

# Vietnam

## Introduction

Generally speaking, Vietnam's labor law favors the employees it is intended to protect. Most employment matters in Vietnam are governed by the Labor Code and its implementing Decrees and Circulars, as well as numerous Official Dispatches from the relevant ministries

## Termination

### Grounds For Termination

#### Termination by notice

Unless the parties mutually agree to terminate the employment or the employee voluntarily resigns, the employer must have a legitimate reason for terminating an employment contract as specified by the Labor Code. However, this principle is not always applied to the employee.

The employer has the right to terminate a labor contract unilaterally, with a proper formal prior notice, based on the following legitimate reasons:

- (i) The employee regularly fails to fulfill the task as assigned in the labor contract. The phrase “fails to fulfill the task as assigned in the labor contract” pertains to the failure of an employee to fulfill an assigned task or a labor norm as provided for in the labor contract due to subjective reasons despite written warnings sent to the employee at least twice a month. The level to qualify as “failure to fulfill the task assigned” must be stated in the labor contract, the collective labor agreement or the internal labor regulations.
- (ii) The employee is subject to discipline and dismissal in accordance with the Labor Code.
- (iii) The employee is ill and no recovery is in sight after having received treatment for a specific period (half of the term for a labor contract for seasonal jobs or a labor contract with a term of less than 12 months; six consecutive months for a labor contract with a term of 12-36 months; and 12 consecutive months for a labor contract with an indefinite term).

- (iv) Force majeure events force the employer to cut production and workforce.
- (v) The employer ceases activities.

### Termination by dismissal

Dismissal, i.e., termination of a labor contract with an immediate effect, may be applied as a disciplinary measure only in the following circumstances:

- (i) The employee commits an act of theft, embezzlement, disclosure of business or technology secrets or other conduct that is seriously detrimental to the assets or interest of the enterprise.
- (ii) The employee recommitting an offense while on a discipline trial.
- (iii) The employee has been absent for a total of five days per month, or 20 days per year, without any legitimate reason.

### **Procedure And Formalities For The Unilateral Termination Of Labor Contracts By Employer**

In order to terminate a labor contract unilaterally, except in cases where the termination is due to dismissal, the employer or the employee must give the other party 45 days' prior notice in case of a labor contract with an indefinite term and 30 days' prior notice in case of a labor contract with a definite term. The employer may pay the employee the salary equivalent in lieu of the notice period as long as the latter so agrees. Prior notice days are working days.

The prior notice requirement is not applied in the case of dismissal.

If the employer wants to terminate a labor contract unilaterally, the employer must convene the executive committee of the relevant trade union and reach an agreement with them. Where there is continued disagreement, both parties must submit a report to the labor authority. After a period of 30 days from the date the labor authority is notified, the employer shall have the right to make a decision and shall be responsible for such decision. If either the trade union executive committee or the employee concerned disagrees to the employer's decision, either party may request a relevant competent authority to resolve the dispute. After dismissing an employee, the employer must notify the local labor authority.

It is unclear if the employer must notify the labor authority in cases where there is no trade union in the company/representative office. However, it is commonly understood that the employer must notify the labor authority before unilaterally terminating an employee. The employer should also expect that when it notifies the labor authority of the unilateral termination, the labor authority could come back with questions and inquiries on the legal basis of such termination and the severance payment for the employee.

## **Severance Entitlements**

When unilaterally terminating the labor contract of an employee who has been employed for at least 12 months, the employer must pay such employee a statutory severance allowance equivalent to a half-month salary, plus salary allowance, if there is any, for each year of service. The employer also has to pay any unpaid accrued salaries, accrued but unused annual leaves, unpaid guaranteed bonus and any other outstanding amounts.

The statutory severance payment is calculated as follows:

$$\text{Severance allowance} = \text{Total duration of employment} \times \text{Salary used as basis for computing severance} \times 0.5$$

The total duration of employment shall include the total period of employment according to the executed labor contract, including any oral labor contract, period of apprenticeship, training, agreed suspension of employment, etc. The total period of employment is rounded off in accordance with the following principles:

- A period of one to less than six months is deemed a half-year.
- A period of six to 12 months is deemed one year.

The salary used as the basis for calculating severance payment is the average salary during the six months preceding the termination of the labor contract, including the base salary, plus position and regional allowances (if there are any).

The severance allowance and any outstanding amounts must be settled within seven days from the termination date. In exceptional circumstances, this period may be extended but must not exceed 30 days.

The employee is not entitled to severance allowance if he or she is subject to dismissal based on the legal grounds set out in items (i) and (ii) above.

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## **Legal Consequences Of Illegal Termination**

### **Illegal Unilateral Termination By The Employer**

If the Labor Court declares a unilateral termination of a labor contract by the employer illegal, the employer must re-employ the employee and pay him or her the following compensations:

- (i) Salary for the period during which the employee did not work; and
- (ii) Two months' salary, plus allowances, if there are any, representing compensation for psychological damage

If the employee does not want to return to work, he or she will receive the abovementioned compensation, together with severance allowance, in accordance with the provisions on the termination of a labor contract.

If the employer does not want to receive the employee back, it must pay the latter the abovementioned compensation, the severance allowance and an extra amount that is subject to the mutual agreement of both parties.

### **Illegal unilateral termination by the employee**

If the employee unilaterally terminates the labor contract, he or she will not be entitled to the severance allowance and has to pay the employer an amount equal to his or her half-month salary. The employee also has to pay the company for any training costs.

## **Employment Discrimination**

Vietnam has not yet developed a sophisticated set of laws and regulations to deal with employment discrimination issues. However, the main policy is to prevent any kind of discrimination based on sex, race, social class, beliefs or religion.

Vietnam laws strictly prohibit gender-based discrimination in employment. Women are not discriminated against in recruitment, employment, compensation, working conditions and promotion in the workplace. The labor law also prohibits the employer from dismissing or unilaterally terminating labor contracts of a female employee because she is getting married, pregnant, taking a maternity leave or nursing a child under 12 months old, except in cases where the company ceases its activities. The female employee is also entitled to various preferential treatments during pregnancy, maternity leave and the time she raises a child under 12 months old.

## **Workplace Harassment**

Vietnam has not yet developed a sophisticated set of laws and regulations to deal with workplace harassment issues. The laws generally prohibit maltreatment of workers and the use of forced labor in whatever form. An employer shall have the obligation to implement a labor contract, collective labor agreement and other agreements reached with the employees, to protect the employees' honor and dignity and to treat the employees properly.