

Legal news

January 2008

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LABOUR LAW

Brief on benefits of local employees under the laws of Vietnam

By Le Tuan Anh

We herein address the requirements pertaining to a number of labour issues, including the termination of labour contracts:

I. Annual Leave

Under the labour laws of Vietnam, an employee who has been working for an employer under normal conditions and circumstances for a period of 12 months shall be entitled to annual leave of 12 working days. The amount of annual leave may be greater in the event of the employee working under hazardous or severe conditions. The amount of annual leave shall increase according to the duration of employment according to the schedule of one additional day off for each five years of employment. It is noted that any holidays or any other rest days that coincide with the annual leave shall not be counted against annual leave.

Regarding the employee whose period of employment is less than twelve (12) months but who has successfully completed the probationary period, he/she shall be entitled to days off based in proportion to the period of employment to that point.

II. Medical Leave

The labour laws of Vietnam do not limit the amount of medical leave employees may take if they become sick (although employees are required to submit to the employer evidence of their illness and the required amount of medical leave that a legitimate medical establishment has recommended). However, the employer shall have the right to unilaterally terminate the labour contract if an employee who works under a labour contract with indefinite term falls sick and has undergone 12 consecutive months of treatment; or if an employee working under a contract with a definite term from full 12 months to 36 months has taken 6 consecutive months of sick leave or if an employee working under a contract of less than 12 months has taken a sick leave longer than half the term of the labour contract without any prospect of recovery in the near future. After recovery, he shall be considered for continued execution of the labor contract.

III. Probation Period

Subject to the profession of the employee/requirement for the position, prior to entering into the labour contract or even at the time of entering into the labour contract, the employer shall be entitled to require the employee to apply for one of the following probationary periods:

- (a) A maximum duration of sixty (60) days for jobs requiring the professional and technical qualifications of college level or higher;
- (b) A maximum duration of thirty (30) days for jobs which require secondary-level technical and professional qualifications; or

- (c) A maximum of six (6) days with respect to other jobs.

IV. Notice during Probation Period

During a probation period, either the employer or the employee shall be entitled to unilaterally terminate the work without giving notice in advance. The employee shall also not be obliged to pay compensation if the performance fails to satisfy the agreed requirements. After probation, the employer is required to inform the employee of the performance review in the probationary period. If the work performed satisfies the agreed requirements, the employer must officially employ the employee as previously agreed. If the employee continues to work for the employer after completion of the probationary period then the employee shall be naturally considered as entering into an official labour contract with the employer.

V. Termination

Relating to termination of labour contracts, the labour laws of Vietnam have defined a number of cases in which the parties must jointly terminate the labour contract and other cases where either the employer or employee may unilaterally terminate the labour contract.

1. A labour contract, in general, shall be terminated in the following circumstances:
 - 1.1 Upon mutual agreement on termination of a labour contract between employer and employee.
 - 1.2 The labour contract shall automatically terminate in either of the following cases without prior notice:
 - (i) The term of the labour contract expires;
 - (ii) The employee is sentenced to serve a jail term or is prohibited from performing his or her former job in accordance with decision of a competent court; or
 - (iii) The employee dies or is declared missing by a competent court; or
 - (iv) The work under the contract has been completed.
2. The employer shall have the right to unilaterally terminate the labour contract in any of the following circumstances:
 - 2.1 The employee repeatedly fails to perform the work stipulated in labour contract.
[Meaning that the employee fails to perform assigned work levels or tasks according to subjective factors and has been given a written reminder, or the failure has been minuted at least twice within any one month, but the employee still fails to remedy the failure. The work levels that constitute failure to perform the work shall be recorded in labour contracts, collective labour agreements and the internal labour rules of entities.]

- 2.2 The employee commits an act subject to dismissal as a discipline. Dismissal shall be considered an appropriate discipline in the following cases:
- (a) *Where an employee commits an act of theft, embezzlement, disclosure of business or technology secrets, or other conduct which is detrimental to the assets or well-being of the enterprise.*
 - (b) *Where an employee who is disciplined by delaying the salary increase or assignment to another job recommits the violation during the period when he is on trial.*
 - (c) *Where an employee takes five (5) days off in one month or twenty (20) days off in one year without proper reasons.*

It is noted that if the employer resorts to dismissal, the employer must strictly follow dismissal procedures as required by the laws of Vietnam.

- 2.3 An employee who works under a labour contract with an indefinite term falls sick and has undergone consecutive 12 months of treatment; or an employee working under a contract with a definite term from full 12 months to 36 months has taken 6 consecutive months of sick leave or an employee working under a contract of less than 12 months has taken a sick leave longer than half the term of labour contract without any prospect of recovery in the near future. After recovery he shall be considered for continued execution of labour contract.

- 2.4 The entity is forced to reduce its business activity or employment requirements while trying to recover from natural disaster, fire or any event of force majeure (which are the events arising from requirements of competent authorities at the provincial level or higher caused by war or epidemic diseases).

- 2.5 The entity terminates its operation.

3. The employee who works under a labour contract with a definite term from a full 12 to 36 months or a labour contract for a seasonable job or specific job to be carried out in less than 12 months shall be entitled to unilaterally terminate labour contract in one of the following circumstances:

- 3.1 The employee is not assigned to a job or work place or is not provided with the work conditions in accordance with the labour contract;
- 3.2 The employee is not paid in full and on time the wages due in accordance with the labour contract;
- 3.3 The employee is maltreated or subject to forcible labor;
- 3.4 The employee or his/her family meets with difficulties resulting in his/her inability to continue the work;

- 3.5 The employee is elected to a permanent position in the people's elected organs or in the state system; and
 - 3.6 The employee becomes pregnant and must stop the work under the instruction of doctor; or
 - 3.7 Where an employee suffers illness or injury and remains unable to work after having received treatment for three consecutive months in regards to a definite term of a full 12-36 months contract, or a quarter of the duration of the contract in a contract of less than 12 months for a specific or reasonable job.
4. The employee who works under a labour contract with an indefinite term shall have the right to unilaterally terminate labour contract provided that they notify the employer at least 45 working days in advance. An employee who suffers illness or injury and receives treatment for six consecutive months must notify the employer at least 3 days in advance.

VI. Notice Period during permanent employment (indefinite term labour contract)

1. Where the employer is entitled to unilaterally terminates the labour contract as mentioned above, the employer must give notice to the employee, except for termination by dismissal:
 - (i) No later than forty five (45) days for an indefinite term labour contract;
 - (ii) No later than thirty (30) days for a definite term contract with z duration of a full 12 to 36 months;
 - (iii) No later than three days for a contract for a specific or seasonal job with a duration of less than 12 months.
2. In case of the unilateral termination of a labour contract as stated above, the employee must give notice in advance to the employer:
 - (i) No later than 03 days in the cases stipulated in points (3.1), (3.2), (3.3) and (3.7) of Part V above;
 - (ii) No later than 30 days for a labour contract with a term from a full 12 months to 36 months; no later than 03 days for a labour contract for a reasonable job or specific job with a term of under 12 months in the cases stipulated in points (3.4) or (3.5) of Part V hereabove;
 - (iii) As for cases stipulated in point (3.6) of Part V: subject to the instruction of the doctor certifying that continued work shall adversely affect her fetus.

VII. Statutory Contribution

Under the labour laws of Vietnam, obligatory social insurance and medical insurance must be applied to an entity whose employees work under a labour contract with a definite term from 3 months upward or with an indefinite term. The social insurance contributions currently applied are as follows:

- (i) The employer shall make a contribution of 15% of the total salary for the social insurance and 2% of total salary (payroll) for the health insurance;
- (ii) The employee shall make a contribution of 5% of total salary for the social insurance and 1% of total salary for the health insurance.

These percentages shall be gradually changed in the coming years in order to implement a new social insurance scheme.

VIII. Personal Income Tax – Rate for Regular Income

As to Vietnamese citizens residing in Vietnam:

Unit: VND1,000

No.	Monthly Average Income/ a person	Tax Rate (%)
1	Full 5,000	0
2	From 5,000 to 15,000	10
3	From 15,000 to 25,000	20
4	From 25,000 to 40,000	30
5	40,000 and higher	40

IX. Hours of work

The normal working hours of each employee shall not exceed eight hours per day or forty eight (48) hours per week. The employer is entitled to schedule the working time daily or weekly but must notify the employee in advance. The employer and the employee may agree on extra hours of work but the time of such extra work shall not exceed 4 hours per day or 200 hours per year or 300 hours in some special cases as stipulated by the Government.

X. Per Diem

Under the laws of Vietnam, there is no regulation on per diem rates applicable to private sectors and the per diem for staff shall be therefore subject to company policy.

XI. Statutory holidays

Under the laws of Vietnam, an employee shall be entitled to take off work with full pay during the following public holidays (9 days):

- 1. Calendar New Year holiday: one day (January 1);
- 2. Lunar New Year holidays: four days (the last day of the out going year and the first three days of the new coming year);
- 3. Victory Day: one day (April 30);
- 4. International Labor Day: one day (May 1);
- 5. National Day: one day (September 2);
- 6. Hung King celebration day (March 10 of the lunar year).

When the public holidays referred to above coincide with the fixed day of weekly rest, the employees shall have the next day off in compensation thereof.

XII. Severance allowance

1. Regulatory severance payment:
 - (i) half month of salary for each year the employee worked for the employer ("salary" means his average net monthly salary and allowance within latest six months achieved);
 - (ii) payment in lieu of annual leave remaining;
 - (iii) bonus and allowances as agreed in the labour contract (if any).

2. The Employer's goodwill (if any).

Other Sectors

Finance

- On January 18, 2008, the Prime Minister of the Government issued Decision No. 13/2008/QĐ-TTg promulgating Regulations on financial management for Vietnam deposit insurance.
- Decision No. 02/2008/QĐ-NHNN of the State Bank of Vietnam, dated January 15, 2008 on the amendment of and supplement to a number of accounts in the system of accounting accounts of credit institutions, accompanying the State Bank Governor's Decision No. 479/2004/QĐ-NHNN dated April 29, 2004; Decision No. 807/2005/QĐ-NHNN, dated June 1, 2005; and Decision No. 29/2006/QĐ-NHNN, dated July 10, 2006.
- On January 4, 2008, the Ministry of Finance stipulated Decision No. 01/2008/QĐ-BTC providing Regulations on recognition of organizations supplying value-added services in respect of electronic transactions in customs operations.
- Decision No. 51/2007/QĐ-NHNN of the State Bank of Vietnam, dated December 31, 2007 promulgating Regulations on credit information activities.
- On December 28, 2007, the State Bank of Vietnam issued Decision No. 50/2007/QĐ-NHNN providing the levels of fees collected for payment services through organizations supplying such services.
- Decision No. 48/2007/QĐ-NHNN of the State Bank of Vietnam, dated December 26, 2007 promulgating regulations on the collection of fees for payment services through organizations supplying such services.
- On December 25, 2007, the State Bank of Vietnam stipulated Decision No. 47/2007/QĐ-NHNN on the levels of fees collected for credit information services.
- Decision No. 46/2007/QĐ-NHNN of the State Bank of Vietnam, dated December 25, 2007 on the amendment of and supplement to a number of clauses of Regulations on the grant of establishment and operation license of joint stock commercial banks accompanying with the State Bank Governor's Decision No. 24/2007/QĐ-NHNN, dated June 7, 2007.
- On December 25, 2007, the Ministry of Finance issued Decision No. 3982/QĐ-BTC providing Regulations on document inspections and settlement of the Ministry of Finance.
- Decision No. 76/QĐ-HDQL of the State Bank of Vietnam, dated December 20, 2007 promulgating Regulations on the investment credit guarantees.

- On January 15, 2008, the Ministry of Finance stipulated Circular 07/2008/TT-BTC setting fees for residence registration.
- Inter-ministerial Circular No. 04/2008/TTLT-BTC-TTCP of the Ministry of Finance and the Inspectorate of the Government, dated January 4, 2008 providing guidelines on the preparation, management, use and finalization of expenditures ensuring operations of the State inspectorates.
- On December 28, 2007, the Ministry of Finance and the Ministry of Justice issued Inter-ministerial Circular No. 158/2007/TTLT-BTC-BTP guiding the management and use of expenditures supporting works of legislative document inspections.

Taxation

- Decision No. 93/QD-BTC of the Ministry of Finance, dated January 16, 2008 on the denial and correction of Annex 1 attached to Circular No. 61/2007/TT-BTC of the Ministry of Finance, dated June 14, 2007 promulgating guidelines on dealing with breaches of tax laws.
- On December 24, 2007, the Ministry of Finance issued Circular No. 157/2007/TT-BTC guiding the enforcement for execution of administrative decisions on taxation.

Insurance

- Decree No. 190/2007/ND-CP, dated December 28, 2007 providing guidelines on a number of articles of the Law on Social Insurance with respect to voluntary social insurance.
- On December 20, 2007, the Ministry of Finance stipulated Circular No. 156/2007/TT-BTC guiding the implementation of Decree 46/2007/ND-CP, dated March 27, 2007 promulgating the financial regime for insurance enterprises and insurance brokerage enterprises.
- Circular No. 155/2007/TT-BTC of the Ministry of Finance, dated December 20, 2007 guiding the implementation of Decree 45/2007/ND-CP, dated March 27, 2007 detailing the implementation of a number of articles of the Law on Insurance Business.

Trade

- On November 21, 2007, the National Assembly passed the Law No. 05/2007/QH12 on the quality of products and goods.
- Decree No. 06/2008/ND-CP, dated January 16, 2008 dealing with administrative violations in the trading activities.

- On December 31, 2007, the Government issued Decree No. 191/2007/ND-CP on the amendment of and supplement to a number of articles of Decree No. 113/2003/ND-CP, dated October 7, 2003 on the management of fertilizer production and business.
- Decision No. 0243/QD-BCT of the Ministry of Industry and Trade, dated January 15, 2008 on the recognition of enterprises satisfying standards for motorbicycle manufacture and assembly.
- On December 28, 2007, the Ministry of Industry and Trade stipulated Decision No. 014/2007/QD-BCT on the quotas for imported goods in 2008.
- Decision No. 013/2007/QD-BCT of the Ministry of Industry and Trade, dated December 27, 2007 on the rules of origin and procedures for the implementation of such rules for the agreement between the Ministry of Industry and Trade of the Socialist Republic of Vietnam and the Ministry of Trade of the Kingdom of Cambodia.
- On December 21, 2007, the Ministry of Industry and Trade issued Decision No. 011/2007/QD-BCT on the import under quotas in 2008 and 2009 for goods of Cambodian origin.

Health

- Law No. 03/2007/QH12, dated November 21, 2007 on the prevention of and fighting against contagious diseases.
- On December 31, 2007, the Drug Authority of Vietnam stipulated Decision No. 325/QD-QLD announcing one domestically-manufactured drug permitted to be circulated in Vietnam.
- Decision No. 47/2007/QD-BYT of the Ministry of Health, dated December 24, 2007 on the deployment of the application of “Good Manufacturing Practice” principles and standards, “Good Laboratory Practice” principles, “Good Storage Practice” principles and “Good Distribution Practice” principles for establishments manufacturing, testing, trading, distributing, exporting, importing, storing and preserving vaccines and medical bio-products.
- On December 18, 2007, the Ministry of Health issued Decision No. 45/2007/QD-BYT providing the list of medicinal active ingredients allowed to be registered for advertising on radio and television.
- Circular No. 15/2007/TT-BYT of the Ministry of Health, dated December 12, 2007 guiding the implementation of self-control right and being self-responsible for the use of assets to create joint ventures and alliances or to contribute capital in a joint venture for the purchase of equipments and facilities for service activities of public health establishments.

Transportation

- On December 28, 2007, the Ministry of Transport stipulated Decision No. 64/2007/QĐ-BGTVT promulgating regulations on the assignment of duties and authorization to the managing board of a project in the construction investment administration for projects where the Ministry of Transport is the project investor.
- Decision No. 62/2007/QĐ-BGTVT of the Ministry of Transport, dated December 28, 2007 providing temporary regulations for the inspection of quality, technical safety, and environmental protection for motorbikes and motor tricycles for handicapped persons used before January 1, 2008.
- On December 24, 2007, the Ministry of Transport issued Decision No. 61/2007/QĐ-BGTVT promulgating regulations on the form of enterprises doing railway business that must obtain a safety certificate and on the conditions, process and procedures for the grant of safety certificate.
- Decision No. 60/2007/QĐ-BGTVT of the Ministry of Transport, dated December 7, 2007 providing regulation on the loading limits of trucks participating in traffic on land roads and announcement of land roads' loading capacity.
- On December 28, 2007, the Ministry of Public Security and the Ministry of Transport stipulated Inter-ministerial Circular No. 32/2007/TTLT-BCA-BGTVT guiding the registration, management and circulation of land road transport vehicles used by war invalids and handicapped persons.
- Inter-ministerial Circular No. 31/2007/TTLT-BCA-BGTVT of the Ministry of Public Security and the Ministry of Transport, dated December 28, 2007 promulgating guidelines on the deletion of registrations and the revocation of number plates for land road transport vehicles that have expired and are out of use.

Construction

- On January 7, 2008, the Government issued Decree No. 03/2008/ND-CP on the amendment of and supplement to a number of articles of Decree 99/2007/ND-CP, dated June 13, 2007 on the management of costs and expenses for investment in the construction of works.
- Decision No. 1591/2007/QĐ-BKH of the Ministry of Planning and Investment, dated December 24, 2007 providing a set form of short-list tendering invitation dossier for construction and installation packages.
- On December 24, 2007, the Ministry of Planning and Investment stipulated Decision No. 1583/2007/QĐ-BKH promulgating a set form of tendering invitation dossier for consultancy services.

Environment

- Decision No. 26/2007/QD-BTNMT of the Ministry of Natural Resources and Environment, dated December 31, 2007 providing regulations on the exploration and classification of reserves for natural resource of carbonate stone.
- On December 27, 2007, the Ministry of Agriculture and Rural Development issued Decision No. 104/2007/QD-BNN promulgating Regulations on the management of activities of ecological tourism in national parks and natural reserve zones.
- Decision No. 103/2007/QD-BNN of the Ministry of Agriculture and Rural Development, dated December 24, 2007 on the addition of crop plants to the list of protected crop plants and the assignment of units carrying out DUS experiments.
- On December 17, 2007, the Ministry of Natural Resources and Environment stipulated Decision No. 22/2007/QD-BTNMT providing regulations on the preparation of maps reflecting the actual state of land use.
- Decision No. 21/2007/QD-BTNMT of the Ministry of Natural Resources and Environment, dated December 10, 2007 promulgating Regulations on the preparation and issuance of legislative documents in the fields of natural resources and the environment.
- On January 3, 2008, the Ministry of Finance issued Circular No. 01/2008/TT-BTC guiding the preparation, management, use and finalization of expenditures from the State budget for the implementation of a national plan of action on biological diversification to 2010 and orientation to 2020 carrying out the Convention on biological diversification and the Protocol of Cartagena on biological safety.
- Inter-ministerial Circular No. 12/2007/TTLT-BTNMT-BNV of the Ministry of Natural Resources and Environment and the Ministry of Interior, dated December 27, 2007 providing guidelines on the implementation of a number of articles of Decree 81/2007/ND-CP, dated May 23, 2007 promulgating the organizations and units professionalized in environmental protection in State authorities and State-owned enterprises.

Power

- On December 31, 2007, the Ministry of Industry and Trade stipulated Decision No. 015/2007/QD-BCT providing the frame of prices for power whole sale to industrial zones.

- Decision No. 1855/QD-TTg of the Prime Minister of the Government, dated December 27, 2007 approving a national strategy for Vietnam's power development to 2020 with projections to 2050.

Agriculture

- On January 16, 2008, the Prime Minister of the Government issued Decision No. 10/2008/QD-TTg approving a strategy for development of breeding to 2020.
- Decision No. 04/2008/QD-BNN of the Ministry of Agriculture and Rural Development, dated January 10, 2008 promulgating Regulations on the organization and co-ordination of activities between Vietnam's Notification Office and the national Question and Answers Point in relation to food safety and hygiene, and animal and plant quarantine (Sanitary and Phytosanitary measures - SPS) with a network of Q&A Points on SPS under the ministries and branches.
- On December 27, 2007, the Ministry of Agriculture and Rural Development stipulated Decision No. 105/2007/QD-BNN providing the charter on the organization and operations of a fund for recreation of fishery resources of Vietnam.
- Circular No. 02/2008/TT-BNN of the Ministry of Agriculture and Rural Development, dated January 8, 2008 guiding the implementation of Decree No. 128/2005/ND-CP, dated October 11, 2005 dealing with administrative violations in the field of fishery and Decree No. 154/2006/ND-CP, dated December 27, 2006 on the amendment of and supplement to Article 17 of Decree No. 128/2005/ND-CP.

Judiciary

- On November 21, 2007, the National Assembly passed the Law No. 07/2007/QH12 on special amnesty.
- Law No. 08/2007/QH12, dated November 21, 2007 on judiciary assistance.
- On November 21, 2007, the National Assembly passed the Law No. 02/2007/QH12 on anti-familial violences.
- Decree No. 02/2008/ND-CP, dated January 4, 2008 detailing and guiding the implementation of a number of articles of the Law on Public Notarization.
- On January 17, 2008, the Prime Minister of the Government issued Decision No. 12/2008/QD-TTg promulgating Regulations on co-ordination for the implementation of a co-operation agreement to fight against pirates and armed robbery attacking boats and vessels in Asia.
- Decision No. 76/QD-TTg of the Prime Minister of the Government, dated January 16, 2008 approving a project on the establishment of a nation-wide organization of lawyers.

- On January 3, 2008, the Ministry of Finance stipulated Circular No. 02/2008/TT-BTC guiding the preparation of estimations, management and use of expenditures from the State budget ensuring the effectiveness of criminal investigations.
- Inter-ministerial Circular No. 10/2007/TTLT-BTP-BCA-BQP-BTC-VKSNDTC-TANDTC of the Ministry of Justice, the Ministry of Public Security, the Ministry of Defense, the Ministry of Finance, the People's Supreme Procuracy and the People's Supreme Court, dated December 28, 2007 providing guidelines on the implementation of a number of provisions on legal assistance in proceedings activities.

Miscellaneous

- On November 21, 2007, the National Assembly passed the Law No. 06/2007/QH12 on chemicals.
- Decision No. 08/2007/QD-BTTTT of the Ministry of Information and Communication, dated December 24, 2007 promulgating the list of open source software products meeting requirements of use in the State authorities and organizations.
- On December 20, 2007, the Ministry of Education and Training issued Decision No. 77/2007/QD-BGDĐT providing regulation on the process and procedures for recognition of diplomas granted to Vietnamese citizens by foreign education establishments.
- Circular No. 01/2008/TT-BNV of the Ministry of Interior, dated January 15, 2008 guiding the process and procedures for appointment, re-appointment, removal, commendation and reward of the Chairman of the Board of Management, members of the Board of Management, the General Director, the Director, the Deputy General Director, the Deputy Director of State-owned enterprises.
- On December 31, 2007, the Ministry of Science and Technology stipulated Circular No. 31/2007/TT-BKHCHN promulgating guidelines on the implementation of work hours and rest time regime for labour of radiation and nuclear works.

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