



## Legal update – 2019 Labour Code

On 20 November 2019, the National Assembly issued *Labour Code No. 45/2019/QH14* (“**2019 Labour Code**”), which took effect from 1 January 2021.

To guide the implementation of *the new law*, the Government also issued a number of decrees and circulars:

1. *Decree No. 135/2020/ND-CP* dated 18 November 2020 on retirement age (“**Decree 135**”);
2. *Decree No. 145/2020/ND-CP* dated 14 December 2020 (“**Decree 145**”). *Decree 145* provides detailed regulations and guidelines on a working conditions and labour relations to guide the implementation of the following provisions of the *2019 Labour Code*:
  - (i) Labour relations: *Article 12.3*;
  - (ii) Labour contracts: *Article 21.4* (labour contracts of employees hired to act as directors of State-owned enterprises); *Article 35.1(d)* (the right of an employee to terminate unilaterally the labour contract and provide advance notice to the employer); *Article 36.2(d)* (in the case of a number of industries and trades and special jobs, the period of advance notice to be provided by an employee unilaterally terminating his or her labour contract); *Article 46.4* (severance allowance); and *Article 51.3* (dealing with invalid labour contracts);
  - (iii) Labour outsourcing: *Article 54.2*;

- (iv) Arranging discussions at the workplace and implementation of democratic regulations at the grassroots level at the workplace: in *Article 63.4*;
  - (v) Wages: *Article 92.3* (the functions of the National Wage Council); *Article 96.3* (method of payment of wages); and *Article 98.4* (wages for working overtime and for night work);
  - (vi) Working hours and rest periods: *Article 107.5* (additional working hours or overtime); *Article.7* (annual leave); and *Article 116* (working hours and rest breaks for workers on jobs of a special nature);
  - (vii) Labour discipline and liability for material loss: *Article 118.5* (internal labour rules); *Article 122.6* (the sequence and procedures for dealing with breaches of labour discipline); *Article 130.2* (the sequence, procedures and limitation period for dealing with cases in which compensation for loss and damage is payable by an employee); and *Article 131* (complaints about labour discipline or about liability for loss and damage);
  - (viii) Female employees and gender equality: *Article 135.6*;
  - (ix) Domestic helpers: *Article 161.2*;
  - (x) Resolution of labour disputes: *Article 184.2* (appointment of labour conciliators), *Article 185.6* (labour arbitration councils and labour arbitration tribunals); *Article 209.2* (places employing workers at which strikes are prohibited); and *Article 210.2* (staying or suspending strikes and resolving the interests of employees).
3. *Decree No. 152/2020/ND-CP* dated 30 December 2020 on foreign workers working in Vietnam and recruitment and management of Vietnamese workers working for foreign employers in Vietnam (“**Decree 152**”).
  4. *Circular 10/2020/TT-BLDTBXH* dated 12 November 2020 on elaborating and guiding certain articles of the Labour Code concerning employment contracts (“**Circular 10**”).

We highlight salient points of the *new 2019 Labour Code* below in the order as they appear in the legislation:

No.	Issue	<i>2012 Labour Code</i>	<i>2019 Labour Code</i>	DN Legal Comments
1.	<b>Definition of employee</b>	Employee means a person at least fifteen (15) years of age, with the ability to work, <b>who works pursuant to a labour contract</b> , who is paid wages and who is subject to management by the employer.  <i>(Article 3.1)</i>	Employee means a person working for an employer pursuant to an agreement, who is paid wages and who is subject to management and supervision by the employer.  <i>(Article 3.1)</i>	<b>The requirement that only those with labour contracts can be deemed as employees is removed</b>  The definition of an employee has been broadened to include an employee working under an agreement (not necessarily called a labour contract) pursuant to which the employee is paid wages and is supervised. The agreement does not necessarily have to be called a labour contract.
2.	<b>Definition of employment discrimination</b>	N/A	Employment discrimination is defined as discrimination, exclusion or preference based on race, colour, national origin or social origin, ethnicity, sex, age, maternity status, marital status, religion, belief, political belief, disability, family responsibility or on the basis of HIV infection status or because of the establishment, accession or activities in a trade union or employees' organization at the enterprise adversely affecting equality regarding employment opportunity or trade or profession.	For the first time, employees are protected against most forms of discrimination.  Employers should consider issuing internal policies and put training in place.

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			<i>(Article 3.8)</i>	
3.	<b>Definition of sexual harassment</b>	N/A	Sexual harassment in the workplace means any act of a sexual nature by any person to another person in the workplace without the latter's wish or consent.  <i>(Article 3.9)</i>	The new law protects employees against sexual harassment. This did not exist under the old law.
4.	<b>The rights of employees</b>	An employee has the following rights: <ul style="list-style-type: none"> <li>• to work, freely choose a job or occupation, to participate in vocational training and to improve occupational skills and suffer no discrimination;</li> <li>• to receive a salaries commensurate with his/her occupational knowledge and skills on the basis of an agreement reached with the employer; to receive labour protection and work in assured conditions of labour safety and labour hygiene; to take leaves according to the prescribed regime, paid annual leaves and</li> </ul>	<b>Three (03)</b> additional rights: <ul style="list-style-type: none"> <li>• to not be subjected to forced labour or sexual harassment at the workplace;</li> <li>• to refuse to work if he/she finds that the work directly threatens his/her life or health;</li> <li>• to exercise other rights prescribed by laws.</li> </ul> <i>(Article 5)</i>	Employees are further protected against forced labour, sexual harassment or working in unsafe conditions.

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		<p>enjoy collective welfare benefits;</p> <ul style="list-style-type: none"> <li>• to form and join and participate in activities of trade unions, occupational associations and other organizations in accordance with law; to request and participate in dialogues with the employer, implement democracy regulations and be consulted at the workplace to protect his/her rights and legitimate interests; and to participate in management activities according to the employer's regulations;</li> <li>• to unilaterally terminate the labour contract in accordance with law;</li> <li>• to go on strike.</li> </ul> <p><i>(Article 5.1)</i></p>		
5.	<b>Responsibilities of employer to manage the use of labour</b>	N/A	<p>Responsibilities of employer to manage labour:</p> <ul style="list-style-type: none"> <li>• to prepare, update, manage and implement labour management</li> </ul>	<p>The Government provided further clarification on this article in <i>Charter II of Decree 145</i>, including:</p>

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			<p>register, either by the way of a hard copy or electronic version and to present same when the competent State agency so requests.</p> <ul style="list-style-type: none"> <li>• to submit a report on employment status within thirty (30) days after the commencement date of its operation, and to periodically report any labour changes during the operational process to the specialized agency for labour under the provincial people's committee and to notify same to the social insurance agency. </li></ul> <p><i>(Article 12)</i></p>	<ol style="list-style-type: none"> <li>1. Labour management register (<i>Article 3 of Decree 145</i>) <ul style="list-style-type: none"> <li>– An employer must, within 30 days after commencing its operation, prepare a register at the location of its headquarters, branch or representative office;</li> <li>– The labour management register may be prepared in written or electronic form and must ensure basic information about employees.</li> </ul> </li> <li>2. Reports on employment of workers (<i>Article 4 of Decree 145</i>): On a semi-annual basis (prior to 5 June) and annually (prior to 5 December), employers must report the status of labour changes to the Department of Labour via the national public service portal (<i>Form 01/PL1 in Appendix 1 issued with Decree 145</i>) and also report to the district social insurance agency where the employer has its headquarters, branch or representative office.</li> </ol>

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6.	<b>Labour contract</b>	N/A	<p>If an agreement with some other name (not called a labour contract) but with contents setting out the scope of work, salary, and management, executive operation and supervision by one party, then such agreement is a labour contract.</p> <p><i>(Article 13)</i></p>	<p>Under the new law, any person working under an agreement who satisfies the following three factors: (i) has a job, (ii) gets paid, and (iii) works under the supervision of an employer, will be considered to be an employee, regardless of the names and forms of the agreement.</p>
7.	<b>Form of labour contract</b>	N/A	<p>A labour contract may be entered into electronically and will have the same value as a written labour contract.</p> <p><i>(Article 14.1)</i></p>	<p>The <i>2019 Labour Code</i> recognises the validity of e-contracts or those made electronically.</p>
8.	<b>Prohibited conduct by an employer when entering into and performing a labour contract</b>	<p>There are <b>02</b> prohibited actions that an employer may not do:</p> <ul style="list-style-type: none"> <li>• keeping employees' original identity cards, diplomas, and certificates;</li> <li>• requesting employees to make a deposit in cash or property as security for the performance of labour contracts.</li> </ul> <p><i>(Article 20)</i></p>	<p>The new law adds <b>one (01)</b> additional act that the employer is not allowed to do:</p> <ul style="list-style-type: none"> <li>• forcing an employee to continue to work to repay a debt to the employer.</li> </ul> <p><i>(Article 17)</i></p>	<p>Employers to note when lending to employees.</p>

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9.	<b>Types of labour contract</b>	<p><b><u>3 types</u></b> of labour contract:</p> <ul style="list-style-type: none"> <li>• Indefinite term labour contract;</li> <li>• Definite term labour contract;</li> <li>• A seasonal or specific job labour contract with a duration of less than twelve (12) months.</li> </ul> <p><i>(Article 22.1)</i></p>	<p><b><u>2 types</u></b> of labour contract:</p> <ul style="list-style-type: none"> <li>• Indefinite term labour contract;</li> <li>• Definite term labour contract with the maximum duration of 36 months.</li> </ul> <p><i>(Article 20)</i></p>	<p>The concept of "seasonal" contract is abolished. This provision prevents employers from avoiding treating seasonal workers as employees by not signing labour contracts with them and therefore not entitled to certain protections under the labour laws..</p>
10.	<b>Contents of labour contract</b>	<p><i>(Article 23)</i></p>	<p>A labour contract must contain the following main provisions:</p> <ul style="list-style-type: none"> <li>• Name and address of the employer and full name and title of the person entering into the labour contract on the employer's side;</li> <li>• Full name, date of birth, gender, residential address, and serial number of citizen's card, people's identity card or passport of the person entering into the labour contract on the employee's side;</li> <li>• Job description and workplace;</li> <li>• Term of the labour contract;</li> </ul>	<p>Basically, the material contents of the labour contract have not been changed under the <i>2019 Labour Law</i>.</p> <p>The details of what should be in a labour contract are guided by <i>Chapter II of Circular 10</i> and <i>Charter III of Decree 145</i>.</p>



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			<ul style="list-style-type: none"> <li>• Wage rate in accordance with the job or title/position, and method of and time of payment of wages, allowances and other additional payments;</li> <li>• Regime for wage increases and promotion;</li> <li>• Working hours and holidays [rest breaks];</li> <li>• Personal protective equipment of the employee;</li> <li>• Social insurance, health insurance and unemployment insurance;</li> <li>• Training, fostering and raising trade/vocational qualifications and skills.</li> </ul> <p><i>(Article 21)</i></p>	
11.	<b>Addendum to labour contracts</b>	An addendum to a labour contract may set forth in detail some articles of the labour contract, or may amend or supplement the labour contract, <b><u>including the duration of the contract.</u></b>	An addendum to a labour contract may set forth in detail or may amend or supplement some articles of the labour contract, <b><u>but may not amend the duration (term) of the contract.</u></b>	Employers cannot use an addendum to change the term (duration) of a labour contract.

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		<i>(Article 24)</i>	<i>(Article 22)</i>	
12.	<b>Probation</b>	<p>If agreement is reached on a probationary period, an employer and an employee may enter into <b><u>a probationary contract.</u></b></p> <p><i>(Article 26)</i></p>	<p>An employer and an employee may agree on terms and conditions of the probation <b><u>in the labour contract</u></b> or by entering into <b><u>a probationary contract.</u></b></p> <p><i>(Article 24)</i></p>	Employers and employees can now sign a separate probation agreement or include terms and conditions of probation in labour contracts.
13.	<b>Duration of probationary period</b>	<i>(Article 27)</i>	<p><b><u>Adding an additional provision:</u></b></p> <p>The probationary period may not be longer than 180 days if the job is to be the manager of a company pursuant to the Law on Enterprises, and the Law on Management and Use of State Capital Invested in Production and Business in Enterprises.</p> <p>According to <i>Article 4.18 of Law on Enterprises</i>: “A manager of an enterprise means the owner of a private enterprise, an unlimited liability partner, the chairman of a members’ council, a member of a members’ council, the chairman of a company, the chairman of a board of management, a member of a board of management, a director or general</p>	An employee who is the manager of a company or holds an important role may have a longer probationary period not to exceed 180 days.

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			<p><i>director, and an individual holding another managerial position, who is authorized to enter into transactions of the company in the name of the company as stipulated in the charter of the company”</i></p> <p><b><i>(Article 25)</i></b></p>	
14.	<p><b>Cases in which suspension of performance of a labour contract is permitted</b></p>	<p>There are <b>five (05) cases</b> pursuant to which a labour contract may be temporarily postponed:</p> <ul style="list-style-type: none"> <li>• The employee is required to do military service;</li> <li>• The employee is detained or temporarily held in prison in accordance with the law on criminal procedure;</li> <li>• The employee must comply with a mandatory decision on admission to a detention centre, to a drug rehabilitation centre or to an educational establishment;</li> </ul>	<p>The new law adds <b>three (03) additional cases</b>:</p> <ul style="list-style-type: none"> <li>• The employee is designated as the executive of a wholly state-owned single-member limited liability company;</li> <li>• The employee is authorized to represent the state investment in another enterprise;</li> <li>• The employee is authorized to represent the enterprise’s investment in another enterprise.</li> </ul> <p><b><i>(Article 30)</i></b></p>	<p>The new law adds three additional cases in which an employee may “postpone” his/her employment (meaning the employer has to keep his/her job during this period).</p>

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		<ul style="list-style-type: none"> <li>• A female employee is pregnant as stipulated in article 156 of this Code;</li> <li>• In other circumstances agreed by both parties.</li> </ul> <p><i>(Article 32)</i></p>		
15.	<b>Circumstances in which labour contract is terminated</b>	<p>There are <b><u>10 circumstances</u></b> to terminate a labour contract.</p> <p><i>(Article 36)</i></p>	<p>There are <b><u>13 circumstances</u></b> to terminate a labour contract.</p> <p><b><u>The new circumstances</u></b> are as follows:</p> <ul style="list-style-type: none"> <li>a. A corporate employer terminates its operation;</li> <li>b. The employee is a foreigner working in Vietnam and is deported pursuant to an enforceable decision or verdict of a Court or pursuant to a decision of a competent State agency;</li> <li>c. The work permit of a foreign employee working in Vietnam expires;</li> </ul>	<p>Three additional cases are added pursuant to which labour contracts may be terminated.</p>

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			<p>d. There is an agreement on probationary work stipulated in the labour contract, but the probationary work did not satisfy the requirements or either party rescinded the agreement.</p> <p><i>(Article 34)</i></p>	
16.	<p><b>Right of an employee to unilaterally terminate the employment contract</b></p>	<p>An employee may terminate unilaterally:</p> <p>(1) in the circumstances set forth in <i>Article 37 of 2012 Labour Code</i>; and</p> <p>(2) with advanced prior written notice.</p> <p><i>(Article 37)</i></p>	<p>An employee may terminate unilaterally if they provide employer with advanced prior written notice. They do not need to have a reason.</p> <p>a. At least 45 days' advance notice if working pursuant to an indefinite term labour contract;</p> <p>b. At least 30 days' advance notice if working pursuant to a definite term labour contract with a duration from 12 months to 36 months;</p> <p>c. At least 3 days' advance notice if working pursuant to a definite term labour contract with a duration below 12 months.</p> <p><i>(Article 35.1)</i></p>	<p>Employees do not need to have reason for termination under the <i>2019 Labour Code</i>.</p> <p><i>Article 7 of Decree 145</i> also requires longer advanced notice period upon unilateral termination of employment contracts in a number of industries and trades and special jobs (underline Item 15).</p>

No.	Issue	<i>2012 Labour Code</i>	<i>2019 Labour Code</i>	DN Legal Comments
17.	<b>Advanced notice period required in the case of a number of industries and trades and special jobs, when an employee unilaterally terminates his or her labour contract</b>	N/A	<ol style="list-style-type: none"> <li>1. The industries and trades and special jobs are:               <ol style="list-style-type: none"> <li>a. Air craft crew; air craft technical maintenance staff and aviation repair staff; flight dispatch and flight operational staff;</li> <li>b. Enterprise managers as prescribed in the Law on Enterprises and in the Law on Management and Use of State Capital Invested in Production and Business in Enterprises;</li> <li>c. Crew working on Vietnamese ships operating overseas; and seafarers hired by Vietnamese enterprises to work on foreign seagoing vessels;</li> <li>d. Other cases stipulated by law.</li> </ol> </li> <li>2. When an employee in the above industries and trades and special jobs unilaterally terminates his or her labour contract, or when the</li> </ol>	This new article protects the right of both employers and employee.

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			<p>employer unilaterally terminates then the following advance notice is required:</p> <p>a. <b><u>At least 120 days</u></b> in the case of a definite term labour contract or a labour contract with a term of twelve (12) months or more;</p> <p>b. <b><u>At least a period equal to a quarter of the term of the labour contract</u></b> in the case of a contract with a term of less than twelve (12) months.</p> <p><i>(Article 7 of Decree 145)</i></p>	
18.	<b>Right to terminate unilaterally the employment contract without prior notice of employees</b>	N/A	<p>An employee may terminate unilaterally without prior notice in seven (07) cases if he/she:</p> <ul style="list-style-type: none"> <li>• is not assigned to the work or workplace or not provided with the working conditions as agreed in the employment contract;</li> <li>• is not paid adequately or on schedule;</li> </ul>	Employees have stronger termination rights under the <i>2019 Labour Code</i> .

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			<ul style="list-style-type: none"> <li>• is maltreated, assaulted, physically or verbally insulted by the employer in a manner that affects the employee's health, dignity, or honour; is forced to work against his/her will;</li> <li>• is sexually harassed in the workplace;</li> <li>• is pregnant and must stop working;</li> <li>• reaches the retirement age; or</li> <li>• finds that the employer fails to provide truthful information which affects the performance of the employment contract.</li> </ul> <p><i>(Article 35.2)</i></p>	
19.	<b>Right to terminate unilaterally the employment contract without prior notice by employer</b>	N/A	<p>An employer will not have to notify the employee in advance when unilaterally terminating the labour contract in the following cases:</p> <ul style="list-style-type: none"> <li>• The employee is not present at the workplace after the time limit</li> </ul>	Employers have more rights to terminate without notice such as when an employee fails to show up for work.



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			<p>prescribed in Article 31 of 2019 Labour Code;</p> <ul style="list-style-type: none"> <li>• The employee quits his/her fails to go to work without acceptable excuses for at least 05 consecutive working days.</li> </ul> <p><i>(Article 36)</i></p>	
20.	<b>Responsibilities on the termination of a labour contract</b>	<p>Within <b><u>seven (7) working days</u></b> from the date of termination of a labour contract, each party must fully pay all sums outstanding and comply with other rights and interests to the other party.</p> <p><i>(Article 47)</i></p>	<p>Within <b><u>fourteen (14) working days</u></b> 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.</p> <p><i>(Article 48)</i></p>	More time is provided for both parties to complete their responsibilities.
21.	<b>Invalid labour contract</b>	<p>The labour contract will be invalid if:</p> <ul style="list-style-type: none"> <li>• The entire contents of the labour contract are illegal;</li> <li>• A signatory to the labour contract lacked authority;</li> <li>• The job for which the two parties entered into the labour</li> </ul>	<p><b><u>Adding one (01) more case:</u></b></p> <p>A labour contract is completely invalid when violating the principles of voluntariness, equality, goodwill, cooperation, and honesty when entering a labour contract.</p> <p><i>(Article 49)</i></p>	This protects both parties.

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		<p>contract is work prohibited by law;</p> <ul style="list-style-type: none"> <li>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.</li> </ul> <p><i>(Article 50)</i></p>		
22.	<b>Authority to declare a labour contract invalid</b>	<p>The Labour Inspectorate and People's Courts.</p> <p><i>(Article 51)</i></p>	<p>The People's Courts.</p> <p><i>(Article 50)</i></p>	<p>Only the People's Courts may declare a labour contract invalid.</p>
23.	<b>Conducting discussion at workplace</b>	<p>According to Article 65 of <i>2019 Labour Code</i>, discussion at the workplace means sharing information, discussing and exchanging opinions between the employer and the employees on issues relevant to the rights, benefits and interests of employer and the employees in the workplace.</p>	<p>Discussions must be held at the workplace <b>once every year.</b></p> <p><i>(Article 63)</i></p>	<p>Simplified procedures. The employer is required to hold the discussion only once a year instead of four times a year.</p>

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		<p>Discussions must be held at the workplace <b>once every three months</b>.</p> <p><i>(Article 65.1)</i></p>		
24.	<b>Formulation of wage scales, wage tables and labour rates</b>	<p>When formulating the wage scale, wage table and labour norms, an employer shall consult the representative organization of the grassroots-level employees' collective and publish this information at the workplace of the employees before implementation, and concurrently <b>send them to the district-level state management agency of labour of the locality in which the employer's production and business establishments are located</b>.</p> <p><i>(Article 93)</i></p>	<p>The employer <b>does not have to send</b> the wage scale, wage table and labour norms <b>to the district-level state management agency of labour of the locality in which the employer's production and business establishments are located</b>.</p> <p><i>(Article 93)</i></p>	The Government will not directly interfere in compensation.
25.	<b>Principles for payment of wages</b>	<p>An employee is entitled to receive his or her wage directly, in full, and on time.</p> <p><i>(Article 96)</i></p>	<p><b><u>New regulation:</u></b></p> <p>If an employee is unable to receive his or her wage directly, then the employer may pay same to another person lawfully authorized by such employee.</p>	More flexibility for employees to receive salary.

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			<i>(Article 94)</i>	
26.	Payment of wages	N/A	<p><b><u>New regulation:</u></b></p> <p>On each payment of wages, the employer must provide a written breakdown the wage payment to the employee recording wage payment, overtime wage payments, night work wage payments, and the items and amount of money withheld or deducted (if any).</p> <p><i>(Article 95)</i></p>	This new regulation protects employees by requiring a payment breakdown for a payment of compensation.
27.	Method of payment of wages	<p>In the case of payment via a bank, the <b><u>employer must reach agreement with the employee</u></b> on service fees for opening and maintaining the bank account.</p> <p><i>(Article 94.2)</i></p>	<p>In the case of payment via a personal account of the employee opened at a bank, the <b><u>employer must pay the service fees</u></b> for opening such bank account and for remitting wages.</p> <p><i>(Article 96.2)</i></p>	<p>Employers must bear the cost of opening bank account for employees if they pay salary through the bank.</p> <p>The detail of the form of salary payment is specified in <i>Article 54 of Decree 145.</i></p>
28.	Wages for working overtime and for night work	<i>(Article 97)</i>	<p>An employee who works overtime must be paid according to the wage unit price or actual wage of his or her current work as follows:</p> <ul style="list-style-type: none"> <li>• On normal days, at a rate of at least 150%;</li> </ul>	<p>Basically, this provision has not been changed under the <i>2019 Labour Law.</i></p> <p>The details of this article are guided by <i>Article 55, 56, 57 of Decree 145,</i> specificity:</p>

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			<ul style="list-style-type: none"> <li>• On weekly days off [weekends], at a rate of at least 200%;</li> <li>• On holidays, New Year [Tet] and paid leave at a rate of at least 300% but excluding the wage for such holiday, New Year or paid leave in the case of employees receiving a daily wage.</li> </ul> <p><i>(Article 98)</i></p>	<p><b>1. Wages for overtime (<i>Article 55</i>)</b></p> <p>Overtime wage = Hourly salary in a normal working day (normal hourly salary) x At least 150% or 200% or 300% x Overtime hours</p> <ul style="list-style-type: none"> <li>– 150% applied to overtime work on weekdays;</li> <li>– 200% applied to overtime work on weekends;</li> <li>– 300% applied to overtime hours on public holidays, New Year, paid days off, not including the salary of public holidays, New Year, paid days off for employees.</li> </ul> <p><b>2. Wages for night shift (<i>Article 56</i>)</b></p> <p>Night shift wage = (Normal hourly salary + (Normal hourly salary x At least 30%) x Night work hours</p> <p><b>3. Wages for overtime during a night shift (<i>Article 57</i>)</b></p>

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				<p>Night shift overtime wage =  [(Normal hourly salary x At least 150% or 200% or 300%) + (Normal hourly salary x At least 30%) + (20% x Daytime hourly salary of a normal working day, during weekly breaks, public holidays or paid leave)] x Extra night work hours.</p> <ul style="list-style-type: none"> <li>- Normal day: <ul style="list-style-type: none"> <li>• At least equal to 100% of the job's salary on a normal working day (before working overtime at night, not working overtime during the day);</li> <li>• At least equal to 150% of the job's salary on a normal working day (before working overtime at night, with overtime working during the day);</li> </ul> </li> <li>- Weekend days off: At least equal to 200% of the actual hourly wage of the current job on a normal working day;</li> </ul>

No.	Issue	2012 Labour Code	2019 Labour Code	DN Legal Comments
				<ul style="list-style-type: none"> <li>- Holidays, New Year, paid days off: At least equal to 300% of the actual hourly wage of the job being done on a normal working day.</li> </ul>
29.	<b>Wages on work stoppage</b>	<p>If work stoppage was due to the fault of the employee, the employee is not entitled to payment of wages; and other employees in the same unit who also have to cease work shall be paid wages at a rate agreed on by the two parties <b>but not less than the minimum area wage stipulated by the Government.</b></p> <p><i>(Article 98)</i></p>	<p>If there is a breakdown in electricity or water through no fault of the employer or due to a natural disaster, fire, dangerous epidemic, enemy destruction, relocation of operational address pursuant to a request of the competent State authority or for economic reasons, then the two parties shall reach agreement on the level of wages for ceasing work as follows:</p> <ol style="list-style-type: none"> <li>a. If work was ceased <b>for <u>fourteen (14) or less working days</u></b>, then the wage for ceasing work shall be as agreed but <b>not less than the minimum wage rate</b>;</li> <li>b. If work was ceased <b>for more <u>fourteen (14) working days</u></b> then the wage for ceasing work to be paid shall be as <b>agreed by the two parties but ensuring</b></li> </ol>	<p>Employees are protected in certain cases when work has to stop not due to their fault.</p>

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			<p><b><u>that the wage for ceasing work in the first fourteen (14) days is not lower than the minimum wage rate.</u></b></p> <p><i>(Article 99)</i></p>	
30.	<b>Payment of wages in advance</b>	<p>Employees may receive a salary advance in two cases:</p> <ul style="list-style-type: none"> <li>• Agreed upon by the two parties.</li> <li>• An employer shall advance a wage amount to an employee corresponding to the number of days off which the employee takes to perform citizens' obligations from 1 week to 1 month at most. The employee shall refund this advance amount, except the case that he/she performs military services.</li> </ul> <p><i>(Article 100)</i></p>	<p>An employee may receive wages in advance in accordance with the conditions agreed by both parties and <b><u>shall not be charged interest.</u></b></p> <p><b><u>One additional case is provided:</u></b> When taking annual leave, an employee shall receive an advance payment of at least salary for the entitled days of leave.</p> <p><i>(Article 101)</i></p>	One additional case an employee may be paid wages in advance.
31.	<b>Bonuses</b>	Bonus is <b><u>a sum of money</u></b> paid by an employer to his/her employees based on annual business results	Bonus means a <b><u>sum of money or assets or other forms</u></b> which the employer grants an employee based	Employers may pay non-cash bonus, such as products of company, company trip, flight/train tickets to



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		and the level of work performance of employees.  <i>(Article 103)</i>	on the business performance or the employees' performance.  <i>(Article 104)</i>	return hometown, etc. Under <i>the 2021 Labour Law</i> , only cash can be paid.
32.	<b>Additional working hours</b>	The number of overtime working hours of the employee may not exceed <b><u>30 hours per month.</u></b>  <i>(Article 106)</i>	The number of overtime working hours of the employee may not exceed <b><u>40 hours per month.</u></b>  <i>(Article 107)</i>	Increase the monthly overtime to 40 hours.
33.	<b>Weekly days off</b>	N/A	In case a public holiday falls on an employee's weekly break coincide with a public holiday, employee will have compensatory time-off on the next working days.  <i>(Article 111)</i>	More rights for employees.
34.	<b>Public holidays</b>	<b><u>ten (10)</u></b> days off.  <i>(Article 115)</i>	<b><u>eleven (11)</u></b> days off.  <i>(Article 112)</i>	More rights for employees.
35.	<b>Annual leave</b>	An employee who has been working for an employer for full 12 months is entitled a fully paid annual leave as stated in his/her labour contract as follows:	<b>Adding the provisions on leave days for for employees who are under 18 and who have not worked for full 12 months</b> , as follows:  <ul style="list-style-type: none"> <li>• 14 working days for employees who are juniors or who are</li> </ul>	The <i>2019 Labour Law</i> recognises additional rights for employees who <b>are under 18</b> and who have not worked for a full 12 months.  In addition, (i) <i>Article 65 of Decree 145</i> defines working time used for calculating the number of days of

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		<ul style="list-style-type: none"> <li>• 12 working days for an employee working in normal conditions.</li> <li>• 14 working days for an employee doing a heavy, hazardous or dangerous job; or an employee working in a place with harsh living conditions on the list issued by the Ministry of Labour, War Invalids and Social Affairs in coordination with the Ministry of Health, or for minor or disabled employees;</li> <li>• 16 working days for an employee doing an extremely heavy, hazardous or dangerous job; an employee working in a place with extremely harsh living conditions on the list issued by the Ministry of Labour, War Invalids and Social Affairs in coordination with the Ministry of Health.</li> </ul> <p><i>(Article 111)</i></p>	<p>disabled and for people performing heavy, toxic or dangerous trades or work.</p> <ul style="list-style-type: none"> <li>• An employee who has been working for an employer for less than 12 months will have several paid leave days proportional to the number of working months.</li> </ul> <p><i>(Article 113)</i></p>	<p>annual leave; and (ii) <i>Article 66 of Decree 145</i> provides how to calculate the numbers of days of annual leave in some special circumstances.</p>

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36.	<b>Personal leave of absence</b>	<p>An employee is entitled to fully paid leave of absence for personal reasons in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Marriage: three (3) days;</li> <li>• Marriage of his or her children: one (1) day;</li> <li>• Death of a natural parent (including a parent of his or her spouse), spouse, or child: three (3) days.</li> </ul> <p><i>(Article 116)</i></p>	<p><b>More detailed:</b></p> <p>An employee is entitled to fully paid leave of absence for personal reasons and must notify the employer in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Marriage: three (3) days;</li> <li>• Marriage of a natural or <b><u>adopted child</u></b>: one (1) day;</li> <li>• Death of a natural or <b><u>adoptive parent</u></b>; or of a natural or <b><u>adoptive parent of the employee's spouse</u></b>; or of a spouse, or natural or <b><u>adopted child</u></b>: three (3) days.</li> </ul> <p><i>(Article 115)</i></p>	More rights for employees.
37.	<b>Principles, sequence and procedures for dealing with an employment breach/ violation</b>	<i>(Article 123)</i>	<p>The sequence for dealing with an employment breach/violation is as follows:</p> <ol style="list-style-type: none"> <li>a. The employer must be able to prove the employee's fault;</li> <li>b. The organization representing employees at the grassroots level of which the employee</li> </ol>	<p>Basically, this provision has not been changed under the <i>2019 Labour Law</i>.</p> <p>The details of this article on principles, sequence and procedures for dealing with breach of labour discipline are guided by <i>Article 70 of Decree 145</i>.</p>

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			<p>being dealt with is a member must participate;</p> <p>c. The employee must be present and has the right to defend himself or herself or to employ a lawyer or an organization representing employees to do so; if the employee is under 15 years of age, the legal representative must participate;</p> <p>d. Minutes must be prepared of any dealing with a breach of labour discipline.</p> <p><b><i>(Article 122)</i></b></p>	<p>Disciplinary procedures prescribed in <i>Article 122 of the 2019 Labour Code</i> are specified below:</p> <ol style="list-style-type: none"> <li>1. In case an employee’s violation is discovered when it is committed, the employer shall prepare a violation record and inform the internal employee representative organization. In case an employee’s violation is discovered after it is committed, evidence of such violation must be collected.</li> <li>2. The employer shall hold a disciplinary hearing as follows: <ol style="list-style-type: none"> <li>a. At least 05 working days before the disciplinary hearing is held, the employer shall notify the mandatory participants time and location of the hearing, full name of the employee facing disciplinary procedure and his/her violations;</li> <li>b. Upon receipt of the employer’s notification, the mandatory participants shall send the employer confirmation of their</li> </ol> </li> </ol>

No.	Issue	<i>2012 Labour Code</i>	<i>2019 Labour Code</i>	DN Legal Comments
				<p>participation. In case any of the mandatory participants cannot participate in the hearing, the employee and the employer shall reach an agreement on change of time and/or location of the hearing;</p> <p>3. Minutes of the disciplinary hearing shall be taken and ratified before the end of the hearing. The minutes shall bear the signatures of the participants. In case a person refuses to sign the minutes, the minutes taker shall specify his/her full name and reasons for refusal in the minutes.</p>
38.	<b>Principles, sequence and procedures for ordering payment of compensation for loss and damage</b>	<i>N/A</i>	<p>An examination and decision on the amount of compensation for loss and damage must be based on fault, the actual level of loss and damage, and the actual family, personal and property status of the employee.</p> <p><i>(Article 130)</i></p>	<i>Article 71, 72 of Decree 145</i> provide further guidance.
39.	<b>Complaints about labour discipline and about liability</b>	<i>(Article 132)</i>	Where a person who is disciplined, temporarily suspended from work or ordered to pay compensation in accordance with the regime on	Basically, this provision has not been changed under the <i>2019 Labour Law</i> .

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	<b>for loss and damage</b>		liability for loss and damage is dissatisfied with the decision, he or she has the right to complain to the employer or to a competent agency in accordance with law, or to request resolution of a labour dispute in accordance with the procedures stipulated by law.  <i>(Article 131)</i>	<i>Article 73 of Decree 145</i> provides further guidance.
40.	<b>Employment of senior workers</b>	<i>(Article 167)</i>	<b><u>Adding new regulation:</u></b>  When senior workers are recruited, the employer can sign the definite term labour contracts with senior workers many times.  <i>(Article 149.1)</i>	This change makes it easier to hire senior workers.
41.	<b>Foreigners working in Vietnam not required to have work permits if their spouses are Vietnamese</b>	<i>(Article 172)</i>	<b><u>Adding new case:</u></b>  Foreigners having Vietnamese spouse and living in Vietnam will be exempted from work permits.  <i>(Article 154)</i>	<i>Article 7 of Decree 152</i> specifies cases in which foreign workers are not required to obtain work permits  This new regulation is easier for foreigners married to Vietnamese citizen and living in Vietnam.
42.	<b>Valid duration of work permits</b>	The maximum duration of a work permit shall be two (2) years.	<b><u>Adding new regulation:</u></b>	<i>Articles 16, 17 and 18 of Decree. 152 2020</i> provide conditions, procedure

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		<i>(Article 173)</i>	<p>An extension may be granted but only on one occasion for a maximum (2) years.</p> <p><i>(Article 155)</i></p>	<p>and duration relating to the extension of a work permit.</p> <p>Work permit renewals are harder under the new law.</p> <p>After the number of extensions expires, the foreign employee must apply for the new work permit. The term of temporary residence card will be the same as the term of work permit. Therefore, the foreign employee must obtain the new work permit before the expiry date of the current work permit to avoid having to leave Vietnam.</p>
43.	<b>Retirement age</b>	<p>An employee who satisfies the conditions on period of payment of social insurance contributions stipulated in the law on social insurance is entitled to pension benefits at sixty (60) years of age in the case of a male, and fifty-five (55) years of age in the case of a female.</p> <p><i>(Article 187)</i></p>	<p>The retirement age for employees in normal working conditions will be adjusted in accordance with a roadmap for <b><u>male employees who reach a full sixty-two (62) years</u></b> of age in year 2028 and for <b><u>female employees who reach a full sixty (60) years</u></b> of age in year 2035.</p> <p>As from 2021, the retirement age of a worker in normal labour conditions will be a full sixty (60) years plus three (3) months for a male, and a full fifty-five (55) years plus four (4)</p>	<p>In addition, the details the retirement age are provided in <i>Decree 135</i>.</p> <p>This change is to conform with current social insurance legislation.</p>

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			<p>months for a female; and thereafter, each year such age will increase by three (3) months for men and by four (4) months for women.</p> <p><i>(Article 169)</i></p>	
44.	<b>Cases in which employees have the right to strike</b>	N/A	<p>The organization representing employees which is a party to a collective labour dispute regarding benefits has the right to conduct the procedures prescribed in <i>Articles 200, 201 and 202 of this Code</i> to strike in the following cases.</p> <ul style="list-style-type: none"> <li>• Conciliation was unsuccessful or after expiry of the time limit prescribed in <i>Article 188.2 of this Code</i> the conciliator failed to conduct a conciliation.</li> <li>• A labour arbitration tribunal was not established or was established but failed to issue a decision resolving the dispute or the employer being a party to the dispute failed to implement the decision of the labour arbitration tribunal resolving the dispute.</li> </ul>	More rights for employees to strike.



No.	Issue	<i>2012 Labour Code</i>	<i>2019 Labour Code</i>	DN Legal Comments
			<i>(Article 199)</i>	
45.	<b>Notification of decision to temporarily close a workplace</b>	<p>An employer must, at least three (3) working days prior to the date of temporary closure, publicly list such decision on temporary closure at the workplace and also notify <b>five (05)</b> agencies and organizations.</p> <p><i>(Article 216)</i></p>	<p>An employer must notify the following <b>three (03)</b> agencies and organizations:</p> <ul style="list-style-type: none"> <li>• The organization representing the employees which is organizing and leading the strike;</li> <li>• The provincial people's committee in the locality of the workplace which is proposed to close;</li> <li>• The district people's committee in the locality of the workplace which is proposed to close.</li> </ul> <p><i>(Article 205)</i></p>	<p>This new provision simplifies notice by employer on temporary closure in the event of a strike.</p>

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