

2023 Employment Newsletter

Subtitle

In brief

2022 was undoubtedly an active period for Vietnam's regulatory landscape and the year has drawn to a close with a long progression of new regulations and important legal updates. As demonstrated by recent announcements and upcoming regulatory enactments, this pace of notable legal developments shows no sign of slowing down in 2023.

This legal guide provides a summary of various highlighted issues and notable updates from Vietnam's legal environment over the course of 2022, as well as commentary on some of the crucial regulations and legal developments to be implemented in 2023 and beyond.

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.

In more detail

2022 HIGHLIGHTS

1. Increased need for workplace dialogues and democracy policies

Under the previous Labor Code 2012, workplace dialogues were organized periodically (once every three months) and at the request of either employers or employees. Under the new Labor Code 2019, apart from workplace dialogues held periodically (now once a year) and upon request, workplace dialogues are also required during the process of establishing several internal company policies (including internal labor regulations, bonus policies, performance management policies, labor norms and salary schemes) as well as labor usage plans in case of retrenchments. Further, a workplace democracy policy is also necessary for implementing workplace dialogues as well as facilitating and enhancing the relationship between the employer, employees and employees' representative organizations at the workplace. Despite the implementation of the Labor Code 2019 and above regulations in 2021, the actual demand and practical implementation for these workplace dialogues and democracy policies saw a substantial increase in 2022.

2. Increase of the regional minimum wage

On 12 June 2022, the Government issued Decree No. 38/2022/ND-CP, which regulates the regional minimum wage ("RMW") for employees working under labor contracts. The following notable changes have been implemented under this decree: (i) the

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RMW per month has been increased by 6%; (ii) an RMW per hour has been added; and (iii) the geographical scope of regions for the application of RMW has been adjusted. These changes to the RMW have correspondingly impacted the capped salary used for the calculation of unemployment insurance. Further, the former rule requiring that salaries for trained employees must be at least 7% higher than the RMW is no longer applicable (though the relevant parties themselves can still agree to continue its application).

3. Updates on work permit/immigration rules and practices

2022 has seen a number of ongoing immigration related challenges. Regarding visa issues, the Immigration Department no longer permits third-party vendors to handle in-person visa application filings on behalf of a sponsoring enterprise, instead now requiring that in-person applicants are employees of the sponsoring enterprise. This new requirement has been rigorously enforced, with applicants needing to prove their eligibility by presenting their Vietnam Social Insurance (VssID) mobile application. In addition, the Immigration Department has started leaning towards granting business visas with a shorter term of one month (instead of three months as before) with the possibility of only a single one month extension. There have also been a number of reported difficulties in regards to obtaining visas on arrival.

In the context of work permits, although Resolution No. 105/NQ-CP addressed certain difficulties related to work permit applications, a number of administrative problems for foreign employees still remain. These challenges include: (i) ongoing lengthy processing times for the approval of requests for foreign labor usage; (ii) the lack of any mechanism for foreign employees to notify the authorities when working in provinces or cities that are different to the location of their registered company; and (iii) inconsistencies stemming from the practice of certain provincial labor authorities of implementing their own regulations on the documents required for notification procedures for employees who are exempt from work permits. A further notable concern is the labor authorities have generally started to review work permit applications more thoroughly, and increasingly require additional supporting documents. For example, the Ho Chi Minh City Department of Labor, Invalids and Social Affairs has started requesting enterprises to prove that they have failed to recruit Vietnamese employees for a job before submitting a request to use foreign employees by providing a: (i) recruitment plan; (ii) public recruitment post; and (iii) plan to train Vietnamese employees for related positions. It is also possible that these stringent requirements could be applied to other locations in the future. Furthermore, it has been reported that the Ministry of Labor, Invalids and Social Affairs is planning to apply a similar approach to the Immigration Department detailed above in requiring that in-person work permit applications be made by an employee of the sponsoring enterprise. These new requirements will invariably lead to administrative burdens and difficulties for enterprises operating in Vietnam, especially newly established enterprises.

4. The Law on Vietnamese Working Abroad Under Labor Contracts

Effective from 1 January 2022, the Law on Vietnamese Working Abroad Under Labor Contracts governs the overseas work of Vietnamese nationals through categorizing forms of overseas employees and providing for the rights, obligations and responsibilities of Vietnamese working abroad, as well as enterprises, organizations and individuals involved in the businesses and activities of Vietnamese working abroad.

Although there are various distinct and separate rules under each category, companies which seek to send Vietnamese employees abroad to perform any work or business should be particularly mindful about: (i) applicable reporting obligations to the authorities; (ii) the types of permissible contracts that can serve as a valid bases for sending employees abroad; and (iii) the specific information, and health and safety obligations owed towards employees sent abroad.

COMING CHANGES IN 2023 AND FUTURE

5. Increase of the general minimum wage

According to Resolution No. 69/2022/QH15 dated 11 November 2023 of the National Assembly on state budget estimation of 2023 (“**Resolution 69**”), the National Assembly has decided that the general minimum wage (“**GMW**”) will be increased from VND 1,490,000 per month (approx. USD 65) to VND 1,800,000 per month (approx. USD 78) from 1 July 2023. As the GMW is the basis for the calculation of the cap salary to determine social and health insurance premiums as well as trade union fees, this increase to the GMW will result in overall heightened labor costs for the private sector.

6. Increase of in-kind compensation values

On 30 November 2022, MOLISA issued Circular No. 24/2022/TT-BLDTBXH regulating the in-kind compensation for employees working in conditions with dangerous and hazardous factors (“**Circular 24**”), which will take effect from 1 March 2023 and replace the current Circular No. 25/2013/TT-BLDTBXH.



Pursuant to Circular 24, the level of in-kind compensation has been raised in comparison to the currently applicable regulations. Specifically, the four levels of monetary value of in-kind compensation have been adjusted as follows:

- Level 1: from VND 10,000 (approximately USD 0.4) to VND 13,000 (approximately USD 0.6)
- Level 2: from VND 15,000 (approximately USD 0.7) to VND 20,000 (approximately USD 0.9)
- Level 3: from VND 20,000 (approximately USD 0.9) to VND 26,000 (approximately USD 1.1)
- Level 4: from VND 25,000 (approximately USD 1.08) to VND 32,000 (approximately USD 1.4)

7. Upcoming revisions to the Law on Employment

A detailed outline of the revised Law on Employment (the “**Detailed Outline**”) was recently issued in line with the upcoming scheduled revision to the Law on Employment. Under this Detailed Outline, various provisions have been amended and added. In particular:

- Employees working under definite-term labor contract with a term of one month or more will be subject to unemployment insurance;
- An employee who is disciplined in the form of dismissal will not be entitled to unemployment insurance benefits;
- An employee who unilaterally terminates their labor contract will no longer be entitled to unemployment insurance benefits;
- Additional support will be provided to employers who hire employees that are disabled, ethnic minorities or elderly;
- Every person participating in unemployment insurance will be entitled to free job counseling; and
- A new chapter regarding “labor management” has been added.

8. Expected new Law on Trade Unions and employees’ organization decree

The Labor Code 2019 recognized the employee right to association by introducing the concept of “employees’ organizations” at enterprises. Accordingly, “grassroots employee representative organizations” now comprises of “grassroots trade unions” and “employees’ organizations”, which have equal rights and responsibilities in representing and protecting the lawful and legitimate rights and benefits of employees.

Pursuant to Decision No. 673/QĐ-TTg dated 7 May 2021, a decree guiding the Labor Code 2019 on employee representative organizations should have been issued by 2021. However, this decree has not yet been released and accordingly no employees’ organizations have thus far been established in practice. This decree is therefore expected to be issued relatively soon.

In addition, upon the issuance of Labor Code 2019, trade unions are no longer the default employees’ representative organization for all employees and the upper level trade union of grassroots trade unions is no longer the default employees’ representative organization in case there is no grassroots trade union at an enterprise. The requirement to contribute and use trade union fees, equal to 2% of the salary fund used for the calculation of social insurances contribution, for trade unions will also need to be reconsidered in the current context where trade union and employees’ organizations are equal in term of rights and obligations. Expected revisions to the applicable regulations have been anticipated for some time and notably, the Vietnam General Confederation of Labor recently issued a new version of the draft Law on Trade Unions. Accordingly, it can be expected that the revision process will be expedited with upcoming announcements anticipated in the coming year.



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