

Human Resources in VIETNAM: An Overview for Foreign Investors

Vietnamese Labour Law and Employment Compliance for Foreign Investors

Vietnamese labour law regulates the rights and obligations of employers and employees in Vietnam. For foreign investors and businesses, understanding these laws is crucial to ensure compliance and foster a productive working environment, as the basis and application of labour laws does differ to international common practice in many regards.

As a general concept, Vietnamese labour laws strongly favour employees, and were essentially drafted from the concept of factory work being the foundation. With that in mind, dealing with human resource decisions and the reduced flexibility in comparison to other markets should be offset against the structure and stability that can be achieved through Vietnam's labour system.

Employment Contracts

Concept of employment

The Vietnamese Labour Code specifies that a contract of employment will exist where there is an agreement for the provision of labour under the supervision and direction of the employing party, for an agreed compensation. This broad definition results in many contracts of other names being deemed an employment contract.

Types of Employment Contracts

Vietnamese labour law recognizes two types of employment contracts:

- *Indefinite-term contracts*, and
- *Definite-term contracts*.

Indefinite-term contracts have no specific end date, while definite-term contracts have a fixed duration not exceeding 36 months.

At the conclusion of the second definite-term contract, the next (third) contract automatically becomes an indefinite-term contract.

Probation

The Labour Code generally permits a 30 day probation period (or 60 day probation for roles that require technical qualifications) before signing the initial employment contract. During probation, either party can terminate the agreement without notice.

Employers are expected sign written employment contracts with employees before commencement. Although provisions exist in the Labour Code for other forms of agreement (ie, not solely requiring a signed written employment contract), other elements of Vietnam's laws and expectations make these alternatives disadvantageous.

Contents of Employment Contracts

Employment contracts must include mandatory contents such as:

- Job description,
- work location,
- duration of the contract,
- working hours,
- rest periods,
- wages,
- allowances,
- social insurance, health insurance, other benefits,
- labour safety & hygiene conditions, and
- training and skill development provisions.

Other aspects can be incorporated into labour policies where necessary

Working Hours and Rest Periods

Standard Working Hours

The standard working hours in Vietnam are eight hours per day and 48 hours per week. Employers and employees can agree on a shorter working week, but it cannot exceed these limits.

Office culture in Vietnam is typically a 5 day/40 hour working week, whilst other sectors such as manufacturing is typically a 6 day/48 hour working week.

Overtime

Overtime is permitted but subject to specific limits. It must not exceed 50% of the normal working hours in a day, no more than 12 hours in a day (including normal working hours and overtime), no more than 40 hours per month, and no more than 200 hours per year, which can be extended to 300 hours per year for certain sectors.

Overtime pay is calculated at 150% of the standard hourly rate for weekdays, 200% for weekends, and 300% for public holidays and paid leave days.

An additional 30% loading is applied for work conducted at night time between the hours of 10.00pm and 6.00am.

Other Working Periods

Employees are entitled to at least one day off work per week, and an additional 60 minutes of rest is mandated each day for female employees nursing children under 12 months.

Wages and Benefits

Minimum Wage

Vietnam has a statutory minimum wage that varies by region, reviewed and is adjusted annually by the government. Employers must ensure that wages paid to employees are not lower than the applicable minimum wage for their region. See the table later in this section for current regional minimums.

Payment of Wages

Wages must be paid at least once a month, either in cash or by bank transfer. Employers must pay wages on time, and if payment is delayed, they are required to compensate employees by paying interest on the delayed amount.

Although the law permits multiple payments in a month, statutory obligations are all based around a monthly payroll process, and the common practice is a single monthly salary payment at the end of each month.

Allowances and Bonuses

Employers may provide additional allowances and bonuses based on company policies and employee performance. These may include position allowances, responsibility allowances, housing, transportation, meal allowances, and annual performance bonuses.

Annual Leave

All employees are entitled to a minimum of 12 days paid annual leave each year, although employers are permitted to provide a greater amount of leave as they determine. In addition, Employees are entitled to an extra day of annual leave each year for each 5 years they have worked for the employer.

Foreign employees, with valid employment documentation, are entitled to two additional leave days each year; one for their national day, and

another for a religious day (actual days to be determined between employee and employer).

There are certain categories of employees that may have an entitlement to additional annual leave benefits (ie those working in toxic or dangerous work) as additional compensation for their specific roles.

Public Holidays

At present there are 11 public holidays applicable for all Vietnamese employees.

- Lunar New Year (Tet) - 5 days
- New Years Day (January 1st)
- Hung King's Anniversary
- Reunification Day (April 30th)
- Labour Day (May 1st)
- Independence Day (September 2nd) - 2 days

It should be noted that the specific dates observed for public holidays can change at short notice, and there needs to be flexibility in how these are implemented due to the short notice and expectation of society/employees resulting.

Other Leave

Additional leave is available for a range of circumstances, including weddings, childbirth, deaths etc. These are mandated in the Labour Code, and are often regarded as unpaid by the employer and will be reimbursed to the employee from the Social Insurance fund.

Sick leave is the responsibility of the Social Insurance fund, and is not generally a liability of the employer. Employees are ordinarily not paid by the employer for days off when they are sick, but they will instead seek payment via a claim to the Social Insurance Fund.

Social Insurance, Unemployment Insurance and Health Insurance

Social Insurance

Employers are required to participate in the compulsory Social Insurance scheme for their employees. Contributions are calculated as a percentage of the employee's monthly salary and are payment obligations are applied to both employers and employees. The contribution rates are 17.5% by the employer and 8% by the employee for Social Insurance, subject to caps.

In Vietnam, Social Insurance covers:

- Workplace accidents insurance
- Retirement/pension contributions
- Sickness / sick leave claims
- Maternity benefits (ie, 6 months minimum paid leave for new mothers)
- Death benefits

There are reductions in insurance rates for foreign employees and certain dangerous industries.

Unemployment Insurance

Unemployment Insurance is compulsory for all employees, except foreign individuals, and is paid by both employer and employee at 1% of gross salaries (subject to caps).

Health Insurance

Employers must also enroll employees in compulsory health insurance, which provides access to medical services and benefits in case of illness, maternity, or work-related accidents. Employees and employers both contribute to this (at 1.5% and 3.0% of gross salary, respectively) subject to a cap. Employers can also provide private health insurance in addition

VIETNAM LABOUR REGULATIONS

KEY HR & PAYROLL

PRINCIPALS

Legal Framework

Vietnamese Labor Code governs all employment relationships. This covers rules on employment contracts, working hours, wages, insurances, and termination, and strict compliance is mandatory.

Employment Contracts

There are two types of contracts: Indefinite-term & definite(fixed)-term contracts.

After two definite-term contracts, which can be a maximum of 36 months each, the third contract must be an indefinite-term contract.

Contracts should be in writing for compliance, and must include job description, working hours, salary, work location, and contract duration.

Onboarding

A maximum probationary period of 60 days for roles requiring technical experience, and 30 days for roles requiring lower qualifications. Probation salary must be at least 85% of the agreed full salary, and either party can terminate during the probation period without notice.

Detailed records for each employee must be collated on commencement and maintained per legal requirements.

Working Hours and Leave Entitlements

Standard working week is 48 hours, typically 8 hours per day, 6 days per week, with common practice for offices of 40 hours/5 days per week.

Overtime maximum is 4 hours per day, 12 hours per week and 200 hours per year, with 300 hours per year in specified cases.
Overtime pay rates apply.

Staff are entitled to a minimum of 12 days of annual leave, which can increase based upon length of employment and sector/role.

Wages and Benefits

There is a minimum monthly wage set by the government, which varies by region. This is generally updated annually. Salary payments are expected to be paid monthly, along with other insurance and similar obligations. Salary payments can be made more often, but this is not common for most roles and organisations.

Mandatory insurances are paid by both employees and employers, being Social Insurance (workplace accidents, retirement, maternity leave, etc), Health Insurance and Unemployment Insurance.

Termination

Employees can provide 45 days notice for indefinite-term contracts, and 30 days for fixed-term contracts.

Legal grounds for employer termination includes mutual agreement, contract expiry, poor performance, misconduct, economic reasons, and force majeure. However, unilateral termination should be treated with caution as difficult in practice to undertake.

Severance Pay or termination pay may arise in some circumstances.

Other Obligations

Requirements exist to adhere to occupational safety and health regulations, provide regular safety training and provide health checks for employees.

Employees have the right to join a trade union, and employers must make contributions to the trade union or local trade union authority.

Employers must submit periodic labor reports to local labor authorities, and maintain accurate and comprehensive employment records.

Trade Unions

Employers are required to contribute trade union contributions, at 2.0% of gross salaries (subject to a cap), regardless whether an internal trade union has been formed.

Employees are entitled to form an internal trade unions (otherwise known as grass roots trade unions), which is an affiliate of the national trade union structure, and employers must ensure a vote is taken amongst staff to form a trade union once they have 10 or more employees.

Individual membership and contribution to trade unions is optional, and will be required to contribute 1.0% of gross salaries, subject to a cap.

Within international agreements, the Vietnamese authorities have committed to amending the trade union structure so that trade unions will not need to be affiliated with the national (government) trade union structure, however this has not been fully implemented yet.

Required Documents and Structures

All employers are required to prepare and maintain a regulated set of internal documentation. These include:

- **Employment Contracts** (and probation agreements) that are compliant with laws for all staff.
- **Internal Labour Policies**, detailing benefits, obligations, procedures and similar that apply to staff. These policies are essentially the operating policies, that apply to employees, for an employer.
- **Internal Labour Regulations** are a prescribed document that details employment regulations, disciplinary procedures and other defined requirements. Where an employer has 10 or more staff, this document must be registered with the Department of Labour, Invalids and Social Affairs (DoLISA).
- **Salary Pay Scale**, showing the salary structure in the organisation.

Labour Disputes and Resolution

Types of Labour Disputes

Labour disputes can be categorized into individual labour disputes and collective labour disputes. Individual labour disputes occur between an employee and the employer regarding employment conditions, wages, or termination. Collective labour disputes involve a group of employees and the employer regarding collective bargaining agreements, working conditions, or occupational safety.

Dispute Resolution Mechanisms

Labour disputes can be resolved through conciliation, arbitration, or court proceedings. Conciliation is the initial attempt by a labour conciliator to mediate and resolve the dispute. If conciliation fails, the dispute can be referred to a labour arbitration council. As a last resort, parties can bring the dispute to court for a judicial decision.

Compliance and Penalties

Compliance Requirements

Employers must comply with various administrative requirements, including registration with the labour authorities, maintaining detailed records of employment contracts, wage payments, working hours, and employee benefits, and ensuring a safe working environment and compliance with occupational health regulations.

Penalties for Non-compliance

Non-compliance with labour laws can result in administrative fines, penalties, and legal liability for employers. Penalties vary depending on the severity of the violation and can include fines, temporary suspension of business activities until compliance is achieved, and in severe cases, criminal charges for serious violations of labour laws.

Annual Health Checks

Vietnamese employers are required to provide all employees with an annual health checkup, which is compliant with locally specified requirements. Certain industries have obligations for more frequent health checks through registered providers.

Employing Foreign Individuals

Although there is no automatic right for foreign individuals to be employed by a Vietnamese employer, if they obtain a Work Permit for the role (or meet any exemption requirement and hold the requisite exemption certificate), then they are eligible to be employed along similar lines to Vietnamese nationals.

Employment Processes

The Labour Code and associated regulations are designed around facilitating only experienced foreign individuals in senior capacities, as a general rule. As a result, the concept of a Work Permit becomes important, as this is a permit to work at an employer for a specific role. Each new employer (and role) will require a new Work Permit. Without a valid Work Permit (or exemption confirmation), both employees and employers face significant risks.

There are a number of categories that foreign individuals can be employed under, including as an expert, manager and internal transferee. Each category has specific requirements and documentation. As Work Permit applications can take some time to prepare for, including pre-approvals for hiring a foreign individual for a role and legalised foreign documents for the individual, employers need to plan well ahead with this in mind.

Benefits for Foreign Employees

There are a number of specific tax-free benefits that are provided for foreign employees, that domestic employees are not eligible to take advantage of. These include:

- School fees for children of foreign individuals
- Return flight home each year
- Provision of housing (partially exempt)
- One-off relocation costs to Vietnam

VIETNAM PAYROLL OVERVIEW:

THE VIETNAM PAYROLL COMPANION (1 July 2024)

PERSONAL INCOME TAX

Personal Income Tax (PIT) is a tax levied on individuals. Employers are required to withhold PIT from salaries on behalf of their employees, on a monthly basis, and remit to the Tax Authorities.

Monthly Taxable Income (VND)	Tax Rate
0 - 5,000,000	5%
5,000,001-10,000,000	10%
10,000,001 - 18,000,000	15%
18,000,001 - 32,000,000	20%
32,000,001 - 52,000,000	25%
52,000,001 - 80,000,000	30%
over 80,000,000	35%

Personal Deductions (ie, Tax free portion of income) that reduce individual's Monthly Taxable Income, and therefore the amount at which the PIT Rates commence:

- > Personal Allowance -11,000,000VND per month
- > Dependent Allowance - 4,400,000VND per month, for each dependent

For non-tax resident individuals, a flat PIT Rate of 20% will apply.

TRADE UNION CONTRIBUTIONS

Employers must pay to trade union contributions for employees, regardless whether an internal (grass roots) trade union has been established.

If an internal trade union exists, employees can join the trade union and will be required to contribute.

Employer:
2.0%

Employee:
1.0%

Max Salary Cap - Employers:
46,800,000 VND
Max Salary Cap - Employee:
2,340,000 VND

CALCULATIONS

Employers are required to calculate, withhold and remit all PIT, Compulsory Insurances and Trade Union Contributions on behalf of employees and employers. The resultant net salary amount, after withholding, is to be paid to employees.

The general basis for determining income subject to PIT in a month is:

Monthly Taxable Income = Gross (Taxable) Salary, less Compulsory Insurances, less Personal Deductions.

COMPULSORY INSURANCES

Social Insurance

Employer: **17.5%** Employee: **8.0%** Max Cap: 46,800,000VND

Health Insurance

Employer: **3.0%** Employee: **1.5%** Max Cap: 46,800,000VND

Unemployment Insurance

Employer: **1.0%** Employee: **1.0%** Max Cap: 99,200,000VND

Notes:

- > Foreign employees are not subject to Unemployment Insurance contributions.
- > The Max Caps are the maximum monthly salaries upon which Compulsory Insurances are calculated. These are regularly adjusted, based upon government minimum wage publications.
- > The Max Cap for Unemployment Insurance depends on which region the employer is located. The quoted Max Cap is for Region 1 employers, which is the highest cap.

MINIMUM MONTHLY WAGES

Effective 1 July 2024, the minimum monthly wage that must be paid to employees, depending upon the region in which they are employed:

Region	Minimum Monthly Wage
1	4,960,000 VND
2	4,410,000 VND
3	3,860,000 VND
4	3,450,000 VND

OTHER NOTES

- > Employers are generally responsible for annual tax finalisations for employees, but only where the employee has only one source of income in the year, and the employee consents to the employer finalising for them.
- > Foreign Individuals are subject to Work Permit requirements before they can be employed.
- > Labour Law has a very broad definition of "employee", and service contracts may be deemed as employment.
- > Certain payments may be exempt from insurances or taxes, but care should be taken to follow guidances.

Termination of Employment

Terminating employees in Vietnam is governed by the Vietnamese Labor Code, which provides specific rules and processes to ensure fair treatment of employees.

Options for Termination

Mutual Agreement

Both employer and employee can agree to terminate the employment contract. This is the simplest and least contentious method.

Expiry of the Employment Contract

Fixed-term contracts naturally end when the contract period expires. Employers must notify the employee in writing at least 15 days before the contract's expiration. If there is no notification that the contract will not be renewed, then the law will deem that a new contract has been entered into (either definite or indefinite, depending on the nature of the previous contract).

Incapacity

Where an employee is incarcerated or prevented from working by a court, dies or declared missing, their contracts are deemed terminated.

Completion of Project/Assignment in an Employment Contract

Where the employment contract is written on the basis of completing a specific project or assignment, the contract can come to an end with parties agree that the project or assignment is complete.

Unilateral Termination by the Employee

Employees can unilaterally terminate their contract, provided the appropriate notification is provided.

- Indefinite-Term Contracts: 45 days' notice.
- Definite-Term Contracts: 30 days' notice.

Unilateral Termination by the Employer

Employers can unilaterally terminate an employment contract under specific conditions, as detailed below, however caution must be taken to ensure strict compliance with regulations to ensure termination is valid.

Unilateral Termination By Employer

The various categories permitted within Vietnamese labour regulations for unilateral termination by the employer are detailed below:

Poor / Unacceptable Work Performance

Where the performance of an employee is not in line with requirements in the employment contract, internal policies or other regulations, then there is a process to address which may lead to termination. The regulations require 2 written warning notices to be issued within a single month, which have been addressed with the Trade Union, amongst other requirements.

Disciplinary - Absence & Gross Misconduct

Should theft or repeated violations of company regulations occur, or where the individual has 5 days unexplained absence in a month (or 20 days in a year), then a termination process can commence.

Prolonged Illness

If an employee is absent for an extended period due to serious illness, and are unable to undertake their employment tasks, they can be terminated. Specifically, if an individual must be absent for 12 months (indefinite

contract), 6 months (definite contract greater than 12 months) or half contract term (definite contract less than 12 months), then termination can occur.

Force Majeure

Events regarded as force majeure include major fires, natural disasters or similar that result in reduced production capacity and the need to terminate employees as a result.

Corporate Restructuring

Where a company seeks to restructure and close a particular portion or element of their business, they will need to develop a labour usage plan with DoLISA, offer the impacted employees with other potential roles in the company, and offer training programs. In return, DoLISA can authorise and monitor the plan to terminate impacted employees.

Corporate Mergers & Acquisitions

If an M&A event arises that can result in staff redundancy, the same procedure as for corporate restructuring will apply.

Ceasing Operations

If an employer ceases operations via winding up or liquidation, employment contracts can be terminated as part of the winding up process.

Fabricated Employment Information

Where an employee has fabricated information on their employment application, there are provisions for termination where the employer relied upon the fabricated information for making employment decisions.

It should be noted that other than the force majeure or ceasing operations events, trade union and DoLISA involvement and approval is generally required, often resulting in prolonged negotiations and requirements to be met. Although an employer may have sufficient grounds to proceed with termination per legal requirements, the human factor in dealing with organisations designed to protect employees should not be underestimated.

Notwithstanding approvals to terminate, notice is still generally required to be given for terminations in most circumstances - 30 days or 45 days, depending on employment contract. Further, Termination pay may also arise particularly in the restructuring or economic scenarios, which is often at least 2 months salary plus an additional month for each year worked.

Other Matters to be Aware of

Severance Allowances

Different to termination pay, severance allowance generally only arises in Vietnam where an individual did not receive Unemployment Insurance contributions from their employer. As all Vietnamese employees should be receiving Unemployment Insurance, eligibility mostly (but not solely) falls on foreign employees upon termination.

Protected Employees

Pregnant employees, employees on maternity leave, and employees raising a child under 12 months cannot be terminated, except in cases of company closure or when the employment contract expires.

VIETNAM LABOUR CODE

TERMINATING EMPLOYMENT CONTRACTS

Termination Basis	Discussion	Consent / Notification of Trade Union & DoLISA
Mutual Agreement	Signed mutual agreement	N/A
Expiry of the Employment Contract	Notification 15 days prior to expiry	N/A
Incapacity	Court notification	N/A
Completion of Project/Assignment in an Employment Contract	Written confirmation of completion of tasks	N/A
Unilateral Termination by Employee	30 days' notice (definite-term contract) or 45 days' notice (indefinite-term contract)	N/A
Unilateral Termination by Employer:		
• Poor / Unacceptable Work Performance	Two written decisions within one month, along with specific process for redress.	Yes
• Disciplinary - Absence & Gross Misconduct	Theft, gross misconduct or unexplained absences all require documented evidence and follow specific process	Yes
• Prolonged Illness	Absent due to illness for extended period (up to 12 months)	Yes
• Force Majeure	Natural Disaster, Fire or similar major disruption to operations	No
• Corporate Restructuring	Terminating employees due to a department, team or similar group no longer being required, subject to an approved restructure plan	Yes
• Corporate Mergers & Acquisitions	Terminating employees due to a department, team or similar group no longer being required, subject to an approved restructure plan	Yes
• Ceasing Operations	Formal notice of winding up permits the termination of employment contracts	No

The above discussion of options/paths for terminating employment contracts is general in nature, as each option has specific requirements and processes that must be followed in order to enact them. Some of the requirements and interpretations can differ significantly, depending on the local authorities directions, and others require consent that can be very difficult to obtain. Before making any decisions, a thorough review of the current laws and regulations should be undertaken.

About Alitium

Alitium provides professional support in Vietnam for foreign investors. Looking after Market Entry, Company Establishment, Taxation, Advisory and Ongoing Compliance services, Alitium's professionals are focussed on ensuring international best practice and governance standards are maintained at all time for foreign investors.

Contact Alitium to discuss how we can assist with your professional needs in Vietnam.

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