

## Vietnam's Employee-Friendly Labor Laws

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**Overview.** Employers, including multi-national employers with expatriate employees in Vietnam, should be aware that Vietnam employment laws provide strong protections for both local employees and expatriates. There are numerous unique aspects of Vietnam's labor laws, including distinctions among entitlements depending upon the type of work conducted, as well as the gender of the employee. Many of the country's statutory requirements, including those pertaining to leave and vacation, provide certain rights to employees who work under "normal" conditions, and greater entitlement for employees who work under hazardous, strenuous, or dangerous conditions. Also, certain preferential treatment is required for female employees and applicants, as well as for those with disabilities.

Employer's obligations and employee's rights are located in: 1) the Labour Code of Vietnam, first passed in 1994, and amended by the 2002 and 2006 Amended Law; 2) the Law on Social Insurance, which became effective in 2007, and which expanded the benefits to which employees are entitled in Vietnam; and 3) other government publications. Vietnam employment laws generally govern an employer's obligations to both local Vietnamese workers and expatriates.

**Labor contracts.** Employers, especially multi-national employers, should understand that the laws in Vietnam are very strict pertaining to the creation of written employment contracts. Employers may employ workers with fewer than three months' service through either an oral or written labor contract. However, employers must create a written contract for employees with three months' or more of service that complies with statutory requirements. For example, labor contracts must include the terms and conditions of employment such as salary and rest time, as well as health and safety issues.

Probationary work periods. Vietnamese labor law allows both the employer and the employee to end the employment relationship immediately during the probationary period, which can be established by the employer as 30 days for most types of jobs, and 60 days if the job is one that requires high-level technical skills.

**Summary of some of the employee-friendly provisions in the Vietnamese labor statutes:** Some of the employee-friendly provisions of which employers, including those who employ expatriates, should be aware, are:

- **Leave entitlement.**

- **Annual Leave.** Employees who have worked for twelve months for an employer are entitled to twelve paid annual leave days, with pro rata entitlement for employees with less than twelve month's service. Employees receive one additional paid leave day for each additional five years they work for an employer. Employees who work under strenuous or hazardous conditions are entitled to further leave, with a minimum of fourteen days, and more depending upon the hazards connected with their employment. Employees are entitled to pay in lieu of annual leave for leave not taken by the end of the year.
- **Sick leave.** Employees are entitled to take sick leave when they cannot come to work because of their own sickness, or if they need to care for their ill child who is under seven years of age. Leave entitlement is as follows: 1) employees working under an indefinite-term contract are entitled to twelve months' sick leave; 2) employees working for a definite-term contract from twelve to 36 months are entitled to six months' sick leave; and 3) employees working for a definite-term contract of fewer than twelve months are entitled to six months' sick leave. Although an employee's sick leave is not paid by the employer, employees who meet statutory requirements are eligible for paid sick leave through the government-sponsored Social Insurance Fund.
- **Maternity Leave.** Vietnam's labor statutes provide significant and specific rights for maternity leave of which employers must be aware. For example:
  - Female employees are entitled to at least four to six months maternity leave. Employees who have a multiple birth are entitled to an additional 30 days additional maternity leave for each additional child.
  - An employee on maternity leave is entitled to receive her full salary plus an additional one month's salary through the Social Insurance Fund if the employee and employer have paid the required premiums. The amount of leave may be extended depending upon an employee's duties or by an agreement.
- **Personal leave.** Employees are also entitled to paid personal leave for their wedding, the wedding of their child, or the death of a parent, spouse, or child, as well as unpaid leave with the approval of their employer.

- **Effect of an employee's leave on the ability of an employer to discharge the employee.** Vietnamese employment law prohibits an employer from discharging an employee who is on any type of leave that complies with applicable law, or who is undergoing medical treatment for his or her illness, including for an occupational injury or illness. The law also provides special employment protection for women, as employers are prohibited from discharging a female employee who: 1) has a child under one year of age; 2) is getting married; 3) is pregnant; or 4) is on maternity leave.
- **Reasons employees are allowed to terminate an employee's contract.** The Vietnamese labor statutes allow employers to terminate an employee's contract for the following reasons: 1) the employee repeatedly fails to perform work covered by his or her contract; 2) discharge is discipline for an employee's infraction of the employer's policy; 3) the employee is on sick leave for an extended period of time in compliance with leave entitlement; 4) due to a natural disaster or similar event, the employer has no choice but to reduce work production; 5) the employer ceases business operations; or 6) the employer initiates a reduction in force after all attempts to negotiate with the union have failed (under this redundancy situation, there are numerous legal procedures the employer must follow).
- **General notice requirements for employees and employers for terminating labor contracts.**
  - **Employees.** Employees working under an indefinite contract may resign by providing their employer with a 45-day notice, or three days if the employee has been treated for six consecutive months due to an illness or accident.
  - **Employers.** Except in cases of a discharge due to a disciplinary matter, employers must provide employees: 1) a 45-day notice for a unilateral dismissal of an employee working under an indefinite term contract; 2) 30 days' notice in the case of a definite-term labor contracts; or 3) three days for employees working under a seasonal labor contract.
- **General employee severance entitlement upon labor contract termination.** Employees with one or more years of service who are separated due to the legal termination by the employer of the labor contract are entitled to one half-month's salary for each year of service (this amount may depend upon whether or not the Vietnamese employee participates in the country's compulsory unemployment insurance scheme).

- **Restructures.** Employees who have worked for twelve months or more who are separated due to a restructure are entitled to be paid by their employers one month's salary for each year of employment, with a minimum severance payment of two months' salary. Employers also have numerous other legal procedural obligations when they initiate a redundancy affecting more than one employee.
- **Contract terminations initiated by the employee.** Employers should also be aware they are required to provide severance pay to employees with more than twelve months' service who terminate their labor contracts as allowed by law. Employees who are discharged for disciplinary infractions or who illegally terminate their contracts are not entitled to severance pay.
- **Employer's obligations regarding applicants and employees with disabilities as well as female applicants and employees.**
  - **Preferences and special entitlements for applicants and employees with disabilities.** Employers in Vietnam must comply with the government's determination of the percentage of employees with disabilities to be recruited in certain job categories, with financial penalties for noncompliance. Additionally, employees with disabilities have certain protections regarding the terms and conditions of their employment. For example, employees with disabilities are not allowed to work more than a seven-hour day or a 42-hour week.
  - **Employment preferences for female applicants and employees.** Vietnam's labor laws require employers to give a preference to females who qualify for a vacant position. Entities that employ a substantial number of female employees will be considered for tax incentives by the government. Female employees are provided equal opportunity for all aspects of their employment, as well as protection against discriminatory actions or behavior that would violate their dignity.

**Observations.** Local and multi-national entities that employ workers in Vietnam, including multi-national employers with expatriates on assignment in that country, should ensure they are knowledgeable about the requirements of Vietnam's labor laws, which provide significant rights to employees.