

**THE NATIONAL ASSEMBLY**

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Code No. 45/2019/QH14

**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence - Freedom - Happiness**

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**LABOR CODE***Pursuant to the Constitution of the Socialist Republic of Vietnam;**The National Assembly promulgates the Labor Code.***Chapter I****GENERAL PROVISIONS****Article 1. Scope**

The Labor Code sets forth labor standards; rights, obligations and responsibilities of employees, employers, internal representative organizations of employees, representative organizations of employers in labor relations and other relations directly related to labor relations; and state management of labor.

**Article 2. Regulated entities**

1. Employees, trainees, apprentices and other workers without labor relations.
2. Employers.
3. Foreign employees who work in Vietnam.
4. Other organizations and individuals directly related to labor relations.

**Article 3. Definitions**

For the purposes of this document, the terms below shall be construed as follows:

1. *Employee* means a person who works for an employer under an agreement, is paid, managed and supervised by the employer.

The legal working age is 15, except for the cases specified in Section 1 Chapter XI of this Labor Code.

2. *Employer* means an enterprise, agency, organization, cooperative, household or individual who employs other people under agreements. In case the employer is an individual, he/she shall have full legal capacity.

3. *Internal representative organizations of employees* means an internal organization voluntarily established by employees under an employer which protects the employees' legitimate rights and interests in labor relations through collective bargaining or other methods prescribed by labor laws. The Internal representative organizations of employees include internal trade unions and internal employee organizations.

4. *Representative organization of employers* means a lawfully established organization which represents and protects the employers' legitimate rights and interests in labor relations.

5. *Labor relation* means a social relation which arises in respect of the employment and salary payment between an employee and an employer, their representative organizations and competent authorities. Labor relations include individual labor relation and collective labor relation.

6. *Worker without labor relations* means a person who works without an employment contract.

7. *Forced labor* means to use force or threat to use force or a similar practice to oblige a person to work against his/her will.

8. *Labor discrimination* means the discrimination, elimination or preference based on the grounds of race, skin color, nationality and social origin, ethnicity, gender, age, pregnancy, marital status, religion, opinion, disability, family responsibility, HIV infection, establishment of or participation in trade union or internal representative organizations of the employee in a manner that affects the equality of employment or career opportunities.

The discrimination, elimination or preference based on the grounds of professional requirements, the employment sustainment and protection for vulnerable employees will not be considered as discrimination.

9. *Sexual harassment at the workplace* means any sexual act of a person against another person at the workplace against the latter's will. *Workplace* means the location when an employee works under agreement or as assigned by the employer.

#### **Article 4. State policies on labor**

1. Guarantee the legitimate rights and interests of employees and workers without labor relations; encourage agreements providing employees with conditions more favorable than those provided by the labor laws.

2. Guarantee the legitimate rights and interests of employers, to ensure lawful, democratic, fair and civilized labor management, and to promote corporate social responsibility.

3. Facilitate job creation, self-employment and occupational training and learning to improve employability; labor-intensive businesses; application of certain regulations in this Labor code to workers without labor relations.

4. Adopt policies on the development and distribution of human resources; improve productivity; provide basic and advanced occupational training, occupational skill development; assist the employees in sustainment and change of jobs; offer incentives for skilled employees in order to meet the requirements of national industrialization and modernization.

5. Adopt policies on labor market development and diversify types of linkage between labor supply and demand.

6. Promote dialogues, collective bargaining and establishment of harmonious, stable and progressive labor relations between employees and employers.

7. Ensure gender equality; introduce labor and social policies aimed to protect female, disabled, elderly and minor employees.

#### **Article 5. Rights and obligations of employees**

1. An employee has the rights to:

a) Work; freely choose an occupation, workplace or occupation; participate in basic and advanced occupational training; develop professional skills; suffer no discrimination, forced labor and sexual harassment at the workplace;

b) Receive a salary commensurate with his/her occupational skills on the basis of an agreement with the employer; be provided with personal protective equipment and work in an occupationally safe and healthy environment; take statutory sick leaves, annual paid leaves and receive collective welfare benefits;

c) Establish, join a representative organization of employees, occupational associations and other organizations in accordance with law; request and participate in dialogues with the employer, implementation of democracy regulations and collective bargaining with the employer; receive consultancy at the workplace to protect his/her legitimate rights and interests; participate in management activities according to the employer's regulations;

d) Refuse to work if he/she finds that the work directly threatens his/her life or health;

dd) Unilaterally terminate the employment contract;

e) Go on strike;

g) Exercise other rights prescribed by law.

2. An employee has the obligations to:

a) implement the employment contract, collective bargaining agreement and other lawful agreements;

c) obey internal labor regulations, the lawful management, administration and supervision by the employer;

c) implement regulations of laws on labor, employments, vocational education, social insurance, health insurance, unemployment insurance, occupational safety and health.

### **Article 6. Rights and obligations of employers**

1. An employer has the rights to:

a) recruit, arrange and manage and supervise employees; give commendation and take actions against violations of internal labor regulations;

b) establish, join and operate in employer representative organization, occupational associations and other organizations in accordance with law;

c) request the representative organization of employees to negotiate the conclusion of the collective bargaining agreement; participate in settlement of labor disputes and strikes; discuss with the representative organization of employees about issues related to labor relations and improvement of the material and spiritual lives of employees;

d) temporarily close the workplace;

dd) exercise other rights prescribed by law.

2. An employer has the obligations to:

a) implement the employment contracts, collective bargaining agreement and other lawful agreements with employees; respect the honor and dignity of employees;

b) establish a mechanism for and hold dialogue with the employees and the representative organization of employees; implement the regulations on grassroots-level democracy;

c) Provide basic training and advanced training in order to help employees improve their professional skills or change their occupations;

d) implement regulations of laws on labor, employments, vocational education, social insurance, health insurance, unemployment insurance, occupational safety and health; develop and implement solutions against sexual harassment in the workplace;

dd) Participate in development of the national occupational standards, assessment and recognition of employees' professional skills.

#### **Article 7. Development of labor relations**

1. Labor relations are established through dialogue and negotiation on principles of voluntariness, good faith, equality, cooperation and mutual respect of each other's the lawful rights and interests.

2. Employers, employer representative organizations, employees and representative organizations of employees shall develop progressive, harmonious and stable labor relations with the assistance of competent authorities.

3. The trade union shall cooperate with competent authorities in assisting the development of progressive, harmonious and stable labor relations; supervising implementation of labor laws; protecting the legitimate rights and interests of employees.

4. Vietnam Chamber of Commerce and Industry, Vietnam Cooperative Association and other employer representative organizations that are lawfully established shall represent, protect the lawful rights and interests of employers, and participate in development of progressive, harmonious and stable labor relations.

#### **Article 8. Forbidden actions**

1. Labor discrimination.

2. Maltreatment of employees, forced labor.

3. Sexual harassment in the workplace.

4. Taking advantage of occupational training or apprenticeships to exploit the trainees or apprentices, or persuade or force them to act against the law.

5. Employing untrained people or people without occupational training certificates to do the jobs or works that have to be done by trained workers or holders of occupational training certificates.

6. Persuading, inciting, promising advertising or otherwise tricking employees into human trafficking, exploitation of labor or forced labor; taking advantage of employment brokerage or guest worker program to commit violations against the law.

7. Illegal employment of minors.

### **Chapter II**

#### **EMPLOYMENTS, RECRUITMENT AND EMPLOYEE MANAGEMENT**

#### **Article 9. Employments and creation of employments**

1. Employment is any income-generating laboring activity that is not prohibited by law.

2. The State, employers and the society have the responsibility to create employment and guarantee that every person, who has the work capacity, has access to employment opportunities.

#### **Article 10. Right to work of employees**

1. An employee shall have the right to choose his employment, employer in any location that is not prohibited by law.

2. An employee may directly contact an employer or through an employment service provider in order to find a job that meets his/her expectation, capacity, occupational qualifications and health.

#### **Article 11. Employment plan**

1. Employers have the right to recruit employees directly or through employment agencies or dispatching agencies.

2. Employees shall not pay any employment cost.

#### **Article 12. Responsibility of an employer for employee management**

1. Prepare, update, manage, use the physical or electronic employee book and present it to the competent authority whenever requested.

2. Declare the employment status within 30 days from the date of commencement of operation, and report periodically on changes of employees during operation to the local labor authority under the People's Committee of the province (hereinafter referred to as "provincial labor authority") and to the social security authority.

3. The Government shall elaborate this Article.

### **Chapter III**

## **EMPLOYMENT CONTRACT**

### **Section 1. CONCLUSINO OF AN EMPLOYMENT CONTRACT**

#### **Article 13. Employment contract**

1. An employment contract is an agreement between an employee and an employer on a paid job, salary, working conditions, and the rights and obligations of each party in the labor relations.

A document with a different name is also considered an employment contract if it contains the agreement on the paid job, salary, management and supervision of a party.

2. Before recruiting an employee, the employer shall enter into an employment contract with such employee.

#### **Article 14. Forms of employment contract**

1. An employment contract shall be concluded in writing and made into two copies, one of which will be kept by the employee, the other by the employer, except for the case specified in Clause 2 of this Article.

An employment contract in the form of electronic data conformable with electronic transaction laws shall have the same value as that of a physical contract.

2. Both parties may conclude an oral contract with a term of less than 01 month, except for the cases specified in Clause 2 Article 18, Point a Clause 1 Article 145 and Clause 1 Article 162 of this Labor Code.

#### **Article 15. Principles for conclusion of an employment contract**

1. Voluntariness, equality, good faith, cooperation and honesty.
2. Freedom to enter into an employment contract which is not contrary to the law, the collective bargaining agreement and social ethics.

#### **Article 16. Obligations to provide information before conclusion of an employment contract**

1. The employer shall provide the employee with truthful information about the job, workplace, working conditions, working hours, rest periods, occupational safety and health, wage, forms of wage payment, social insurance, health insurance, unemployment insurance, regulations on business secret, technological know-how, and other issues directly related to the conclusion of the employment contract if requested by the employee.

2. The employee shall provide the employer with truthful information about his/her full name, date of birth, gender, residence, educational level, occupational skills and qualifications, health conditions and other issues directly related to the conclusion of the employment contract which are requested by the employer.

#### **Article 17. Prohibited acts by employers during conclusion and performance of employment contracts**

1. Keeping the employee's original identity documents, diplomas and certificates.
2. Requesting the employee to make a deposit in cash or property as security for his/her performance of the employment contract.
3. Forcing the employee to keep performing the employment contract to pay debt to the employer.

#### **Article 18. Competence to conclude employment contracts**

1. Employees may directly conclude their employment contracts, except for the cases specified in Clause 2 of this Article.

2. In respect of seasonal works or certain jobs which have a duration of less than 12 months, a group of employees aged 18 or older may authorized the representative of the group to conclude the employment contract, in which case such employment contract shall be effective as if it was separately concluded by each of the employees.

The employment contract concluded by the said representative must be enclosed with a list clearly stating the full names, ages, genders, residences and signatures of all employees concerned.

3. The person who concludes the employment contract on the employer's side shall be:
  - a) The legal representative of the enterprise or an authorized person as prescribed by law;
  - b) The head of the organization that is a juridical person, or an authorized person as prescribed by law;
  - c) The representative of the household, artels or an organization that is not a juridical person, or an authorized person as prescribed by law;

d) The individual who directly hires the employee.

4. The person who concludes the employment contract on the employee's side shall be:

a) The employee himself/herself if he/she is 18 or older;

b) The employee aged 15 to under 18 with a written consensus by his/her legal representative;

c) The employee aged under 15 and his/her legal representative;

d) The employee lawfully authorized by the group of employees to conclude the employment contract.

5. The person who is authorized to conclude the employment contract must not authorize another person to conclude the employment contract.

#### **Article 19. Entering into multiple employment contracts**

1. An employee may enter into employment contracts with more than one employer, provided that he/she fully performs all terms and conditions contained in the concluded contracts.

2. Where an employee enters into employment contracts with more than one employer, his/her participation in social insurance, health insurance and unemployment insurance schemes shall comply with regulations of law on social insurance, health insurance, unemployment insurance, occupational safety and health.

#### **Article 20. Types of employment contracts**

1. An employment contract shall be concluded in one of the following types:

a) An indefinite-term employment contract is a contract in which the two parties neither fix the term nor the time of termination of the contract;

b) A fixed-term employment contract is a contract in which the two parties fix the term of the contract for a duration of up to 36 months from the date of its conclusion.

2. If an employee keeps working when an employment contract mentioned in Point b Clause 1 of this Article expires:

a) Within 30 days from the expiration date of the employment contract, both parties shall conclude a new employment contract. Before such a new employment contract is concluded, the parties' rights, obligations and interests specified in the old employment contract shall remain effective;

b) If a new employment contract is not concluded after the 30-day period, the existing employment contract mentioned in Point b Clause 1 of this Article shall become an employment contract of indefinite term;

c) The parties may enter into 01 more fixed-term employment contract. If the employee keeps working upon expiration of this second fixed-term employment contract, the third employment contract shall be of indefinite term, except for employment contracts with directors of state-invested enterprises and the cases specified in Clause 1 Article 149, Clause 2 Article 151 and Clause 4 Article 177 of this Labor Code.

#### **Article 21. Contents of employment contracts**

1. An employment contract shall have the following major contents:

- a) The employer's name, address; full name and position of the person who concludes the contract on the employer's side;
- b) Full name, date of birth, gender, residence, identity card number or passport number of the person who concludes the contract on the employee's side;
- c) The job and workplace;
- d) Duration of the employment contract;
- dd) Job- or position-based salary, form of salary payment, due date for payment of salary, allowances and other additional payments;
- e) Regimes for promotion and pay rise;
- g) Working hours, rest periods;
- h) Personal protective equipment for the employee;
- i) Social insurance, health insurance and unemployment insurance;
- k) Basic training and advanced training, occupational skill development.

2. If the employees' job is directly related to the business secret, technological know-how as prescribed by law, the employer has the rights to sign a written agreement with the employee on the content and duration of the protection of the business secret, technology know-how, and on the benefit and the compensation obligation in case of violation by the employee.

3. If the employee works in agriculture, forestry, fishery, or salt production, both parties may exclude some of the aforementioned contents and negotiate additional agreements on settlement in the case when the contract execution is affected by natural disaster, fire or weather.

4. The contents of the employment contract with an employee who is recruited to work as the director of a state-invested enterprise shall be stipulated by the Government.

5. The Minister of Labor, War Invalids and Social Affairs elaborate Clauses 1, 2 and 3 of this Article.

#### **Article 22. Annexes to employment contract**

1. An annex to an employment contract is an integral part of the employment contract and is as binding as the employment contract.

2. An annex to an employment contract may elaborate or amend certain contents of the employment contract and must not change the duration of the employment contract.

Where an annex to an employment contract elaborates the employment contract in a manner that leads to a different interpretation of the employment contract, the contents of the employment contract shall prevail.

Where an annex amends certain contents of the employment contract, it should clearly states the amendments or additions, and the date on which they take effect.

#### **Article 23. Effect of employment contract**

An employment contract takes effect as of the date on which the contract is concluded by the parties, unless otherwise agreed by both parties or prescribed by law.



### **Article 24. Probation**

1. An employer and an employee may include the contents of the probation in the employment contract or enter into a separate probation contract.
2. The probation contract must include the probation period and the contents specified in Points a, b, c, dd, g and h Clause 1 Article 21 of this Code.
3. Probation is not allowed if the employee works under an employment contract with a duration of less than 01 month.

### **Article 25. Probationary period**

The probationary period shall be negotiated by the parties on the basis of the nature and complexity of the job. Only one probationary period is allowed for a job and the probation shall not exceed:

1. 180 days for the position of enterprise executive prescribed by the Law on Enterprises, the Law on management and use of state investment in enterprises;
2. 60 days for positions that require a junior college degree or above;
3. 30 days for positions that require a secondary vocational certificate, professional secondary school; positions of or for technicians, and skilled employees;
4. 06 working days for other jobs.

### **Article 26. Probationary salary**

The probationary salary shall be negotiated by both parties and shall not be lower than 85% of the offered salary.

### **Article 27. Termination of probationary period**

1. Upon the expiry of the probationary period, the employer shall inform the employee of the probation result.

If the result is satisfactory, the employer shall keep implementing the concluded employment contract, if there is one, or conclude the employment contract.

If the result is not satisfactory, the employer may terminate the concluded employment contract or the probation contract.

2. During the probationary period, either party has the right to terminate the concluded probation contract or employment contract without prior notice and compensation obligation.

## **Section 2. PERFORMANCE OF EMPLOYMENT CONTRACT**

### **Article 28. Performance of works under an employment contract**

The works under an employment contract shall be performed by the employee who directly enters into the contract. The workplace shall be consistent with that indicated in the employment contract, unless otherwise agreed upon by both parties.

### **Article 29. Reassignment of an employee against the employment contract**

1. In the event of sudden difficulties such as natural disasters, fire, major epidemics, implementation of preventive and remedial measures for occupational accidents or diseases, electricity and water supply

failures, or for reasons of business and production demands, the employer may temporarily assign an employee to perform a work which is not prescribed in the employment contract for an accumulated period of up to 60 working days within 01 year, unless otherwise agreed in writing by the employee.

The employer shall specify in the internal labor regulations the cases in which the employer may temporary reassign employees against the employment contracts.

2. In case of temporarily reassignment of an employee specified in Clause 1 of this Article, the employer shall inform the employee at least 03 working days in advance, specify the reassignment period and only assign works that are suitable for the employee's health and gender.

3. The reassigned employee will receive the salary of the new work. If the new salary is lower than the previous salary, the previous salary shall be maintained for 30 working days. The new salary shall be at least 85% of the previous salary and not smaller than the minimum wages.

4. In case the employee refuses to be reassigned for more than 60 working days in 01 year and has to suspend the employment, he/she shall receive the suspension pay from the employer in accordance with Article 99 of this Labor Code.

### **Article 30. Suspension of an employment contract**

1. Cases of suspension of an employment contract:

- a) The employee is conscripted into the army or militia;
- b) The employee is held in custody or detention in accordance with the criminal procedure law;
- c) The employee is sent to a reformatory school, drug rehabilitation center or correctional facility;
- d) The female employee is pregnant as specified in Article 138 of this Code;
- dd) The employee is designated as the executive of a wholly state-owned single-member limited liability company;
- e) The employee is authorized to representative the state investment in another enterprise;
- g) The employee is authorized to represent the enterprise's investment in another enterprise;
- h) Other circumstances as agreed by both parties.

2. During the suspension of the employment contract, the employee shall not receive the salary and benefits specified in the employment contract, unless otherwise agreed by both parties or prescribed by law.

### **Article 31. Reinstatement of employees upon expiry of the temporary suspension of the employment contract**

Within 15 days from the expiry of the suspension period of the employment contract, the employee shall be present at the workplace and the employer shall reinstate the employee under the employment contract if it is still unexpired, unless otherwise agreed by both parties or prescribed by law.

### **Article 32. Part-time employments**

1. A part-time employee is an employee who works for less than the usual daily, weekly or monthly working hours as prescribed by labor laws, the collective bargaining agreement internal labor regulations.

2. An employee may negotiate part-time employment with the employer when enter into an employment contract.

3. The part-time employee shall be entitled to receive salary, equal rights and obligations as a full-time employee; equal opportunity and treatment, and to a safe and hygienic working environment.

### **Article 33. Revisions to employment contracts**

1. During the performance of an employment contract, any party who wishes to revise the employment contract shall notify the other party of the revisions at least 03 working days in advance.

2. In case where an agreement is reached between the parties, the revisions shall be made by signing an annex to the employment contract or signing a new employment contract.

3. In case the two parties fail to reach an agreement on the revisions, they shall continue to perform the existing employment contract.

### **Section 3. TERMINATION OF EMPLOYMENT CONTRACTS**

#### **Article 34. Cases of termination of an employment contract**

1. The employment contract expires, except for the case specified in Clause 4 Article 177 of this Code.

2. The tasks stated in the employment contract have been completed.

3. Both parties agree to terminate the employment contract.

4. The employee is sentenced to imprisonment without being eligible for suspension or release as prescribed in Clause 5 Article 328 of the Criminal Procedure Code, capital punishment or is prohibited from performing the work stated in the employment contract by an effective verdict or judgment of the court.

5. The foreign employee working in Vietnam is expelled by an effective verdict or judgment of the court or a decision of a competent authority.

6. The employee dies; is declared by the court as a legally incapacitated person, missing or dead.

7. The employer that is a natural person dies; is declared by the court as a legally incapacitated person, missing or dead. The employer that is not a natural person ceases to operate, or a business registration authority affiliated to the People's Committee of the province (hereinafter referred to as "provincial business registration authority") issues a notice that the employer does not have a legal representative or a person authorized to exercise the legal representative's rights and obligations.

8. The employee is dismissed for disciplinary reasons.

9. The employee unilaterally terminates the employment contract in accordance with Article 35 of this Code.

10. The employer unilaterally terminates the employment contract in accordance with Article 36 of this Code.

11. The employer allows the employee to resigns in accordance with Article 42 and Article 43 of this Code.

12. The work permit or a foreign employee expires according to Article 156 of this Labor Code.

13. The employee fails to perform his/her tasks during the probationary period under the employment contract or gives up the probation.

### **Article 35. The right of an employee to unilaterally terminates the employment contract**

1. An employee shall have the right to unilaterally terminate the employment contract, provided he/she notices the employee in advance:

- a) at least 45 days in case of an indefinite-term employment contract;
- b) at least 30 days in case of an employment contract with a fixed term of 12 – 36 months;
- c) at least 03 working days in case of an employment contract with a fixed term of under 12 months;
- d) The notice period in certain fields and jobs shall be specified by the government.

2. An employee is shall have the right to unilaterally terminate the employment contract without prior notice if he/she:

a) is not assigned to the work or workplace or not provided with the working conditions as agreed in the employment contract, except for the cases specified in Article 29 of this Labor Code;

b) is not paid adequately or on schedule, except for the case specified in Clause 4 Article 97 of this Code.

c) is maltreated, assaulted, physically or verbally insulted by the employer in a manner that affects the employee's health, dignity or honor; is forced to work against his/her will;

d) is sexually harassed in the workplace;

dd) is pregnant and has to stop working in accordance with Clause 1 Article 138 of this Labor Code.

e) reaches the retirement age specified in Article 169 of this Labor Code, unless otherwise agreed by the parties; or

g) finds that the employer fails to provide truthful information in accordance with Clause 1 Article 16 of this Labor Code in a manner that affects the performance of the employment contract.

### **Article 36. The right of an employer to unilaterally terminates the employment contract**

1. An employer shall have the right to unilaterally terminate an employment contract in one of the following circumstances:

a) The employee repeatedly fails to perform his/her work according to the criteria for assessment of employees' fulfillment of duties established by the employer. The criteria for assessment of employees' fulfillment of duties shall be established by the employer with consideration taken of opinions offered by the representative organization of employees (if any);

b) The employee is sick or has an accident and remains unable to work after having received treatment for a period of 12 consecutive months in the case of an indefinite-term employment contract, for 06 consecutive months in the case of an employment contract with a fixed term of 12 – 36 months, or more than half the duration of the contract in case of an employment contract with a fixed term of less than 12 months.

Upon recovery, the employer may consider concluding another employment contract with the employee;

c) In the event of a natural disaster, fire, major epidemic, hostility, relocation or downsizing requested by a competent authority, the employer has to lay off employees after all possibilities have been exhausted;

d) The employee is not present at the workplace after the time limit specified in Article 31 of this Labor Code;

dd) The employee reaches the retirement age specified in Article 169 of this Labor Code, unless otherwise agreed by the parties;

e) The employee quits his/her fails to go to work without acceptable excuses for at least 05 consecutive working days;

g) The employee fails to provide truthful information during the conclusion of the employment contract in accordance with Clause 2 Article 16 of this Labor Code in a manner that affects the recruitment.

2. When unilaterally terminating the employment contract in any of the cases specified in Point a, b, c, dd and g Clause 1 of this Article, the employer shall inform the employer in advance:

a) at least 45 days in case of an indefinite-term employment contract;

b) at least 30 days in case of an employment contract with a fixed term of 12 – 36 months;

c) at least 03 working days in the case of an employment contract with a fixed term of less than 12 months and in the cases stipulated in Point b Clause 1 of this Article;

d) The notice period in certain fields and jobs shall be specified by the government.

3. When unilaterally terminating the employment contract in the cases mentioned in Point d and Point e Clause 1 of this Article, the employer is not required to inform the employee in advance.

### **Article 37. Cases in which an employer is prohibited from unilaterally terminating an employment contract**

1. The employee is suffering from an illness or work accident, occupational disease and is being treated or nursed under the decision of a competent health institution, except for the cases stipulated in Point b Clause 1 Article 36 of this Labor Code.

2. The employee is on annual leave, personal leave, or any other types of leave permitted by the employer.

3. The employee is pregnant, on maternal leave or raising a child under 12 months of age.

### **Article 38. Withdrawal of unilateral termination of employment contracts**

Either party may withdraw the unilateral termination of an employment contract at any time prior to the expiry of the notice period by a written notification, provided that the withdrawal is agreed by the other party.

### **Article 39. Illegal unilateral termination of employment contracts**

The unilateral termination of an employment contract will be illegal if it does not comply with regulations of Article 35, 36 and 37 of this Labor Code.

### **Article 40. Illegal unilateral termination of the employment contract insurance the employee**

The employee who illegally unilaterally terminates his/her employment contract shall:

1. Not receive the severance allowance.
2. Pay the employer a compensation that is worth his/her half a month's salary plus (+) an amount equal to his/her salary for the remaining notice period from the termination date.
3. The employee shall reimburse the employer with the training costs in accordance with Article 62 of this Code.

#### **Article 41. Illegal unilateral termination of the employment contract by the employer**

1. The employer that illegally unilaterally terminates an employment contract with an employee shall reinstate the employee in accordance with the original employment contract, and pay the salary, social insurance, health insurance and unemployment insurance premiums for the period during which the employee was not allowed to work, plus at least 02 months' salary specified in the employment contract.

After the reinstatement, the employee must return the severance allowance or redundancy allowance (if any) to the employer.

Where there is no longer a vacancy for the position or work as agreed in the employment contract and the employee still wishes to work, the employer shall negotiate revisions to the employment contract.

Where the employer fails to comply with the provisions on notice period in Clause 2 Article 36 of this Labor Code, the employer shall pay a compensation that is worth the employee's salary for the remaining notice period from the termination date.

2. In case the employee does not wish to return to work, in addition to the compensation prescribed in Clause 1 of this Article, the employer shall pay a severance allowance in accordance with Article 46 of this Code in order to terminate the employment contract.

3. Where the employer does not wish to reinstate the employee and the employee agrees, in addition to the compensation mentioned in Clause 1 of this Article and the severance allowance mentioned in Article 46 of this Labor Code, both parties shall negotiate an additional compensation which shall be at least 2 months' salary under the employment contract in order to terminate the employment contract.

#### **Article 42. Obligations of the employer in case of changes in structure, technology or changes due to economic reasons**

1. Changes in structure and technology include:

- a) Changes in the organizational structure, personnel rearrangement;
- b) Changes in processes, technology, equipment associated with the employer's business lines;
- c) Changes in products or product structure.

2. Changes due to economic reasons include:

- a) Economic crisis or economic depression;
- b) Changes in law and state policies upon restructuring of the economy or implementation of international commitments.

3. If the change affects the employment of a large number of employees, the employer shall develop and implement a labor utilization plan prescribed in Article 44 of this Labor Code. In case of new vacancies, priority shall be given to retraining of the existing employees for continued employment.

4. If a change due to economic reasons threatens to cause a large number of employees to lose their jobs, the employer shall develop and implement a labor utilization plan as prescribed in Article 44 of this Code.

5. In case the employer is unable to create provide employment and has to resort to dismissing employees, the employer shall pay them redundancy allowances in accordance with Article 47 of this Labor Code.

6. The dismissal of employees in the cases mentioned in this Article shall only be implemented after a discussion with the representative organization of employees (if any) and after giving prior notice of 30 days to the People's Committee of the province and the employees.

**Article 43. Obligations of the employer in case of full division, partial division, consolidation, merger of the enterprise; sale, lease, conversion of the enterprise; transfer of the right to ownership or right to enjoyment of assets of the enterprise or cooperative**

1. In case the full division, partial division, consolidation, merger of the enterprise; sale, lease, conversion of the enterprise; transfer of the right to ownership or right to enjoyment of assets of the enterprise or cooperative affects the employment of a large number of employees, the employer shall develop a labor utilization plan as prescribed in Article 44 of this Labor Code.

2. The current employer and the next employer shall implement the adopted labour utilization plan.

3. The laid off employees will receive redundancy allowances in accordance with Article 47 of this Code.

**Article 44. Labor utilization plan**

1. A labor utilization plan shall have the following contents:

a) The names and number of employees to be retained, employees to be retrained for further employment, and employees to be working on part-time basis;

b) The names and number of employees to retire;

c) The names and number of employees whose employment contracts have to be terminated;

d) Rights and obligations of the employer, employee and relevant parties regarding implementation of the labor utilization plan;

dd) The measure and financial sources to implement the plan.

2. During development of the labor utilization plan, the employer shall discuss with the representative organization of employees (if any). The labor utilization plan shall be made available to the employees within 15 days from the day on which it is adopted.

**Article 45. Noticing termination of employment contracts**

1. The employer shall send a written notice to the employee of the termination of his/her employment contract, except for the cases specified in Clauses 4, 5, 6, 7, 8 Article 34 of this Labor Code.

2. In case an employer that is not a natural person shuts down business operation, the date of termination of the employment contract is the same date of the notice of business shutdown.

In case the provincial business registration authority issues a notice that the employer does not have a legal representative or a person authorized to exercise the legal representative's rights and obligations

according to Clause 7 Article 34 of this Labor Code, the date of termination of the employment contract is the same date of the notice.

#### **Article 46. Severance allowance**

1. In case an employment contract is terminated as prescribed in Clauses 1, 2, 3, 4, 6, 7, 9 and 10, Article 34 of this Code, the employer is responsible for paying severance allowance to the employee who has worked on a regular basis for a period of at least 12 months. Each year of work will be worth half a month's salary, except for the cases in which the employee is entitled to receive retirement pension as prescribed by social insurance laws, and the cases specified in Point e Clause 1 Article 36 of this Labor Code.

2. The qualified period of work as the basis for calculation of severance allowance shall be the total period during which the employee actually worked for the employer minus the period over which the employee participated in the unemployment insurance in accordance with unemployment insurance laws and the period for which severance allowance or redundancy allowance has been paid by the employer.

3. The salary as the basis for calculation of severance allowance shall be the average salary of the last 06 months under the employment contract before the termination.

4. The Government shall elaborate this Article.

#### **Article 47. Redundancy allowance**

1. Where an employment contract is terminated according to Clause 11 Article 34 of this Labor Code and the employee has worked on a regular basis for the employer for at least 12 months, the employer shall pay a redundancy allowance to the employee. Each year of work will be worth 01 month's salary and the total redundancy allowance shall not be smaller than 02 month's salary.

2. The qualified period of work as the basis for calculation of redundancy allowance shall be the total period during which the employee actually worked for the employer minus the period over which the employee participated in the unemployment insurance in accordance with unemployment insurance laws and the period for which severance allowance or redundancy allowance has been paid by the employer.

3. The salary as the basis for the calculation of redundancy allowance shall be the average salary of the last 06 months under the employment contract before the termination.

4. The Government shall elaborate this Article.

#### **Article 48. Responsibilities of the parties upon termination of an employment contract**

1. Within 14 working days following the termination of an employment contract, both parties shall settle all payments in respect of the rights and interests of each party. In the following cases, such period may be extended, but shall not exceed 30 days:

- a) Shutdown of business operation of the employer that is not a natural person;
- b) Changes in the organizational structure, technology or changes due to economic reasons;
- c) Full division, partial division, consolidation, merger of the enterprise; sale, lease, conversion of the enterprise; transfer of the right to ownership or right to enjoyment of assets of the enterprise or cooperative;
- d) Natural disasters, fire, hostility or major epidemics.



2. Priority shall be given to payment of the employees' salaries, social insurance, health insurance, unemployment insurance, severance allowance and other benefits under the collective bargaining agreement and employment contracts in case of shutdown, dissolution or bankruptcy of an enterprise or cooperative.

3. The employer has the responsibility to:

a) Complete the procedures for verification of duration of participation in social insurance and unemployment insurance, return them and original copies of the employee's other documents (if any);

b) Provide copies of the documents relevant to the employee's work if requested by the employee. The employer shall pay the cost of copying and sending the documents.

#### **Section 4. INVALID EMPLOYMENT CONTRACT**

##### **Article 49. Invalid employment contracts**

1. An employment contract shall be completely invalid in the following cases:

a) The entire contents of the employment contract are illegal;

b) A person concludes the employment contract ultra vires or against the rules for employment contract conclusion specified in Clause 1 Article 15 of this Labor Code;

c) The work described in the employment contract is prohibited by law;

2. An employment contract shall be partially invalid when part of its contents is illegal but does not affect its remaining contents.

##### **Article 50. Competence to invalidate employment contracts**

People's Courts shall be entitled to invalidate employment contracts.

##### **Article 51. Settlements upon invalidation of an employment contract**

1. Where an employment contract is declared as partially invalid, it shall be dealt with as follows:

a) The rights, obligations and benefits of the parties shall be settled in accordance with the collective bargaining agreement (or provisions of the law if there is no collective bargaining agreement);

b) The parties shall revise the invalidated part of the employment contract in accordance with the collective bargaining agreement or labor laws.

2. In case an employment contract is completely invalidated, the rights, obligations and interests of the employee shall be settled in accordance with law. In case an employment contract is concluded ultra vires, another contract shall be concluded.

3. The Government shall elaborate this Article.

#### **Section 5. LABOR DISPATCH**

##### **Article 52. Labor dispatch**

1. Labor dispatch is an arrangement in which an employee enters into an employment contract with a dispatching agency, which subsequently dispatches the employee to work for another employer while maintaining labor relations with the dispatching agency with which the employment contract is concluded.

2. Labor dispatch is a conditional business, requires the labor dispatch license and applies only to certain types of work.

### **Article 53. Labor dispatch rules**

1. The maximum duration of labor dispatch is 12 months.

2. The client enterprise may employ a dispatched employee in the following cases:

a) The employment is necessary for the sharp increase in labor demand over a limited period of time;

b) The dispatched employee is meant to replace another employee who is taking maternal leave, has an occupational accident or occupational disease or has to fulfill his/her citizen's duties;

c) The work requires highly skilled workers.

3. The client enterprise may not employ a dispatched employee in the following cases:

a) The dispatched employee is meant to replace another employee during a strike or settlement of labor disputes;

b) There is no agreement with the dispatching agency on responsibility for compensation for the dispatched employee's occupational accidents and occupational diseases;

c) The dispatched employee is meant to replace another employee who is dismissed due to changes in organizational structure, technology, economic reasons, full division, partial division, consolidation or merger of the enterprise.

4. The client enterprise must not dispatch a dispatched employee to another employer; must not employ an employee dispatched by an enterprise that does not have the labor dispatch license.

### **Article 54. Dispatching agencies**

1. A dispatching agency shall pay a deposit and obtain labor dispatch license.

2. The Government shall provide for the issuance of labor dispatch licenses, making deposit, the types of work that allow dispatched labor.

### **Article 55. Labor dispatch contracts**

1. The dispatching agency and the client enterprise shall conclude a written labor dispatch contract, which is made into 02 copies, each of which shall be kept by a party.

2. A labor dispatch contract shall have the following major contents:

a) The work location, the vacancy which will be filled by the dispatched employee, detailed description of the work, and detailed requirements for the dispatched employee;

b) The labor dispatch duration; the starting date of the dispatch period;

c) Working hours, rest periods, occupational safety and health at the workplace;

d) Responsibility for compensation in case of occupational accidents and occupational diseases;

dd) Obligations of each party to the dispatched employee.

3. The labor dispatch contract shall not include any agreement on the rights and benefits of employee which are less favorable than those stipulated in the concluded employment contract between the employee and the dispatching agency.

#### **Article 56. Rights and obligations of the dispatching agency**

Apart from the rights and obligations specified in Article 6 of this Labor Code, the dispatching agency also has the following rights and obligations:

1. Provide a dispatched employee who meets the requirements of the client enterprise and the employment contract signed with the employee;
2. Inform the dispatched employee of the contents of the labor dispatch contract;
3. Provide the client enterprise with the curriculum vitae of the dispatched employee, and his/her requirements.
4. Pay the dispatched employee a salary that is not lower than that of a directly hired employee of the client enterprise who has equal qualifications and performs the same or equal work;
5. Keep records of the number of dispatched employees, the client enterprise, submit periodic reports to the provincial labor authority.
6. Take disciplinary measures against the dispatched employee in cases where the client enterprise returns the employee for violations against labor regulations.

#### **Article 57. Rights and obligations of the client enterprise**

1. Inform and guide the dispatched employee to understand its internal labor regulations and other regulations.
2. Do not discriminate between the dispatched employee and its directly hired employees in respect of the working conditions.
3. Reach an agreement with the dispatched employee on night work and overtime work in accordance with this Labor Code.
4. The client enterprise may negotiate with the dispatched employee and the dispatch enterprise on official employment of the dispatched employee while the employment contract between the dispatch employee and the dispatch enterprise is still unexpired.
5. Return the dispatched employee who does not meet the agreed conditions or violates the work regulations to the dispatch enterprise.
6. Provide evidence of violations against work regulations by the dispatched employee to the dispatching agency for disciplinary measures.

#### **Article 58. Rights and obligations of the dispatched employee**

Apart from the rights and obligations specified in Article 5 of this Labor Code, the dispatched employee also has the following rights and obligations:

1. Perform the work in accordance with the employment contract with the dispatching agency;
2. Obey internal labor regulations, lawful management, administration and supervision by the client enterprise;

3. Receive a salary which is not lower than that of a directly hired employee of the client enterprise who has equal qualifications and performs the same or equal work;

4. File a complaint with the dispatch enterprise in case the client enterprise violates agreements in the labor dispatch contract.

5. Negotiate termination of the employment contract with the dispatching agency in order to conclude an employment contract with the client enterprise.

## Chapter IV

### OCCUPATIONAL TRAINING

#### Article 59. Basic and advanced occupational training

1. Workers are entitled to have vocational training; participate in national assessment and recognition of occupational skills, develop occupational skills that are suitable for their desires and abilities.

2. The State encourages eligible employers to provide basic and advanced occupational training for their employees and other employees by:

a) Establishing occupational training centers or classes at the workplace in order to train, retrain and develop occupational skills of the employees; cooperating with vocational education institutions in providing occupational training at basic, intermediate and college level, and other occupational training programs as per regulations;

b) Carrying out vocational assessments; participating in the occupational training council; forecasting labor demand and develop the occupational standards; organizing the assessment and recognition of occupational skills; developing professional capacity of employees.

#### Article 60. Responsibilities of employers for provision of basic and advanced occupational training and occupational skill development

1. Employers shall develop annual basic and advanced occupation training and occupational skill development plans for their employees and allocate budget for implementation thereof; provide training for employees before reassigning them.

2. Employers shall submit annual reports on results of the basic and advanced occupational training and occupational skill development they provide to the provincial labor authority.

#### Article 61. Trainees and apprentices

1. Trainees are employees who are recruited and trained by the employer at the work place in order to work for the employer. The traineeship duration varies according to the level of training as prescribed by the Law on Vocational education.

2. Apprentices are employees who are recruited and instructed to practice doing their work by the employer in order to work for the employer. The maximum duration of apprenticeship is 03 months.

3. An employer who recruits trainees or apprentices in order to employ them is not required to register such training activity, shall not charge fees for such training, and shall sign traineeship or apprenticeship contracts in accordance with the Law on Vocational education.

4. Every trainee and apprentice shall be at least 14 years of age and healthy enough for the traineeship or apprenticeship. Trainees and apprentices of the occupations on the list of laborious, toxic

and dangerous occupations or the list of highly laborious, toxic and dangerous occupations promulgated by the Minister of Labor, War Invalids and Social Affairs shall be at least 18 years of age, except for arts and sports.

5. During the traineeship or apprenticeship period, if an apprentice or trainee directly performs or participates in performance of the work, he/she shall be paid a salary at a rate agreed by both parties.

6. Upon the expiry of the apprenticeship or traineeship period, both parties must enter into an employment contract if the conditions stipulated in this Labor Code are satisfied.

#### **Article 62. Occupational training contract between an employer and an employee, and occupational training costs**

1. Both parties must enter into an occupational training contract in case the employee is provided with advanced training or retraining at home or abroad funded by the employer or sponsorship from the employer's partner.

The occupational training contract shall be made into 02 copies, each of which shall be kept by a party.

2. A vocational training contract shall have the following major contents:

- a) The occupation in which training is provided;
- b) Location, time of training and salary for the training period;
- c) The work commitment period after training;
- d) The training costs and responsibility for reimbursement thereof;
- dd) Responsibilities of the employer;
- e) Responsibilities of the employee.

3. Training costs include those specified in valid documents on payments for trainers, training materials, training locations, equipment, practice materials, other supportive expenses for the learner, the salary, social insurance, health insurance and unemployment insurance premiums paid for the learner during the training period. In case the employee receives the training overseas, the training costs also include the travelling and living expenses during the training period.

### **Chapter V**

#### **DIALOGUE AT WORKPLACE, COLLECTIVE BARGAINING, COLLECTIVE BARGAINING AGREEMENTS**

##### **Section 1. DIALOGUE AT WORKPLACE**

#### **Article 63. Organization of dialogue at the workplace**

1. Dialogue at the workplace means the sharing of information, discussion between the employer and employees or representative organization of employees regarding the issues relevant to the rights and interests of the parties at the work place in order to strengthen the understanding, cooperation and work out mutually beneficial solutions.

2. Dialogue at the workplace shall be held by the employer:

- a) at least once a year;

b) whenever requested by one or both party;

c) in any of the events specified in Point a Clause 1 Article 36, Articles 42, 44, 93, 104, 118 and Clause 1 Article 128 of this Labor Code.

3. Employers, employees and representative organizations of employees are encouraged to hold dialogues in occasions other than those specified in Clause 2 of this Article.

4. The Government shall provide for organization of dialogue and implementation of democracy regulations at the workplace.

#### **Article 64. Contents of dialogue at the workplace**

1. Mandatory contents are specified in Point c Clause 2 Article 63 of this Labor Code.

2. Apart from the mandatory contents mentioned in Clause 1 of this Article, the parties may include one or some of the following issues in the dialogue:

a) Business performance of the employer;

b) Performance of the employment contracts, collective bargaining agreement, internal labor regulations, other commitments and agreements at the workplace;

c) Working conditions;

d) Requests of employees and representative organization of employees to the employer;

dd) Requests of employer to the employees and the representative organization of employees;

e) Other issues of concern to either or both parties.

### **Section 2. COLLECTIVE BARGAINING**

#### **Article 65. Collective bargaining**

Collective bargaining is a process of negotiation between a party that consists of one or several representative organization of employees and another party that consists of one or several employers or employer representative in order to regulate working conditions, relationship between the parties and develop progressive, harmonious and stable labor relations.

#### **Article 66. Principles of collective bargaining**

Collective bargaining shall be carried out on the principles of voluntariness, good faith, equality, cooperativeness, openness to the public and transparency.

#### **Article 67. Issues for collective bargaining**

The parties may include one or some of the following issues in the collective bargaining:

1. Salary, bonus, allowances, pay rise, means and other benefits;

2. Labor rates, working hours, rest periods, overtime work, rest breaks at work;

3. Employment security for the workers;

4. Occupational safety and health; implementation of the internal labor regulations;

5. Conditions and equipment of the representative organization of employees; the relationship between the employer and the representative organization of employees;

6. Mechanism and methods for prevention and settlement of labor disputes;

7. Assurance of gender equality, maternity protection, annual leaves; actions against violence and sexual harassment in the workplace;

8. Other issues of concern to either or both parties.

#### **Article 68. The right to request collective bargaining of the internal representative organization of employees**

1. The representative organization of employees has the right to request collective bargaining whenever it reaches the minimum number of members as prescribed by the Government.

2. In case an enterprise has more than one internal representative organization of employees that satisfies the requirements in Clause 1 of this Article, the one that has the most members will have the right to request the collective bargaining. Other representative organizations of employees may participate in the collective bargaining if agreed by the requesting organization.

3. If none of the employees' representative organizations of an enterprise satisfies the requirements in Clause 1 of this Article, they may request collective bargaining if their total number of members reaches the minimum number specified in Clause 1 of this Article.

4. The Government shall provide for settlement of disputes among the parties over the right to request collective bargaining.

#### **Article 69. Representatives of the parties to the collective bargaining**

1. The number of representatives of each party participating in the collective bargaining shall be agreed by the two parties.

2. The participants of each party in the collective bargaining shall be decided by the party.

In case more than one representative organization of employees participate in the collective bargaining as prescribed in Clause 2 Article 68 of this Labor Code, they may negotiate the number of representatives of each organization.

In the case specified in Clause 3 Article 68 of this Labor Code, the number of representatives of each organization shall be negotiated by the organizations. If an agreement cannot be reached, each organization shall decide the number of its representative based on the ratio of its members to the total number of members.

3. Each party to the collective bargaining may invite representatives from its superior organization and this has to be accepted by the other parties. The representatives of each party to the collective bargaining must not exceed the agreed quantity mentioned in Clause 1 of this Article, unless otherwise agreed by the other parties.

#### **Article 70. Collective bargaining procedures**

1. Whenever collective bargaining is requested by a representative organization of employees in accordance with Article 68 of this Labor Code, the requested party must not refuse to hold the collective bargaining.

Within 07 working days from the day on which the request and the agenda are received, the parties shall agree upon the location and starting time for the bargaining.

The employer shall prepare time, location and other conditions for holding collective bargaining meetings?.

The collective bargaining must be held within 30 days from the day on which the request is received.

2. The duration of a collective bargaining must not exceed 90 days from its starting day, unless otherwise agreed by the parties.

The employees' representatives shall be fully paid for the time spent participating in the collective bargaining meetings. The time a member of the representative organization of employees spends participating in the collective bargaining meetings shall not be included in the time specified in Clause 2 Article 176 of this Labor Code.

3. During the course of collective bargaining, if the employee's party requests the employer's party to provide information on the business performance and other information relevant to the collective bargaining issues, with the exception of business secrets, technological know-how of the employer, such information must be provided within 10 days from the day on which such request is received.

4. Other representative organizations of employees may discuss with the employees about the contents, methods and results of the collective bargaining.

The representative organization of employees may decide the time, location and method of discussion or survey as long as it does not affect the enterprise's normal business operation.

The employer must not obstruct or interfere with the discussion or survey held by the representative organization of employees.

5. Minutes of the bargaining meeting must be taken and it must specify the issues which have been agreed upon by the parties and issues that remain controversial. The minutes shall bear the signatures of the parties and the record maker. The representative organization of employees shall make the minutes of the collective bargaining available to all employees.

#### **Article 71. Failed collective bargaining**

1. A collective bargaining is considered failed in any of the following circumstances:

a) A party refuses to participate in the collective bargaining or the collective bargaining is not held within the time limit specified in Clause 1 Article 70 of this Labor Code;

b) An agreement cannot be reached within the time limit specified in Clause 2 Article 70 of this Labor Code;

c) The parties declare that the collective bargaining has failed before expiration of the time limit specified in Clause 2 Article 70 of this Labor Code.

2. In case the bargaining fails, the parties may initiate labor dispute settlement procedures as prescribed in this Labor Code. During the labor dispute settlement, the representative organization of employees must not call a strike.

#### **Article 72. Sectoral collective bargaining, multi-enterprise collective bargaining**

1. The principles and contents of sectoral collective bargaining and multi-enterprise collective bargaining shall comply with Article 66 and Article 67 of this Labor Code.



2. The procedures for holding sectoral collective bargaining and multi-enterprise collective bargaining shall be negotiated by the parties, including collective bargaining via a collective bargaining council specified in Article 73 of this Labor Code.

3. In case of a sectoral collective bargaining, the representatives shall be the sectoral trade union and sectoral employer representative organizations.

In case of a multi-enterprise collective bargaining, the representatives shall be decided by the parties.

### **Article 73. Multi-enterprise collective bargaining via a collective bargaining council**

1. By consensus, the parties to a multi-enterprise collective bargaining may request the People's Committee of the province where they are headquartered (or a province they choose if they are headquartered in different provinces) to establish a collective bargaining council.

2. Upon receipt of the said request, the People's Committee of the province shall issue a decision to establish a collective bargaining council. A collective bargaining council consists of:

a) A chairperson who is chosen by the parties and has the responsibility to operate the council and assist in the process of collective bargaining.

b) Representatives appointed by each party. The number of representatives of each party who participate in the council shall be agreed upon by the parties;

c) Representatives of the People's Committee of the province.

3. The collective bargaining council shall hold the collective bargaining at the request of the parties and shall be dismissed when a multi-enterprise collective bargaining agreement is concluded or when the dismissal is agreed upon by the parties.

4. The Minister of Labor, War Invalids and Social Affairs shall provide for the functions, duties and operation of collective bargaining councils.

### **Article 74. Responsibilities of the People's Committees of provinces in collective bargaining**

1. Provide training in collective bargaining skills for the parties to the collective bargaining.

2. Provide information and data about the economy, society, labor market and labor relation in order to facilitate the process of collective bargaining.

3. Assist the parties in reaching an agreement during the collective bargaining on its own initiative or when requested by the parties. If no request is made by the parties, the assistance shall only be provided if it is accepted by the parties.

4. Establish a collective bargaining council when requested by parties to the multi-enterprise collective bargaining in accordance with Article 73 of this Labor Code.

## **Section 3. COLLECTIVE BARGAINING AGREEMENTS**

### **Article 75. Collective bargaining agreements**

1. A collective bargaining agreement means an agreement that is reached through a collective bargaining and concluded in writing by the parties.

Collective bargaining agreements include enterprise-level collective bargaining agreements, sectoral collective bargaining agreements, multi-enterprise collective bargaining agreements and other types of collective bargaining agreements.

2. The contents of a collective bargaining agreement must be contrary to the law, and should provide for the terms and conditions that are more favorable to the employees than those provided by law.

#### **Article 76. Survey and conclusion of collective bargaining agreements**

1. Before an enterprise-level collective bargaining agreement is concluded, its draft must be made available for comment by all employees of the enterprise. An enterprise-level collective bargaining agreement shall only be concluded if it is voted for by more than 50% of the enterprise's employees.

2. A sectoral collective bargaining agreement shall be available for comment by all members of the management boards of the representative organizations of employees of the enterprises participating in the bargaining. A sectoral collective bargaining agreement shall only be concluded if it is voted for by more than 50% of the voters.

A multi-enterprise collective bargaining agreement shall be available for comment by all employees of the enterprises participating in the bargaining or members of management boards of the representative organizations of employees thereof. Only an enterprise more than 50% of employees of which vote for the multi-enterprise collective bargaining agreement may participate in its conclusion.

3. The time and location for casting votes on a draft collective bargaining agreement shall be decided by the representative organization of employees as long as it does not affect the participating enterprises' normal business operation. The employers must not obstruct or interfere with process of voting on the draft agreement by the representative organizations of employees.

4. A collective bargaining agreement shall be concluded by legal representatives of the parties.

In case a multi-enterprise collective bargaining agreement is negotiated via a collective bargaining council, it shall be concluded by the chairperson of the council and legal representatives of the parties.

5. A copy of the collective bargaining agreement shall be sent to every party and the provincial labor authority in accordance with Article 77 of this Labor Code.

In case of a sectoral or multi-enterprise collective bargaining agreement, each employer and representative organization of employees of the participating enterprises shall receive 01 copy.

6. After a collective bargaining agreement is concluded, the employer must make publicly available to their employees.

7. The Government shall elaborate this Article.

#### **Article 77. Sending the collective bargaining agreement**

Within 10 days from the day on which a collective bargaining agreement is concluded, the employer shall send 01 copy to the provincial labor authority in the same province where the enterprise is headquartered.

#### **Article 78. Effective date and effective period of collective bargaining agreements**

1. The effective date of a collective bargaining agreement shall be agreed upon by the parties and specified in the agreement itself. In case the parties do not agree upon an effective date, the collective bargaining agreement shall be effective on its conclusion date.

An effective collective bargaining agreement shall be upheld by the parties.

2. An enterprise-level effective collective bargaining agreement shall be binding on the employer and all employees of the enterprise. An effective sectoral or multi-level collective bargaining agreement shall be binding on all employers and employees of the participating enterprises.

3. The effective period of a collective bargaining agreement shall 01 – 03 years. The specific effective period shall be agreed upon by the parties and specified in the collective bargaining agreement. The parties may agree upon various effective periods for different parts of a collective bargaining agreement.

#### **Article 79. Implementation of enterprise-level collective bargaining agreements**

1. The employer and the employees, including new employees who are employed after the collective bargaining agreement has come into effect, shall be responsible for the full implementation of the effective collective bargaining agreement.

2. Where the rights, responsibilities and interests of the parties stipulated in the employment contract which were concluded before the effective date of the collective bargaining agreement are less favorable than those of respective provisions provided in the collective bargaining agreement, the provisions of the collective bargaining agreement shall prevail. Internal labor regulations of the employer which are not conformable with the collective bargaining agreement shall be revised accordingly. Provisions of the collective bargaining agreement shall apply until such revisions are made.

3. Where a party considers that the other party does not perform fully or violates the provisions of the collective bargaining agreement, the former has the right to request the latter to fully comply with the agreement, and both parties must jointly settle the issue. In case of failure to settle the issue, either party has the right to request settlement of the collective labor dispute in accordance with the law.

#### **Article 80. Implementation of an enterprise-level collective bargaining agreement upon full division, partial division, consolidation, merger of the enterprise; sale, lease, conversion of the enterprise; transfer of the right to ownership or right to enjoyment of assets of the enterprise**

1. Upon full division, partial division, consolidation, merger of the enterprise; sale, lease, conversion of the enterprise; transfer of the right to ownership or right to enjoyment of assets of an enterprise, the succeeding employer and representative organization of employees mentioned in Article 68 of this Labor Code shall consider revising the existing enterprise-level collective bargaining agreement or concluding a new one, In consideration of the labor utilization plan.

2. In case a collective bargaining agreement expires because the employer ceases its operation, the rights and interests of the employees shall be settled in accordance with the law.

#### **Article 81. Relationship between enterprise-level collective bargaining agreements, sectoral collective bargaining agreements and multi-enterprise collective bargaining agreements**

1. In case an enterprise-level collective bargaining agreement, multi-enterprise collective bargaining agreement and sectoral collective bargaining agreement provide for employees' rights, obligations and interests differently, the most favorable provisions shall apply.

2. An enterprise which is subject to the governance of a sectoral collective bargaining agreement or multi-enterprise collective bargaining agreement but have not established enterprise-level collective bargaining agreements may establish an enterprise-level collective bargaining agreement with more

favorable terms and conditions for employees than those stipulated in the sectoral collective bargaining agreement or multi-enterprise collective bargaining agreement.

3. Enterprises that have not participated in any sectoral collective bargaining agreement or multi-enterprise collective bargaining agreement are encouraged to adopt more favorable provisions of a sectoral collective bargaining agreement or multi-enterprise collective bargaining agreement.

#### **Article 82. Revisions of collective bargaining agreements**

1. A collective bargaining agreement may only be by the parties through collective bargaining on a voluntary basis.

The process of revising a collective bargaining agreement shall be the same as that of the negotiation and conclusion of a collective bargaining agreement.

2. In case a change in law results in the collective bargaining agreement being unsuitable with the new law, the parties must revise the collective bargaining agreement accordingly within 15 days from the date on which the new legal provisions come into effect. During the process of revising the collective bargaining agreement, the rights and interests of the employees will be ensured in accordance with the law.

#### **Article 83. Expiry of collective bargaining agreements**

Within 90 days prior to the expiry date of a collective bargaining agreement, the parties may negotiate extension of the collective bargaining agreement or conclusion of a new collective bargaining agreement. In case the parties agree on an extension, a survey shall be carried out in accordance with Article 76 of this Labor Code.

Where the collective bargaining agreement expires while the negotiation process is still on-going, it shall continue to be effective for a maximum duration of 90 days from the expiry date, unless otherwise agreed by the parties.

#### **Article 84. Extension of scope of sectoral collective bargaining agreements or multi-enterprise collective bargaining agreements**

1. When a sectoral collective bargaining agreement or multi-enterprise collective bargaining agreement applies to more than 75% of employees or more than 75% of enterprises in the same field or sector in an industrial park, economic zone, export-processing zone or hi-tech zone, the employers or representative organizations of employees therein shall request a competent authority to issue a decision to extend the scope of part or all of the collective bargaining agreement to other enterprises in the same field or sector in that industrial park, economic zone, export-processing zone or hi-tech zone.

2. The Government shall elaborate Clause 1 of this Article; the procedures and competence to decide the scope of collective bargaining agreements mentioned in Clause 1 of this Article.

#### **Article 85. Joining and withdrawing from a sectoral collective bargaining agreements or multi-enterprise collective bargaining agreement**

1. An enterprise may join a sectoral or multi-level collective bargaining agreement when it is agreed by all employers and representative organizations of employees of the participating enterprises, except for the cases specified in Clause 1 Article 84 of this Labor Code.

2. An enterprise that is a member of a sectoral or multi-level collective bargaining agreement may withdraw from it when the withdrawal is agreed by all employers and representative organizations of employees of the participating enterprises, unless it is facing business difficulties.

3. The Government shall elaborate this Article.

#### **Article 86. Invalid collective bargaining agreements**

1. A collective bargaining agreement shall be partially invalid if one or some of its contents are contrary to the law.

2. A collective bargaining agreement shall be entirely invalid in any of the following circumstances:

- a) The entire contents of the collective bargaining agreement are illegal;
- b) The collective bargaining agreement was concluded by a person without due competence;
- c) The procedures for negotiation and conclusion of the collective bargaining agreement were not followed.

#### **Article 87. Competence to declare a collective bargaining agreement invalid**

People's Courts shall be entitled to declare a collective bargaining agreement as invalid.

#### **Article 88. Handling of invalid collective bargaining agreements**

When a collective bargaining agreement is declared invalid, the rights, obligations and interests of parties specified in the invalid parts shall be handled in accordance with the provisions of the law and other lawful agreements as provided in the employment contract.

#### **Article 89. Costs for negotiation and conclusion of collective bargaining agreements**

The costs of negotiation, conclusion revision, sending and announcement of the collective bargaining agreement shall be paid by the employer.

### **Chapter VI**

## **SALARIES**

#### **Article 90. Salaries**

1. A salary is an amount the employer pays the employee under an agreement for a work performed by the latter. Salary equals (=) base salary plus (+) allowances and other additional amounts.

2. The base salary must not fall below the statutory minimum wages.

3. Employers shall pay salaries fairly without discrimination against genders of employees who perform equal works.

#### **Article 91. Statutory minimum wages**

1. Statutory minimum wages are minimum wages of workers who do the simplest jobs in normal working conditions that are sufficient to support themselves and their families, and appropriate for socio-economic development.

2. Statutory minimum wages per month or per hour vary according to regions.

3. Statutory minimum wages shall be adjusted according to minimum living standards of workers and their families; the relation between statutory minimum wages and usual salaries; consumer price index, economy growth rate; labor supply and demand, productivity and financial capacity of enterprises.

4. The Government shall elaborate this Article; decide and announce the statutory minimum wages on the basis of proposals of National Salary Council.

#### **Article 92. National Salary Council**

1. National Salary Council is an agency that provides counseling for the Government regarding statutory minimum wages and salary-related issues.

2. The Prime Minister shall establish the National Salary Council, whose members are representatives of the Ministry of Labor, War Invalids and Social Affairs, Vietnam General Confederation of Labor, some central employer representative organizations and independent experts.

3. The Government shall provide for functions, tasks and organizational structure of National Salary Council.

#### **Article 93. Establishment of pay scales, payrolls and labor productivity norms**

1. Every employer shall establish their worn pay scale, payroll and labor productivity norms as the basis for recruitment and use of labor, negotiation and payment of salaries.

2. The labor rate shall be an average value that is achievable to most employees without having to extend their normal working hours, and must be experimented before officially introduced.

3. The employer shall consult with the representative organization of employees (if any) during establishment of the pay scale, payroll and labor productivity norms.

The pay scale, payroll and labor productivity norms shall be publicly posted at the workplace before they are implemented.

#### **Article 94. Salary payment rules**

1. Employers shall directly, fully and punctually pay salaries to their employees. In the cases where an employee is not able to directly receive his/her salary, the employer may pay it through a person legally authorized by the employee.

2. Employers must not restrict or interfere their employees' spending of their salaries; must not force their employees to spend their salaries on goods or services of the employers or any particular providers decided by the employers.

#### **Article 95. Salary payment**

1. The employer shall pay the employee on the basis of the agreed salary, productivity and work quality.

2. The salary written in the employment contract and the salary paid in reality shall be VND, unless the employee is a foreigner working in Vietnam.

3. Every time salary is paid, the employer shall provide the employee with a note specifying the salary, overtime pay, nightshift pay and deductions (if any).

#### **Article 96. Salary payment forms**

1. The employer and employee shall reach an agreement on whether the salary is time-based, product-based (piece rate) or a fixed amount.

2. Salary shall be paid in cash or transferred to the employee's personal bank account.

In case of bank transfer, the employer shall pay the costs of account opening and transfer.

3. The Government shall elaborate this Article.

#### **Article 97. Salary payment time**

1. An employer who receives an hourly, daily or weekly salary shall be paid after every working hour, day or week respectively, or shall receive a sum within not more than 15 days as agreed by both parties.

2. An employee who receives a monthly or bi-weekly salary shall be paid after every month or every two weeks respectively. The payment time shall be periodic and agreed upon by both parties.

3. An employee who receives a piece rate or a fixed amount shall be paid as agreed by both parties. In case a task cannot be completed within one month, the employee shall receive a monthly advance payment based on the amount of work done in the month.

4. In case of a force majeure event in which the employer is unable to pay the employee on schedule after all remedial measures have been implemented, the salary shall be paid within 30 days. In case a salary is paid at least 15 days behind schedule, the employer shall pay the employee a compensation that is worth at least the interest on the amount paid behind schedule at the latest 1-month interest rate quoted by the bank at which the employee's salary account is opened.

#### **Article 98. Overtime pay, night work pay**

1. An employee who works overtime will be paid an amount based on the piece rate or actual salary as follows:

a) On normal days: at least 150%;

b) On weekly days off: at least 200%;

c) During public holidays, paid leave, at least 300%, not including the daily salary during the public holidays or paid leave for employees receiving daily salaries.

2. An employee who works at night will be paid an additional amount of at least 30% of the normal salary.

3. An employee who works overtime at night will be paid, in addition to the salary specified in Clause 1 and Clause 2 of this Article, an amount of at least 20% of the day work salary of a normal day, weekend or public holiday.

4. The Government shall elaborate this Article.

#### **Article 99. Suspension pay**

In case of a suspension of work, the employee shall receive a suspension pay as follows:

1. If the suspension is at the employer's fault, the employee shall be paid the full salary under the employment contract;

2. If the suspension is at the employee's fault, the employee shall not receive the salary. If this leads to suspension of work of other employees in the same unit, they shall be paid an amount not smaller than the statutory minimum wages;

3. In case the suspension is caused by an electricity or water supply issue that is not at the employer's fault, or by a natural disaster, fire, major epidemic, hostility, relocation requested by a competent authority, or for economic reasons, both parties shall negotiate the salary as follows:

a) If the suspension does not exceed 14 working days, the salary shall not fall below the statutory minimum wages;

b) If the suspension is longer than 14 working days, the salary shall be negotiated by both parties and the salary for the first 14 days must not fall below the statutory minimum wages.

#### **Article 100. Salary payment through the contractor's foreman**

1. Where a contractor's foreman or equivalent intermediary is employed, the employer who is the principal owner must maintain a list of the names and addresses of such persons accompanied by a list of their employees, and must ensure that their activities comply with the law on salary payment and occupational safety and health.

2. In case the contractor's foreman or equivalent intermediary fails to pay or pays insufficient wages to the employees and does not ensure other rights and interests of the employees, the employer who is the principal owner shall be responsible for salary payment and for ensuring the rights and interests of the employees.

In this case, the employer who is the principal owner has the rights to request compensation from the contractor's foreman or equivalent intermediary, or to request the competent authority to resolve the dispute in accordance with the provisions of the law.

#### **Article 101. Salary advances**

1. An employee may receive an interest-free salary advance in accordance with conditions agreed on by the two parties.

2. The employer must make the advance payment to the employee for the number of days the employee temporarily leaves his/her work in order to perform duties of citizens for a period of 01 week or longer, but the advance shall not exceed 01 month's salary. The employee must reimburse the advance.

An employee who is conscripted in accordance with the Law on Conscription may not receive salary advance.

3. When taking annual leave, an employee shall receive an advance payment of at least salary for the entitled days of leave.

#### **Article 102. Salary deductions**

1. An employer shall have the right to deduct from an employee's salary only for the compensation for the damage to the employer's equipment and assets in accordance with Article 129 of this Labor Code.

2. The employee has the right to be aware of the reasons for the deduction.

3. Any monthly deduction shall not exceed 30% of the net monthly salary of the employee, after the payment of compulsory social insurance, health insurance, unemployment insurance premiums and personal income tax.



**Article 103. Pay rise**

Pay rises including increases in salary, pay grades, allowance, benefits and other types of incentives for an employee shall be agreed on in the employment contract or the collective bargaining agreement, or stipulated in the regulations of the employer.

**Article 104. Bonuses**

1. A bonus means an amount of money, a piece of property or item that is provided by an employer for his/her employees on the basis of the business performance or the employees' performance.

2. A bonus regulation shall be decided and publicly announced at the workplace by the employer after consultation with the representative organization of employees (if any).

**Chapter VII****WORKING HOURS, REST PERIODS****Section 1. WORKING HOURS****Article 105. Normal working hours**

1. Normal working hours shall not exceed 08 hours per day or 48 hours per week.

2. An employer has the right to determine the daily or weekly working hours and inform the employees accordingly. The daily working hours shall not exceed 10 hours per day and not exceed 48 hours per week where a weekly basis is applied.

The State encourages employers to apply 40-hour workweeks.

3. Employers shall limit the time of exposure to harmful elements in accordance with relevant National Technical Regulations and laws.

**Article 106. Working hours at night**

Working hours at night is the period from 22 pm to 06 am.

**Article 107. Overtime work**

1. Overtime work is the duration of work performed at any other time than during normal working hours, as indicated in the law, collective bargaining agreement or internal labor regulations of an employer.

2. An employer has the right to request an employee to work overtime when all of the following conditions are met:

a) The employee agrees to work overtime;

b) The number of overtime working hours of the employee does not exceed 50% of the normal working hours in 01 day; in case of weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 day, and 40 hours in 01 month;

c) The total overtime working hours do not exceed 200 hours in 01 year, except for the cases specified in Clause 3 of this Article.

3. An employer must not request an employee to work overtime exceeding 300 hours in 01 year in the following fields, works, jobs and cases:

a) Manufacture, processing of textile, garment, footwear, electric, electronic products, processing of agricultural, forestry, aquaculture products, salt production;

b) Generation and supply of electricity, telecommunications, refinery operation; water supply and drainage;

c) Works that require highly skilled workers that are not available on the labor market at the time;

d) Urgent works that cannot be delayed due to seasonal reasons or availability of materials or products, or due to unexpected causes, bad weather, natural disasters, fire, hostility, shortage of power or raw materials, or technical issue of the production line;

dd) Other cases prescribed by the Government.

4. When organizing overtime work as prescribed in Clause 3 of this Article, the employer shall send a written notification to the provincial labor authority.

5. The Government shall elaborate this Article.

#### **Article 108. Overtime working in special cases**

In the following cases, an employer has the right to request any employee to work overtime on any day without limits on the overtime hours as prescribed in Article 107 of this Labor Code and the employee must not decline:

1. Execution of a conscription order for the purpose of national security or national defense as prescribed by law;

2. Performance of tasks necessary to protect human life or property of certain organizations or individuals in the prevention and recovery of natural disasters, fires, epidemics and disasters, unless those tasks threaten the employees' health or life as prescribed by occupational safety and health laws.

### **Section 2. REST PERIODS**

#### **Article 109. Rest breaks during working hours**

1. An employee who works for at least 06 hours per day under Article 105 of this Code shall be given a rest break of at least 30 consecutive minutes. In case of night work, the rest break shall be at least 45 consecutive minutes.

If a shift lasts at least 06 consecutive hours, the rest break will be included in the working hour.

2. In addition to the rest break prescribed in Clause 1 of this Article, the employer shall determine other short breaks and specify that in the internal labor regulations.

#### **Article 110. Breaks between shifts**

An employee who performs shift work is entitled to a break of at least 12 hours before beginning another shift.

#### **Article 111. Weekly breaks**

1. Each week an employee is entitled to a break of at least 24 consecutive hours. Where it is impossible for the employee to have a weekly day off due to the work cycle, the employer has the responsibility to ensure that on average the employee has at least 04 days off per month.

2. The employer has the right to determine and schedule the weekly breaks either on Sunday or for another fixed day in a week, which must be recorded in the internal labor regulations.

3. In case a public holiday falls on an employee's weekly break coincide with a public holiday as prescribed in Clause 1 Article 112 of this Labor Code, he/she will have compensatory time-off on the next working days.

#### **Article 112. Public holidays**

1. Employees shall be entitled to fully paid days off on the following public holidays:

- a) Gregorian Calendar New Year Holiday: 01 day (the 1<sup>st</sup> of January of the Gregorian calendar);
- b) Lunar New Year Holidays: 05 days;
- c) Victory Day: 01 day (the 30<sup>th</sup> of April of the Gregorian calendar);
- d) International Labor Day: 01 day (the 1<sup>st</sup> of May of the Gregorian calendar);
- dd) National Day: 02 days (the 2<sup>nd</sup> of September of the Gregorian calendar and the previous or next day);
- e) Hung Kings Commemoration Day: 01 day (the 10<sup>th</sup> of the third month of the Lunar calendar).

2. Foreign employees in Vietnam are entitled to 01 traditional public holiday and 01 National Day of their country, in addition to the public holidays stipulated in Clause 1 of this Article.

3. The Prime Minister shall decide the specific public holidays mentioned in Point b and Point dd Clause 1 of this Article on an annual basis.

#### **Article 113. Annual leave**

1. Any employee who has been working for an employer for 12 months is entitled to fully-paid annual leave, which is stipulated in his/her employment contract as follows:

- a) 12 working days for employees who work in normal working conditions;
- b) 14 working days for employees that are minors, the disabled, employees who do laborious, toxic or dangerous works;
- c) 16 working days for employees who do highly laborious, toxic or dangerous works.

2. An employee who has been working for an employer for less than 12 months will have a number of paid leave days proportional to the number of working months.

3. An employee who, due to employment termination or job loss or other reasons, has not taken or not entirely taken up his/her annual leave shall be paid in compensation for the untaken leave days.

4. The employer has the responsibility to regulate the timetable for annual leaves after consultation with the employees and must give prior notice to the employees. An employee may reach an agreement with the employer on taking annual leave in instalments or combining annual leave over a maximum period of up to 03 years.

5. When an employee takes his/her annual leave before salary payment is due, he/she may receive an advance in accordance with Clause 3 Article 101 of this Labor Code.

6. When taking annual leave, should the employee travel by road, rail, water and the travel days, the traveling time in excess to 02 days will be added to the annual leave days, and this policy shall only be granted once for an annual leave in a year.

7. The Government shall elaborate this Article.

#### **Article 114. Increased annual leave by work seniority**

The annual leave of an employee as prescribed in Clause 1 Article 113 of this Code shall increase by 01 day for every 05 years of employment with the same employer.

#### **Article 115. Personal leave, unpaid leave**

1. An employee is entitled to take a fully paid personal leave in the following circumstances, at long as it is notified to the employer in advance:

- a) Marriage: 03 days;
- b) Marriage of his/her biological child or adopted child: 01 day;
- c) Death of his/her biological or adoptive parent; death of his/her spouse's biological or adoptive parent; death of spouse, biological or adopted child: 03 days.

2. An employee is entitled to take 01 day of unpaid leave and must inform the employer in the case of the death of his/her grandparent or biological sibling; marriage of his/her parent or natural sibling.

3. The employee may negotiate with his/her employer on taking unpaid leave other than the leave stipulated in Clause 1 and Clause 2 of this Article.

### **Section 3. WORKING HOURS AND REST PERIODS FOR EMPLOYEES WHO PERFORM WORK OF SPECIAL NATURE**

#### **Article 116. Working hours and rest periods for employees who perform work of special nature**

In accordance with Article 109 of this Labor Code, relevant ministries and the Ministry of Labor, Invalids and Social Affairs shall discuss and agree upon working hours and rest periods special work in the areas of road, rail, water or air transportation; oil and gas exploration and extraction at sea; offshore work; in the fields of arts; use of radiation and nuclear engineering; application of high-frequency waves; information technology; research and application of technology; industrial design; diver's work, work in mines; seasonal production work and processing of goods by order; and work that requires for 24/24 hours on duty, other works of special nature defined by the Government.

### **Chapter VIII**

#### **LABOR DISCIPLINE AND MATERIAL RESPONSIBILITY**

##### **Section 1. LABOR DISCIPLINE**

#### **Article 117. Labor discipline**

Labor discipline comprises provisions in the internal labor regulations on the compliance in respect of time, technology, production and business management that are imposed by the employer and prescribed by law.

#### **Article 118. Internal labor regulations**

1. Every employer shall issue their own internal labor regulations. An employer that has at least 10 employees shall have written internal labor regulations.

2. The contents of the internal labor regulations shall not be contrary to labor laws or to relevant legal provisions. The internal labor regulations shall include the following key contents:

- a) Working hours and rest periods;
- b) Order at the workplace;
- c) Occupational safety and health;
- d) Actions against sexual harassment in the workplace;
- dd) Protection of the assets and technological and business secrets and intellectual property of the employer;
- e) Cases in which reassignment of employees are permitted;
- g) Violations against labor regulations and disciplinary measures;
- h) Material responsibility;
- i) The person having the competence to take disciplinary measures.

3. Before issuing or revising the internal labor regulations, the employer shall consult the employee representative organization (if any).

4. Employees must be notified of the internal labor regulations, and the major contents must be displayed at the workplace where they are necessary.

5. The Government shall elaborate this Article.

#### **Article 119. Registration of internal labor regulations**

1. An employer that has at least 10 employees shall register the internal labor regulations at the labor authority of the province where business registration is applied for.

2. Within 10 days from the date of issuance of the internal labor regulations, the employer must submit the application for registration of the internal labor regulations.

3. If any of the contents of the internal labor regulations is found contrary to the law, within 07 working days from the date of receipt of the application, the provincial labor authority shall notify and instruct the employer to revise it and re-submit the application.

4. An employer whose branches, units or business locations in different provinces shall send the registered internal labor regulations to the labor authority of those provinces.

5. The provincial labor authority may authorize a district-level labor authority to process an application for registration of internal labor regulations in accordance with this Article.

#### **Article 120. Application for registration of internal labor regulations**

An application for registration of internal labor regulations shall consist of:

- 1. The application form;
- 2. A copy of the internal labor regulations;

3. Comments of the representative organization of employees (if any);

4. Documents of the employer that are relevant to labor discipline and material responsibility (if any).

#### **Article 121. Effect of internal labor regulations**

The internal labor regulations shall start to have effect after 15 days from the day on which the satisfactory application is received by a competent authority as prescribed in Article 119 of this Labor Code.

The effect of the written internal labor regulations issued by an employee that has fewer than 10 employees shall be decided by the employer.

#### **Article 122. Principles and procedures for taking disciplinary measures at work**

1. Disciplinary measures against an employee shall be taken in accordance with the following regulations:

a) The employer is able to prove the employee's fault;

b) The process is participated in by the representative organization of employees to which the employee is a member;

c) The employee is physically present and has the right to defend him/herself, request a lawyer or the representative organization of employees to defend him/her; if the employee is under 15 years of age, his/her parent or a legal representative must be present;

d) The disciplinary process is recorded in writing.

2. It is prohibited to impose more than one disciplinary measure for one violation of internal labor regulations.

3. Where an employee commits multiple violations of internal labor regulations, he/she shall be subjected to the heaviest disciplinary measure for the most serious violation.

4. No disciplinary measure shall be taken against an employee during the period when:

a) The employee is taking leave on account of illness or convalescence; or on other types of leave with the employer's consent;

b) The employee is being held under temporary custody or detention;

c) The employee is waiting for verification and conclusion of the competent agency for acts of violations, stipulated in Clause 1 and Clause 2 Article 125 of this Labor Code;

d) The employee is pregnant, on maternal leave or raising a child under 12 months of age.

5. No disciplinary measure shall be taken against an employee who commits a violation of internal labor regulations while suffering from the mental illness or another disease which causes the loss of consciousness ability or the loss of his/her behavior control.

6. The Government shall provide for the principles and procedures for taking disciplinary measures at work.

#### **Article 123. Time limit for taking disciplinary measures at work**

1. The time limit for taking disciplinary measures against a violation is 06 months from the date of the occurrence of the violation. The time limit for dealing with violations directly relating to finance, assets and disclosure of technological or business secrets shall be 12 months.

2. In case the time limit stipulated in this Article has expired or is shorter than 60 days when the period stipulated in Clause 4 Article 122 of this Labor Code expires, the former may be extended for up to 60 more days.

3. The employer shall issue a disciplinary decision within the period specified in Clause 1 and Clause 2 of this Article.

#### **Article 124. Disciplinary measures**

1. Reprimand.
2. Deferment of pay rise for up to 6 months.
3. Demotion.
4. Dismissal.

#### **Article 125. Dismissal for disciplinary reasons**

An employer may dismiss an employee for disciplinary reasons in the following circumstances:

1. The employee commits an act of theft, embezzlement, gambling, deliberate infliction of injuries or uses drug at the workplace;

2. The employee discloses technological or business secrets or infringing the intellectual property rights of the employer, or commits acts which are seriously detrimental or posing seriously detrimental threat to the assets or interests of the employer, or commits sexual harassment in the workplace against the internal labor regulations;

3. The employee repeats a violation which was disciplined by deferment of pay rise or demotion and has not been absolved. A repeated violation means a violation which was disciplined and is repeated before it is absolved in accordance with Article 126 of this Code.

4. The employee fails to go to work for a total period of 05 days in 30 days, or for a total period of 20 days in 365 days from the first day he/she fails to go to work without acceptable excuses.

Justified reasons include natural disasters, fires; the employee or his/her family member suffers from illness with a certification by a competent health facility; and other reasons as stipulated in the internal labor regulations.

#### **Article 126. Absolution of violations, reduction in the duration of disciplinary measures**

1. An employee who commits a violation that is disciplined by reprimand, deferment of pay rise or demotion will have the previous violation absolved after 03 months, 06 months or 03 years respectively from the day on which the disciplinary measure is imposed if he/she does not commits any violation against internal labor regulations.

2. Where an employee who is disciplined by deferment of wage increase has completed half of the duration of the disciplinary measure and has demonstrated improvement, the employer may consider a remission.

#### **Article 127. Forbidden actions when imposing disciplinary measures in the workplace**

1. Harming the employee's health, life, honor or dignity.
2. Applying monetary fines or deducting the employee's salary wage.
3. Imposing a disciplinary measure against an employee for a violation which is not stipulated in the internal labor regulations or employment contract or labor laws.

#### **Article 128. Work suspension**

1. An employer has the right to suspend an employee from work if the violation is of a complicated nature and where the continued presence of the employee at the workplace is deemed to cause difficulties for the investigation. An employee shall only be suspended from work after consultation with the representative organization of employees to which the employee is a member.

2. The work suspension shall not exceed 15 days, or 90 days in special circumstances. During the suspension, the employee shall receive an advance of 50% of his/her salary entitled prior to the suspension.

Upon the expiry of the work suspension period, the employer shall reinstate the employee.

3. Where the employee is disciplined, he/she shall not be required to return the advanced salary.
4. Where the employee is not disciplined, the employer shall pay the full salary for the work suspension period.

### **Section 2. MATERIAL RESPONSIBILITY**

#### **Article 129. Compensation for damage**

1. An employee who causes damage to equipment or otherwise damages the employer's assets shall have to pay compensation in accordance with labor laws or the employer's internal labor regulations.

In case the damage caused by an employee is not serious, not deliberate and is worth less than 10 months' region-based minimum wage announced by the Government, the employee shall have to pay a compensation of not more than his/her 03 months' salary, which shall be monthly deducted from his/her salary in accordance with Clause 3 Article 102 of this Code.

2. An employee who loses the employer's equipment or assets, or consumes the materials beyond the set limits shall pay a compensation for damage in full or in part at the market price or as stipulated in the internal labor regulations or the responsibility contract (if any). In case this is caused by a natural disaster, fire, war, major epidemic, calamity, or another force majeure event which is unforeseeable and insurmountable, and all necessary measures and possibilities for avoidance have been taken, the compensation shall not be required.

#### **Article 130. Determination of compensation**

1. Consideration and decision on the level of compensation for damage shall be based on the nature of the offence, the actual extent of damage, the situation of the offender or the offender's family, and financial capacity of the employee.

2. The Government shall provide for procedures and time limits for claiming damages.

#### **Article 131. Complaints on labor disciplinary regulations and material responsibility**

If the employee who is disciplined, suspended from work, or required to pay compensation is not satisfied with the decision, he/she has the right to file a complaint to the employer or a competent authority



as prescribed by law, or request settlement of the labor dispute in accordance with the procedures stipulated by law.

The Government shall elaborate this Article.

## Chapter IX

### OCCUPATIONAL SAFETY AND HEALTH

#### Article 132. Compliance with the law on occupational safety and health

Employers, employees, organizations and individuals involved in labor and business operation shall comply with the regulations of the law on occupational safety and health.

#### Article 133. Occupational safety and health program

1. The Government shall decide on development of the National Programme on Occupational Safety and Health.

2. The People's Committee of every province shall submit a provincial occupational safety and health program to the People's Council of the same province for inclusion to the socio-economic development plan.

#### Article 134. Ensuring occupational safety and health at the workplace

1. Employers shall fully implement the measures for ensuring occupational safety and health at the workplace.

2. Employees shall comply with rules and procedures for occupational safety and health, regulations of law, obtain knowledge and skills on assurance of occupational safety and health at the work place.

## Chapter X

### PROVISIONS APPLICABLE TO FEMALE EMPLOYEES AND ASSURANCE OF GENDER EQUALITY

#### Article 135. State policies

1. Equality between male and female employees shall be ensured; necessary measures for ensuring gender equality and prevention of sexual harassment in the workplace shall be implemented.

2. Employers are encouraged to enable both male and female employees to work regularly, and to widely apply the systems of flexible working hours, part-time work, or outwork.

3. Necessary measures shall be implemented to create employment opportunities, improve working conditions, develop occupational skills, provide healthcare, and strengthen the material and spiritual welfare of female employees in order to assist them in developing effectively their vocational capacities and harmoniously combine their working lives with their family lives.

4. Tax reductions shall be granted to employers who employ a large numbers of female employees in accordance with the tax laws.

5. The State shall develop plans and measures to open day care facilities and kindergartens in areas where a large number of female employees are employed; develop various forms of training to enable female employees to acquire additional occupational skills that are suitable to their physical and physiological characteristics and their motherhood roles.

6. The Government shall elaborate this Article.

#### **Article 136. Responsibilities of the employer**

1. Ensure gender equality and implementation of measures to promote gender equality in recruitment, job assignment, training, working hours and rest periods, salaries and other policies.

2. Consult with female employees or their representatives when taking decisions which affect their rights and interests.

3. Provide appropriate bathrooms and toilets at the workplace for female employees.

4. Assist in building day care facilities and kindergartens, or cover a part of the childcare expenses incurred by employees.

#### **Article 137. Maternity protection**

1. An employer must not require a female employee to work at night, work overtime or go on a long distance working trip in the following circumstances:

a) The employee reaches her seventh month of pregnancy; or her sixth month of pregnancy when working in upland, remote, border and island areas;

b) The employee is raising a child under 12 months of age, unless otherwise agreed by her.

2. Whenever an employer is informed of the pregnancy of a female employee who is doing a laborious, toxic or dangerous work, a highly laborious, toxic or dangerous work or any work that might negatively affect her maternity, the employer shall assign her to a less laborious or safer work, or reduce the working hours by 01 hour per day without reducing her salary, rights or benefits until her child reaches 12 months of age.

3. The employer must not dismiss an employee or unilaterally terminate the employment contract with an employee due to his/her marriage, pregnancy, maternity leave, or nursing a child under 12 months of age, except for cases where the employer that is a natural person dies or is declared incapacitated, missing or dead by the court, or the employer that is not a natural person ceases its business operation, declared by a provincial business registration authority that it does not have a legal representative or a person authorized to perform the legal representative's rights and obligations.

Upon expiration of the employment contract with female employee who is pregnant or nursing a child under 12 months of age, conclusion of a new employment contract shall be given priority.

4. During her menstruation period, a female employee shall be entitled to a 30 minute break in every working day; a female employee nursing a child under 12 months of age shall be entitled to 60 minutes breaks in every working day with full salary as stipulated in the employment contract.

#### **Article 138. The right of pregnant female employees to unilaterally terminate or suspend their employment contracts**

1. Where a female employee is pregnant and obtains a confirmation from a competent health facility which states that if she continues to work, it may adversely affect her pregnancy, she shall have the right to unilaterally terminate or suspend the employment contract.

In case of unilateral termination or suspension of the employment contract, a notification enclosed with the aforementioned confirmation from the health facility shall be submitted to the employer.

2. In case of suspension of the employment contract, the suspension period shall be agreed by the employer and the employee and must not be shorter than the period specified by the health facility. If the rest period is not specified by the health facility, both parties shall negotiate the suspension period.

### **Article 139. Maternity leave**

1. A female employee is entitled to 06 months of prenatal and postnatal leave; the prenatal leave period shall not exceed 02 months.

In case of a multiple birth, the leave shall be extended by 01 month for each child, counting from the second child.

2. During maternity leave, the female employee is entitled to maternity benefits as prescribed by social insurance laws.

3. After the maternity leave stipulated in Clause 1 of this Article expires, if so demanded, the female employee may be granted an additional unpaid leave under terms agreed upon with the employer.

4. The female employee may return to work before the expiry of her statutory maternity leave stipulated in Clause 1 of this Article after she has taken at least 04 months of leave, provided she has obtained a confirmation from a competent health facility that the early resumption of work does not adversely affect her health, the employer receives a prior notice of the early resumption and agrees to the early resumption. In this case, besides the salary of the working days, which is paid by the employer, the female employee shall continue to receive the maternity allowance in accordance with social insurance laws.

5. A male employee whose wife gives birth, an employee who adopts a child under 06 months of age, a female employee who becomes a surrogate mother shall be entitled to maternity leave in accordance with social insurance laws.

### **Article 140. Employment security for employees after maternity**

An employee shall be reinstated to his/her previous work when he/she returns to work after the maternity leave prescribed in Clauses 1, 3 and 5 Article 139 of this Labor Code without any reduction in his/her salary, rights and benefits before the leave. In case the previous work is no longer available, the employer must assign another work to the employee with a salary not lower than the salary he/she received prior to the maternity leave.

### **Article 141. Allowances for during period of care for sick children, pregnancy and implementation of contraceptive methods**

When an employee takes leave to take care of a sick child aged under 07, have prenatal care check-up, due to miscarriage, abortion, stillbirth, therapeutic abortion, implementation of contraceptive methods or sterilization, the employee shall receive allowance for the leave period in accordance with social insurance laws.

### **Article 142. Jobs and works that are harmful to child-bearing and parenting functions**

1. The Minister of Labor, War Invalids and Social Affairs shall promulgate the list of jobs and works that are harmful to child-bearing and parenting functions.

2. Employers must provide adequate information to their employees on the hazards and requirements of the works to before the employees make their decisions; ensure occupational safety and

health of the employees when assign them any of the works on the list mentioned in Clause 1 of this Article.

## Chapter XI

### EXCLUSIVE PROVISIONS CONCERNING MINOR EMPLOYEES AND CERTAIN TYPES OF EMPLOYEES

#### Section 1. MINOR EMPLOYEES

##### Article 143. Minor employees

1. A minor employee is an employee under 18 years of age.
2. A person aged 15 to under 18 must not be assigned any of the works or to any of the workplaces mentioned in Article 147 of this Labor Code.
3. A person aged 13 to under 15 may only do the light works on the list promulgated by the Minister of Labor, War Invalids and Social Affairs.
4. A person under 13 may only do the works specified in Clause 3 Article 145 of this Labor Code.

##### Article 144. Rules for employment of minors

1. Minor employees may only do works that are suitable for their health in order to ensure their physical health, mental health and personality development.
2. The employer who has minor employees has the responsibility to take care of their work, health and education in the course of their employment.
3. When an employer hires a minor employee, the employer must have the consent of his/her parent or guardian; prepare a separate record which writes in full of his/her name, date of birth, the work assigned, results of periodical health check-ups, and shall be presented at the request of the competent authority.
4. Employers shall enable minor employees to have educational and vocational training.

##### Article 167. Employment of employees under 15

1. When employing a person under 15, the employer shall:
  - a) Conclude a written contract with the employee and his/her legal representative;
  - b) Arrange the working hours so as not to affect the employee's study hours;
  - c) Obtain the health certificate from a competent health facility which certifies that the employee's health is suitable for the work assigned, and provide periodic health check-up for the employee at least once every 06 months;
  - d) Ensure that the working conditions, occupational safety and health are suitable for the employee's age;
2. An employer is only entitled to assign employees aged 13 to under 15 to do the light works specified in Clause 3 Article 143 of this Labor Code.
3. Employers must not hire people under 13 to do works other than sports and arts, provided they do not affect their development of their physical health, mental health and personality, and the employment is accepted by the provincial labor authority.

4. The Minister of Labor, War Invalids and Social Affairs shall elaborate this Article.

#### **Article 146. Working hours of minors employees**

1. The working hours of minor employees under 15 shall not exceed 04 hours per day and 20 hours per week. Employers must not request minor employees to work overtime or at night.

2. The working hours of employees aged 15 to under 18 shall not exceed 08 hours per day and 40 hours per week. Employees aged 15 to under 18 may work overtime or at night in certain works and jobs listed by the Minister of Labor, War Invalids and Social Affairs.

#### **Article 147. Prohibited works and workplaces for employees aged 15 to under 18**

1. A person aged 15 to under 18 must not be assigned to the following works:

- a) Carrying and lifting of heavy things which are beyond his/her the physical capacity;
- b) Production, sale of alcohol, tobacco and neuro-stimulants and other narcotic substances;
- c) Production, use or transport of chemicals, gas or explosives;
- d) Maintaining equipment or machinery;
- dd) Demolition;
- e) Melting, blowing, casting, rolling, pressing, welding metals;
- g) Marine diving, offshore fishing;
- h) Other works that are harmful to the development of his/her physical health, mental health or personality.

2. A person aged 15 to under 18 must not be assigned to the following locations:

- a) Underwater, underground, in caves, in tunnels;
- b) Construction sites;
- c) Slaughter houses;
- d) Casinos, bars, discotheques, karaoke rooms, hotels, hostels, saunas, massage rooms; lottery agents, gaming centers;
- dd) Any other workplace that is harmful to the development of his/her physical health, mental health or personality.

3. The Ministry of Labor- Invalids and Social Affairs shall promulgate the lists mentioned in Point h Clause 1 and Point dd Clause 2 of this Article.

### **Section 2. ELDERLY EMPLOYEES**

#### **Article 148. Elderly employees**

1. An elderly employee is a person who continues working after the age stipulated in Clause 2 Article 169 of this Labor Code.

2. Elderly employees are entitled to negotiate with their employer on reduction of reduce their daily working hours or to work on a part-time basis.

3. Employers are encouraged by the State to assign works that are suitable for elderly employees in order to uphold their right to work and ensure efficient utilization of human resources.

#### **Article 149. Employment of elderly people**

1. When an elderly person is employed, both parties may agree on conclusion of multiple fixed-term employment contracts.

2. In case a person who is receiving retirement pension under the Law on Social Insurance enters into a new employment contract, he/she shall receive salary and other benefits prescribed by law and the employment contract in addition to the benefits to which they are entitled under the pension scheme.

3. Employer must not assign elderly employees to do laborious, toxic or dangerous works, or highly laborious, toxic or dangerous works that are harmful to their health, unless safety is ensured.

4. Employers are responsible for taking care of the health of elderly employees at the workplace.

### **Section 3. VIETNAMESE EMPLOYEES WORKING OVERSEAS, EMPLOYEES OF FOREIGN ORGANIZATIONS AND INDIVIDUALS IN VIETNAM AND FOREIGN EMPLOYEES WORKING IN VIETNAM**

#### **Article 150. Vietnamese employees working overseas, employees of foreign organizations and individuals in Vietnam**

1. The State shall encourage enterprises, agencies, organizations, and individuals to seek and expand the labor market for Vietnamese employees to work overseas.

Vietnamese employees working overseas must comply with the law of Vietnam and the law of the host country except where an international convention to which Socialist Republic of Vietnam is a signatory contains different provisions.

2. Vietnamese citizens working in foreign organizations in Vietnam, in industrial zones, economic zones, export-processing zones, hi-tech zones, or working for individuals who are foreign citizens in Vietnam shall comply with the law of Vietnam and shall be protected by law.

3. The Government shall provide for the recruitment and management of Vietnamese employees working for foreign entities in Vietnam.

#### **Article 151. Requirements for foreigners to work in Vietnam.**

1. A foreign employee means a person who has a foreign nationality and:

a) is at least 18 years of age and has full legal capacity;

b) has qualifications, occupational skills, practical experience and adequate health as prescribed by the Minister of Health;

c) is not serving a sentence; does not have an unspent conviction; is not undergoing criminal prosecution under his/her home country's law or Vietnam's law;

d) has a work permit granted by a competent authority of Vietnam, except in the cases stipulated in Article 154 of this Labor Code.

2. The duration of a foreign employee's employment contract must not exceed that of the work permit. When a foreign employee in Vietnam is recruited, both parties may negotiate conclusion of multiple fixed-term labor contracts.

3. Foreign employees working in Vietnam shall comply with and shall be protected by the labor law of Vietnam, unless otherwise prescribed by treaties to which Vietnam is a signatory.

#### **Article 152. Requirements for employment of foreigners in Vietnam.**

1. Enterprises, organizations, individuals and contractors shall only employ foreigners to hold positions of managers, executive directors, specialists and technical workers the professional requirements for which cannot be met by Vietnamese workers.

2. Recruitment of foreign employees in Vietnam shall be explained and subject to written approval by competent authorities.

3. Before recruiting foreign employees in Vietnam, a contractor shall list the positions, necessary qualifications, skills, experience and employment period of the contract, and obtain a written approval from a competent authority.

#### **Article 153. Responsibilities of employers and foreign employees**

1. Foreign employees shall present their work permits whenever requested by competent authorities.

2. Any foreign employee working in Vietnam without a work permit shall be deported or forced to leave Vietnam in accordance with immigration laws.

3. An employer who hires a foreign employee without a work permit shall be liable to penalties as regulated by the law.

#### **Article 154. Work permit exemption for foreign employees in Vietnam**

A foreign employee is not required to have the work permit if he/she:

1. Is the owner or capital contributor of a limited liability company with a capital contribution value conformable with regulations of the Government.

2. Is the Chairperson or a member of the Board of Directors of a joint-stock company a capital contribution value conformable with regulations of the Government.

3. Is the manager of a representative office, project or the person in charge of the operation of an international organizations or a foreign non-governmental organization in Vietnam.

4. Enters Vietnam for a period of less than 03 months to do marketing of a service.

5. Enters Vietnam for a period of less than 03 months to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam.

6. Is a foreign lawyer who has been granted a lawyer's practising certificate in Vietnam in accordance with the Law on Lawyers.

7. In one of the cases specified in an international treaty to which the Socialist Republic of Vietnam is a signatory.

8. Gets married with a Vietnamese citizen and wishes to reside in Vietnam.

9. Other circumstances specified by the Government.

#### **Article 155. Duration of work permit**

The maximum duration of a work permit is 02 years. A work permit may be extended once for up to 02 more years.

#### **Article 156. Cases in which a work permit is invalid**

1. The work permit expires.
2. The employment contract is terminated.
3. The contents of the employment contract are inconsistent with the contents of the work permit granted.
4. The work performed is not conformable with the contents of the work permit granted.
5. The contract that is the basis for issuance of the work permit expires or is terminated.
6. The foreign party issues a written notice which terminates the dispatch of the foreign employee to Vietnam.
7. The Vietnamese party or foreign organization that hires the foreign employee ceases its operation.
8. The work permit is revoked.

#### **Article 157. Issuance, re-issuance and revocation of work permits; notice of rejection of work permit issuance**

The Government shall specify the conditions and procedures for issuing, re-issuing, revoking the work permit and issuance of the notice of rejection of work permit issuance.

### **Section 4. DISABLED EMPLOYEES**

#### **Article 158. State policies on disabled employees**

The State shall protect the rights to work and to self-employment of disabled people; adopt policies to encourage and provide incentives for employers to create work for and to employ disabled people in accordance with regulations of law on People with Disabilities.

#### **Article 159. Employment of disabled people**

1. Employers shall provide reasonable accommodation with respect to working conditions, working tools, and occupational safety and health measures that are suitable for disabled employees and organize periodic health check-up for disabled employees.
2. Employers must consult with disabled employees before deciding on matters of relevance to the rights and interests of disabled employees.

#### **Article 160. Prohibited acts regarding employment of disabled people**

1. Assign employees with work capacity reduction of at least 51%, serious or very serious disabilities to work overtime or work at night, unless otherwise agreed by the employees/
2. Assign disabled employees to laborious, toxic or dangerous works on the list promulgated by the Minister of Labor, War Invalids and Social Affairs without their consent after they are properly informed of the works.

### **Section 5. DOMESTIC WORKERS**

#### **Article 161. Domestic workers**



1. A domestic worker is a worker who regularly carries out domestic work for one or more than one households.

Domestic work includes cooking, housekeeping, babysitting, nursing, caring for elders, driving, gardening, and other work for a household which is not related to commercial activities.

2. The Government shall provide for employment of domestic workers.

#### **Article 162. Employment contracts with domestic workers**

1. The employer shall enter into a written employment contract with the domestic worker.

2. The duration of the employment contract for the domestic worker is negotiated by both parties. Either party has the right to terminate the employment contract at any time provided that an advance notice of 15 days is given.

3. The employment contract shall specify the salary payment method, period, working hours, accommodation.

#### **Article 163. Obligations of the employer**

1. Fully implement the agreement as indicated in the employment contract.

2. Pay the domestic worker an amount of his/her social insurance and health insurance premiums in accordance with the law for the domestic worker to manage insurance by themselves.

3. Respect the domestic worker's honor and dignity.

4. Provide clean and hygienic accommodation and dining place for the domestic worker, where there is such an agreement.

5. Create opportunities for the domestic worker to participate in educational and occupational training.

6. Cover the cost of the travel expenses for the domestic worker to return to their place of residence at the end of his/her service, except in cases where the domestic worker terminates the employment contract before its expiry date.

#### **Article 164. Obligations of the domestic worker**

1. Fully implement the agreement as indicated in the employment contract.

2. Pay compensation in accordance with the agreement or in accordance with the law in cases of loss of or damage to the employer's assets and property.

3. Promptly notify the employer about risks of accident, dangers to health, life and property of the employer's family and himself/herself.

4. Report to the competent authority if the employer commits acts of mistreating, sexual harassment, extracting forced labor or any other acts against the law.

#### **Article 165. Prohibited acts by the employer**

1. Mistreating, sexually harassing, extracting forced labor, and using force or violence against the domestic worker.

2. Assigning works to the domestic worker against the employment contract.

3. Keeping personal papers of the domestic worker.

## **Section 6. OTHER TYPES OF WORKERS**

### **Article 166. Workers in the fields of arts, sports, maritime, air transport**

Workers in the fields of arts, sports, maritime, air transport shall have appropriate basic and advanced training, occupational skill development training, employment contracts, salaries, bonuses; working hours, rest periods, occupational safety and health as prescribed by the Government.

### **Article 167. Working at home**

An employee may negotiate with his/her employer to perform certain works at home.

## **Chapter XII**

### **SOCIAL INSURANCE, HEALTH INSURANCE AND UNEMPLOYMENT INSURANCE**

#### **Article 168. Participation in social insurance, health insurance and unemployment insurance**

1. Employers and employees shall participate in compulsory social insurance, compulsory health insurance and unemployment insurance and enjoy the benefits in accordance with provisions of the law on social insurance, health insurance and unemployment insurance.

Employers and employees are encouraged to obtain other kinds of insurance for employees.

2. The employer shall not be required to pay salary for an employee when the employee is on leave and receiving social insurance benefits, unless otherwise agreed by both parties.

3. Where an employee is not covered by compulsory social insurance, compulsory health insurance or unemployment insurance, the employer shall, in addition to and at the same time with salary payment, pay the employee an amount equal to the compulsory social insurance, compulsory health insurance, unemployment insurance premiums payable by the employer in accordance with regulations of law on social insurance, health insurance and unemployment insurance.

#### **Article 169. Retirement ages**

1. An employee who has paid social insurance for an adequate period of time as prescribed by social insurance laws shall receive retirement pension when he/she reaches the retirement age.

2. Retirement ages of employees in normal working conditions shall be gradually increased to 62 for males by 2028 and 60 for females in 2035.

From 2021, the retirement ages of employees in normal working conditions shall be 60 years 03 months for males and 55 years 04 months for females, and shall increase by 03 months for males and 04 months for females after every year.

3. The retirement ages of employees who suffer from work capacity reduction; doing laborious, toxic or dangerous works; working in highly disadvantaged areas may be younger by up to 05 years than the retirement ages specified in Clause 2 of this Article, unless otherwise prescribed by law.

4. Retirement ages of skilled employees and employees in certain special cases may be older by up to 05 years than the retirement ages specified in Clause 2 of this Article, unless otherwise prescribed by law.

5. The Government shall elaborate this Article.

**Chapter XIII****REPRESENTATIVE ORGANIZATIONS OF EMPLOYEES****Article 170. The right to establish, join and participate in representative organizations of employees**

1. Every employee has the right to establish, join and participate in activities of trade union in accordance with the Trade Union Law.

2. Employees of enterprises are entitled to establish, join and participate in activities of internal employee organizations in accordance with Articles 172, 173 and 174 of this Labor Code.

3. The representative organizations of employers mentioned in Clause 1 and Clause 2 of this Article shall have equal rights and obligations in protection of the legitimate rights and interests of employees in labor relations.

**Article 171. Internal trade unions in Vietnam's trade union system**

1. Internal trade unions in Vietnam's trade union system shall be established in organizations, units and enterprises.

2. The establishment, dissolution, organization and operation of internal trade unions shall comply with the Trade Union Law.

**Article 172. Establishment, participation and operation of internal employee organizations**

1. The internal employee organization in an enterprise shall be established after registration is granted by a competent authority. The organizational structure and operation of internal employee organizations shall comply with the Constitution, law and internal regulations, adhere to the principles of autonomy, democracy and transparency.

2. Registration of an internal employee organization shall be cancelled if it acts against its objectives and principles as prescribed in Point b Clause 1 Article 174 of this Labor Code, or the organization is undergoing division, amalgamation, merger, or the enterprise is undergoing dissolution or bankruptcy.

3. When an internal employee organization wishes to join the trade union, the Trade Union Law shall apply

4. The Government shall provide for documents and procedures for registration; the competence to grant and cancel registration, state management of finance and assets of internal employee organizations; division, amalgamation, merger, dissolution thereof; the right to association of employees in enterprises.

**Article 173. Management board and members of internal employee organizations**

1. When applying for registration, the number of members the internal employee organization that are employees of the enterprise shall reach the minimum number prescribed by the Government.

2. The management board shall be elected by members of the internal employee organization. Members of the management board shall be Vietnamese employees of the enterprise who are not serving a sentence, do not have an unspent conviction and are not undergoing criminal prosecution for breach of national security, violations against freedom and democracy, infringement of ownership defined in Criminal Code.

**Article 174. Charter of internal employee organization**

1. The charter of an internal employee organization shall contain:

a) Name, address and logo (if any) of the organization;

b) The objectives of protecting the lawful rights and interests of the members in labor relations in the enterprise; cooperating with the employer in resolving issues relevant to the rights, obligations and interest of the employer and employees; develop progressive, harmonious and stable labor relation;

c) Requirements and procedures for joining and leaving the organization.

The internal employee organization of an enterprise shall not simultaneously have members that are ordinary employees and members that participate in the process of making decisions relevant to working conditions, recruitment, labor discipline, employment contract termination or employee reassignment;

d) Organizational structure, tenure and representative of the organization;

dd) Rules for organization and operation;

e) Methods for ratifying decisions of the organization.

The following issues shall be voted by the members under the majority rule: ratification, revisions of the organization's charter; election, dismissal of the chief and members of the management board of the organization; division, consolidation, merger, renaming, dissolution, association of the organization; joining the trade union.

g) Membership fees, sources of assets and finance, and the management thereof.

Revenues and expenses of the internal employee organization shall be monitored, archived and made available to its members.

h) Members' proposals and responses thereto.

2. The Government shall elaborate this Article.

### **Article 175. Prohibited acts by the employer regarding the establishment, operation of and participation in representative organizations of employees**

1. Any act of discrimination against employees or members of the management board of the representative organization of employees due to the establishment, operation or participation in the representative organization of employees, including:

a) Requesting a person to participate, not to participate or to leave the representative organization of employees in order to be recruited, have the employment contract signed or renewed;

b) Disciplining or unilaterally terminating an employment contract; refuses to conclude or renew an employment contract; reassigning an employee;

c) Discrimination by salary, working hours, other rights and obligations in the labor relation;

d) Obstructing, disrupting or otherwise impairing the operation of the representative organization of employees.

2. Interfering, influencing the establishment, election, planning and operation of the representative organization of employees, including financial support or other economic measures aimed to neutralize or weaken the functions of the representative organization of employees, or discriminate between the representative organizations of employees.

### **Article 176. Rights of members of the management board of a representative organization of employees**

1. Members of the management board of a representative organization of employees have the rights to:

a) Approach employees at the workplace during the performance of the organization's duties, provided it does not affect the employer's normal operation.

b) Approach the employer to perform the duties of the employees' representative organization;

c) Be fully paid by the employer for performance of the duties of the representative organization of employees during the working time in accordance with Clause 2 and Clause 3 of this Article;

d) Other guarantees in labor relation and performance of the representative's duties as prescribed by law.

2. The Government shall specify the minimum period of time the employer has to allow all members of the management board of the representative organization of employees to perform its duties according to the number of its members.

3. The representative organization of employees and the employer may negotiate the extra time and how the management board uses the working time to perform their duties in a practical manner.

### **Article 177. Obligations of the employer to the representative organization of employees**

1. Do not obstruct the employees from lawfully establishing, joining and participate in activities of the representative organization of employees.

2. Recognize and respect the rights of the lawfully established representative organization of employees.

3. Enter into a written agreement with the management board of the representative organization of employees when unilaterally terminating the employment contract with, reassigning or dismissing for disciplinary reasons an employee who is a member of the management board. In case such an agreement cannot be reached, both parties shall send a notice to the provincial labor authority. After 30 days from the day on which such a notice is sent to the labor authority in the locality, the employer shall have the right to make the decision. In case of disagreement with the employer's decision, the employee and management board may request labor dispute settlement in accordance with the procedures prescribed by law.

4. In case the employment contract with a member of the management board expires before the end of his/her term of office, the contract shall be extended until the end of the term of office.

5. Other obligations prescribed by law.

### **Article 178. Rights and obligations of the representative organization of employees in labor relations**

1. Enter into collective bargaining with the employer in accordance with this Labor Code.

2. Hold dialogues at work in accordance with this Labor Code.

3. Comment on the establishment; supervise the implementation of the pay scale, payroll, labor rates, regulations on salary payment, rewards, internal labor regulations, and other issue relevant to rights and interests of employees that are members of the organization.

4. Represent the employee during labor dispute settlement when authorized by the employee.

5. Organize and lead strikes in accordance with this Labor Code.

6. Provide technical assistance for legally registered organizations in Vietnam to improve their knowledge about labor laws, procedures for establishment of the representative organization of employees and performance of representative activities in labor relation after registration is granted.

7. Be provided a working location, information and other necessary facilities for operation of the representative organization of employees by the employer.

8. Other rights and obligations prescribed by law.

## Chapter XIV

### SETTLEMENT OF LABOR DISPUTES

#### Section 1. GENERAL PROVISIONS FOR SETTLEMENT OF LABOR DISPUTES

##### Article 179. Labor disputes

1. A labor dispute means a dispute over rights, obligations and interests among the parties during the establishment, execution or termination of labor relation; a dispute between the representative organizations of employees; a dispute over a relationship that is directly relevant to the labor relation. Types of labor disputes:

a) Labor disputes between the employee and the employer; between the employee and the organization that sends the employee to work overseas under a contract; between the dispatched employee and the client enterprise.

b) Right-based or interest-based collective labor disputes between one or several representative organizations of employees and the employer or one or several representative organizations of employees.

2. A right-based collective labor dispute of rights means a dispute between one or several representative organizations of employees and the employer or one or several representative organizations of employees in case of:

a) Discrepancies in interpretation and implementation of the collective bargaining agreement, internal labor regulations and other lawful agreements;

b) Discrepancies in interpretation and implementation of labor laws; or

c) The employer's discrimination against the employees or members of the management board of the representative organization of employees for reasons of establishment, operation or participation in the organization; the employer's interference or influencing the representative organization of employees; the employer's violations against amicable negotiation.

3. a) Interest-based collective labor disputes include:

a) Labor disputes that arise during the process of collective bargaining;

a) A party refuses to participate in the collective bargaining or the collective bargaining is not held within the time limit prescribed by law.

#### **Article 180. Labor dispute settlement principles**

1. Respect the parties' autonomy through negotiation throughout the process of labor dispute settlement.

2. Prioritize labor dispute settlement through mediation and arbitration on the basis of respect for the rights and interests of the two disputing parties, and respect for the public interest of the society and conformity with the law.

3. The labor dispute shall be settled publicly, transparently, objectively, promptly, and lawfully.

4. Ensure the participation of the representatives of each party in the labor dispute settlement process.

5. Labor dispute settlement shall be initiated by a competent authority or person after it is requested by a disputing party or by another competent authority or person and is agreed by the disputing parties.

#### **Article 181. Responsibilities of organizations and individuals during labor dispute settlement**

1. The labor authority shall cooperate with the representative organization of employees and representative organization of employees in giving instructions and assisting the parties during the process of labor dispute settlement.

2. The Ministry of Labor, Invalids and Social Affairs shall organize training to improve the professional capacity of labor mediators and arbitrators for labor dispute settlement.

3. The provincial labor authority, when requested, shall receive and classify the request for labor dispute settlement, provide instructions and assists the parties during the process of labor dispute settlement.

Within 05 working days, the receiving authority shall transfer the request to the labor mediators if mediation is mandatory; to the arbitral tribunal if the dispute has to be settled by arbitration, or instruct the parties to file the petition to the court.

#### **Article 182. Rights and obligations of the two parties in labor dispute settlement**

1. During the labor dispute settlement process, the two disputing parties have the rights to:

a) Participate directly or through a representative in the labor dispute settlement process;

b) Withdraw or change the contents of the request;

c) Request for a change of the person in charge of labor dispute settlement where there reasonable grounds for believing that the said person may not be impartial or objective.

2. During the labor dispute settlement process, the two parties have the responsibility to:

a) Promptly and adequately provide documents and evidence to support his/her request;

b) Abide by the agreement reached, decision of the arbitral tribunal, court judgment or decision which when it comes into effect.

#### **Article 183. Rights of competent labor dispute settlement authorities and persons**

Competent labor dispute settlement authorities and persons shall, within their mandates, have the rights to request the disputing parties, relevant organizations and individuals to provide documents and evidence; request verification; and invite witnesses and other relevant persons.

#### **Article 184. Labor mediators**

1. Labor mediators shall be assigned by the provincial labor authority to mediate labor disputes and disputes over vocational training contracts; assist in development of labor relation.

2. The Government shall provide for the standards, procedures for assignments, benefits, working conditions and management of labor mediators; power and procedures for dispatching labor mediators.

#### **Article 185. Labor Arbitration Council**

1. The President of the People's Committee of the province shall issue the decision to establish the Labor Arbitration Council, designate its chairperson, secretary and labor arbitrators. The tenure of a Labor Arbitration Council is 05 years.

2. The President of the People's Committee of the province shall decide the number of labor arbitrators which is at least 15. The number of labor arbitrators nominated by each party shall be equal. To be specific:

a) At least 05 labor arbitrators shall be nominated by the provincial labor authority. The chairperson and secretary shall be officials of the provincial labor authority;

b) At least 05 labor arbitrators shall be nominated by the provincial trade union;

c) At least 05 arbitrators shall be nominated the representative organizations of employees in the province.

3. Standards and working conditions of labor arbitrators:

a) A labor arbitrator shall conversant with law, experienced in labor relations, reputable and objective;

b) When nominating labor arbitrators as prescribed in Clause 2 of this Article, the provincial labor authority, provincial trade union and representative organizations of employees may nominate their people or other people that fully satisfy the standards for labor arbitrators.

c) The secretary of the Labor Arbitration Council shall perform its regular duties. Labor arbitrators may work on a full-time or part-time basis.

4. Whenever a request for labor dispute settlement is received as prescribed in Article 189, 193 and 197 of this Labor Code, the Labor Arbitration Council shall establish an arbitral tribunal as follows:

a) The representative of each disputing party shall choose 01 labor arbitrator from the list of labor arbitrators;

b) The labor arbitrators chosen by the parties as prescribed in Point a of this Clause shall choose 01 other labor arbitrator as the chief of the arbitral tribunal;

c) In case a labor arbitrator is selected by more than one disputing party, the arbitral tribunal shall appoint 01 of the chosen arbitrators.

5. The arbitral tribunal shall work on the principle of collectives and make decision under the majority rule, except for the cases specified in Point c Clause 4 of this Article.



6. The Government shall provide for the procedures, requirements, procedures for designation, dismissal, benefits and working conditions of labor arbitrators and Labor Arbitration Councils; organization and operation of Labor Arbitration Councils; establishment and operation of the arbitral tribunals mentioned in this Article.

**Article 186. Prohibition of unilateral actions during the process of labor dispute settlement**

None of the disputing parties shall take unilateral actions against the other party while the labor dispute is being settled by a competent authority or person within the time limit specified in this Labor Code.

**Section 2. COMPETENCE AND PROCEDURES FOR SETTLEMENT OF INDIVIDUAL LABOR DISPUTES**

**Article 187. Competence to settle individual labor disputes**

The following agencies, organizations and individuals have the competence to settle individual labor disputes:

1. Labor mediators;
2. Labor Arbitration Councils;
3. The People's Court.

**Article 188. Procedures for the settlement of individual labor disputes by labor mediators**

1. Individual labor disputes shall be settled through mediation by labor mediators before being brought to the Labor Arbitration Council or the Court, except for the following labor disputes for which mediation is not mandatory:

- a) Disputes over dismissal for disciplinary reasons; unilateral termination of employment contracts;
- b) Disputes over damages and allowances upon termination of employment contracts;
- c) Disputes between a domestic worker and his/her employer;
- d) Disputes over social insurance in accordance with social insurance laws; disputes over health insurance in accordance with health insurance laws ; disputes over unemployment insurance in accordance with employment laws; disputes over insurance for occupational accidents and occupational disease in accordance with occupational safety and health laws;
- dd) Disputes over damages between an employee and organization that dispatches the employee to work overseas under a contract;
- e) Disputes between the dispatched employee and the client enterprise.

2. The Labor Arbitration Council shall complete the mediation process within 05 working days from the receipt of the request from the disputing parties or the authority mentioned in Clause 3 Article 181 of this Labor Code.

3. Both disputing parties must be present at the mediation meeting. The disputing parties may authorize another person to attend the mediation meeting.

4. The labor mediator shall instruct and assist the parties to negotiate with each other.

In case the two parties reach an agreement, the labor mediator shall prepare a written record of successful mediation which bears the signatures of the disputing parties and the labor mediator.

In case the two parties do not reach an agreement, the labor mediator shall recommend a mediation option for the disputing parties to consider. In case the parties agree with the recommended mediation option, the labor mediator shall prepare a written record of successful mediation which bears the signatures of the disputing parties and the labor mediator.

Where the two parties do not agree with the recommended mediation option or where one of the disputing parties is absent for the second time without a valid reason after having been legitimately summoned, the labor mediator shall prepare a record of unsuccessful mediation which bears the signatures of the present disputing parties and the labor mediator.

5. Copies of the record of successful mediation or unsuccessful mediation shall be sent to the disputing parties within 01 working day from the date on which it is prepared.

6. In case a disputing party fails to adhere to the agreements specified in the record of successful mediation, the other party may request a Labor Arbitration Council or the Court to settle the case.

7. In case mediation is not mandatory as prescribed in Clause 1 of this Article, the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 of this Article, or the mediation is unsuccessful as prescribed in Clause 4 of this Article, the disputing parties may:

a) request the Labor Arbitration Council to settle the dispute in accordance with Article 189 of this Labor Code; or

b) Request the Court to settle the dispute.

#### **Article 189. Settlement of individual labor disputes by Labor Arbitration Council**

1. The parties are entitled to, by consensus, request the Labor Arbitration Council to settle the dispute in any of the cases specified in Clause 7 Article 188 of this Labor Code. After the Labor Arbitration Council has been requested to settle a dispute, the parties must not simultaneously request the Court to settle the same dispute, except for the cases specified in Clause 4 of this Article.

2. Within 07 working days from the receipt of the request mentioned in Clause 1 of this Article, an arbitral tribunal shall be established.

3. Within 30 working days from the establishment of the arbitral tribunal, it shall issue a decision on the settlement of the labor dispute and send it to the disputing parties.

4. In case an arbitral tribunal is not established by the deadline specified in Clause 2 of this Article, or a decision on the settlement of the labor dispute is not issued by the arbitral tribunal by the deadline specified in Clause 3 of this Article, the parties are entitled to bring the case to Court.

5. In case a disputing party fails to comply with the decision of the arbitral tribunal, the parties are entitled to bring the case to court.

#### **Article 190. Time limits for requesting settlement of individual labor disputes**

1. The time limit to request a labor mediator to settle an individual labor dispute is 06 months from the date on which a party discovers the act of infringement of their lawful rights and interests.

2. The time limit to request a Labor Arbitration Council to settle an individual labor dispute is 09 months from the date on which a party discovers the act of infringement of their lawful rights and interests.

3. The time limit to bring an individual labor dispute to the Court is 01 year from the day on which a party discovers the act of infringement of their lawful rights and interests.

4. In case the requester is able to prove that the aforementioned time limits cannot be complied with due to a force majeure event or unfortunate event, the duration of such event shall not be included in the time limit for requesting settlement of individual labor dispute.

### **Section 3. COMPETENCE AND PROCEDURES FOR THE SETTLEMENT OF RIGHT-BASED COLLECTIVE LABOR DISPUTES**

#### **Article 191. Competence to settle right-based collective labor disputes**

1. The following agencies, organizations and individuals have the competence to settle right-based collective labor disputes:

- a) Labor mediators;
- b) Labor Arbitration Councils;
- c) The People's Court.

2. Right-based labor disputes shall be settled through mediation by labor mediators before being brought to the Labor Arbitration Council or the Court.

#### **Article 192. Procedures for settlement of right-based collective labor disputes**

1. Procedures for the mediation of collective labor disputes are the same as the procedures specified in Clauses 2, 3, 4, 5 and 6 Article 188 of this Labor Code.

If violations of law is found during settlement of the disputes mentioned in Point b and Point c Clause 2 Article 179 of this Labor Code, the labor mediator shall prepare a record and transfer the documents to a competent authority for settlement as prescribed by law.

2. In case the mediation is unsuccessful or the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labor Code, the disputing parties may:

- a) request the Labor Arbitration Council to settle the dispute in accordance with Article 193 of this Labor Code; or
- b) Request the Court to settle the dispute.

#### **Article 193. Settlement of right-based collective labor disputes by Labor Arbitration Council**

1. In case the mediation is unsuccessful, the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labor Code, or a party fails to adhere to the agreements in the successful mediation record, the disputing parties are entitled to, by consensus, request the Labor Arbitration Council to settle the dispute.

2. Within 07 working days from the receipt of the request mentioned in Clause 1 of this Article, an arbitral tribunal shall be established.

3. Within 30 working days from the establishment of the arbitral tribunal, in accordance with labor laws, the registered internal labor regulations and collective bargaining agreement, other lawful agreement and regulations, the arbitral tribunal shall issue a decision on dispute settlement and send it to the disputing parties.

If violations of law is found during settlement of the disputes mentioned in Point b and Point c Clause 2 Article 179 of this Labor Code, the arbitral tribunal shall, instead of making a settlement decision, issue a record and transfer the documents to a competent authority for settlement as prescribed by law.

4. While the Labor Arbitration Council is settling a dispute at the request of the parties as prescribed in this Article, the parties must not bring the same dispute to Court.

5. In case an arbitral tribunal is not established by the deadline specified in Clause 2 of this Article, or a decision on the settlement of the labor dispute is not issued by the arbitral tribunal by the deadline specified in Clause 3 of this Article, the parties are entitled to bring the dispute to Court.

6. In case a disputing party fails to comply with the decision of the arbitral tribunal, the parties are entitled to bring the case to court.

#### **Article 194. Time limits for requesting settlement of right-based collective labor disputes**

1. The time limit to request a labor mediator to settle a right-based collective labor dispute is 06 months from the date on which a party discovers the act of infringement of their lawful rights.

2. The time limit to request a Labor Arbitration Council to settle a right-based collective labor dispute is 09 months from the date on which a party discovers the act of infringement of their lawful rights.

3. The time limit to bring a right-based collective labor dispute to the Court is 01 year from the day on which a party discovers the act of infringement of their lawful rights.

### **Section 4. COMPETENCE AND PROCEDURES FOR THE SETTLEMENT OF INTEREST-BASED COLLECTIVE LABOR DISPUTES**

#### **Article 195. Competence to settle interest-based collective labor disputes**

1. Agencies, organizations and individuals who have the competence to settle interest-based collective labor disputes include:

- a) Labor mediators;
- b) Labor Arbitration Councils.

2. An interest-based collective labor dispute shall be settled through mediation by labor mediators before it is brought to the Labor Arbitration Council or a strike is organized.

#### **Article 196. Procedures for settlement of interest-based collective labor disputes**

1. Procedures for the mediation of interest-based collective labor disputes are the same as the procedures specified in Clauses 2, 3, 4 and 5 Article 188 of this Labor Code.

2. In case of successful mediation, the labor mediator shall prepare a written record of successful mediation which contains the agreements between the parties and bears the signatures of the disputing parties and the labor mediator. The record of successful mediation shall be as legally binding as the enterprise's collective bargaining agreement.

3. In case the mediation is unsuccessful, the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labor Code, or a party fails to adhere to the agreements in the successful mediation record:

a) The disputing parties are entitled to, by consensus, request the Labor Arbitration Council to settle the dispute in accordance with Article 197 of this Labor Code; or

b) The representative organization of employees is entitled to organize a strike following the procedures specified in Articles 200, 201 and 202 of this Labor Code.

### **Article 197. Settlement of interest-based collective labor disputes by Labor Arbitration Council**

1. In case the mediation is unsuccessful, the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labor Code, or a party fails to adhere to the agreements in the successful mediation record, the disputing parties are entitled to, by consensus, request the Labor Arbitration Council to settle the dispute.

2. Within 07 working days from the receipt of the request mentioned in Clause 1 of this Article, an arbitral tribunal shall be established.

3. Within 30 working days from the establishment of the arbitral tribunal, in accordance with labor laws, the registered internal labor regulations and collective bargaining agreement, other lawful agreement and regulations, the arbitral tribunal shall issue a decision on dispute settlement and send it to the disputing parties.

4. While the Labor Arbitration Council is settling a dispute at the request of the parties as prescribed in this Article, the representative organization of employees must not call a strike.

In case an arbitral tribunal is not established by the deadline specified in Clause 2 of this Article, or a decision on the settlement of the labor dispute is not issued by the arbitral tribunal by the deadline specified in Clause 3 of this Article, or the employer that is a disputing party fails to implement the settlement decision issued by the arbitral tribunal, the representative organization of employees that is a disputing party is entitled to call a strike following the procedures specified in Articles 200, 201 and 202 of this Labor Code.

## **Section 5. STRIKES**

### **Article 198. Strikes**

A strike is a temporary, voluntary and organized stoppage of work by the employees in order to press demands in the process of the labor dispute settlement. A strike shall be organized and lead by the representative organization of employees that has the right to request collective bargaining and is a disputing party.

### **Article 199. Cases in which employees are entitled to strike**

The representative organization of employees that is a disputing party to an interest-based collective labor dispute is entitled to call a strike following the procedures specified in Articles 200, 201 and 202 in the following cases:

1. The mediation is unsuccessful or the labor mediator fails to initiate the mediation by the deadline specified in Clause 2 Article 188 of this Labor Code;

2. An arbitral tribunal is not established or fails to issue a decision on the settlement of the labor dispute; the employer that is a disputing party fails to implement the settlement decision issued by the arbitral tribunal.

### **Article 200. Procedures for going on strike**

1. Conduct a survey on the strike in accordance with Article 201 of this Labor Code.
2. Issue a strike decision and strike notice in accordance with Article 202 of this Labor Code.
3. Go on strike.

### **Article 201. Survey on strike**

1. Before going on strike, the representative organization of employees that has the right to call the strike as prescribed in Article 198 of this Labor Code shall survey all employees or members of the management board of the representative organization of employees.

2. The survey involves:

a) Whether the employee agrees or disagrees about the strike;

b) The plan of the representative organization of employees according to Point b, c and d Clause 2 Article 202 of this Labor Code.

3. The survey shall be carried out by collecting votes, signatures or in another manner.

4. The time and method of survey shall be decided by the representative organization of employees and notified to the employer at least 01 day in advance. The survey must not affect the employer's normal business operation. The employers must not obstruct or interfere with the survey conducted by the representative organization of employees.

### **Article 202. Strike decision and notice of starting time of a strike**

1. When over 50% of the surveyed people agree to carry out a strike as prescribed in Clause 2 Article 201 of this Labor Code, the representative organization of employees shall issue a written strike decision.

2. The strike decision shall contain:

a) The survey result;

b) The starting time and the venue for the strike;

c) The scope of the strike;

d) The demands of the employees;

dd) Full name and address of the representative of the representative organization of employees that organizes and leads the strike.

3. At least 05 working days prior to the starting date of the strike, the representative organization of employees shall send the strike decision to the employer, the People's Committee of the district and the provincial labor authority.

4. At the starting time of the strike, if the employer does not accept the demands of the employees, the strike may take place.

### **Article 203. Rights of parties prior to and during a strike**

1. The parties have the right to continue negotiating settlement of the collective labor dispute or to jointly request settlement of the dispute by mediation or Labor Arbitration Council.

2. The representative organization of employees that is entitled to organize a strike as prescribed in Article 198 of this Labor Code has the rights to:

a) Withdraw the strike decision before the strike; end the strike during the strike.

b) Request the Court to declare the strike as lawful.

3. The employer has the rights to:

- a) Accept the entire or part of the demands, and send a written notice to the representative organization of employees which organizes and leads the strike;
- b) Temporarily close the workplace during the strike due to the lack of necessary conditions to maintain the normal operations or to protect the employer's assets.
- c) Request the Court to declare the strike as illegal.

#### **Article 204. Cases of illegal strike**

A strike shall be considered illegal if:

1. It is not the case specified in Article 199 of this Labor Code.
2. The strike is not organized by a representative organization of employees that is entitled to organize a strike.
3. The strike is organized against the procedures in this Labor Code.
4. The collective labor dispute is being settled by a competent authority or person in accordance with this Labor Code.
5. The strike takes places in the cases in which it is not permitted according to Article 209 of this Labor Code.
6. The strike takes place after a competent authority issues a decision to postpone or cancel the strike according to Article 210 of this Labor Code.

#### **Article 205. Notice of temporary closure the workplace**

At least 03 working days before the date of temporary closure of the workplace, the employer shall publicly post the decision on temporary closure of the workplace at the workplace and notify the following organizations:

1. The representative organization of employees that organizes the strike;
2. The People's Committee of the province where the workplace is located.
3. The People's Committee of the district where the workplace is located.

#### **Article 206. Temporary closure of the workplace is not prohibited:**

1. 12 hours prior to the starting time of the strike as stated in the strike decision.
2. After the strike ends.

#### **Article 207. Salaries and other lawful interest of employees during a strike**

1. Employees who do not take part in the strike but have to temporarily stop working due to the strike are entitled to work suspension allowance in accordance with Clause 2, Article 99 of this Code as well as to other benefits as stipulated in the labor laws.
2. Employees who take part in the strike shall not receive salaries and other benefits as prescribed by law, unless agreed otherwise by both parties.

#### **Article 208. Prohibited acts before, during and after a strike**

1. Obstructing employees exercising their right to strike; inciting, inducing or forcing employees to go on strike; preventing employee who do not take part in the strike from working.
2. Use of violence; sabotaging equipment or assets of the employer.
3. Disrupting public order and security.
4. Terminating employment contracts, disciplining or reassigning employees or strike leaders to other work or location workplace due to their preparation for or involvement in the strike.
5. Retaliating, inflicting punishment against employees who take part in strike or against strike leaders.
6. Taking advantage of the strike to commit illegal acts.

#### **Article 209. Workplaces where strike is prohibited**

1. Strike is prohibited in workplaces where the strike may threaten national security, national defense, public health or public order.
2. The Government shall compile a list of workplaces where strike is prohibited as mentioned in Clause 1 of this Article, and settlements of labor disputes that arise therein.

#### **Article 210. Decisions on postponing or cancelling a strike**

1. When deemed that a strike threatens to cause serious damage to the national economy or public interest, threatens national security, national defense, public health or public order, the President of the People's Committee of the province shall issue a decision to postpone or cancel the strike.
2. The Government shall provide for postponing and cancelling strikes and settlement of employees' rights.

#### **Article 211. Handling of unlawful strikes**

Within 12 hours from the receipt of the notification that a strike is organized against the regulations of Articles 200, 201 and 202 of this Labor Code, the President of the People's Committee of the district shall request the labor authority to cooperate with the trade union at the same level and relevant organizations in meeting the employer and the representative organization of employees, assisting the parties in finding a solution and returning the normal business operation.

Any violations of law shall be dealt with or reported to a competent authority as prescribed by law.

The parties shall be assisted in following proper procedures for settling the labor dispute.

### **Chapter XV**

#### **STATE MANAGEMENT OF LABOR**

#### **Article 212. Areas of State management of labor**

1. Promulgate and organize implementation legislative documents on labor.
2. Monitor, make statistics and provide information on the labor supply and demand, and the fluctuation thereof; make decision on salary policies; policies plans on human resources, distribution and utilization of nationwide human resources, vocational training and development; develop of a national level framework for various levels of vocational training. Compile the list of occupations that require workers who have undertaken vocational training or have obtained the national certificate.



3. Organize and conduct scientific research on labor, statistics and information on labor and the labor market, and on the living standards and incomes of workers; manage the quantity, quality or workers and labor fluctuation.

4. Establish mechanisms for supporting development of progressive, harmonious and stable labor relation; promote application of this Labor Code to workers without labor relations; organize registration and management of internal employee organizations.

5. Carry out inspections; take actions against violations of law; handle labor-related complaints; settle labor disputes as prescribed by law.

6. Seek international cooperation in the area of labor.

### **Article 213. State management of labor**

1. The Government shall uniformly carry out the State management of labor nationwide.

2. The Ministry of Labor, Invalids and Social Affairs shall be responsible to the Government for state management of labor.

3. Other Ministries and ministerial agencies, within their respective mandates, shall be responsible for implementing and cooperating with the Ministry of Labor, Invalids and Social Affairs in the state management of labor.

4. People's Committees at all levels shall be responsible for the state management of labor within their administrative divisions.

## **Chapter XVI**

### **LABOR INSPECTION AND ACTIONS AGAINST VIOLATIONS OF LABOR LAWS**

#### **Article 214. Contents of labor inspection**

1. Inspect compliance with labor laws.

2. Investigate occupational accidents and violations against regulations on occupational safety and health.

3. Provide instructions on the application technical standards for working conditions, occupational safety and health.

4. Handle labor-related complaints and denunciation as prescribed by law.

5. Take actions and request competent authorities to take actions against violations of labor laws.

#### **Article 215. Specialized labor inspection**

1. The competence to carry out specialized labor inspection is specified in the Law on Inspection.

2. Occupational safety and health inspections shall be carried out in accordance with the Law on Occupational Safety and Health.

#### **Article 216. Rights of labor inspectors**

Labor inspectors have the right to inspect and investigate within the scope of inspection specified in the inspection decision.

A prior notice is not required for surprise inspection decided by a competent person in case of urgent threat to safety, life, health, honor, dignity of employees at the workplace.

### **Article 217. Actions against violations**

1. Any person who violates of any provision of this Labor Code shall, depending on the nature and seriousness of the violation, be held liable to disciplinary actions, administrative penalties or criminal prosecution, and shall pay compensation for any damage caused as prescribed by law.

2. Where the Court has issued a decision which declares that a strike is illegal, any employee who fails to return to work shall be held liable to labor disciplinary measures in accordance with labor laws.

In case an illegal strike causes damage to the employer, the representative organization of employees that organizes the strike shall pay compensation as prescribed by law.

3. Any person who takes advantages of a strike to disrupt public order, sabotage the employer's assets, obstruct the execution of the right to strike, or incite, induce or force employees to go on strike; retaliate or inflict punishment on strikers and strike leaders, depending on the seriousness of the violation, shall be held liable to administrative penalties or criminal prosecution, and shall pay compensation for any damage caused in accordance with the law.

## **Chapter XVII**

### **IMPLEMENTATION CLAUSES**

#### **Article 218. Exemption and reduction of procedures for employers having fewer than 10 employees**

Any employer who has fewer than 10 employees shall follow regulations of this Labor Code and shall be entitled to exemption and reduction of certain procedures specified by the Government.

#### **Article 219. Amendments to some Articles of labor-related Laws**

1. Amendments to the Law on Social insurance No. 58/2014/QH13, which has been amended by the Law No. 84/2015/QH13 and the Law No. 35/2018/QH14:

a) Amendments to Article 54:

##### **“Article 54. Conditions for receiving retirement pension**

1. An employee mentioned in Points a, b, c, d, g, h and i Clause 1 Article 2 of this Law, except for the cases specified in Clause 3 of this, will receive retirement pension if he/she has paid social insurance for at least 20 years and:

a) He/she has reached the retirement age specified in Clause 2 Article 169 of the Labor Code;

b) He/she has reached the retirement age specified in Clause 3 Article 169 of the Labor Code and has at least 15 years' doing the laborious, toxic or dangerous works or highly laborious, toxic or dangerous works on the lists of the Ministry of Labor, War Invalids and Social Affairs; or has at least 15 years' working in highly disadvantaged areas, including the period he/she works in areas with the region factor of at least 0,7 before January 01, 2021;

c) His/her age is younger than the retirement age specified in Clause 2 Article 169 of the Labor Code by up to 10 years and he/she has worked in coal mines for at least 15 years; or

d) He/she contracted HIV due to an occupation accident during performance of his/her assigned duty.

2. An employee mentioned in Points dd and e Clause 1 Article 2 of this Law will receive retirement pension if he/she has paid social insurance for at least 20 years and:

a) His/her age is younger than the retirement age specified in Clause 2 Article 169 of the Labor Code by up to 05 years, unless otherwise prescribed by the Law on Military Officer of Vietnam's Army, the Law of People's Police, the Law on Cipher and the Law on professional servicemen and women, national defense workers and officials;

b) His/her age is younger than the retirement age specified in Clause 3 Article 169 of the Labor Code by up to 05 years and he/she has at least 15 years' doing the laborious, toxic or dangerous works or highly laborious, toxic or dangerous works on the lists of the Ministry of Labor, War Invalids and Social Affairs; or has at least 15 years' working in highly disadvantaged areas, including the period he/she works in areas with the region factor of at least 0,7 before January 01, 2021; or

c) He/she contracted HIV due to an occupation accident during performance of his/her assigned duty.

3. A female employee that is a commune official or a part-time worker at the commune authority and has paid social insurance for 15 to under 20 years and reaches the retirement age specified in Clause 2 Article 169 of the Labor Code will receive the retirement pension.

4. The Government shall provide for special cases of retirement age.”;

b) Amendments to Article 55:

**“Article 55. Conditions for receiving retirement pension in case of work capacity reduction**

1. When an employee mentioned in Points a, b, c, d, g, h and i Clause 1 Article 2 of this Law resigns after having paid social insurance for at least 20 years will receive a lower retirement pension than the rate specified in Points a, b, c Clause 1 Article 54 of this Law if:

a) His/her age is younger than the retirement age specified in Clause 2 Article 169 of the Labor Code by up to 05 years and he/she suffers from 61% to under 81% work capacity reduction;

b) His/her age is younger than the retirement age specified in Clause 2 Article 169 of the Labor Code by up to 10 years and he/she suffers from at least 81% work capacity reduction; or

c) He/she has at least 15 years' doing laborious, toxic and dangerous occupations or highly laborious, toxic and dangerous occupations on the lists of the Minister of Labor, War Invalids and Social Affairs and suffers from at least 61% work capacity reduction.

2. When an employee mentioned in Points dd and e Clause 1 Article 2 of this Law resigns after having paid social insurance for at least 20 years and suffers from at least 61% work capacity reduction will receive a lower retirement pension than the rate specified in Points a and b Clause 2 Article 54 of this Law if:

a) His/her age is younger than the retirement age specified in Clause 2 Article 169 of the Labor Code by up to 10 years;

b) He/she has at least 15 years' doing highly laborious, toxic and dangerous occupations on the lists of the Minister of Labor, War Invalids and Social Affairs .”;

c) Amendments to Clause 1 of Article 73:

“1. A worker will receive retirement pension when he/she:

- a) reaches the retirement age specified in Clause 2 Article 169 of the Labor Code; and
- b) has paid social insurance for at least 20 years.”.

#### 2. Amendments to Article 32 of the Civil Procedure Code No. 92/2015/QH13:

- a) Revisions of the title and Clause 1 of Article 32; addition of Clauses 1a, 1b and 1c after Clause 1 of Article 32:

#### **Article 32. Labor disputes and labor-related disputes within the jurisdiction of the court**

1. Individual labor disputes between employees and their employers shall be settled through mediation by labor mediators, unless the mediation is unsuccessful, the parties do not adhere to the agreements specified in the successful mediation record, or the mediation is not initiated by the labor mediator by the deadline prescribed by labor laws, or the labor dispute is:

- a) over a dismissal for disciplinary reasons or unilateral termination of an employment contract;
- b) over compensation and allowances upon termination of an employment contract;
- c) between a domestic worker and his/her employer;

d) over social insurance in accordance with social insurance laws; over health insurance in accordance with health insurance laws ; over unemployment insurance in accordance with employment laws; over insurance for occupational accidents and occupational disease in accordance with occupational safety and health laws;

dd) over damages between an employee and the organization that dispatches the employee to work overseas under a contract;

- e) between the dispatched employee and the client enterprise.

1a. In case both parties agree to bring an individual labor dispute to a Labor Arbitration Council but an arbitral tribunal is not established by the deadline prescribed by labor laws, the arbitral tribunal does not issue a decision on dispute settlement or a party does not adhere to the decision issued by the arbitral tribunal, the dispute may be brought to Court. 1b. In case a right-based collective labor dispute has been undertaken by a labor mediator but the mediation is unsuccessful, a party does not adhere to the successful mediation record, or the mediation is not initiated by the labor mediator by the deadline prescribed by labor laws, the dispute may be brought to Court.

1c. In case both parties agree to bring a right-based collective labor dispute to a Labor Arbitration Council but an arbitral tribunal is not established by the deadline prescribed by labor laws, the arbitral tribunal does not issue a decision on dispute settlement or a party does not adhere to the decision issued by the arbitral tribunal, the dispute may be brought to Court.”;

- b) Clause 2 of Article 32 is annulled.

#### **Article 220. Entry in force**

1. This Labor Code shall enter into force as of 1<sup>st</sup> of January 2021.

The Labor Code No. 10/2012/QH13 ceases to have effect from the effective date of this Labor Code

2. From the effective date of this Labor Code, the employment contracts, collective bargaining agreements, lawful agreements that are not contrary to this Labor Code or provide for more favorable

rights and conditions of employees than may continue to have effect, unless the parties agree to revise them according to this Labor Code.

3. Labor policies for officials and public employees, and persons working in the People's Army, People's Police forces, social organizations, and members of cooperatives, workers without labor relations shall be regulated by other legislative documents though certain regulations of this Labor Code may still apply.

*This Labor Code is ratified by the 14<sup>th</sup> National Assembly of Socialist Republic of Vietnam during its 8<sup>th</sup> session on November 20, 2019.*

**PRESIDENT OF THE NATIONAL ASSEMBLY**

**Nguyen Thi Kim Ngan**