing international commitments

When terminating contracts for any of these reasons, the employer must formulate a labour utilization plan, in consultation with the WRO(s). This utilization plan must be made publicly available to the workers within 15 days from the date of approval and must be implemented. In the case of job losses due to changes in structure or technology, if a new vacancy is created, employers must give priority to retraining workers for the purpose of re-employment.

If the employer cannot re-employ a worker and intends to terminate contracts of multiple workers, they can only do so after consulting with the WRO of which the workers are members. The employer must also provide at least 30 days prior notice of the termination to the worker(s) and to the provincial People's Committee.

(iv) Termination of employment contracts due to merger, consolidation, division, or separation of enterprises and cooperatives, transfer of ownership, or right to usage of assets

An employer may terminate an employment contract due to merger, consolidation, division or separation, transfer of total ownership, or right to usage of assets of the enterprise or a cooperative.

In such cases, the employer must establish and implement a labour utilization plan which includes the quantity and names of workers to be made redundancy. This plan must be prepared in consultation with WROs in the enterprise, and must be made publicly available to the workers within 15 days after its formulation.



The Labour Code specifies a number of situations in which an employer cannot dismiss a worker.

Unilateral termination of an employment contract due to illness/injury: An employer can only lawfully terminate an employment contract on the basis of a worker's illness or injury where the worker has received treatment but remains unable to work for a certain period of time. This period of time depends on the type and duration of the employment contract. An employer may not lawfully terminate an employment contract if the worker is:

- taking annual leave, personal leave, or any other type of leave permitted by the employer
- pregnant, or on parental leave, or caring for a child who is less than 12 months old
- is sick or injured, and receiving treatment under the prescription of a competent health institution (subject to the exception above).

Also, an employer must not dismiss a worker for discriminatory reasons. This includes on the basis of trade union activity. See further **Information Sheet: Discrimination and Sexual Harassment at Work**.

What happens if an employer or worker unlawfully terminates an employment contract?

Where an employer terminates an employment relationship unlawfully, the employer must:

- Reinstatement the worker in accordance with the original employment contract
- Pay the worker wages, social insurance, unemployment insurance and health insurance for the period during which the worker was prevented from working
- Pay the worker an additional sum of at least 2 months wages; and
- If the employer has failed to comply with the minimum notice period, compensate the worker with an amount equivalent to the period of notice that was not given.

Following an unlawful termination by an employer, if the worker chooses not to re-establish the employment relationship, the employer must pay the worker severance allowance. This allowance is in addition to the payments identified above.

Following an unlawful termination by an employer, if the employer does not want to reinstate the worker and the worker agrees, the employer must pay the worker a severance allowance and compensation equivalent to least 2 months wages. This is in addition to the payments identified above.

Where a worker unlawfully terminates an employment contract or does not give the requisite notice:

- The worker must compensate the employer half of the worker's monthly wage (as specified in the employment contract)

- The worker will be ineligible for a severance allowance
- Where the worker has failed to comply with the minimum notice requirements, he/she must compensate the employer with a sum equivalent to the worker's wages corresponding to the number of days during which notice was not given.

Severance allowance and job-loss allowance

Severance allowance or job-loss allowance is paid to workers upon termination of their employment in certain cases. A worker is only entitled to these allowances once he/she has worked on a regular basis for the employer for at least full 12 months. The Labour Code specifies in detail how these allowances are to be calculated.

Job-loss allowance is paid to the worker by the employer in case of redundancy, or merger, consolidation, division, or separation or transfer of ownership, right to usage of assets of enterprises and cooperatives. Severance allowance is paid to the worker by the employer in all the cases of termination of employment contract, except for the following:

- The foreign worker is deported
- The worker is dismissed as a disciplinary measure
- The worker is entitled to job-loss allowance
- The worker retires
- The worker unlawfully terminates the employment contract

Note: The qualifying period of work for the calculation of severance and job-loss allowance is the total working period of the worker minus the period in which the worker participated in the unemployment insurance scheme and the period in which the worker has already been paid severance or job-loss allowance.

Final payments, entitlements and obligations upon contract termination

Upon termination of an employment contract, both parties should settle all payments owed to the other party within 14 working days. In exceptional circumstances, this period may be extended but must not exceed 30 days.

An employer should complete the verification process for social insurance contributions, unemployment insurance contributions and return any of the worker's original documents to the worker. Upon the worker's request, the employer should also provide copies of the worker's employment record. Any expense associated with copying and sending such documents are to be borne by the employer.

Where an employer terminates operations, or is dissolved or bankrupt, all wages, social insurance, health insurance, unemployment insurance and other incentives provided for in the employment contract (and collective bargaining agreement if applicable) should be paid as a priority.





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For more information

This leaflet describes the basic rights and duties provided under the Labour Code 2019. More details 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 XI: Separate Provisions Concerning Minor Workers and Certain Types of Workers; Chapter XIII: Workers' Representative Organization(s) at Grassroots Level.

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