LAW 10-2012-QH13

LABOUR CODE

Dated 18 June 2012

TABLE OF CONTENTS

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom – Happiness

Law 10-2012-QH13

Ha Noi, 18 June 2012

LABOUR CODE

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10;

The National Assembly hereby promulgates the Labour Code.

CHAPTER 1

General Provisions

Article 1 *Governing scope*

The Labour Code regulates labour standards; the rights, obligations and responsibilities of employees, employers, organizations representing labour collectives, and organizations representing employers in the labour relationship and in other relationships directly related to the labour relationship; and regulates State administration of labour

Article 2 *Applicable entities*

1. Vietnamese employees, people studying trades or practising trades [trainees and apprentices][1], and other employees stipulated in the Labour Code.

2. Employers.

3. Foreign employees working in Vietnam.

4. Other agencies, organizations and individuals directly related to the labour relationship.

Article 3 *Interpretation of terms*

In this Code, the following terms are construed as follows:

1. *Employee* means a person at least fifteen (15) years of age, with the ability to work, who works pursuant to a labour contract, who is paid wages and who is subject to management by the employer.

2. *Employer* means an enterprise, agency, organization, co-operative, business household or individual who hires [or] employs labour pursuant to a labour contract; and in the case of an individual employer must have full legal capacity for civil acts.

3. *Labour collective* means an organized collective of employees working together for one employer or within any one section of the organizational structure of an employer.

---

[1] Allens Arthur Robinson footnote: Square brackets contain translator's comments only.

4. *Organization representing the labour collective at the grassroots level* means the executive committee of the grassroots trade union, or the executive committee of the trade union at the directly superior level to the grassroots level in a place where a grassroots trade union has not yet been established.

5. *Organization representing the employer* means a legally established organization which represents and protects the legal rights and interests of the employer in the labour relationship.

6. *Labour relationship* means a social relationship arising during the hiring or employment of a worker, [or] payment of wages between an employee and an employer.

7. *Labour dispute* means a dispute [or disagreement] about rights, obligations and benefits arising between parties in a labour relationship.

   Labour disputes comprise individual labour disputes between an employee and employer, and collective labour disputes between the labour collective and the employer.

8. *Collective labour dispute about rights* means a dispute between the labour collective and the employer arising about different explanations and implementation of provisions of the law on labour, of a collective labour agreement, of internal labour rules or of other rules or lawful agreements.

9. *Collective labour dispute about benefits* means a dispute arising about a request of the labour collective to establish new labour conditions as compared with provisions of the law on labour, of a collective labour agreement, of internal labour rules or of other rules or lawful agreements during the process of negotiation between the labour collective with the employer.

10. *Labour coercion* means using force, threatening to use force or using other tricks aimed at coercing a worker contrary to his or her will.

Article 4 *State's policy on labour*

1. The State ensures the legitimate rights and interests of employees; encourages agreements which ensure employees have more favourable conditions than those stipulated in the law on labour; and has policies enabling employees to purchase shares and contribute capital to develop production and business.

2. Ensuring the lawful rights and interests of employers, that labour is correctly managed in accordance with law, and ensuring democracy, fairness, civilized behaviour and the raising of social responsibility.

3. The State facilitates activities of job creation, self-employment, job training and apprenticeship to enable people to find work, and facilitates labour-intensive production and business activities.

4. The State has policies on developing and allocating manpower; on training, fostering and raising technical skill of employees, and grants incentives to employees with high qualifications and technical expertise satisfying requirements for industrialization and modernization of the country.

5. The State has policies on developing the labour market and diversifying the forms of linking labour supply and demand.

6. The State shall guide employees and employers to engage in collective discussion and negotiation in order to develop an harmonious, stable and progressive relationship.

7. The State ensures the principle of gender equality; and regulates labour regimes and social policies aimed at protecting female employees, disabled employees, senior employees and junior employees.

Article 5 *Rights and obligations of employees*

1. Employees have the following rights:

   (a) To work, to freely choose types of work and trades and professions, to learn a trade, to improve professional skills, and not to be discriminated against;

   (b) To be paid a wage commensurate with his or her professional skills on the basis of an agreement reached with the employer; to be entitled to labour protection and to work in safe and hygienic working conditions; to be entitled to stipulated leave and paid annual leave and to receive collective welfare benefits;

   (c) To establish, join and participate in the activities of trade unions, professional and occupational associations and other organizations in accordance with law; to request and participate in discussions with the employer, to implement democratic regulations, and to receive advice at workplaces in order to protect the employee's lawful rights and interests; and to participate in management in accordance with the internal rules of the employer;

   (d) To strike.

2. Employees have the following obligations:

   (a) To implement labour contracts and collective labour agreements;

   (b) To comply with labour discipline and internal labour rules and to be subject to lawful management by the employer;

   (c) To implement provisions of law on social insurance and health insurance.

Article 6 *Rights and obligations of employers*

1. Employers have the following rights:

   (a) To recruit, arrange and manage labour in accordance with business and production requirements; to reward employees and to deal with breaches of labour discipline;

   (b) To establish, join and participate in the activities of professional and occupational associations and other organizations in accordance with law;

   (c) To require the labour collective to discuss, negotiate and sign a collective labour agreement; to participate in resolution of labour disputes and strikes; and to discuss with the trade union labour relations issues and improvement of the material and spiritual lives of the employees;

   (d) To temporarily close down the workplace.

2. Employers have the following obligations:

   (a) To implement labour contracts, collective labour agreements and other agreements with employees; and to respect the honour and dignity of employees;

(b) To establish a regime on organizing discussions with the labour collective at the enterprise and to strictly implement democratic regulations at the grassroots level;

(b) To comply with labour standards; to implement labour contracts, collective labour agreements and other agreements with employees, and to respect the honour and dignity of employees;

(c) To establish a register managing personnel and a register managing salary, and to present these registers on request by competent agencies;

(d) To prepare a declaration of employment of employees and submit it within thirty (30) days from the date of inauguration of activities to the local State authority for labour, and to periodically provide reports to such authority on status of labour changes during operation;

(dd) To implement other provisions of the law on labour, and provisions of law on social insurance and health insurance.

Article 7 *Labour relationship*

1. The labour relationship between an individual employee or labour collective with the employer shall be established via discussion, negotiation and agreement on the principles of voluntary commitment, goodwill, equality, co-operation and mutual respect of legal rights and interests.

2. The trade union and employer representative shall jointly participate with State authorities to assist formulation of an harmonious, stable and progressive labour relationship; shall supervise implementation of the law on labour; and shall protect the lawful rights and interests of both employers and the employer.

Article 8 *Conduct which is strictly prohibited*

1. Discrimination on the basis of gender, race, colour, social class, marital status, beliefs, religion, HIV infection, disability, or because of establishing, joining or participating in activities of a trade union.

2. Maltreatment or sexual harassment of employees at the workplace.

3. Labour coercion.

4. Taking advantage of an apprenticeship or trade-training program to seek profit or exploit an employee or to entice or compel an apprentice or trainee to conduct an illegal act.

5. Employing workers who have not yet passed training courses or who do not yet have national trade or technical certificates in the case of any trade or work for which the law requires employees to have passed such courses or have such certificates.

6. Seducing, making false promises or conducting false advertising in order to deceive employees, or taking advantage of employment services or labour export to foreign countries pursuant to contracts in order to conduct an illegal act.

7. Employing juniors contrary to law.

CHAPTER 2

Employment

Article 9 *Employment and finding jobs*

1. Working or a job means any labour activity which creates income and which is not prohibited by law.

2. The State, employers and society are responsible to participate in job creation, ensuring that all people with the ability to work have the opportunity to work.

Article 10 *Right of workers to work*

1. A worker has the right to be employed by any employer and in any location not prohibited by law.

2. A person seeking work has the right to make a direct approach to prospective employers or to approach them via an employment services organization in order to find work which matches his/her aspirations, capability, trade or professional skills, and health.

Article 11 *Right of employers to recruit labour*

An employer has the right to recruit labour directly or to do so via an employment services organization or labour subleasing enterprise, and has the right to increase or reduce the number of employees for compliance with production and business requirements.

Article 12 *State policy on employment*

1. The State shall set targets on creation of additional new jobs in both its annual and five-year socio-economic development plans.

   Based on the socio-economic conditions in each period, the Government shall submit a national program with targets on job creation and occupational training to the National Assembly for decision.

2. The State has a policy on job loss insurance and other policies encouraging workers to create their own jobs; and to assist employers to employ many female workers, disabled people and ethnic minority people in order to resolve the search for employment.

3. The State encourages and creates favourable conditions for investment by both domestic and foreign organizations and individuals to develop business and production for the purpose of creating jobs for workers.

4. The State assists employers and workers to find work and to expand the labour market overseas.

5. The State shall create a national Job Creation Fund to assist with loans and other incentives for job creation and other activities in accordance with law.

Article 13 *Employment programs*

1. People's committees of provinces and cities under central authority (*provincial people's committees*) shall formulate local employment programs for submission to the same level people's council for decision.

2. State bodies, enterprises, socio-political and social organizations and other employers are responsible, within the scope of their respective duties and powers, to participate in implementing employment programs.

Article 14 *Employment services organizations*

1. Employment services organizations have the function of providing consultancy, introducing jobs and providing vocational training to workers; of supplying and recruiting labour at the request of employers; and of collecting and providing information on the labour market and implementing other duties in accordance with law.

2. Employment services organizations comprise employment introduction centres and enterprises providing employment services.

   Employment introduction centres shall be established and operate in accordance with Government regulations.

   Enterprises providing employment services shall be established and operate in accordance with the provisions of the *Law on Enterprises* and must be licensed to provide employment services by the provincial level State authority for labour.

3. Employment services organizations are permitted to collect fees, and shall be considered for tax reduction or exemption in accordance with the law on fees and charges and the law on tax.

CHAPTER 3

Labour Contracts

Section 1

Signing Labour Contracts

Article 15 *Labour contracts*

Labour contract means an agreement between an employee and an employer on a paid job, on working conditions, and on the rights and obligations of each party to the labour relationship.

Article 16 *Forms of labour contract*

1. A labour contract must be entered into in writing and made in two copies, each party to retain one copy, except in the case prescribed in clause 2 of this article.

2. The parties may enter into an oral labour contract for temporary work of less than three months.

Article 17 *Principles for signing labour contracts*

1. Voluntary commitment, equality, goodwill, co-operation and honesty.

2. Voluntary signing of a labour contract but not contrary to law, to the collective labour agreement or to social ethics.

Article 18 *Responsibility to sign labour contracts*

1. Before accepting a worker to work, the employer and such worker must directly enter into a labour contract.

   If the worker is from 15 years up to under 18 years of age, then the legal representative of the worker must consent to the entering into the labour contract.

2. For seasonal work or a specific job with a duration of less than twelve (12) months, a group of workers may authorize one of the workers in their group to enter into a written labour contract; and in this case, the labour contract has the same validity as if it was signed with each worker.

   A labour contract signed by an authorized person must enclose a list setting out the full name, age, sex, residential addresses, trade or occupation, and signature of each worker.

Article 19 *Responsibility to provide information before signing a labour contract*

1. [Before signing a labour contract], an employer must provide information to the employee on the work to be performed, the workplace, working conditions, working hours, rest breaks, [conditions on] occupational safety and hygiene, [rates of] wages, method of payment of wages, social insurance and health insurance, and provisions on confidentiality of business secrets (if any) and other matters directly relevant to signing of a labour contract which an employee needs to know.

2. [Before signing a labour contract], an employee must also provide the employer with information being the employee's full name, age, sex, residential address, educational standard, professional qualifications, health status, and other matters directly relevant to signing of a labour contract which the employer requests.

Article 20 *Prohibited conduct by an employer when signing and performing a labour contract*

1. Retaining originals of personal papers, degrees and certificates of the employee.

2. Requiring the employee to provide security measures by way of cash or assets to guarantee performance of the labour contract.

Article 21 *Entering into multiple labour contracts with multiple employers*

An employee may enter into multiple labour contracts with multiple employers, provided that all the contents in the executed contracts are fully performed.

If [an employee] enters into multiple labour contracts with multiple employers, participation by the employee in the social insurance and health insurance schemes shall be implemented in accordance with Government regulations.

Article 22 *Types of labour contract*

1. A labour contract must be entered into in one of the following types:

   (a) Indefinite term labour contract.

   An indefinite term labour contract is a contract in which the two parties do not fix the term nor the time of termination of validity of the contract;

   (b) Definite term labour contract.

A definite term labour contract is a contract in which the two parties fix the term and the time of termination of the validity of the contract as a period between twelve (12) months and thirty six (36) months;

(c) A seasonal or specific job labour contract with a duration of less than twelve (12) months.

2. Where a labour contract prescribed in sub-clauses (b) or (c) of clause 1 of this article expires and the employee continues to work, then within thirty (30) days from the date of expiry of the contract the two parties must enter into a new labour contract; if a new labour contract is not entered into, then a signed contract as prescribed in sub-clause (b) of clause 1 of this article shall become an indefinite term labour contract, and a signed contract as prescribed in sub-clause (c) of clause 1 of this article shall become a definite term labour contract with a duration of twenty-four (24) months.

Where the two parties enter into a new labour contract which is a definite term labour contract, they may only sign one additional contract, and if the employee thereafter continues to work then an indefinite term labour contract must be entered into.

3. It is prohibited to sign a seasonal or specific job labour contract for a term of less than twelve (12) months in respect of work which is regular and has a duration of twelve (12) months or more, except to temporarily replace an employee who has taken leave of absence for military service, is on maternity leave or sick leave, is on leave as the result of a work-related accident, or is on leave for other temporary reasons.

Article 23 *Contents of labour contracts*

1. A labour contract must contain the following main particulars:

(a) Name and address of the enterprise or of the employer's lawful representative;

(b) Full name, date of birth, sex, residential address, and number of identity card or other legal document of the employee;

(c) Job description and workplace;

(d) Term of the labour contract;

(dd) Wage rate, method of and time of payment of wages, allowances and other additional payments;

(e) Regime for wage increases and promotion;

(g) Working hours and holidays;

(h) Personal protective equipment of the employee;

(i) Social insurance and health insurance;

(k) Training and skill improvement;

2. When an employee does work which is directly related to business or technological secrets as defined by law, the employer has the right to a written agreement with the employee on contents and term of confidentiality of business secrets and of technology, of interests [or benefits] and on payment of compensation if the employee breaches such agreement.

3. In the case of employees working in the sectors of agriculture, forestry, fisheries and salt mining, then depending on the type of work, the two parties may exclude some of the main particulars of the labour contract and reach agreement on adding items on method of resolution of a case where performance of the labour contract is affected by natural disaster, fire or weather.

4. The Government shall regulate contents of labour contracts of employees hired to act as directors of enterprises with State owned capital.

Article 24 *Addenda to labour contracts*

1. An addendum to a labour contract constitutes a part of such labour contract and has the same validity as the labour contract.

2. An addendum to a labour contract may elaborate in detail some of the articles of the labour contract, or may amend or supplement the labour contract.

   If the addendum to a labour contract elaborates in detail some of the articles or clauses of the labour contract resulting in an interpretation different from the labour contract, then implementation shall be in accordance with the contents of the labour contract.

   An addendum to a labour contract which amends or supplements the labour contract must clearly specify the articles which are amended or supplemented and the effective date of such amended and supplemented articles.

Article 25 *Effectiveness of a labour contract*

A labour contract is effective from the date the parties enter into the contract, unless otherwise agreed by the two parties or unless otherwise stipulated by law.

Article 26 *Probationary period of work*

1. The employer and the employee may reach agreement on a probationary [trial] period of work and the rights and obligations of the two parties within that period. If agreement is reached on a probationary period of works, the parties may sign a probationary contract.

   The contents of a probationary contract shall comprise the contents prescribed in sub-clauses (a), (b), (c), (d), (dd), (g) and (h) of article 23.1 of this Code.

2. An employee working pursuant to a seasonal labour contract is not engaged in a probationary period of work.

Article 27 *Duration of probationary period*

The duration of a probationary period shall depend on the nature and complexity of the work, but there may only be probation on one occasion for one job, and probation must ensure the following conditions:

1. The probationary period must not exceed sixty (60) days for working in a position requiring college level or higher specialized or technical expertise.

2. The probationary period must not exceed thirty (30) days for working in a position requiring vocational or professional intermediate level specialized or technical expertise or for technical workers and professional staff.

3. The probationary period must not exceed six (6) working days for other work.

Article 28 *Wage during probationary period*

The wage of an employee during a probationary period shall be as agreed by the two parties but must be at least 85% of the scale wage rate for the relevant working position [job].

Article 29 *Termination of probationary period*

1. When the employee's work satisfies the requirements during the probationary period, the employer must sign a labour contract with the employee.

2. During the probationary period, each party has the right to rescind the agreement on probationary work without providing advance notice and without paying compensation if the employee's probationary work does not satisfy the requirements agreed by the two parties.

Section 2

Performance of Labour Contracts

Article 30 *Performing work pursuant to a labour contract*

Work pursuant to a labour contract must be performed by the employee who entered into such contract. The working address[2] shall be implemented in accordance with the labour contract or an agreement between the two parties.

Article 31 *Assigning employee to do other work different from the labour contract*

1. In a case of unforeseeable difficulty due to a natural disaster, fire, epidemic, application of measures to prevent or overcome a work-related accident or occupational disease, in the event of a power failure or water shortage or due to business and production demand, an employer has the right to temporarily assign an employee to do work other than that specified in the labour contract, but not for more than an accumulated period of sixty (60) working days in any one year unless the employee [otherwise] consents.

2. An employer must, when temporarily assigning an employee to do other work than that specified in the labour contract, give at least three (3) working days notice to the employee, inform the employee of the duration of the temporary assignment, and assign a job which is suitable to the health and gender of the employee.

3. Where an employee is temporarily assigned to another job pursuant to clause 1 of this article, the employee must be paid a wage at the rate appropriate to the new job; if the wage rate of the new job is less than that of the previous job, the employee is entitled to receive the previous wage for a period of thirty (30) working days. The new wage must equal at least eighty-five (85) per cent of the previous wage, but must not be less than the minimum wage for the relevant area stipulated by the Government.

Article 32 *Cases in which suspension of performance of a labour contract is permitted*

1. The employee is required to do military service.

---

[2] Allens Arthur Robinson footnote: This is the literal translation here as opposed to "workplace" which is mostly used in the original text.

2. The employee is detained or temporarily held in prison in accordance with the law on criminal procedure.

3. The employee must comply with a mandatory decision on admission to a detention centre, to a drug rehabilitation centre or to an educational establishment.

4. A female employee is pregnant as stipulated in article 156 of this Code.

5. In other circumstances agreed by both parties.

Article 33 *Responsibility to receive the employee back to work on expiry of suspension of performance of labour contract*

Within fifteen (15) days from expiry of the term of suspension of performance of the labour contract in the cases prescribed in article 32, the employee must attend the workplace and the employer must receive the employee back to work, unless the two parties have some other agreement.

Article 34 *Employees working part-time*

1. *A part-time employee* means an employee with working hours shorter than the average daily or weekly working hours prescribed in the law on labour, in the collective labour agreement of the enterprise, in the industry labour collective agreement, or in the rules of the employer.

2. An employee may reach agreement with an employer for the former to work part-time when signing the labour contract.

3. Part-time employees are entitled to receive wages, and have rights and obligations the same as full-time employees, and are entitled to equal opportunity the same as full-time employees, must not be discriminated against, and are entitled to [the same conditions] on occupational safety and hygiene.

Section 3

Amending, Supplementing and Terminating Labour Contracts

Article 35 *Amending and supplementing labour contracts*

1. Any party who during the process of performing the labour contract wishes to amend or supplement the contractual items must notify the other party at least three (3) working days in advance of the specific items to be amended or added.

2. Amendments or additions to contents of a labour contract shall take place by way of amending or supplementing the signed labour contract in the form of an addendum to the labour contract, or by entering into a new labour contract.

   If the two parties fail to reach agreement on the amendment or addition to the contents of the labour contract, then the signed labour contract must continue to be performed.

Article 36 *Circumstances in which labour contract is terminated*

[A labour contract is terminated in the following circumstances:]

1. On expiry of the labour contract, except in the case prescribed in article 192.6 of this Code.

2. The job has been completed in accordance with the labour contract.

3. Both parties agree to terminate the contract.

4. The employee has satisfied the conditions of period of employment for social insurance contributions and reaches the age of pension entitlement pursuant to article 187 of this Code;

5. The employee is sentenced to a jail term or to the death penalty, or is prohibited from performing the job prescribed in the labour contract by a legally enforceable decision of a court.

6. The employee dies; or is declared by a court to have lost legal capacity for civil acts, to be missing or to be deceased.

7. The employer being an individual dies, or is declared by a court to have lost legal capacity for civil acts, to be missing or to be deceased; [or] the employer not being an individual terminates its operation.

8. The employee is disciplined in the form of dismissal in accordance with article 125.3 of this Code.

9. The employee unilaterally terminates the labour contract in accordance with article 37 of this Code.

10. The employer unilaterally terminates the labour contract in accordance with article 38 of this Code; [or] the employer retrenches the employee as a result of restructuring, change of technology, for economic reasons, or due to merger, consolidation or separation of the enterprise or co-operative.

Article 37 *Circumstances in which an employee has the right to unilaterally terminate the labour contract*

1. An employee working under a definite term labour contract, or a seasonal or specific job labour contract with a duration of less than twelve (12) months has the right to unilaterally terminate the labour contract prior to expiry of its duration in the following circumstances:

   (a) The employee is not assigned to the correct job or workplace or is not ensured the working conditions agreed in the labour contract;

   (b) The employee is not paid in full or on time the wages due as agreed in the labour contract;

   (c) The employee is maltreated, sexually harassed, or is subject to labour coercion;

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

   (dd) The employee is elected to full-time public office duties in a body elected by the people[3] or is appointed to a position in a State body;

   (e) A female employee is pregnant and must cease working on the advice of a competent medical consulting or treating establishment;

   (g) The employee is ill or injured and remains unable to work[4] after having received treatment for a period of ninety (90) consecutive days in the case of work pursuant to a definite term labour contract, or for a quarter of the duration of the contract in the case of work pursuant to a seasonal or specific job labour contract with a duration of less than twelve (12) months.

---

[3] Allens Arthur Robinson footnote: An example would be a people' s council.

[4] Allens Arthur Robinson footnote: The literal translation is "and has not recovered the ability to work".

2. On unilateral termination of a labour contract pursuant to clause 1 above, the employee must provide the employer with the following advance notice:

   (a) At least three (3) working days in the cases stipulated in sub-clauses (a), (b), (c) and (g) of clause 1 of this article;

   (b) At least thirty (30) days in the case of a definite term labour contract; and at least three (3) working days in the case of a seasonal or specific job labour contract with a duration of less than twelve (12) months in the cases prescribed in sub-clauses (d) and (dd) of clause 1 of this article;

   (c) In the cases prescribed in sub-clause (e) of clause 1 of this article, the employee must give advance notice to the employer in accordance with article 156 of this Code.

3. An employee working pursuant to an indefinite term labour contract has the right to unilaterally terminate the contract, but must provide the employer with at least forty-five (45) days' advance notice, except in the case prescribed in article 156 of this Code.

Article 38 *Circumstances in which an employer has the right to unilaterally terminate the labour contract*

1. An employer has the right to unilaterally terminate a labour contract in the following circumstances:

   (a) The employee repeatedly failed to perform the work in accordance with the terms of the labour contract;

   (b) The employee is ill or injured and remains unable to work after having received treatment for a period of twelve (12) consecutive months in the case of an indefinite term labour contract, or six consecutive months in the case of a definite term contract, or more than half the duration of the contract in the case of a seasonal or specific job labour contract with a duration of less than twelve (12) months.

   On recovery of the employee's health, the employee shall be considered for continued signing of a labour contract;

   (c) Where as a result of a natural disaster, fire or for any other reason of force majeure as prescribed by law, the employer, despite having taken all necessary measures to remedy the problem, still needs to narrow production and reduce the number of jobs;

   (d) The employee failed to attend the workplace on expiry of the period prescribed in article 33 of this Code [15 days].

2. An employer who unilaterally terminates a labour contract must provide the following period of advance notice to the employee:

   (a) At least forty-five (45)days in the case of an indefinite term labour contract;

   (b) At least thirty (30) days in the case of a definite term contract;

   (c) At least three (3) working days in the case prescribed in clause 1(b) of this article and in the case of a seasonal or specific job labour contract with a duration of less than twelve (12) months.

Article 39 *Circumstances in which an employer is not permitted to unilaterally terminate a labour contract*

[An employer is not permitted to unilaterally terminate a labour contract in the following circumstances:]

1. The employee, after contracting an or suffering an injury caused by a work-related accident or occupational disease, is being treated or nursed on the decision of a competent medical consulting or treating establishment, except in the case prescribed in article 38.1(b) above.

2. The employee is on annual leave, personal leave of absence, or any other type of leave agreed by the employer.

3. The employee is a female in the cases stipulated in article 155.3 of this Code.

4. The employee is on leave pursuant to the regime on parental leave prescribed in the law on social insurance.

Article 40 *Rescission of unilateral termination of labour contract*

Each party has the right to rescind its unilateral termination of a labour contract at any time prior to expiry of the notice period, but must provide written notice to the other party and must have consent from the other party.

Article 41 *Illegal unilateral termination of labour contract*

Illegal unilateral termination of a labour contract means any case of termination of a labour contract which is incorrect in terms of articles 37, 38 and 39 of this Code.

Article 42 *Obligations of employer who unilaterally terminates a labour contract illegally*

1. The employer must receive the employee back to work in accordance with the signed labour contract and must pay wages, social insurance and health insurance for the period during which the employee did not work, plus at least two months' wages in accordance with the labour contract.

2. An employee who does not wish to continue to work must be paid by the employer, in addition to the compensation prescribed in clause 1 of this article, the severance allowance stipulated in article 48 of this Code.

3. If the employer does not wish to receive the employee back to work and has the employee's consent, then in addition to the compensation prescribed in clause 1 of this article and the severance allowance stipulated in article 48 of this Code, the two parties may agree on additional compensation of at least two months' wages in accordance with the labour contract in order to terminate the labour contract.

4. If there is no longer the working position or job for which the labour contract was signed and the employee wishes to continue to work, then in addition to the compensation pursuant to clause 1 of this article, the two parties shall negotiate in order to amend and supplement the labour contract.

5. If there was a breach of the provisions on the required period of advance notice, then [the employer] must pay the employee compensation being an amount of money equivalent to the wage of the employee for the period during which advance notice was not provided.

Article 43 *Obligations of employee who unilaterally terminates a labour contract illegally*

1. The employee is not entitled to a severance allowance and must pay compensation to the employer of one half of one month's wage in accordance with the labour contract.

2. If the employee breaches the provisions on the period of advance notice which must be provided, then the employee must pay compensation to the employer being a sum of money equivalent to the wage of the employee during the period for which advance notice was not provided.

3. The employee must refund training costs to the employer in accordance with article 62 of this Code.

Article 44 *Obligations of employer in cases of restructuring, change of technology, or [changes for] economic reasons*

1. If restructuring or a change of technology adversely affects the jobs of many employees, the employer must formulate and implement a labour usage plan in accordance with article 46 of this Code. If new jobs are created, then the employer must prioritize retraining for employees in order to continue to employ them.

   If the employer is unable to resolve new jobs but must retrench employees, then the employer must pay severance allowances for job loss to employees in accordance with article 49 of this Code.

2. If for economic reasons many employees are in danger of losing their jobs and must be retrenched, then the employer must formulate and implement a labour usage plan in accordance with article 46 of this Code.

   If the employer is unable to resolve new jobs but must retrench employees, then the employer must pay severance allowances for job loss to employees in accordance with article 49 of this Code.

3. Many employees may only be retrenched pursuant to this article after discussion with the organization representing the labour collective at the grassroots level and after thirty (30) days' advance notice has been provided to the provincial State administrative body for labour.

Article 45 *Obligations of employer upon merger, consolidation, division or separation of an enterprise or co-operative*

1. Upon merger, consolidation, division or separation of an enterprise or co-operative, the succeeding employer is responsible to continue to employ the current number of employees and to amend and supplement their labour contracts.

   If the succeeding employer is unable to employ all current employees, then such employer must prepare and implement a labour usage plan in accordance with article 46 of this Code.

2. On transfer of ownership or right to use assets of an enterprise, the previous employer must prepare a labour usage plan in accordance with article 46 of this Code.

3. An employer who retrenches employees pursuant to this article must pay severance allowances for job loss to the employees in accordance with article 49 of this Code.

Article 46 *Labour usage plan*

1. A labour usage plan shall contain the following basic particulars:

(a) List and the number of employees who will continue to be employed, and of employees to undergo retraining for further employment;

(b) List and the number of employees who will retire;

(c) List and the number of employees who will be transferred to work part-time; and of employees whose labour contracts will be terminated;

(d) Measures and financial funding for ensuring implementation of the plan.

2. The organization representing the labour collective at the grassroots level must participate in formulation of the labour usage plan.

Article 47 *Responsibilities of employers who terminate labour contracts*

1. At least fifteen (15) days prior to the date of expiry of a definite labour contract, the employer must provide advance written notice to the employee of the time [the date] when the contract terminates.

2. Within seven (7) working days from the date of termination of a labour contract, each party must fully pay all sums outstanding and relating to rights and interests to the other party. In special cases this period may be extended, but shall not exceed thirty (30) days.

3. The employer is responsible to complete procedures for certification of, and return of, the social insurance book to the employee, and also return other documents to the employee which the employer retained.

4. In a case where an enterprise or a cooperative has its operation terminated, or is dissolved or declared bankrupt, then there shall be priority payment of wages, severance allowances, social insurance and health insurance, job loss insurance, and other interests of the employees in accordance with the labour collective agreement and signed labour contracts.

Article 48 *Severance allowance*

1. When a labour contract is terminated in accordance with clauses 1, 2, 3, 5, 6, 7, 9 or 10 of article 36 of this Code, the employer is responsible to pay a severance allowance to any employee who has regularly worked for a full twelve months or more. The severance allowance shall be one half of one month's wage for each year of employment.

2. The length of a working period for calculating a severance allowance on retrenchment means the total working time the employee actually worked for the employer minus the period for which the employee received unemployment benefits in accordance with the *Law on Social Insurance* and the working period for which the employer has already paid a severance allowance.

3. Wages for the purpose of calculating a severance allowance on retrenchment means the average wage pursuant to the labour contract for the six (6) months immediately preceding retrenchment of the employee.

Article 49 *Retrenchment [job loss] allowance*

1. The employer shall pay a severance allowance for job loss to an employee who had regularly worked for the employer for 12 or more months and who loses his or her job pursuant to article 44 or 45 of this Code. The severance allowance shall be one month's wages for each working year but at least 2 months' salary.

2. The length of a working period for calculating a severance allowance for job loss means the total working time the employee actually worked for the employer minus the period for which the employee received unemployment benefits in accordance with the *Law on Social Insurance* and the working period for which the employer has already paid a severance allowance.

3. Wages for the purpose of calculating a severance allowance for job loss means the average wage pursuant to the labour contract for the six months immediately preceding job loss.

Section 4

Invalid Labour Contracts

Article 50 *Invalid labour contract*

1. A labour contract is wholly invalid in the following cases:

   (a) The entire contents of the labour contract are illegal;

   (b) A signatory to the labour contract lacked authority;

   (c) The job for which the two parties signed the labour contract is work prohibited by law;

   (d) The contents of the labour contract restrict or prevent exercise of the right of the employee to establish or join a trade union and participate in its activities.

2. A labour contract is partially invalid when the contents of a part of the contract are illegal without affecting the residual contents of the contract.

3. If a part or the entire contents of a labour contract specify interests of the employee as being less than those prescribed in the law on labour, in labour rules, or in any collective labour agreement currently applicable, or if the contents of the labour contract restrict other rights of the employee, then such part or entire contents are invalid.

Article 51 *Authority to declare a labour contract invalid*

1. The Labour Inspectorate and People's Courts shall have the right to declare a labour contract to be invalid.

2. The Government shall provide regulations on the sequence and procedures for the Labour Inspectorate to declare labour contracts invalid.

Article 52 *Dealing with invalid labour contracts*

1. A labour contract which is declared partially invalid shall be dealt with as follows:

   (a) The rights, obligations and interests of the parties shall be resolved in accordance with provisions in the collective labour agreement or provisions of law;

   (b) That parties shall amended that part of the labour contract declared to be invalid for compliance with the collective labour agreement or the law on labour.

2 A labour contract which is declared wholly invalid shall be dealt with as follows:

(a) If a signatory to the labour contract lacked authority as prescribed in article 50.1(d) above, then the State administrative body for labour shall guide the parties to resign the contract;

(b) The rights, obligations and interests of the employee shall be resolved in accordance with law.

3. The Government shall provide specific regulations on this article.

Section 5

Labour Outsourcing

Article 53 *Labour outsourcing [or sub-leasing]*

1. *Labour outsourcing* means an employee recruited by an enterprise licensed to conduct labour outsourcing [the sub-lessor] thereafter works for another employer [sub-leasing employer], and is subject to management by such other employer but maintains the labour relationship with the labour outsourcing enterprise.

2. Labour outsourcing activities are a business line subject to conditions and may only be conducted in respect of a number of specified jobs.

Article 54 *Labour outsourcing enterprises*

1. A labour outsourcing enterprise must pay an escrow deposit and must be licensed for labour outsourcing activities.

2. The period of any labour sublease [outsourcing] shall not exceed twelve (12) months.

3. The Government shall regulate licensing of labour outsourcing activities, payment of escrow deposits and the list of jobs for which labour may be outsourced.

Article 55 *Labour sublease contract*

1. The labour outsourcing enterprise and the subleasing employer must sign a sublease contract in writing, which contract must be made in two copies, with each party to receive one copy.

2. A labour sublease contract must contain the following main particulars:

(a) Workplace, description of the job which requires a subleased employee; specific contents of the job, and specific requirements applicable to the subleased employee;

(b) Term of the labour sublease, and date of commencement of work by the employee;

(c) Working hours, rest breaks, and conditions on occupational safety and hygiene at the workplace;

(d) Obligations of each party owed to the employee.

3. A labour sublease contract must not contain agreements on the rights and interests of the employee which are less [favourable] than those in the labour contract which the labour outsourcing enterprise signed with the employee.

Article 56 *Rights and obligations of labour outsourcing enterprises*

1. To ensure that the employee provided has the professional qualifications which match the requirements of the sub-lessee and the contents of the labour contract [which the labour outsourcing enterprise] signed with the employee.

2. To notify employees of the contents of subleases.

3. To sign labour contracts with employees in accordance with the provisions of this Code.

4. To notify the labour sub-lessee of the curriculum vitae of the employee or of the requirements of the employee (if any).

5. To discharge obligations of an employer in accordance with this Code; to pay employees in accordance with law the following: wages, wages for public holidays and for annual leave, wages on cessation of work, severance allowances on retrenchment or job loss, compulsory social insurance payments, health insurance and job loss insurance.

   To ensure that the sub-leased employee receives a wage not lower than the wage of an employee of the sub-leasing employer with the same professional qualifications and doing the same job or a job of the same value.

6. To formulate a file recording the number of sub-leased employees, sub-leasing employers, the fees for outsourcing labour and to report same to the provincial State administrative body for labour.

7. To discipline any sub-leased employee in breach of labour discipline when the sub-leasing employer returns such employee because of a breach of labour discipline.

Article 57 *Rights and obligations of sub-leasing employers*

1. To inform and guide sub-leased employees of the internal labour rules and other regulations of the sub-leasing employer.

2. Not to discriminate regarding labour conditions as between sub-leased employees and [other] employees of such sub-leasing employer.

3. To reach agreement with any sub-leased employee who is required for night work or for overtime outside the scope of contents of the labour sub-lease contract.

4. Not to further outsource a sub-leased employee to another employer.

5. To reach agreement with the sub-leased employee and the labour outsourcing enterprise to officially recruit the sub-leased employee to work for the sub-leasing employer in a case where the labour contract of the employee with the outsourcing enterprise has not yet terminated.

6. To return the employee to the outsourcing enterprise if the former fails to satisfy the agreed requirements or is in breach of labour discipline.

7. To provide evidence to the outsourcing enterprise of any breach of labour discipline by the sub-leased employee in order to consider disciplinary measures to be taken.

Article 58 *Rights and obligations of sub-leased employees*

1. To perform work in accordance with the labour contract signed with the labour outsourcing enterprise.

2. To comply with internal rules, labour discipline, lawful management and the collective labour agreement of the sub-leasing employer.

3. To be paid a wage not lower than the wage of an employee of the sub-leasing employer with the same professional qualifications and doing the same job or a job of the same value.

4. To make a complaint to the labour outsourcing enterprise if the sub-leasing employer breaches the contents of the labour sub-lease contract.

5. To exercise the right to unilaterally terminate the labour contract with the outsourcing labour enterprise in accordance with article 37 of this Code.

6. To reach agreement to sign a labour contract with the sub-leasing employer after termination of the labour contract with the outsourcing labour enterprise.

CHAPTER 4

Apprenticeship, Providing Training, and Fostering Improvement of Job and Professional Skills

Article 59 *Apprenticeship and providing trade training*

1. An employee is permitted to select the trade or apprenticeship at the workplace in conformity with his or her working requirements.

2. The State encourages eligible enterprises[5] to establish a trade training establishment or open a trade training class at the workplace in order to train, re-train, foster and improve job and professional skills of employees currently working at the enterprise, and to provide trade training for other apprentices in accordance with the law on vocational training .

Article 60 *Responsibilities of employers to provide training, to foster and improve job and professional skills*

1. Employers must have annual plans on training and improving job and professional skills of employees currently working at the enterprise, and must arrange funding [a budget] for same; and must provide retraining for employees prior to assigning them to other trades inside the enterprise.

2. Employers must provide a report, in their annual labour reports to the provincial State administrative authority for labour, on the results of training, fostering and improving job and professional skills.

Article 61 *Apprenticeship and practical training in order to work for an employer*

1. Any employer who recruits people as apprentices or to provide them with practical training in order to work for the enterprise is not required to register trade training activities and is not permitted to collect study fees.

---

[5] Allens Arthur Robinson footnote: The literal translation is "enterprises which satisfy all the conditions".

Apprentices and practical trainees in this case must be at least 14 years of age and be in good health sufficient to satisfy the requirements of the [particular] trade, except for a number of trades stipulated by the Ministry of Labour.

The two parties must sign a trade training contract, which shall be formulated in two copies, each party to retain one copy.

2. If during the period of apprenticeship or practical training the apprentice or trainee directly makes or participates in the making of eligible products, the employer must pay such person a wage at a rate agreed by the two parties.

3. On expiry of the period of apprenticeship or practical training, the two parties must sign a labour contract if all conditions prescribed in this Code are satisfied.

4. An employer is responsible to facilitate the employee's participation in assessing the technical skills achieved in order to issue a national trade and professional skill certificate.

Article 62 *Trade training contract between employer and employee and training fees*

1. The two parties must sign a trade training contract if the worker is provided with training, job and professional skills improvement or re-training in Vietnam or overseas with funding provided by the employer, including funding provided to the employer by its partner.

   A trade training contract shall be made in two copies, and each party shall retain one copy.

2. A trade training contract shall include the following basic particulars:

   (a) The trade in which training is provided;

   (b) Training location and training period;

   (c) Training fees;

   (d) Period for which the worker undertakes to work for the enterprise after training;

   (dd) Responsibility to refund training fees;

   (e) Responsibilities of the employer.

3. Training fees comprise fees which have valid vouchers being fees paid to trainers, training materials, school classes, machinery, equipment and practical materials, other expenses paid to support the trainee, and wages, social insurance and health insurance paid for the trainee during the training period. If a worker is sent overseas for training, then the training fees also include travelling expenses and living expenses for the period the worker spends overseas.

CHAPTER 5

Discussion at Workplaces, Collective Bargaining, and Collective Labour Agreements

Section 1

Discussion at Workplaces

Article 63 *Objectives and form of discussion at workplaces*

1. Discussion at the workplace is aimed at sharing information and increasing understanding between the employer and employees in order to formulate the labour relationship at the working location.

2. Discussion at the workplace shall be conducted via a direct exchange between the employer and employees or between the labour collective representative with the employer, ensuring implementation of democratic regulations at the grassroots level.

3. The employer and employees must implement democratic regulations at the grassroots level at the workplace in accordance with Government regulations

Article 64 *Contents of discussion at workplaces*

1. Status of production and business of the employer.

2. Performance of labour contracts, of the collective labour agreement, of internal rules and other regimes [regulations],and of other undertakings and agreements at the workplace.

3. Working conditions.

4. Requests from the employees and labour collective to the employer.

5. Requests from the employer to the employees and labour collective.

6. Other matters in which the parties are interested.

Article 65 *Conducting discussion at workplace*

[Discussion must be held at the workplace:]

1. Discussion must be held at the workplace once every three months or on one-off occasions at the request of one of the parties.

2. Employers are responsible to arrange locations and other material conditions to ensure that discussion is able to take place at the workplace.

Section 2

Collective Bargaining[6]

Article 66 *Objective of collective bargaining*

Collective bargaining means debate and negotiation between the labour collective representative and the employer with the following objectives:

1. Formulating an harmonious, stable and progressive labour relationship.

2. Establishing new working conditions to provide the basis for signing a collective labour agreement.

3. Resolving problems and difficulties in exercise of rights and implementation of obligations of each party to the labour relationship.

Article 67 *Principles for collective bargaining*

1. Collective bargaining shall be conducted on the principles of goodwill, equality, cooperation, publicity and transparency.

2. Collective bargaining shall be carried out periodically or on one-off occasions.

3. Collective bargaining shall be conducted at the location agreed by the two parties.

Article 68 *Right to require collective bargaining*

1. Each party has the right to request that collective bargaining be carried out, and the requested party must not refuse. No later than seven (7) working days from such request, the parties must agree on a time for commencing a negotiating meeting.

2. If either party is unable to participate in the negotiating meeting at the time specified, it has the right to request a postponement but bargaining must commence no later than thirty (30) days from the date of receipt of the request for collective bargaining.

3. If either party refuses to engage in bargaining or fails to conduct bargaining within the time prescribed in this article, then the other party has the right to conduct procedures to petition for resolution of a labour dispute in accordance with law.

Article 69 *Representation at collective bargaining*

1. Representation at collective bargaining is regulated as follows:

   (a) The labour collective party in the case of collective bargaining within the scope of an enterprise shall be the organization representing the labour collective at the grassroots level, and within the scope of an industry shall be the representative of the executive committee of the trade union of the industry;

   (b) The employer party in the case of collective bargaining within the scope of an enterprise shall be the employer or the representative of the employer; and in the scope of an industry shall be

---

6 Allens Arthur Robinson footnote: Alternative translation is "Collective negotiation".

the representative of the organization representing employers in the industry.

2. The number of participants in negotiating [bargaining] meetings shall be agreed by the two parties.

Article 70 *Matters subject to collective bargaining*

1. Wages, bonuses, allowances and pay rises.

2. Working hours and rest breaks [holidays or leave]; overtime and rest breaks between shifts.

3. Job security for employees.

4. Ensuring occupational safety and hygiene; implementation of internal labour rules.

5. Other matters in which the parties are interested.

Article 71 *Collective bargaining process*

1. The process of preparing for collective bargaining is regulated as follows:

   (a) At least ten (10) days prior to commencing the first collective bargaining session, the employer must supply information about the status of production and business when the labour collective so requests, except for business secrets and confidentiality of technology of the employer;

   (b) Obtaining opinions from the labour collective:

   The negotiating representative of the labour collective shall obtain opinions directly from the labour collective or indirectly via the employees' congress regarding proposals of employees to the employer and regarding proposals of the employer to the labour collective.

   (c) Notification of matters to be negotiated during collective bargaining:

   At least five (5) working days prior to commencing the first collective bargaining session, the party requesting collective bargaining must provide written notice to the other party about the matters proposed to be negotiated during collective bargaining.

2. The process of conducting collective bargaining is regulated as follows:

   (a) Organizing the collective bargaining session:

   The employer is responsible to hold a collective bargaining session at the time and location agreed by the two parties.

   The conduct of collective bargaining must be recorded in minutes, specifying the issues agreed upon by the two parties, the proposed time for signing an agreement on the agreed item, and the items remaining in dispute.

   (b) Minutes of the collective bargaining session must be signed by the labour collective representative, the employer, and the person who prepared the minutes.

3. Within fifteen (15) days after the end of the collective bargaining session, the negotiating representative of the labour collective must widely publish the minutes of the collective bargaining session for the information of the labour collective, and at the same time seek an opinion on voting

by the labour collective on the issues agreed.

4. If the negotiations were unsuccessful then either party has the right to continue to request bargaining or to conduct procedures for resolution of a labour dispute in accordance with this Code.

Article 72 *Responsibilities during collective bargaining of the trade union, of the organization representing the employer, and of the State administrative body for labour*

1. To arrange training in collective bargaining skills for the people participating in collective bargaining.

2. To participate in the negotiation session if requested by either of the parties to the collective bargaining.

3. To provide and exchange information relevant to the collective bargaining.

Section 3

Collective Labour Agreement

Article 73 Collective labour agreement

1. *Collective labour agreement* means a written agreement between the labour collective and the employer on working conditions which were reached via collective bargaining.

   A collective labour agreement shall comprise an agreement of the enterprise labour collective, an agreement of the industry labour collective and other forms of labour agreements as stipulated by the Government.

2. The contents of a collective labour agreement must not be contrary to the provisions of law and must contain greater benefits for employees than those prescribed in the law.

Article 74 *Signing a collective labour agreement*

1. A collective labour agreement shall be signed between the representative of the labour collective with the employer or the employer's representative.

2. A collective labour agreement shall only be signed after items have been agreed by the parties at a collective bargaining session, and

   (a) More than 50% of the people in the labour collective have voted in favour of the negotiated items which have been agreed in the case of signing an enterprise collective labour agreement;

   (b) More than 50% of the representatives of the executive committees of the grassroots trade unions or of the superior trade union of grassroots trade unions have voted in favour of the negotiated items which have been agreed in the case of signing an industry collective labour agreement;

   (c) In the case of a collective labour agreement in another form, [voting has been conducted] as stipulated in Government regulations.

3. After a collective labour agreement is signed, the employer must publicly announce it for the information of all employees.

Article 75 *Sending copies of a collective agreement to State administrative bodies*

Within ten (10) days from the date of signing a collective labour agreement, the employer or its representative must send one copy of such agreement to:

1. The provincial level State administrative body for labour in the case of an enterprise collective labour agreement.

2. The Ministry of Labour, War Invalids and Social Affairs in the case of an industry collective labour agreement.

Article 76 *Effective date of collective labour agreement*

The effective date of a collective labour agreement must be recorded in the agreement. If no such date is recorded in the agreement, then the effective date shall be the date of signing by the parties.

Article 77 *Amendments and additions to collective labour agreement*

1. The parties have the right to request amendments or additions to a collective labour agreement within the following deadlines:

   (a) After three months' implementation in the case of a collective labour agreement with a term of under one year;

   (b) After six months' implementation in the case of a collective agreement with a term of from one to three years.

2. If there is a change of law resulting in a collective labour agreement becoming inconsistent with provisions of law, then the two parties must amend or supplement such agreement within fifteen (15) days from the date on which the new provisions of law take effect.

   During the period of conducting amendments or additions to a collective labour agreement, the rights and interests of employees shall be implemented in accordance with law.

3. The procedures for amendments and additions to a collective labour agreement shall be conducted the same as those for signing a collective labour agreement.

Article 78 *Invalid collective labour agreement*

1. A collective labour agreement is partially invalid if one or a number of items in it are contrary to law.

2. A collective labour agreement is wholly invalid in any of the following circumstances:

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

   (b) The person signing the agreement lacked authority;

   (c) The signing of the collective labour agreement did not comply with the collective bargaining rules [process].

Article 79 *Authority to declare a collective labour agreement invalid*

People's courts have the right to declare a collective labour agreement to be invalid.

Article 80 *Dealing with an invalid collective labour agreement*

When a collective labour agreement is declared invalid, then the rights, obligations and interests of the parties set out in the collective labour agreement and corresponding to the entire or partial invalidity shall be resolved in accordance with provisions of law on labour and the lawful agreements in labour contracts.

Article 81 *Expiry of collective labour agreement*

Within the three month period prior to expiry of a collective labour agreement, both parties may negotiate an extension of the duration of the existing collective labour agreement or enter into a new collective labour agreement.

When a collective labour agreement expires during the negotiation process, the former collective labour agreement shall continue to be implemented for a maximum sixty (60) day period.

Article 82 *Expenses for collective bargaining and for signing collective labour agreement*

The employer is responsible to pay all expenses of negotiating, signing, amending and supplementing, and announcing the collective labour agreement.

Section 4

Enterprise Collective Labour Agreement

Article 83 *Signing an enterprise collective labour agreement*

1. People competent to sign an enterprise collective labour agreement are regulated as follows:

   (a) The representative of the labour collective at the grassroots level on behalf of the labour collective;

   (b) The employer or its representative on behalf of the employer.

2. An enterprise collective labour agreement shall be made in five copies, of which:

   (a) Each signing party shall retain one copy;

   (b) One copy shall be sent to the State authority prescribed in article 75 of this Code;

   (c) One copy shall be sent to the superior level trade union [above] the grassroots trade union and one copy shall be sent to the organization representing employers of which the employer is a member.

Article 84 *Implementation of enterprise collective labour agreement*

1. The employer and [all] employees including those who commence work after the effective date of a collective labour agreement are responsible to fully implement such agreement.

2. If the rights, obligations and interests of the parties in a labour contract signed before the effective date of a collective labour agreement are less favourable than the corresponding provisions in such collective labour agreement, then the corresponding provisions of the collective labour agreement must be implemented. Labour rules of the employer which are not yet consistent with the collective labour agreement must be amended for consistency with it, within fifteen (15) days after the effective

date of the collective labour agreement.

3. If either party considers that the other party has failed to fully implement or is in breach of the provisions of the collective labour agreement, such party has the right to demand proper implementation and the two parties must jointly consider resolution; and if the matter is unable to be resolved, then either party has the right to request resolution of a collective labour dispute in accordance with law.

Article 85 *Duration of enterprise collective labour agreement*

An enterprise labour collective agreement shall have a duration of from one to three years. When an enterprise signs an enterprise collective labour agreement for the first time, the duration of such agreement may be less than one year.

Article 86 *Implementation of collective labour agreement when an enterprise transfers ownership of, right to manage or right to use the enterprise, or merges, consolidates, divides or separates*

1. In cases of transfer of ownership or of right to manage or right to use an enterprise; or where an enterprise merges, consolidates, divides or separates, then the employer shall continue [to rely on] and the representative of the labour collective shall rely on the labour usage plan to consider and select continuance of performance of, amendment of or addition to the old collective labour agreement, or shall conduct bargaining in order to sign a new collective labour agreement.

2. In cases where the validity of a collective labour agreement is terminated because the employer terminates its operation, the interests of the employees shall be resolved in accordance with the law on labour.

Section 5

Industry Collective Labour Agreement

Article 87 *Signing an industry collective labour agreement*

1. Representatives competent to sign an industry collective labour agreement are regulated as follows:

   (a) The Chairman of the industry union on behalf of the collective labour party;

   (b) The representative of the organization representing employers which participated in industry collective bargaining, on behalf of the employing party.

2. An [industry] collective labour agreement shall be made in four copies, of which:

   (a) Each signing party shall retain one copy;

   (b) One copy shall be sent to the State authority prescribed in article 75 of this Code;

   (c) One copy shall be sent to the directly superior trade union above the grassroots level.

Article 88 *Relationship between enterprise collective labour agreement and industry collective labour agreement*

1. If any provisions in an enterprise collective labour agreement or rules of the employer regarding lawful rights, obligations and interests of employees in the enterprise are less than those stipulated in the corresponding provisions of the industry collective labour agreement, then the enterprise

collective labour agreement must be amended for compliance with the industry collective labour agreement within three (3) months from the effective date of the industry collective labour agreement.

2. Enterprises to which an industry collective labour agreement applies and which do not have an enterprise collective labour agreement may formulate an additional enterprise labour collective agreement with more favourable conditions for employees than those of the industry collective labour agreement.

3. Enterprises in an industry which are not yet participants in the industry collective labour agreement are encouraged to also implement such agreement.

Article 89 *Duration of industry collective labour agreement*

An industry collective labour agreement has a duration of from one to three years.

CHAPTER 6

Wages

Article 90 *Wages*

1. *Wages* means money which the employer pays to the employee in order for the latter to undertake the work as agreed.

   Wages includes wage rates for the work or position plus wage allowances and other additional items.

   The wage rate of an employee must not be lower than the minimum wage rate stipulated by the Government.

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

3. Employers must ensure that wages are paid fairly, without discrimination between males and females for the same work with the same value.

Article 91 *Minimum wage rate*

1. *Minimum wage rate* means the lowest rate paid to employees doing the most basic work in normal working conditions, and it must ensure minimum living conditions of employees and family households.

   The minimum wage rate shall be fixed on a monthly, daily and/or hourly basis and shall be fixed in accordance with areas and industries.

2. Depending on what are the minimum living conditions of employees and family households, socio-economic conditions and wage rates on the labour market, the Government shall announce minimum area wage rates on the basis of recommendations from the National Wage Council.

3. The minimum wage of any one industry shall be determined by way of industry collective bargaining, shall be recorded in the industry collective labour agreement, but shall not be less than the minimum area wage rates announced by the Government.

Article 92 *National Wage Council*

1. The National Wage Council is an agency advising the Government and comprises members being representatives of the Ministry of Labour, War Invalids and Social Affairs, of Vietnam General Confederation of Labour, and of the central level organization representing employers.

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

Article 93 *Formulation of wage scales, wage tables and labour rates*

1. An employer is responsible to formulate wage scales, wage tables and labour rates based on the principles stipulated by the Government on formulation of wage scales, wage tables and labour rates in order to provide the bases for recruiting and employing workers and reaching agreement with them on the wage rate to be stipulated in labour contracts and on payment of such wages to employees.

2. The employer must, when formulating wage scales, wage tables and labour rates, seek an opinion from the organization representing the labour collective at the grassroots level, and make a public announcement of such items at workplaces of employees before implementing same and must also send them to the district level State administrative authority for labour in the locality where the employer has its production and business establishment.

Article 94 *Method of payment of wages*

1. The employer has the right to select the method of payment of wages calculated by reference to time or by reference to products [produced] or completed pieces of work. The selected method of payment of wages must be maintained for a fixed period of time, and if such form is changed, the employer must provide the employees with advance notice of at least ten (10) days.

2. Wages may be paid in cash or via the personal account of an employee opened at a bank. In the case of payment via a bank, the employer must reach agreement with the employee on service fees for opening and maintaining the bank account.

Article 95 *Periodic payment of wages*

1. An employee entitled to a wage calculated by reference to hours, days or weeks shall be paid at the end of the working hour, day or week or shall be paid a lump sum as agreed by the two parties, provided that at least one payment of wages is made every fifteen (15) days.

2. An employee entitled to a wage calculated by reference to months shall be paid either monthly or half-monthly.

3. An employee entitled to a wage calculated on the basis of products produced or a completed pieces of work shall be paid in accordance with the agreement reached between the two parties; if the work to be performed must be carried out over many months, the employee is entitled to payments in advance calculated on the amount of work performed within the month.

Article 96 *Principles for payment of wages*

An employee is