

Employment, labor & immigration

In brief

The new year, 2022, has officially started with the launch and coming into force of novel legal policies that may impact the operations in general and workforce in particular of enterprises in Vietnam, especially those with foreign employees. The highlights are as follows:

1. Adjusted social insurance contribution rates in response to policies for supporting employers and employees during the COVID-19 period
2. Newly applied regulations on social insurance for foreigners
3. New administrative fines related to gender equality
4. New mobility-related rules
5. New legal framework and guiding documents for sending Vietnamese employees overseas to work under contract
6. Adjusted regulations on working hours and rest hours for employees doing seasonal production jobs or processing goods under orders
7. New decree on administrative sanctions for violations in labor and relevant sectors

Recommended actions

Enterprises should review these regulations carefully to prepare for full compliance in the upcoming period.

If you would like to discuss the issues concerning these policies and their impact in detail, as well as how our Firm can help your business deal with the immediate effects of these new provisions, please do not hesitate to contact us.

We will promptly inform you should there be any further development regarding these matters.

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In more detail

1. Adjusted social insurance contribution rates in response to policies for supporting employers and employees during the COVID-19 period (applied until 1 October 2022)

As prescribed in Resolution No. 68/NQ-CP dated 1 July 2021 and Resolution No. 116/NQ-CP dated 24 September 2021, the policies for supporting employers and employees facing difficulties due to COVID-19 entail the following:

- **From 1 January 2022 until 30 June 2022:** Employers are not required to contribute to the unemployment insurance fund and the labor accidents and occupational diseases fund.
- **From 1 July 2022 until 30 September 2022:** Employers are still not required to contribute to the unemployment insurance fund but must resume their contribution to the labor accidents and occupational diseases fund at a rate of 0.5%, or 0.3% if certain requirements are met, as regulated in Decree No. 58/2020/ND-CP dated 27 May 2020.

2. Newly applied regulations on social insurance for foreign employees¹

- **Contribution to the fund of retirement and survivorship:** According to Decree No. 143/2018/ND-CP ("**Decree No. 143**") issued by the Government on 15 October 2018, from 1 January 2022 onwards, the long-term benefit regimes for (i) retirement and (ii) survivorship will be applied, alongside the existing benefits regimes. Accordingly, from 1 January 2022, foreign employees must participate in all regimes which local employees participate in, and the contribution rates applicable to foreign employees will be the same as those applicable to local employees (i.e., up to 8% for employees and up to 18% for employers)².
- **Lump-sum pay-out of retirement benefit:** Pursuant to Decree No. 143, since 1 January 2022, foreign employees have been entitled to claim a lump-sum pay-out of their retirement benefit if they satisfy one of the following requirements:
 - Reaching retirement age but having not contributed to social insurance for 20 years in full
 - Having terminal illnesses as prescribed by law
 - Being eligible to receive monthly retirement allowances but no longer residing in Vietnam
 - Having labor contracts terminated or having expired practice licenses and work permits without extension

¹ Foreign employees mean persons entering Vietnam to work, having a work permit or practising license issued by competent Vietnamese authorities.

² The exact contribution rate may fluctuate from time to time.



3. New administrative fines related to gender equality

On 28 December 2021, the Government issued Decree No. 125/2021/ND-CP on administrative sanctions related to gender equality, which took effect on 1 January 2022. Accordingly, sanctions applicable to employment and HR practices range from VND 20 million to VND 60 million (approx. USD 870 to USD 2,609). The sanctioned violations, among others, include discrimination on the basis of gender or having prejudice on gender in:

- Ensuring occupational health and safety for employees
- Forcing or prohibiting others in choosing their job, or workplace
- Assigning work or recruiting employees

For the act of imposing and implementing regulations with discrimination on gender, the administrative fine may reach the cap of VND 60 million (approx. USD 2,609).

4. New mobility-related rules

- **Self-monitoring for three days instead of quarantine upon entry for fully vaccinated persons:** Since 1 January 2022, according to Decision No. 10688/BYT-MT dated 16 December 2021 of the Ministry of Health, persons entering Vietnam who are fully vaccinated or have recovered from COVID-19 can self-monitor their health at places of residence for three days upon entry, instead of undergoing quarantine for seven days as before. Details can be found in our previous alert [here](#).
- **International commercial flights resumed from 15 February 2022:** According to public news and a notification on the website of the Civil Aviation Authority of Vietnam (CAAV), as of 15 February 2022, Vietnam has lifted the restriction on the number of international commercial flights with the aim of operating normally as in the pre-COVID-19 period. The number of international commercial flights would depend on the responses from the aviation authorities of other countries and territories.
- **Pre-COVID-19 entry policies to be restored soon:** Although the restriction on international commercial flights has been lifted, as mentioned above, entry procedures still follow current guidance from the immigration and health authorities. Entry approval is still required for those who do not have valid visas, resident cards or visa exemption certificates. However, Vietnam is considering the restoration of entry procedures applied pre-COVID-19 and may agree to implement such restoration on 15 March 2022. According to Official Letter No. 1231/VPCP-KGVX sent from the Government Office to the Ministry of Foreign Affairs (MFA) regarding the restoration of Vietnam's pre-COVID-19 entry policies for inbound passengers, the Prime Minister assigned the MFA to urgently submit a report on the restoration of pre-COVID-19 visa policies. Up to date, the MFA already submitted such report and is waiting for the Prime Minister's approval.
- **Vietnam reopens to international tourists on 15 March 2022:** According to Notification No. 43/TB-VPCP dated 16 February 2022, the Deputy Prime Minister Vu Duc Dam agreed to the proposal of the Ministry of Culture, Sport and Tourism (MCST), other ministries and agencies regarding the reopening of tourism activities on 15 March 2022. The Deputy Prime Minister further requested the MCST to work with other relevant authorities to publish specific plans on the re-opening of tourism activities.



5. New legal framework and guiding documents for sending Vietnamese employees overseas to work under contracts

On 13 November 2020, the Law No. 69/2020/QH14 on Vietnamese employees working overseas under contracts was issued by the National Assembly ("**Law No. 69**"), with its detailing Decree No. 112/2021/ND-CP ("**Decree No. 112**") issued by the Government on 10 December 2021. Law No. 69 and Decree No. 112 took effect on 1 January 2022. On 15 December 2021, the Ministry of Labor, Invalids and Social Affairs (MOLISA) further issued Circular No. 21/2021/TT-BLDTBXH ("**Circular No. 21**") detailing Law No. 69, which took effect on 1 February 2022. Law No. 69 and the aforementioned guiding documents form the new legal framework for Vietnamese employees working overseas under contracts, with the following notable points:

- Negotiations regarding sending Vietnamese employees overseas to work must be in writing.
- Vietnamese employees working overseas are explicitly assured rights such as: right to unilaterally terminate the labor contract due to being maltreated, forced to work, or sexually harassed; right to be exempt from double contribution of social insurance or personal income tax both in Vietnam and the host country, if the countries have signed an agreement on the social insurances or the avoidance of imposing double tax., etc.
- It is now prohibited to collect brokerage commission from employees (the previous regulation stated that employees shall refund to the service enterprise a part of or the entire amount of the brokerage commission).
- Regarding the eligibility for issuance of licenses for provision of service of sending Vietnamese employees to work overseas:
 - Eliminate requirements on the types of enterprises and legal capital; schemes on the provision of the service of sending employees overseas; full-time apparatuses in charge of organizing further training courses to provide essential knowledge to workers before they are sent abroad, and conducting activities related to sending workers abroad.
 - Additionally provide requirements on enterprise's website.

6. Adjusted regulations regarding working hours and rest hours for employees doing seasonal production jobs or processing goods under orders

On 15 December 2021, the MOLISA issued Circular No. 18/2021/TT-BLDTBXH prescribing working time and rest time for employees doing seasonal production work or processing goods under orders ("**Circular No. 18**"), which took effect on 1 February 2022, replacing Circular No. 54/2015/TT-BLDTBXH ("**Circular No. 54**").

Circular No. 18's regulations apply to employees working under labor contracts with a term of between 12 months and 36 months or indefinite-term labor contracts for the following jobs:

- Seasonal production jobs in the fields of agriculture-forestry-fishery-salt production that require instant harvests or instant processing after harvest without delay
- Processing of goods under orders, depending on the time the goods' owner so requests

Compared to Circular No. 54, regulations on the number of daily working hours are now not as specific and no longer distinguish between normal employees and employees engaged in hard, hazardous and dangerous occupations and jobs, or extremely hard, hazardous and dangerous occupations and jobs. Specifically, the total number of standard working hours and extra working hours in a day must not exceed 12 hours. In addition, according to this new Circular, employees who work on holidays can no longer take another day-off to make up for their work during holiday.



7. New decree on administrative sanctions on violation in labor and relevant sectors

On 17 January 2022, the Government issued Decree No. 12/2022/ND-CP ("**Decree No. 12**") replacing Decree No. 28/2020/ND-CP on administrative sanctions in the field of labor, social insurance and Vietnamese employees working overseas under contracts. Notable points include the following:

- **New sanctions:** Violations regarding **labor contract implementation and workplace dialogue** now have certain new sanctions, as follows:
 - A fine ranging from VND 100 million to VND 150 million (approx. USD 4,348 to USD 6,522) will be imposed for the act of **forcing employees to implement labor contracts in order to pay their debts** to the employer.
 - A fine ranging from VND 2 million to VND 6 million (approx. USD 87 to USD 261) will be imposed for the act of **not delivering written notice regarding termination of labor contract for employees** when the labor contract terminates according to the Labor Code's regulations, except for certain cases.
 - A fine ranging from VND 30 million to VND 60 million (approx. USD 1,304 to USD 2,609) will be imposed for the act of **sexual harassment in the workplace**, which is not yet subject to criminal sanctions.
 - A fine ranging from VND 10 million to VND 20 million (approx. USD 435 to USD 870) will be imposed for violations related to **workplace dialogue**:
 - Failure to develop, promulgate, amend or supplement the **workplace democracy regulations**
 - Failure to hold **periodical dialogues** at the workplace or to conduct **dialogue when requested**
 - Failure to coordinate in organizing **employee conferences** as prescribed by law
 - **Not publicly announcing main contents** of the dialogue or grassroots democracy policy regulations at the workplace
 - Not nominating or **nominating the wrong representatives from the employer's side** to participate in the workplace dialogue
- **Increased fine amounts:** Decree No. 12 increases the fines for violations regarding **female employees and disciplinary measures**:
 - A fine ranging from VND 20 million to VND 40 million (approx. USD 870 to USD 1,740) will be imposed for the act of **failing to allow female employees to take a break of 30 minutes every day during menstruation** unless otherwise agreed by both parties (the previous fine was from VND 1 million to VND 2 million, approx. USD 44 to USD 87 only).
 - A fine ranging from VND 40 million to VND 80 million (approx. USD 1,740 to USD 3,478) will be imposed for the act of **disciplining employees with a salary cut** (the previous fine was from VND 20 million to VND 30 million, approx. USD 870 to USD 1,304 only).
- **Amended sanctions:** Decree No. 12 also amends the clauses on violations regarding **labor contract implementation and disciplinary measures**:
 - A fine ranging from VND 4 million to VND 50 million (approx. USD 174 to USD 2,174) will be imposed for the act of **entering into non-written labor contracts with employees who do the job on a term of a full month or more** (previously, this provision applied only to the jobs with a term of a full three months or more).
 - A fine ranging from VND 30 million to VND 60 million (approx. USD 1,304 to USD 2,609) will be imposed for the act of: **applying disciplinary measures for violations** not regulated in the ILR, **not agreed in labor contracts concluded or not regulated by labor law** (the former regulations only provided a fine for the "act of applying disciplinary measures for violations not regulated in the ILR").



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