NGUYEN HUU PHUOC ESQ

25 Hard Questions
IN EMPLOYMENT CONTRACT

Enterprises should know

PHUOC & PARTNERS
ATTORNEY AT LAW

LABOUR HANDBOOK

ACKNOWLEDGEMENT

Writing books is a long journey and it is so interesting for me to work with young, enthusiastic, and dynamic people. Indeed, my thoughts have been greatly expanded and deepened by the contributions of these associates.

Among them are a number of my colleagues in the professional legal advisory team of Phuoc & Partners Law Firm, who have greatly contributed to the completion of this Book within the timeframe of 03 months, and I am especially grateful to them. The first person I would like to mention is Phan Huy Quyen (Paralegal), who has spent time listing, drafting those frequently asked questions related to employment contracts and then looking for relevant direct and indirect regulations, answering explanations in hundreds of legal documents, judgments of legal cases, law books in Vietnam and abroad, and relevant legal articles. He also takes a lot of time to arrange pages, colour schemes and draft images in a professional way so that readers can easily find the legal terms that they look for.

Besides, my other members, Bui Quang Tuan and Ha Anh Thu, are in charge of collecting and reviewing as well as supplementing and adjusting the content of the draft.

INTRODUCTION

An employment contract has long been viewed as an interesting topic for those who take care of the human resources role of enterprises as daily tasks. There are numerous questions that readers might be interested respect to the employment contract because the employment contract not only contains the agreement based on the principle of freedom and voluntariness between the parties but also under the management of competent State agencies. Moreover, when a labour dispute arises, the content of the employment contract is considered one of troubleshooting and dispute resolution between the parties.

When referring to labour law documents or analytical books on Vietnamese labour law, readers often encounter some legal terms on labour law that those who are not students at law universities or those are not working in the legal field will encounter many difficulties in understanding the meaning of these legal terms in order to apply correctly in specific situations at workplaces.

In order to help the readers understand such legal terms more precisely, please refer to the definitions and explanations of a number of common-used legal terms which are usually used in the labour law.

Hopefully that the book 25 QUESTIONS IN EMPLOYMENT CONTRACT THAT ENTERPRISES SHOULD KNOW will assist in the work and life of readers in industrial relations which are increasingly innovating and developing. However, despite our best efforts to demonstrate our limited legal knowledge and practical experience in this Book, we are sure that there must be shortcomings somewhere in the process of making this

Book as well as some relevant areas that may not be mentioned in detail. Therefore, we look forward to the readers' feedback so we can improve in future editions.

Sincerely yours,

Ho Chi Minh City, August 2022

Nguyen Huu Phuoc Esq.

LIST OF 25 QUESTIONS IN EMPLOYMENT CONTRACT THAT ENTERPRISES SHOULD KNOW

25 QUESTIONS
IN EMPLOYMENT CONTRACT
THAT ENTERPRISES SHOULD KNOW

INDEX OF KEYWORDS

Question 1. Is the director of the company subject to compulsory insurance according to Vietnamese law? Under what circumstances will the director of the company not have to pay compulsory insurance according to the regulations of Vietnamese law?

Managerial positions of the enterprise are not mentioned in labour law, so, in order to consider the regulations on the position of the company's director, it is necessary to rely on the regulations of the law on enterprises. Specifically, according to Article 4.24 of the Law on Enterprise 2020, the director is one of the subjects in the group of company executives. In which, the director title can still be both an employer and an employee. Therefore, if there is an employment contract that the company pays the salary, the business executive still has to pay the compulsory insurance according to the law, specifically:

i. **For Social insurance:** Pursuant to the provisions of the Law on Social Insurance 2014 and Article 30.4 of Circular No. 59/2015/TT-BLDTBXH, participation in social insurance is compulsory for business executives who receive salaries from enterprises, except for full-time management officers in one-member limited liability companies owned by the State.

ii. **For Health insurance:** Pursuant to Article 12.1(a) of the Law on Health Insurance, applicable to employees working under indefinite-term or at least full three-month employment contracts; business managers receiving salaries; officials and civil servants.

iii. **For Unemployment insurance:** Pursuant to the provisions of Article 43.1(b) of the Law on Employment, the insurance applies to those who have entered into an employment contract or a working contract.

Thus, according to the provisions of the labour law mentioned above, the director of the company in particular and the executives of the enterprises, in general, are subject to the

compulsory insurance payments under the provisions of Vietnamese law if they have signed employment contracts that pay salaries[1].

Only in cases where the directors of the company or the executives of the enterprise are not bound by the employment contracts with the enterprise, there will be no obligation to pay compulsory insurance according to the provisions of Vietnamese law.

Question 2. When the first employment contract expires, in order to avoid not remembering to sign the next employment contract, the employer proposes to stipulate the provision to automatically renew the employment contract for the next three years in the first employment contract. Is there any risk?

The Labour Code 2019 does not currently prohibit the parties from entering into the clause to automatically renew the definite-term employment contract, and the signing of this clause is not included in prohibited acts or in one of the cases where the employment contract is invalid. However, this clause contains many indirect legal risks that make the signed employment contract invalid.

Firstly, according to the current regulations of the Labour Code 2019, an employment contract must be entered into in one of two types: an indefinite-term employment contract and a definite-term one. An indefinite-term employment contract is a contract in which the two parties do not determine the term and the time of termination of the contract's validity[2]; A definite-term employment contract is a contract in which the two parties have

[1] Article 2.1(a) of the Law on Social Insurance 2014
Article 12.1(a) of the Law on Health insurance 2008, amended and supplemented by Article 1.1 Law amending and supplementing a number of articles of the Law on Health Insurance No. 25/2008/QH12 in 2014
Article 43.1(a) and Article 43.1.b of the Law on Employment 2013

[2] Article 20.1(a) of the Labour Code 2019

a fixed term, the time of termination of the contract's validity within 36 months of the effective date of the contract[3].

i. For a definite-term employment contract, upon the expiration of which the employee and the employer want to continue working, within 30 days of the expiration date of the employment contract, the two parties shall conclude a new employment contract; Before such a new employment contract has not been concluded, the rights, obligations and interests of both parties shall be performed according to the signed contract[4]. If within 30 days of the expiry date of the employment contract, the two parties do not conclude a new employment contract, the signed employment contract will automatically become an indefinite-term employment contract[5]. Moreover, according to the regulations, the employer is responsible for notifying the employee in writing when the employment contract determines the expiry date[6].

ii. Therefore, if the employer fails to notify the employee in writing when the definite-term employment contract expires, the auto-signing clause as set forth will become invalid and the employment contract will become an indefinite-term employment contract according to the provisions of the law.

Secondly, in case two parties enter into a new employment contract which is a definite-term employment contract, it is only allowed to sign one more time, then if the employee continues to work, the two parties must sign an indefinite-term employment

[3] Article 20.1(b) of the Labour Code 2019
[4] Article 20.2.(a) of the Labour Code 2019
[5] Article 20.2(b) of the Labour Code 2019
[6] Article 45.1 of the Labour Code 2019

contract [7]. Therefore, the signing of a new definite-term employment contract can only be added once. The clause automatically signing an employment contract with a term of 03 subsequent years will be invalidated after the first re-signing of the employment contract.

Thirdly, for employees who hold an managerial positions in an enterprise as the General Director/Director, according to the provisions of the law on enterprise, their term of office will not exceed 5 years [8]. Therefore, if the parties sign the clause to automatically renew the employment contract with a definite term of 3 years, it may exceed the 5-year term specified in the provisions of the law on enterprise, and as a result, the employment contract will fall into one of the cases that are against the law and become invalid.

Fourthly, similar to the tenure of employees holding managerial positions in an enterprise, the term of a foreign worker's work permit is also a risk to the clause of the automatic signing of a definite-term employment contract discussed above. According to regulations, the term of the employment contract for foreign employees working in Vietnam will not exceed the term of the work permit [9]. Thus, if the parties enter into a clause to automatically renew an employment contract with a definite term of 3 years, it may exceed the term of the foreign worker's work permit, leading to a violation of the law and the employment contract may be declared invalid.

Thus, if parties want to sign the clause to automatically renew the definite-term employment contract, the enterprise needs to specify the object of application of this employment contract that only for those employees who do not hold managerial positions prescribed by law, or foreign workers working under a work permit in Vietnam. In addition, the enterprise should clearly

[7] Article 20.2(c) of the Labour Code 2019
[8] Article 162 of the Law on Enterprises 2020
[9] Article 151.2 of the Labour Code 2019

stipulate that the validity of this employment contract will automatically terminate when the contract is automatically renewed for the second time to avoid exceeding the regulation on the maximum number of signings of 02 times as prescribed by law as analysed above. Finally, the enterprise also needs to acknowledge that the employee commits to know and understand when signing the first employment contract and accept the automatic signing of a new employment contract as a notice without the employer needing to issue any notice in writing.

Question 3. What are the differences between Working Contract and Employment contract according to the Labour Code 2019 and Law on Public Employees?

	EMPLOYMENT CONTRACT	WORKING CONTRACT
DEFINITIONS	A labour 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 labour relations[10]	Working contract means a written agreement between a public employee or a person recruited to work as public employee and the head of a public non-business unit on the working position, salary, benefits, working conditions and rights and obligations of each party[11].

[10] Article 13 of the Labour Code 2019
[11] Article 3.5 of the Law on Public Employees 2010

DEFINITION (NEXT)	Employment contract and working contract are both considered legal forms to establish the labour relationship of the parties in the contract, containing the content of the contract agreed upon by the parties. Specifically, the labour contract stipulates that the subject is the employer and the employee while the working contract is applicable to the subject who is employed as a public employee with the head of the public non-business unit. Nevertheless, the labour contract is regulated by law in a broader scope than the working contract, because the working contract is directed to one party who wishes to be recruited as a public employee, and the other party is the head of public non-business units, also known as state agencies. In addition, a feature that the employment contract is considered to cover more broadly is in the case where two parties agree with each other by a different name but the contract's content expresses paid work, salary, and administration, management and supervision of one party is still considered an employment contract. The wide scope that the law refers to here is that even though the form of the name of the contract exists in any genre, form, or name, it meets the statutory conditions on the content expressed as "paid job, salary and management, administration and supervision of one party" are considered employment contracts. However, the

	employment contract has a wide scope but does not cover a working contract because the specific nature and purpose of these two types of contracts are completely different. Thus, an employment contract or a working contract has a certain legal formal value and therefore all legal relations prescribed by the two types of contracts mentioned above will have respective binding rights and obligations for each type of contract for the parties to comply and implement.
CONTENTS OF EMPLOYMENT CONTRACT	In general, employment contracts and working contracts have basic contents that are required by law, such as: a) Name and address of the employer/public non-business unit and full name and title of the person entering into the employment contract on the side of employer/head of the public non-business unit; b) Full name and date of birth of the person concluding the employment contract on the side of the employee/recruited person. However, the employment contract also requires the employee to provide additional information such as gender, place of residence, number of citizen identification card, identity card, or passport; c) Work and place of work. The employment contract should clearly state

	the job duties and positions of the recruited person; d) The term of the contract is one of the contents that help determine the type of contract in general. In addition, the working contract also requires content related to the type of contract and termination conditions of the working contract; dd) Salary according to job or title, the form of salary payment, the time limit for salary payment, salary allowance, and other additional items in the employment contract and salary, bonus and other remuneration regimes (if any) for working contract; e) Working time, rest time in the employment contract and working time and rest time in the case of a working contract; g) Social insurance, health insurance. However, unemployment insurance is only applicable to employment contracts and is not specified in the working contract. Because public employees working under contracts work regularly and receive salaries from the State budget, thus, they are not eligible to participate in unemployment insurance. Nonetheless, there are also some public employees working under employment contracts, so in this case, enterprises should pay attention to the adjustment of employment

	contracts for employees to enjoy unemployment insurance. h) Provide labour protection equipment for employees in the employment contract corresponding to the content of working conditions and issues related to labour protection in the working contract; In addition to the basic provisions with similar contents mentioned above, the employment contract needs to stipulate other basic contents [12] such as the promotion regime, salary increase; training, fostering and raising professional qualifications and skills; and in case the works of employee are directly related to the business secret or technology secret of the enterprise according to the provisions of law, the employer has the right to agree in writing with the employee on the content and duration of business secrets protection, protection of technology secrets, rights and compensation in case of violation; or for some fields of agriculture, forestry, fishery and salt production, the employment contract may increase or decrease some of the above basic contents to meet actual conditions. For the working contract, it is necessary to stipulate [13] the probationary regime (if any); the validity of the employment contract; and other commitments associated with the nature and characteristics of the industry, field, and

[12] Article 21 of the Labour Code 2019
[13] Article 26 of the Law on Public Employees 2010

	specific conditions of the public non-business unit but not contrary to the provisions of this Law and other relevant laws.
FORMS OF EMPLOYMENT CONTRACT	In general, both forms of contract have provisions on making a specific document in Article 14 of the Labour Code 2019, the employment contract must be concluded in writing and made into 02 copies, the employee keeps 01 copy, and the employer keeps 01 copy; and Article 26 of the Law on Public Employees 2010, the working contract is signed in writing between the head of the public non-business unit and the person recruited as a public employee and is made in three copies, one of which is assigned to the public employee. However, the labour contract also allows the parties to establish an employment relationship in the form of verbal contracts with a term of less than 1 month and through electronic means in the form of data messages under regulations of laws on electronic transactions and has the same value as a written employment contract.
TYPES OF EMPLOYMENT CONTRACTS	According to Article 20.1 of the Labour Code 2019, an employment contract shall be According to Article 2.2 of the Law on Cadres and Public Officials and the 2019 revised Law on Public

	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's validity; b) Definite-term employment contract is a type of contract in which the two parties determine the term and the time of termination of the contract's validity within 36 months of the effective date of the contract.	Employees, Article 25 of the Law on Public Employees 2010 is amended as follows: a) An indefinite-term working contract is a contract in which the two parties do not determine the term and the time of termination of the contract's validity. An indefinite-term employment contract applies to the following cases: + Public employees employed before 1 July 2020; + Cadres and civil servants who become public employees may be received and appointed to the job positions prescribed by law. + People who are recruited as public employees work in areas with extremely difficult

		socio-economic conditions. b) A definite-term working contract is a contract in which the two parties determine the term and the time of termination of the contract's validity within a period of 12 to 60 months. The definite-term working contract applies to the person who is recruited as a public employee from 1 July 2020, except for the case that a cadre or civil servant who turns out to be a public employee is received or appointed to the position regulated by law. Or people who are recruited as public employees to work in areas with extremely difficult socio-economic conditions.

CONTRACT SUBJECT	According to Article 3.1 of the Labour Code 2019, an employee is a person who works for an employer under an agreement, is paid, managed,, and supervised by the employer. The minimum working age of an employee is full 15 years unless the law allows a contract for a minor employee[14]. For the employer specified in Article 3.2 of the Labour Code 2019, the employer is an enterprise, agency, organization, cooperative, household, or individual that hires and employs employees to work for them as agreed upon; in case the employer is an individual, he/she	Article 25 of the Law on Public Employees 2010 recognises subjects who are public employees or people who are recruited into public employees; or cadres and civil servants to change into public employees. In case the recruited person is under 18 years old, the full name, address, date of birth, and year of birth of the legal representative of the recruited person must be provided[15] and heads of public non-business units.

[14] Section 1 Chapter XI of the Labour Code 2019
[15] Article 26 of the Law on Public Employees 2010

	must have full civil act capacity.

Question 4. What are the forms of disciplinary action against public employees under working contracts? And what is the payment obligation when terminating a working contract for a specific employee?

The consideration of disciplinary action against public employees under working contracts will be in accordance with the provisions of the law specific to the target group of public employees and Decree No. 112/2020/ND-CP on disciplinary handling of cadres, civil servants, and public employees. When a public employee commits one of the violations, depending on the severity and the provisions of the sanctioning decree, he or she may be considered for the application of corresponding disciplinary measures of two groups, namely:

i. Applied to public employees who do not hold managerial positions: a) Reprimand; b) Warning; or c) Forced resignation.

ii. Applied to administrative public employees: a) Reprimand; b) Warning; c) Demotion or d) Forced resignation.

The disciplinary reprimand will be applied to the first violation, causing less serious consequences, except for violations of the regulations requiring the application of warning discipline to public employees.

The form of warning discipline applied to public employees is divided into two groups: public employees and management public employees.

Disciplinary action for dismissal applies to public employees.

In addition to the above-mentioned disciplinary measures, public employees may also be restricted from performing professional activities in accordance with relevant laws.

Public employees are regulated and bound by their laws, but in principle, they must still ensure their legitimate rights and interests when terminating their working contracts. Particularly, public employees will still be paid and enjoy the corresponding allowances according to the working contract regime, and salary from the salary fund of the public non-business unit in accordance with the law.

Public employees work according to the term of the working contract and are subject to compulsory insurance such as social insurance (Article 2 of the Law on Social Insurance), health insurance (Article 6.1 of the Law on Health Insurance), and unemployment insurance (Article 43.1 of the Law on Employment). Article 45 of the Law on Public Employees 2010 (amended by Clause 6, Article 2 of the Law on Cadres and Civil Servants and the revised Law on Public Employees 2019) stipulates that public employees are entitled to severance allowance, job loss allowance or unemployment insurance regime according to provisions of the labour law and the law on insurance when the public non-business unit unilaterally terminates the working contract with the public employee, the term of the contract expires but the employer does not continue to conclude the working contract, the public employee unilaterally terminates the working contract due to an illness or an accident that has been treated for 6 consecutive months (at least 3 days' notice) or unilaterally terminates the contract under the cases specified in Article 29.5 of Law on Public Employees, including: i) Not being arranged according to the correct working position, working location or not guaranteed the working conditions agreed in the working contract; ii) Not being paid in full or not paid on time according to the working contract; iii) mistreatment; forced labour; iv) the employee or his/her family are really in difficult circumstances and cannot continue to perform the contract; v) Pregnant female public employees must take leave from work as indicated by the medical facility; vi) The public employee is sick or has an accident who has received

treatment for 3 consecutive months but his working capacity has not yet recovered.

However, according to Article 45.2 of the Law on Public Employees, public employees are not entitled to severance payment if they fall into one of the following cases: i) Being forced to resign; ii) Unilaterally terminating the working contract but violating the provisions of advance notice in Clauses 4, 5 and 6, Article 29 of the Law on Public Employees; and iii) Termination of working contract upon retirement decision.

Thus, public non-business units will be obliged to pay employees severance allowance or job loss allowance for public employees who have worked regularly for full 12 months or more as prescribed in Articles 46 and 47 of the Labour Code 2019. Therefore, the time for calculating severance allowance or job loss allowance is the total time the employee has actually worked minus the time the employee participates in unemployment insurance, and the working time has been paid severance or job loss allowance by the unit.

Question 5. The employment contract of the person working under the project, but at the end of the project, the project owner cannot solve the job for the people working, how will it be handled?

First of all, the enterprise needs to identify the contract agreed upon between the enterprise and the employee mentioned above as an employment contract or a civil contract such as a service contract, a cooperation contract, etc.

According to the provisions of the Labour Code 2019, an employment contract is an agreement between an employer and an employee on paid jobs, wages, working conditions, rights and obligations of each party in the employment relationship. In case two parties have an agreement by another name but with contents showing paid employment, salary and the management, administration and supervision of one party, it is also considered an employment contract.

Case 1: The above contract is an employment contract

According to the current regulations of the Labour Code 2019, there are a total of 13 cases of termination of employment contracts between employers and employees. In which, the case "Completed work according to the employment contract" is one of these 13 cases, of course, is a legal basis for terminating the employment contract[16]. However, the enterprise can only apply this basis provided that the two parties have determined and agreed in advance on the work that the employee must complete under the contract, so that when the project ends, it leads to the completion of the agreed work in the employment contract, the employment contract will also terminate.

However, in case the enterprise cannot apply the above-mentioned legal grounds because the labour contract between the enterprise and the employee does not have a clear definition of the work that the employee must complete, the enterprise may also apply the reason of changes in structure and technology to terminate employment contracts with employees[17]. Specifically, the following cases will be considered as structural and technological changes:

i. Changing organisational structure, reorganising labour;

ii. Changing production and business processes, technologies, machines and equipment associated with the employer's production and business lines; and

iii. Change the product or product structure.

Depending on the content of the finished project, the enterprise will determine whether this is a change in process, technology or a change in product or product structure. Nevertheless, enterprises should note that in the case of structural and technological changes that affect the

[16] Article 34.2 of the Labour Code 2019
[17] Article 42 of the Labour Code 2019.

employment of many employees, the enterprise must develop and implement a labour use plan. In case the enterprise cannot solve the job but must dismiss the employee, it must pay the job loss allowance. In addition, the dismissal of employees can only be carried out after consulting with the internal representative organisations of employees.

Case 2: The above contract is not an employment contract

Numerous businesses now propose to sign other types of contracts with employees such as service contracts, collaborator contracts instead of employment contracts in order to save costs for businesses. Two key conditions to define a contract as an employment contract include: the nature of paid employment, salary and the nature of management, administration and supervision. Therefore, if the contract agreed upon between the enterprise and the employee does not have these two characteristics, it is likely that the contract between the two parties is not an employment contract.

In case the above-mentioned contract is a service contract, according to regulations, a service contract is an agreement between the parties, whereby the service provider performs work for the service user, the service users must pay for the service fee to the service provider[18]. However, enterprises should note that the service provider must be a registered trader to be allowed to perform a commercial activity instead of an employment relationship[19].

Thus, if the contractual relationship between the enterprise and the employee mentioned above is a civil one, the termination will be less binding than the employment relationship. For example, with a service contract, an enterprise may unilaterally terminate the performance of the contract in case the continuation of the

[18] Article 513.1 of the Civil Code 2015
[19] Article 2 of the Law on Commerce 2005

work is not beneficial to the enterprise, only on the condition that the service provider is firstly informed before a reasonable time[20].

Question 6. Is the employer required to re-sign the employment contract in case the enterprise changes its legal representative?

When concluding an employment contract, the employer and employee will negotiate and agree to sign a labour agreement between the two parties[21]. For an individual employer, this individual will directly conclude an employment contract with an employee. However, for an employer who is an enterprise, agency or organisation, with the characteristics of being a legal entity according to the provisions of law, it will not be possible to enter into employment contracts with employees by themselves but must go through a representative mechanism. The representative of the enterprise will sign the employment contract on behalf of them. According to the law, the parties in the employment relationship are entitled to sign a new employment contract in the following cases: (i) termination of the employment contract; and (ii) amending and supplementing the employment contract[22].

In case an enterprise has a change in its enterprise name as well as other business registration contents, the legal representative of the enterprise must notify the enterprise's previous business registration authority[23]. The business registration authority will issue a new Certificate of Business Registration, which has been modified with information on the legal identity of the enterprise. However, according to the regulations on the cases of termination of employment contracts[24], there are no provisions on the case of changing enterprise information, specifically here is the legal representative of the enterprise. In addition, according to the provisions of the labour law, the change of the legal

[20] Article 520.1 of the Civil Code 2015
[21] Article 13 of the Labour Code 2019
[22] Article 33.2 of the Labour Code 2019
[23] Article 30 of the Law on Enterprises 2020
[24] Article 34 of the Labour Code 2019

representative will not be one of the cases where it is compulsory to re-sign a new employment contract. Therefore, when the parties agree to amend and supplement the employment contract, the signing of a new employment contract will be chosen by the parties themselves.

Thus, although the enterprise changes the legal representative, the implementation of the agreements under the previously signed employment contract remains in effect. Therefore, the enterprise is still responsible for ensuring the implementation and compliance with the agreements in the previously signed Employment contract.

Question 7. Is the employment contract required to specify the position of the signer for the representative of the employer?

When concluding an employment contract, the employer and employee will negotiate and agree to sign a labour agreement between the two parties. Employers can be individuals and legal entities. For an individual employer, that individual shall directly conclude an employment contract with an employee. However, for employers who are enterprises, agencies and organisations, with the characteristics of a legal entity, they will not be able to sign employment contracts with employees themselves but must go through a representative mechanism. The representative of the employer will sign the employment contract on behalf of such enterprise.

Accordingly, the person concluding an employment contract on the employer's side is a person in one of the following cases: (i) The legal representative of the enterprise or the person authorised by law; (ii) The head of an agency or organisation has the legal entity status as prescribed by law or an authorised person as prescribed by law; (iii) Representative of household, cooperative group, other organisation without legal status or authorised person as prescribed by law; and (iv) Individuals directly

employing employees[25]. In case of authorisation, the person authorized to conclude an employment contract may not re-authorise another person[26].

For an employer when concluding an employment contract through a representative, the Labour Code 2019 stipulates that in the content of the employment contract, information about the name and address of the employer and the full name and position of the person entering into the employment contract on the employer's side is required[27]. Thus, the representative (can be the legal representative or authorised representative) of the enterprise when signing an employment contract with the employee, it is necessary to clearly state the full name and position in accordance with the law. In case of amending and supplementing the employment contract by signing an appendix to the contract or concluding a new employment contract[28], the representative of the employer must also pay attention to clearly state his or her full name and position.

Question 8. When signing an employment contract, is it mandatory to have information about the current residence of the employee in the employment contract? Is the employee's current residence a mandatory information when signing an employment contract?

In the employment contract, the employee's place of residence is one of the mandatory contents that must be written in the employment contract [29] as prescribed. Similarly, Circular 10/2020/TT-BLDTBXH guides on mandatory contents of an employment contract, including the address of the place of residence of the person concluding the employment contract on the employee's side, and the address of the place of residence of the employees under the age of 15's representative[30]. Moreover,

[25] Article 18.3 of the Labour Code 2019
[26] Article 18.5 of the Labour Code 2019
[27] Article 21.1(a) of the Labour Code 2019
[28] Article 33.2 of the Labour Code 2019
[29] Article 21 of the Labour Code 2019
[30] Article 3.2(a) and 3.2.(c) Circular 10/2020/TT-BLĐTBXH

when concluding employment contracts, the law also stipulates that employees directly enter into employment contracts[31]. Thus, it can be understood that the employee is also the person who concludes the employment contract and must provide full information about the current residence in the employment contract under the law.

In the case of seasonal jobs or certain jobs with a term of less than 12 months, the group of employees aged full 18 years or older may authorise a certain employee in the group to enter into an employment contract, but must still ensure that the employment contract signed by the authorised person must be enclosed with a list clearly stating the full name, date of birth, gender, place of residence and signature of each employee[32].

When determining the current place of residence, the Law on Residence 2020 stipulates that the current place of residence is the place of permanent or temporary residence where the citizen is regularly living; in case there is no permanent or temporary place of residence, the current residence is the place where the citizen is actually residing[33]. A place of permanent residence is defined as a place where a citizen lives for a long time and has been registered for permanent residence[34]. On the other hand, a place of temporary residence is a place where citizens live for a certain period of time other than their permanent residence and have been registered for temporary residence[35]. Accordingly, the current place of residence of the employee will be determined according to the place where the employee permanently or temporarily resides (place of residence[36]), or where the employee actually lives if he or she does not register for permanent or temporary residence.

[31] Article 18.1 of the Labour Code 2019
[32] Article 18.2 of the Labour Code 2019
[33] Article 2.10 of the Residence Law 2020
[34] Article 2.8 of the Residence Law 2020
[35] Article 2.9 of the Residence Law 2020
[36] Article 11 of the Residence Law 2020

Therefore, when entering into employment contracts, employees should pay attention to writing information about their current place of residence (permanent or temporary residence address or where the employee is actually living) because this is the information required to be included in the employment contract under the labour law.

Question 9. If the employment contract is completely invalidated because it is signed by an unauthorised person, how will it be resolved? What should I do if I have to re-sign a new employment contract but one of the parties does not agree?

An employment contract will be completely void when: (i) the entire content of the contract violates the law; (ii) the person entering into the employment contract does not conform to the competence or violates the principles of entering into the employment contract specified in Clause 1, Article 15 of the Labour Code 2019; (iii) The work signed in the employment contract is a job prohibited by law. If a part of the contract violates the provisions of the law but does not affect the rest of the employment contract, only that part of the employment contract will be invalidated, the rest will continue to be valid. The Judge will make a decision to declare the employment contract invalid, and the Court must deal with the legal consequences of declaring the employment contract invalid. For different invalid cases, there will be different solutions, particularly:

(i) In case the employment contract is partially invalidated[37]: The two parties will amend and supplement the part of the employment contract which is declared invalid under the provisions of law and the enterprise's collective agreement. The rights, obligations and interests of both parties during the period from the time when they start working under the employment contract are declared partially invalid until the employment contract is amended and supplemented, they will be settled

[37] Articles 9.1 and 9.2 of Decree 145/2020/ND-CP

according to the applicable collective agreement. In case there is no collective agreement, the provisions of the law will be enforced.

(2) For a labour contract that is completely invalidated due to improper signing[38]: the parties must re-sign the employment contract in accordance with the provisions of law. If the rights and interests of each party in the employment contract are not lower than the provisions of law and the applicable collective agreement, the rights, obligations and interests of the employee will be performed according to the content of the employment contract which is declared invalid. If the content of rights and interests of the parties does not affect other contents of the labour contract, the rights, obligations and interests of the employee will be implemented as in case (i).

(iii) For a labour contract that is completely invalid because the entire content of the labour contract violates the law or the work concluded the labour contract is prohibited by law[39]: The parties will enter into a new labour contract in accordance with regulations under the law. The rights, obligations and interests of the employee from the time the employment contract is declared invalid until the termination of the labour contract will be implemented as in case (ii).

The Court is the only agency that has the power to make the decision to declare a labour contract invalid[40]. Within the appeal period, if no party appeals, the Court's decision will take legal effect and be enforceable. Therefore, when one of the two parties does not appeal but disagrees to amend the Employment contract, re-sign or conclude a new labour contract according to the decision issued by the Court, the other party will have the right to file a petition to the competent civil judgment enforcement

[38] Articles 10.1 and 10.2(a,b) of Decree 145/2020/ND-CP
[39] Articles 11.1 and 11.2 of Decree 145/2020/ND-CP
[40] Article 50 of the Labour Code 2019

agency to request assistance in the enforcement of the Court's decision in order to ensure their legitimate interests.

However, in case the Court's decision has taken legal effect but the parties mutually agree that they do not want to amend the contents or re-sign and conclude a new labour contract, the parties may agree to record this incident by documents and notify the competent civil judgment enforcement agency. Heads of civil judgment enforcement agencies shall issue decisions to suspend judgment enforcement under the law on civil judgment enforcement. At that time, the parties will terminate the labour contract and the rights, obligations and interests of the employee from the time of starting work under the invalid labour contract will be implemented under the law, and at the same time, the employer will have to settle the severance allowance for employees according to the law.

Thus, for labour contracts that have been declared invalid by the Court, employers and employees can discuss and negotiate to decide whether to re-sign the employment contract or not. In case one party does not agree to re-sign the labour contract, the other party has the right to file a request to the judgment enforcement agency to work to ensure the implementation of the court's decision.

Question 10. Is it legal for an employer to sign a payroll or labour contract with a scanned signature when signing a labour contract?

The Labour Code 2019 recognises the legal value of employment contracts through the conclusion by electronic means in the form of data messages between the employer and the employee. However, in the employment relationship, there are still many other documents that also require a signature and whether the signing of the above documents by electronic means in the form of data messages will be legally recognised and alternative to the direct signing method.

Considering the legal value of electronic signatures, when it comes to electronic signatures used to make transactions, most people confuse electronic signatures with digital signatures. However, these two concepts are regulated independently and it is understood that a digital signature is a subset and at the same time a form of electronic signature[41]. In order to consider the legal validity of electronic signatures, relevant laws require that the conditions of identity and reliability are satisfied, namely: (i) the method of establishing an electronic signature that allows the signer to be verified and demonstrates the signer's acceptance of the contract's contents; and (ii) the method of generating the electronic signature is sufficiently reliable and suitable for the purpose for which the contract was created and sent[42]. The Law on Electronic Transactions 2005 stipulates that electronic signatures can be created in the form of words, letters, numbers, symbols, sounds or other forms by electronic means[43]. According to the regulations on digital signatures, in Vietnam, only the validity of transactions signed by the contracting parties with secure digital signatures is legally valid in Vietnam[44]. Other types of signatures have not been recognised in any specific legal document, so it is difficult to conclude whether forms other than digital signatures will have legal validity. Thus, the signing with an electronic signature in the form of an electronic data message at this time still meets the legal validity and will therefore be recognised by law. However, other types of signatures are still recognised by law if they meet the conditions of identity and reliability.

In addition, when considering entering into labour relations in an enterprise, it is often divided into two types: internal transactions and written transactions outside the enterprise. In particular, there is no longer a regulation that when building a salary scale and payroll, the employer must send the salary scale and payroll to

[41] Article 3.6 of Decree 130/2018/NĐ-CP
[42] Article 24.1 of the Law on Electronic Transactions 2005
[43] Article 21.1 of the Law on Electronic Transactions 2005
[44] Article 9 of Decree 130/2018/NĐ-CP

the State management agency in charge of labour. However, the development of the salary scale and payroll must still be done in consultation with the representative organisation of employees if there is a representative organisation of employees at the enterprise. In addition, when the formulation of the salary scale and payroll is completed, the employer must publicly announce it at the workplace to the employees before implementation[45]. Therefore, the salary scale and payroll can be considered one of the internal documents in the labour relationship, and the enterprise can actively sign it in the form of a streamlined procedure to facilitate its operations.

So to sign the salary scale and payroll, can the enterprise sign with a scanned signature recognised by the law, based on the above analysis, the business signing with a scanned signature will be recognised by law if complying with regulations on: (i) complying with the process of signing and promulgating the development of salary scale and payroll under the labour law on consultation procedures of the representative organisation of employees; (ii) there is a process and regulation on publicising the value of using different types of signatures in the enterprise and having announced and made it public to employees, and (iii) when promulgated, it must be publicly announced at workplace before implementation.

The digital transformation of business processes in Vietnam is encouraged and promoted by the State, but there are still certain challenges. For businesses to do that, in addition to the parties entering into and establishing transactions in general, there needs to be a change in habits, registration procedures and the process of using electronic signatures, especially a digital signature that needs to be streamlined but still meets the needs of security and authenticity. This is also an opportunity for start-ups to grasp to find the answer to this problem, finding a solution will enable employers to remove safety barriers to protect the traditional

[45] Article 93.3 of the Labour Code 2019

labour relationship. It is not easy because giving up a habit that has existed for a long time is never easy.

Question 11. Can the employment contract in Vietnam write in a foreign language? What is the legal value of a bilingual employment contract?

A labour contract has long been considered a contract documenting the agreements between the employer and the employee on paid jobs, wages, working conditions, rights and obligations of the parties in the labour relationship[46]. Vietnam respects, builds and manages labour relations based on clearly and consistently prescribed principles, in which the State always creates favourable conditions for job creation and income generation to attract labour from many places. This contributes to diversity in culture and language in contractual relations.

In principle, the conclusion and establishment of a contract in general and a labour contract, in particular, is a voluntary agreement of the parties[47] and must not violate the prohibited provisions of the law. Therefore, the Labour Code 2019 or the Civil Code does not specifically stipulate the non-recognition of the legal value of the labour contract in case the parties use a language other than Vietnamese to sign. Therefore, the choice of language, unless the specialised law does not have mandatory provisions on the language of the contract must be made in Vietnamese, the parties can completely use a foreign language to sign and execute the contract.

However, employees and employers should also note that, since the employment relationship is established in Vietnam, the language of the labour contract should be at least in Vietnamese or at least bilingual including Vietnamese. Because in addition to recognising the rights and obligations of the parties, the labour contract is also used as a basis for registration, declaration and

[46] Article 13.1 of the Labour Code 2019
[47] Article 15 of the Labour Code 2019

payment of compulsory insurance, and personal income tax deductions by competent agencies. Therefore, labour contracts will be able to be required by competent State agencies when working with them, and to avoid troubles in contract interpretation and convenience in working with the above-mentioned agencies, the Vietnamese language is the basis for the application.

Regarding the legal value of a bilingual employment contract, because the labour law in Vietnam does not have any provisions binding the subjects on the language of the labour contract, it can be understood that the bilingual employment contract still has legal validity, similar to the labour contract concluded in Vietnamese. And so, the parties in the Employment contract should pay attention to the agreement on the preferred language to interpret the labour contract when there is a difference between the two languages. However, the parties in the labour relationship also need to pay attention that during the proceedings, if there is a dispute over the labour contract, specifically, the Civil Code 2015 stipulates that the spoken and written language is used in civil proceedings be Vietnamese. Civil procedure participants have the right to use their languages and scripts, in this case, it is necessary to have a translator from that language into Vietnamese[48]. Thus, in case the labour contract is submitted to the Court for evidence, the bilingual labour contract must not only be notarised and authenticated according to regulations[49], but also need to consider the agreement on language selection to interpret the employment contract selected by the parties. If the agreement to choose the language of the aforementioned bilingual contract is not Vietnamese, the parties to the dispute have different views on the interpretation of the contract. In this case, the Court will ask a third party to re-translate the contract content into Vietnamese to resolve the case.

[48] Article 20 of the Civil Procedure Code 2015
[49] Article 96.3 of the Civil Procedure Code 2015

Question 12. Can an employer terminate an employment contract with a pregnant female employee when it expires?

According to the provisions of the Labour Code 2019, the labour contract will automatically terminate when the employment contract determines the expiry date, but the parties do not have an agreement and the need to continue maintaining the labour relationship[50], unless the employee is a member of the leadership of the internal representative organisation and is in its term, and the labour law is required to extend the signed labour contract until the end of the term[51]. In addition, the Labour Code 2019 also stipulates the responsibility of the employer in giving priority to concluding a new labour contract with female employees who are pregnant or raising children under 12 months when the employment contract expires[52]. However, it should be understood that the labour law only emphasises that the employer "prioritises" the agreement with the female employee who is pregnant or on maternity leave in concluding a new labour contract, not "requiring" the parties to continue the labour relations by concluding into new labour contracts.

Thus, if the female employee who is pregnant or on maternity leave is not a member of the management board of the employee representative organisation at the establishment during her term when the employment contract expires and the parties have no need to continue, the expired Employment contract will automatically terminate.

Enterprises should also note that, although it is considered a case of legal termination of labour contracts, in order to ensure the termination of labour contracts due to expiration under the law, the employer must send a written notice to the female employee who is currently in pregnancy or maternity leave knows about the termination of the labour contract when the labour contract

[50] Article 34.1 of the Labour Code 2019
[51] Article 177.4 of the Labour Code 2019
[52] Article 137.3 of the Labour Code 2019

expires[53]. The content of the notice should clearly state that the labour contract will terminate on the date the labour contract expires, and the employer has no need to renew the labour contract. In addition, the employer must pay all amounts related to the employee's benefits within 14 days from the date of termination of the labour contract (or it may be longer but not more than 30 days in some circumstances allowed by labour law)[54]. Finally, the employer must complete the procedures for certification and return to the employee the social insurance book as well as other papers that the employer is holding of the employee.

Question 13. Employees who continue to work after the probationary period expires, due to force majeure reasons but the employer cannot sign the labour contract, is it counted as having a definite-term labour contract?

According to the provisions of the Labour Code 2019, after the probationary period ends, the employer is obliged to notify the probation result to the employee. In case of satisfactory probation, the employer shall continue to perform according to the signed labour contract if the agreement on the probation content is included in the labour contract or must conclude a new labour contract if the parties only conclude a probationary contract[55]. Thus, after the end of the probationary period, even if the employer has informed the employee of the satisfactory probation results, or has not given notice for any reason, the employee will continue to work under the contract and if the employer does not have any objection to the probation contract, the employee will automatically become a full-time employee according to the employment contract relationship. However, in case the probation contract does not clearly state that the labour contract after the probationary period ends as a definite-term labour contract or an indefinite-term labour contract, the parties

[53] Article 45.1 of the Labour Code 2019
[54] Article 48.1 of the Labour Code 2019
[55] Article 27.1 of the Labour Code 2019.

will not have enough legal basis to establish an employment relationship. This is because the term of a labour contract is the basic content that the law requires to be included in the labour contract[56]. Therefore, the issue that needs to be clarified in this case is to review the will of the parties to assess whether the employer and the employee want to continue the above-mentioned labour relationship and establish the contract term so as to create a basis to determine whether the type of contract is a definite-term labour contract or an indefinite-term labour contract. If one of the parties does not wish to continue the establishment, the parties will exercise their rights and obligations to terminate the signed probationary contract.

Enterprises should also note that there are no provisions of the law on the mandatory time limit for signing an employment contract after the probationary period ends, as well as the type of employment contract that must be concluded, which is agreed upon by the parties depending on the nature of the work and the needs of the parties. Employers may be fined from VND 1,000,000 to VND 2,000,000 for failing to notify probation results to employees according to regulations[57]; the employer shall be fined from VND 4,000,000 to VND 10,000,000 for failing to conclude an employment contract with the employee upon successful probation, in case both parties have concluded a probationary contract[58].

Question 14. What kind of employment contract can an employer sign with an employee who only works 14 days/month?

Entering into employment contracts between employers and employees who only work 14 days/month

According to the provisions of the labour law, the employee and the employer can agree in the labour contract on paid

[56] Article 21.1(d) of the Labour Code 2019
[57] Article 10.1 (b) Decree 12/2022/NĐ-CP
[58] Article 10.2 (d), Decree 12/2022/NĐ-CP

employment, salary, working conditions, rights and obligations of each party in the employment relationship. In which, working time is one of the main contents that must be specified in the employment contract[59]. Currently, the Labour Code 2019 only stipulates normal working hours by day or by week (normal working time is no more than 08 hours in 01 day and no more than 48 hours in 01 week[60]). In case the employee only works 14 days/month, the employer and the employee can agree on a working time of 14 days/month but must ensure the compliance with the maximum working time in a day of 08 hours and 01 week does not exceed 48 hours.

Thus, the type of employment contract that the employer must enter into with the employee who works 14 days/month will be applied according to the provisions on the type of employment contract in the Labour Code 2019, which is an indefinite-term employment contract and a definite-term employment contract with a duration not exceeding 36 months. When entering into a employment contract according to either of the two types mentioned above, the employer should note that the parties can only enter into a maximum of 02 times for a definite-term employment contract, then if the employee continues to work, the parties must sign an indefinite-term employment contract.

Enterprises also need to be careful in concluding various types of collaborator contracts, personal service contracts with a working period of only 14 days/month with a similar nature to the employment relationship. If the parties agree to call the employment contract by another name such as a collaborator contract or a personal service contract, but the agreement contains content that shows paid employment, wages and management, the management and supervision of one party is still considered an employment contract. At that time, employers and employees

[59] Article 21.1.g of the Labour Code 2019
[60] Article 105.1 of the Labour Code 2019

must comply with regulations on participation in compulsory insurance and personal income tax of employees.

Do employees working under employment contracts working 14 days/month participate in compulsory social insurance, health insurance and unemployment insurance?

According to the provisions of the Law on Social Insurance, the Law on Health Insurance and the Law on Employment, employees working under indefinite-term employment contracts or fixed-term employment contracts will be subject to participation in compulsory social insurance, health insurance and unemployment insurance [61]. At the same time, social insurance, health insurance and unemployment insurance are one of the main contents that must be agreed upon in the employment contract. Therefore, in case the employer concludes an employment contract with an employee who only works for 14 days/month, he/she must pay social insurance, health insurance and unemployment insurance for that employee.

Question 15. If an employee's working time in a month includes the probationary period and the official working period, how will the participation in compulsory social insurance of the employee and the employer be done?

1. If the employee's working time in a month includes the probationary period and the official working period, how will the participation in compulsory social insurance of the employee and the employer be done?

Pursuant to Article 85.3 of the Law on Social Insurance and Article 42.4 of Decision No. 595/QD-BLDTBXH, employees

[61] Article 2.1(a) of the Law on Social Insurance 2014
Article 12.1.a of the Law on Health Insurance 2008 as amended and supplemented by Article 1.1 of the Law amending and supplementing several Articles of the Law on Health Insurance No. 25/2008/QH12 in 2014
Article 43.1(a) and Article 43.1.b of the Law on Employment 2013

who do not work and do not receive salaries for 14 working days or more in a month will not pay social insurance premiums for that month; the above time will not be counted to enjoy social insurance.

Hence, in the case that in a month there is both a probationary period and an official working period according to the employment contract, but the total time of not working and not receiving salaries is from 14 working days or more in the month, no payment for social insurance shall be made in that month.

Inferring from the above regulations, probationary employees are not subject to participation in compulsory social insurance, the probationary period will not be included in the period of enjoying social insurance benefits. Therefore, unless there is an agreement on participation in social insurance during the probationary period, the probationary salaries will not be considered the salary as the basis for payment of social insurance. It can be seen that in order to calculate the number of days in a month to determine whether an employee has to participate in social insurance in that month, the probationary period will be included in the time of not working and not receiving a salary (according to the employment contract); if this total period is 14 or more days in a month, the employee will not have to pay social insurance premiums for that month.

2. Does the employer have to pay an amount equivalent to the payment of social insurance, unemployment insurance and health insurance for employees who are not subject to compulsory social insurance according to Article 168.3 of the Labour Code 2019?

Pursuant to Article 168.3 of the Labour Code 2019, for employees who are not eligible to participate in compulsory social insurance, health insurance and unemployment insurance, the employer is responsible for paying additionally at the same time as the salary payment period an amount equivalent to the

employer's payment of social insurance premiums. Compulsory health insurance and unemployment insurance for employees under the law on social insurance, health insurance and unemployment insurance. Meanwhile, probationary employees are not subject to these three types of compulsory insurance. Hence, it can be deduced that the probationary employees will be paid additionally at the same time as the pay period equivalent to the percentage of employers that must pay compulsory insurance for employees.

However, enterprises and competent State authorities on labour still have other interpretations on this issue. There is an opinion that the regulations on the obligation of the employer to pay an equivalent amount mentioned above only apply to full-time employees (who have concluded an employment contract) who are not subject to insurance. Besides, based on the definition provided in the Labour Code 2012, an employee is a person aged full 15 years or older, capable of working, working under an employment contract, being paid a salary and subject to the management and administration of the employer; therefore, probationary employees do not fall under the definition of employees in this Code. Another opinion is that, because the content of the probationary agreement does not include provisions on compulsory social insurance, health insurance, and unemployment insurance, the employer is also not obligated to pay. Many businesses and even some experts at competent state authorities still hold this view and do not pay the above-mentioned amount for probationary employees.

According to the new concept of employee in Article 3.1 of the Labour Code 2019, an employee is a person who works for an employer under an agreement, is paid a salary and is subject to the management, supervision and administration of the employer. This means that a probationary employee is also included in the definition of an employee of the Labour Code 2019. A probationary employee is therefore considered an employee who is not subject to the compulsory social insurance, health insurance

and unemployment insurance contributions if he or she works under the form of a probationary contract but is not included in the employment contract. In addition to the agreed probationary salary, the employer is also responsible for paying, at the same time as the salary period, an amount equivalent to the employer's payment of compulsory social insurance, health insurance and unemployment insurance premium for the employee.

Question 16. Are the forms of entering into electronic employment contracts via email exchange valid and recognised by law?

When considering regulations on the form of an employment contract concluded via electronic means in the form of a data message, which is recognised by law as having the same legal value as a written employment contract when complying with the provisions of the Law on Electronic Transactions. According to the provisions of Article 11 of the Law on Electronic Transactions 2005, any information contained in a data message is legally recognised for its integrity and legal validity, even though such information is presented in the form of a data message in the form of exchange of electronic data, electronic documents, electronic mail, telegram, telegraph, fax or other similar means. Hence, the electronic employment contract through email exchange has full legal validity and is recognised by law. However, for the electronic employment contract via email exchange to have the same validity as the written one, when requiring the employee to provide information for the aforementioned electronic employment contract, the employer must be able to extract and display the information and submit it in writing to the requester, then the electronic data message that is an electronic employment contract will be considered as valid as a document. Therefore, a data message is only considered to have textual value if the information contained in the data message is accessible and usable for reference when necessary.

In addition, the Law on Electronic Transactions also stipulates how to determine that the electronic employment contract via

email exchange is as valid as the original[62] when: (i) content of the electronic employment contract via email exchange is guaranteed to be intact since from the time it was first drafted from the sender and sent to the recipients in the same sequence of events; (ii) the content of the electronic employment contract via email exchange is considered intact when such content has not been changed between the recipient and the sender, except for changes in form arising in the process of sending email due to the use of providers to access different email or read email on different phones, computers or other electronic devices; and (iii) the content of the electronic employment contract via email exchange is accessible and usable in complete text upon request for extraction.

In the process of settling labour disputes in practice, the collection of evidence related to electronic employment contract through the exchange of emails as evidence, in addition to satisfying the requirements on the characteristics of evidence according to the provisions of the Civil Procedure Code, electronic employment contracts via email exchange must also satisfy the reliability of the method of creating, storing or transmitting email exchanges related to above-mentioned electronic employment contracts; how to ensure and maintain the integrity of the electronic employment contracts through email exchange; sender identification and other relevant factors.

Hence, if any enterprise wishes to conclude an electronic employment contract with an employee via email exchange, such an enterprise should pay attention to the following issues: (i) storing; (ii) extracting to review when necessary; and (iii) the storage and management of the exchange, in addition to confidentiality, must also consider the transparency, systematisation, and integrity of the exchange contents related to the electronic employment contract for employees.

[62] Article 13 of the Law on Electronic Transactions 2005

Question 17. Is it legal for legal representative of an enterprise to enter into an employment contract on behalf of the enterprise?

Article 12.1 of the Law on Enterprises 2022 stipulates that a legal representative is an individual representing an enterprise to exercise rights and obligations arising from the enterprise's transactions, representing the enterprise as a requester for civil settlement, plaintiff, defendant, a person with interests, related obligations before Arbitrators, Courts and other rights and obligations as prescribed by law.

In terms of the labour law, subject of an employment contract is the employee and the legal representative of the employer or an authorised person according to the provisions of law[63]. However, Article 141.3 of the Civil Code 2015 stipulates that an individual or juridical person may not act on behalf of the represented person to establish and perform civil transactions with himself or with a third party of which he is also a representative of such person unless otherwise provided for by law. Accordingly, when entering into an employment contract with the legal representative of the enterprise itself, it is necessary to pay attention to any issues so that the conclusion of an employment contract is not considered invalid due to the violation of the prohibition of the Civil Code mentioned above.

In fact, many people have equated the concept of the legal representative with the title of the business manager[64]. In terms of the law on enterprises, for the type of one-member limited liability company, depending on the organisational structure chosen by the enterprise, the legal representative can either: (i) the Chairman of the Members' Council; or (ii) President of the company; or (iii) General Director/Director; for the type of limited liability company with two or more members, the legal representative may be either: (i) the Chairman of the Members'

[63] Article 18.3(a) of the Labour Code 2019
[64] Article 4.24 of the Law on Enterprises 2020

Council; or (ii) General Director/Director; for the type of joint stock company, the legal representative can only be either: (i) the Chairman of the Board of Directors; or (ii) the General Director/Director. From that, it can be seen that the terms legal representative and the titles of the business manager are completely different.

Depending on the position that the legal representative holds in each type of enterprise as analysed above, the Board of Members has the right to elect, relieve or dismiss the Chairman of the Board of Members; decide to appoint, relieve from duty, remove from office, conclude employment contracts with the General Director/Director[65]. The company president is appointed by the investor[66]; and the Board of Directors shall have the right to elect, remove or dismiss the Chairman of the Board of Directors; decide to appoint, relieve from duty, remove from office, sign employment contracts with the General Director/Director[67]. Accordingly, the enterprise needs to determine the title of the legal representative to determine the authority to elect, relieve or remove from office; or decide to appoint/remove/remove/conclude the employment contract under the provisions of law.

Question 18. Any employee who works under the employment contract regime for a short period of about 12 to 13 days per month with intermittent work, subject to compulsory social insurance contribution?

According to the provisions of the Labour Code 2019, employer and employee can agree on working hours from 12 to 13 days per month in the employment contract and ensure that the maximum working time in a day is 08 hours and a week does not exceed 48 hours. Accordingly, employees working from 12 to 13 days per month with intermittent work must conclude with the employer

[65] Article 55, 80 of the Law on Enterprises 2020
[66] Article 81 of the Law on Enterprises 2020
[67] Article 59, 80 of the Law on Enterprises 2020

under one of two types of employment contract, namely indefinite-term employment contract and definite-term employment contract with a duration of not exceeding 36 months. An employment contract must contain the main contents specified in Clause 1, Article 21 of the Labour Code 2019. In which, social insurance, health insurance and unemployment insurance are the compulsory contents of an employment contract.

The Law on Social Insurance stipulates that any employee working under an indefinite-term employment contract and definite-term employment contract is subject to participation in compulsory social insurance[68]. However, according to Clause 3, Article 85 of the Law on Social Insurance and Clause 4, Article 42 of Decision 595/QD-BHXH stipulating that any employee who does not work and does not receive salary for 14 working days or more in a month is not required to pay social insurance contributions of that month. The above duration will not be counted to enjoy social insurance entitlements, except in the case of taking maternity leave. Compared with the above regulations, if in a month the employee does not work and does not receive a salary for 14 days or more, no payment for social insurance shall be made that month. Therefore, any employee who concludes an employment contract with the working time from 12 to 13 days per month are not required to participate in compulsory social insurance.

In addition, if an employee does intermittent work for an employer as in the case where the employee enters into many employment contracts with many employers at the same time, the employee only participates in social insurance contributions for the first signed employment contract, other places of working will not be required to participate. Of note, the payment of social insurance for any employment contract must satisfy the condition

[68] Article 2.1.a of the Law on Social Insurance 2014

that the number of days without work and without salary in a month is less than 14 days.

Question 19. Does an employee has the right to request a suspension of an employment contract and how long can the employment contract be suspended in maximum?

An employer and employee can agree to suspend the performance of an employment contract or the employment contract can be suspended in some cases specified in the Labour Code 2019, including: (i) any employees perform military service, the obligation to participate Militia and self-defence; (ii) any employee is detained or remanded in accordance with the law on criminal procedures; (iii) employee must comply with the decision to apply the measure of sending to reformatory, compulsory detoxification establishment or compulsory education institution; (iv) any employee is a pregnant female with the certification of a competent medical examination and treatment facility that continuing to work will adversely affect the foetus; (v) any employee is appointed as an enterprise manager of a one-member limited liability company in which 100% of charter capital is held by the State; (vi) any employees or authorised to exercise the rights and responsibilities of the State owner's representative for the state capital in the enterprise; (vii) any employees is authorised to exercise the rights and responsibilities of the enterprise with respect to the capital portion of the enterprise invested in another enterprise; or (viii) mutually agreed upon by the parties.

The current law does not have specific regulations on the order, content, time, etc. to suspend the employment contract, except for the regulation that any pregnant female employee has the certification of a competent medical facility that continuing to work will affect the foetus, when suspending the performance of the employment contract, the employer must be notified together with the certification of the competent medical facility. In other words, the law promotes the self-agreement of the parties in

suspending the performance of an employment contract, so if the employee has a need, he or she can make an offer to the employer and jointly agree with the employer on the content as well as the period of suspension of the performance of the employment contract.

It should be noted that, unless otherwise agreed by the two parties or provided by the applicable law, during the period of suspension of the performance of an employment contract, the employee will not be entitled to the salaries and employment rights and benefits signed in the employment contract.

In addition, the labour laws also indirectly stipulate that the period of suspension of an employment contract is still included in the performance time of the signed employment contract. This means that if the parties do not agree otherwise, the period of suspension of the employment contract will be included in the term of the employment contract and the employment relationship of the parties may also be automatically terminated during the suspension period if the employment contract expires during that time. The employee and the employers need to pay attention to this issue in order to agree on the time to suspend the performance of the employment contract in accordance with the provisions of the law, as well as the next plan after the suspension period expires.

Question 20. When an employment contract ends, how long can an employer delays payment of salaries and commissions to an employee and what conditions the employer should note?

According to the provisions of the labour laws, when an employment contract ends, the employer is obliged to pay in full all amounts relevant to the interests of the employee, and is not required to pay immediately after the employment contract is terminated. Accordingly, each party is responsible for making a full payment of monetary amounts relevant to the interests of the other party within 14 days from the termination date of the

employment contract, and in any of the following cases this time-limit may be extended but not exceed 30 days:

i. An employer not being an individual terminates its operation;

ii. Changes in the organisational structure, technology or changes for economic reasons;

iii. There is a separation, division, consolidation, merger, sale, leasing out, conversion of enterprise type; or a transfer of the ownership or use right of the assets of the enterprise or the co-operative; or

iv. There is a natural disaster, fire, enemy sabotage or dangerous epidemic.

In addition, according to the provisions of the labour laws, the employer must pay the salary in full and on time and directly to the employee. In cases of force majeure, the employer may delay the payment of salary but must not be late of more than 30 days. However, in some cases, the employer pays salary and allowances 15 days later than the time limit allowed by the labour law then the employer must compensate the employee by paying a sum of money equal to at least interest on the amount paid late at the rate for raising deposits with a term of one 01 month as announced at the time of payment by the bank where the employer has opened its account for payment of salaries to the employee.

Thus, although the labour laws do not bind the employer to pay the amounts related to the employee's interest at the time of termination of employment contract, it still provides a certain period of time for the employer to fulfil its payment obligation. The employer may delay payment of salaries and allowances to the employee for a maximum period of 14 days and may be extended but must not exceed 30 days in some specific cases. Enterprises should note that, if within the above-mentioned time

limit, the issue of late payment of salaries is not resolved, the employee has the right to make an application to the Division of Labour, War Invalids and Social Affairs where the enterprise registered its head office for settlement, or initiate a lawsuit at the People's Court of the district where the enterprise is registered to request settlement.

Question 21. Does an employer has the right to unilaterally terminate an employment contract when an employee is temporarily detained? Is it illegal to stipulate the right to unilaterally terminate the above-mentioned employment contract in the internal labour regulations of the enterprise?

Pursuant to the provisions of Article 36 of the Labour Code 2019, any employer has the right to unilaterally terminate an employment contract in any of the following cases: (i) the employee who regularly fails to complete the work under the employment contract are determined according to the criteria for assessing the level of work completion in the employer's regulations; (ii) the employee suffering from an illness or an accident has received treatment for 12 consecutive months for the employee working under the indefinite-term employment contract, or for 06 consecutive months for the employee working under the definite-term employment contract with the term from 12 months to 36 months or more than half of the term of an employment contract for a person working under the definite-term employment contract with the term of fewer than 12 months but his or her working capacity has not yet recovered; (iii) due to natural disaster, fire, dangerous epidemic, enemy sabotage or relocation, downsizing of production, business at the request of the competent State authorities, but the employer has sought all remedies but still forced to reduce the workplace; (iv) the employee is not present at the workplace after 15 days from the expiration of the period of suspension of the performance of the employment contract without any other agreement; (v) the employee reaches retirement age; (vi) the employee voluntarily

quits his or her job without a valid reason for 05 consecutive working days or more; and (vii) the employee provides dishonest information when entering into an employment contract, affecting the recruitment of the employee.

Hence, in the case that an employee is held in custody or temporary detention is not any of the cases in which the employer is entitled to unilaterally terminate the employment contract, the provision that the employer unilaterally terminates the employment contract in this case in the internal labour regulations will be considered contrary to the applicable regulations of law.

Pursuant to the applicable regulations of law, when an employee is detained or remanded, the parties can suspend the performance of the employment contract. During the above suspension period of performance of the employment contract, the employee is also not entitled to any salary and employment rights and benefits stated in the employment contract, unless otherwise agreed upon by the two parties or provided for by law.

The employer in such a case may consider other options for terminating the employment contract to suit each actual case and the provisions of the labour law.

Question 22. What should an enterprise do to handle the case where an employee uses fake diplomas to sign the employment contract?

Using a fake diploma to sign an employment contract is a prohibited act according to the labour laws. Accordingly, the employee's obligation is to provide truthful information to the employer about his or her full name, date of birth, gender, place of residence, education level, occupational skill level, health status confirmation and other issues directly related to the conclusion of the employment contract requested by the employer[69]. Thus, the use of fake diplomas of employees to enter

[69] Article 16.2 of the Labour Code 2019

into employment contracts is considered as providing fake information, false information about educational qualifications, occupational skill levels according to the provisions of the Labour Code 2019. In this case, the enterprise has two options to handle violations of employees as follows:

Firstly, regarding the rights of the employer in case the employee provides untruthful information according to Article 16.2 of the Labour Code 2019 when entering into an employment contract affecting the recruitment of the employee, the employer in this case will have the right to unilaterally terminate the employment contract. However, the employer should pay attention to the notification obligation[70], specifically:

i. At least 45 days for an indefinite-term employment contract;

ii. At least 30 days for a definite-term employment contract with a term from 12 months to 36 months;

iii. At least 03 working days for a definite-term employment contract with a term of fewer than 12 months, and for an employee who has been sick or injured for an accident and has been treated for 12 consecutive months under an indefinite-term Employment contract; or 06 consecutive months of treatment for persons working under definite-term employment contracts with a term of between 12 months and 36 months; or more than half of the term of an employment contract for a person working under a definite-term employment contract of fewer than 12 months but his or her working capacity has not yet recovered;

iv. For a number of specific industries, trades and jobs, the time limit for advance notice shall comply with the Government's regulations[71].

[70] Article 36.2 of the Labour Code 2019
[71] Article 7 of Decree 145/2020/ND-CP

Hence, the employer can unilaterally terminate the employment contract with the employee when detecting violations as in the above-mentioned case.

Secondly, the employer can apply the labour discipline[72] to the employee using a fake diploma. The handling of labour discipline for employees will be based on the internal labour regulations of the unit if the internal labour regulations contain provisions on acts of providing fake diplomas or providing untruthful information. In this case, the employer should note:

v. Regarding the prescription, the employer has 06 months from the date of the violation. Thus, the law stipulates that the employer has only 6 months from the date the employee and the enterprise sign the employment contract to detect and handle labour discipline for the use of fake diplomas by the employee. At the end of the above-mentioned prescription, the application of the handling of labour discipline to the employee may pose a risk to the employer when the decision to handle the labour discipline may be considered illegal. Therefore, in the event that the 6-month prescription of limitations expires, the employer should apply the form of unilateral termination of the employment contract If the employee does not want the employee to continue working for the enterprise.

vi. Regarding the order and procedures for handling labour discipline, if there is still a period of 06 months as analysed above, the employer can apply labour discipline measures, however, it is necessary to comply with the basic principles and procedures such as:

- The employer needs to prove the fault of the employee, with the participation of the representative organisation of the employee of which the employee being disciplined is a member, the employee is present and has the right to

[72] Article 6 of the Labour Code 2019

defend himself or herself, through a lawyer or the representative organisation of the worker'' defence (in the case of a person under 15 years of age, the participation of the legal petitioner must be involved), the handling of labour discipline must be recorded in writing[73].

- Employers need to establish the minutes of compilation and notify to employees and representative of organisations and legal representatives[74]. The employer needs to conduct collecting evidence to prove the faults of the employee and conduct a meeting to handle the labour discipline. At least 05 days before the meeting date, the employer needs to fully notify the relevant parties about the content, time and location of the meeting, in case the unidentified participants attend the meeting or out of the face, the employer still conducts the meeting to handle the labour discipline.

Hence, in the above cases, the enterprise can completely choose one of the two above-mentioned forms to apply to any employee who uses fake diplomas to sign employment contract. Any employee who is recruited based on qualifications, usually hold an important position and the addition of a diploma is an insignificant additional requirement with the actual working capacity of that employee. Or, there are also cases where the employee is holding business secrets, technology secrets, infringing on the intellectual property rights of the employer. Therefore, the consideration of how to handle the employee needs to be considered the option of continuing to maintain or needing to unilaterally terminate the employment contracts of the employee.

Question 23. If an employee arbitrarily leaves the job for 05 consecutive days or inconsecutive days without a legitimate reason, will an employer

[73] Article 122.1 of the Labour Code 2019
[74] Article 70.1 of Decree 145/2020/ND-CP

unilaterally terminate the employment contract or be disciplined for dismissal?

An employee who voluntarily takes 05 days off work without a legitimate reason may occur in one of the following cases:

1. Employee arbitrarily leaves work for 5 consecutive days without reason

In this case, there may be two legal consequences: (i) the employee may be disciplined for dismissal; or (ii) the employer unilaterally terminates the employment contract. Specifically:

i. Employees are disciplined for dismissal

Pursuant to the provisions of the Labour Code 2019, when an employee voluntarily quits his or her job for 05 cumulative working days within a maximum period of 30 days or 20 cumulative working days within a maximum period of 365 days from the first day of voluntarily quitting work without a legitimate reason, the employer has the right to apply the form of discipline of dismissal to that employee[75]. Legitimate reasons include natural disasters, fires, illness of self or family members certified by competent medical examination and treatment establishments and other cases specified in the enterprise's labour regulations.

When applying any form of handling labour discipline, especially for the highest form of dismissal, the employer must strictly follow the steps in the process of handling labour discipline as prescribed by the labour law and internal labour regulations of the enterprise.

ii. The employer unilaterally terminates the employment contract

[75] Article 125.4 of the Labour Code 2019

Also, according to the provisions of the labour law, the employer also has the right to unilaterally terminate the employment contract if the employee leaves without a legitimate reason for 05 consecutive working days or more[76]. In this case, the employer is not required to notify the employee about the termination of the employment contract because it is unnecessary, but a written notice to the employee about the termination of the employment contract is required[77]. However, in fact, if the employee has left for many days, it will be difficult for the employer to contact the employee via phone, residential address, etc.. Therefore, sending a notice in this case is often infeasible and costly for the employer, the employer should consider choosing a reasonable solution to avoid legal risks in this case.

2. Employee arbitrarily leaves work for 5 non-consecutive days without reason

In case the employee arbitrarily leaves work for many consecutive days but accumulates for 05 working days within a maximum period of 30 days from the date of starting to leave work without reason, the employer may consider handling labour discipline similar to case 1.(i) above.

In case the employee takes intermittent leave but not more than 05 days within a maximum period of 30 days or 20 working days cumulatively within a maximum period of 365 days from the date of voluntary leave without reason, this case does not have enough legal basis for the employer to apply the dismissal or unilaterally terminate the employment contract toward that employee. The employer in this case may consider applying a different form of labour law handling if the act of

[76] Article 36.1.e of the Labour Code 2019
[77] Article 45.1 of the Labour Code 2019

voluntary resignation is specified in the internal labour regulations of the enterprise.

Question 24. When entering into an employment contract with the elderly, what issues should enterprise pay attention to?

Elderly employees are quite special workers, so when organisations and enterprises sign employment contracts with them, it is necessary to pay attention to the relevant provisions of law related to the use of this object. Here are some notes on when the enterprises use and sign employment contracts with elderly employees:

Firstly, the type of employment contract that the employer can enter into with the elderly employee.

According to the Labour Code 2019, an employer can enter into an employment contract with an employee under any of the two types of employment contract: (i) an indefinite-term employment contract; and (ii) a definite-term employment contract. Pursuant to the above provisions, normally when an employment contract with a definite-term between the employer and the employee expires, and the employee continues to work, the two parties must enter into a new employment contract. If the two parties enter into a new employment contract which is a definite-term employment contract, they may sign only 01 additional contract and if the employee thereafter continues to work then an indefinite-term employment contract. However, for an elderly employee, the parties can agree to sign a definite-term employment contract many times or sign an indefinite-term employment contract depending on the needs of the parties. Thus, when employing an elderly employee, the employer may reach an agreement on entering into a number of definite-term employment contracts or sign an indefinite-term employment contract depending on the needs of the parties.

Secondly, the working time of elderly employees.

Because this is the special employment object, the labour law also stipulates more favourable terms for elderly employees. Previously, any elderly employee is entitled to reduce the number of working hours in a day or to apply the part-time work regime. However, according to the Labour Code 2019, instead of automatically being applied to reduce the number of working hours in a day or to apply the part-time work regime, an elderly employee has the right to reach an agreement with his or her employer to apply either of the above two methods. Accordingly, the elderly employee has the right to negotiate with the employer on reducing the number of working hours in a day (still receiving full salary) or applying part-time working regime (paid only for actual working time). Thus, it can be understood that this is a right (not an automatic right) of the elderly employee, and at the same time is not an automatic obligation of the employer and if the elderly employee requests, the employer must meet the negotiation and vice versa, if the elderly employee does not request an agreement to reduce the number of working hours, the employer may continue to apply the normal working time to that elderly employee. Currently, the labour law has no guidance on how to resolve in case the agreement between the employer and the elderly employee fails because the parties cannot determine how much reduced hours are reasonable and the reduction will be considered reducing working hours with full salary or applying part-time working regime but only being paid salaries for actual working time. In such a case, it can be inferred that the elderly employee is forced to continue working as usual in accordance with the provisions of the employment contract, internal labour regulations and collective labour agreements of the enterprise or requires the representative organisation of employees at the enterprise (if any) support the employees in negotiating with the employer or can complain to the competent labour management agencies.

Thirdly, the cases of not being allowed to sign employment contracts with elderly employees.

The labour law encourages the use of elderly employees to work in accordance with their health to ensure labour rights, at the same time, enterprises are prohibited from assigning elderly employees to heavy, toxic work. The labour law stipulates that an employer is prohibited from assigning an elderly employee to heavy, toxic or dangerous work or jobs or to particularly heavy, toxic or dangerous work or jobs which might have adverse effects on the health of elderly employee, unless safe working conditions are guaranteed. However, in certain cases, the State does not prohibit the use of elderly employees to do heavy work. Accordingly, in order to employ elderly employees to perform heavy, toxic or dangerous work which might have adverse effects on their health, elderly employees must fully satisfy the following conditions: (i) experience with seniority; (ii) having high professional skills and certificate and must be physically fit according to health standards issued by the Ministry of Health. In addition to the conditions that elderly employees must meet when doing heavy work, the employer also has certain constraints, specifically, employers may only employ elderly employees for no more than 05 years; there must be 01 employee who is not an elderly employee to work together with the elderly employee when performing work at a workplace and there must be an application from the elderly employee for voluntary work for the employer to consider before signing the employment contract. Thus, normally, the enterprise will not be allowed to hire elderly employee to do heavy, toxic or dangerous work which might have adverse effects on their health, except for the case of ensuring the working conditions as prescribed by law. If the employer fails to ensure safe working conditions and still requires the elderly employees to do heavy, toxic or dangerous work, a fine of between 10 and 15 million dong will be imposed.

Fourthly, the enterprise pays compulsory social insurance for elderly employee

The basis for determining whether an enterprise has to pay compulsory social insurance for an elderly employee or not will

depend on whether the elderly employee has received a pension or not. According to the provisions of law, pensioner must fully satisfy the following two conditions: (i) the employee has reached the prescribed retirement age; and (ii) the employee who has had full 20 years of paying compulsory social insurance premiums or more. Thus, an employee who fully satisfies the above two conditions will be considered an employee entitled to the pension. The enterprise needs to note whether the elderly employee working at the enterprise is eligible for pension so that the enterprise can determine the payment of compulsory social insurance for his or her. Accordingly, there are two possible cases as follows:

Case 1: Elderly employee is receiving pension

As analysed above, any elderly employee who is enjoying a monthly pension must reach the prescribed retirement age and have paid compulsory social insurance for 20 years or more. Any elderly employee who is enjoying monthly pensions must reach the prescribed retirement age and have paid compulsory social insurance for the full 20 years or more. The Law on Social Insurance 2014 stipulates that any person who receives pension, social insurance benefits and monthly allowances who are entering into employment contracts are not eligible to participate in compulsory social insurance. Accordingly, if an elderly employee is enjoying pension, the enterprise will not have to pay compulsory social insurance for him or her.

However, according to the Labour Code 2019, in case an elderly employee who is enjoying a pension works under an employment contract, in addition to the retirement regime, such an elderly employee is also entitled to a salary and other employment benefits in accordance with the provisions of the labour laws and employment contract. At the same time, the Labour Code 2019 also stipulates that instead of paying compulsory insurance, the employer must pay the employee an additional amount equivalent to the level of payment of compulsory social insurance, health

insurance and unemployment insuranceto the employer. Thus, the employer is not required to pay social insurance premiums for any elderly employee who is on pension but must pay the employee an amount equivalent to the level of the employer paying compulsory insurance for any other ordinary employees.

Case 2: Elderly employee who has not yet received pensions

Any elderly employee who has not yet received pensions are understood as those who do not meet the conditions for the period of social insurance payment as prescribed by law. The Law on Social Insurance 2014 stipulates that any employee who signs a employment contract with a term of a full 01 month is eligible to participate in compulsory social insurance. Therefore, if an elderly employee has not yet received a monthly pension but is working under an employment contract for a full 01 month or more, the employer is still responsible for paying compulsory insurance for him or her.

The enterprise should note that any elderly foreign employee who is receiving a pension in the country of which he or she is a citizen, he or she will not automatically be considered eligible to receive a pension according to the provisions of Vietnamese laws.

Question 25. If an employee arbitrarily leaves the job in 01 day without permission, does an employer has the right to not pay that day's salary? If yes, then what is the applicable law? When can an employer deducts an employee's salary?

It is a clear fact that if the employee does not work, the employer will not pay the salary, however, will the employer rely on any legal basis in the Labour Code 2019 to not pay the employee when they arbitrarily leave job in 01 day off or less than 04 days a year without permission or without a legitimate reason. Article 36.1 (e) of the Labour Code 2019 only stipulates that the employer has the right to unilaterally terminate the employment contract in case the employee voluntarily quits his or her job without a legitimate reason for 05 consecutive working days or

more. However, for the leave of less than 04 intermittent days, the employer will not be able to apply the above provisions to be able to unilaterally terminate the employment contract. Meanwhile, the labour laws force the employer to pay the employee the full salary as agreed in the employment contract. Meanwhile, many enterprises can only apply labour discipline to employees, and the application of this form requires the employer to apply a complicated and time-consuming procedure as required by law.

In the above situation, the employer should consider two matters for the basis on the application of the salary calculation and the form of salary payment. For the matter number one, salary calculation is the amount of money that the employer pays the employee as agreed to perform the job, including the salary according to the job or position, salary allowances and other employment benefits. This means that the employer has to clarify which could not be deduct from the salary. The second matter, the form of salary payment will be agreed upon by the parties in one of three methods according to time, product or contract. Thus, the assumption that needs to be made here is that the parties have agreed on the form of time-based salary payment. Because, pursuant to the other two forms, there will be no legal basis for the employer to manage the working time of the employee.

When considering time as the basis for salary calculation, the employee is entitled to salary according to his or her actual working time according to the month, week, day and hour as agreed in the employment contract. In this case, the employer needs to review all internal regulations related to working time to have a basis for calculating salaries and paying the employee. If there is not any detailed agreement on how to calculate hourly salary according to the daily salary paid for a working day, the employer must comply with the agreement in the employment contract and must pay the employee monthly salary in full.

Hence, in this case, the employer must send a notice to the employee and confirm that the above leave of the employee is considered as the employee's acceptance of the unpaid leave.

LIST OF GLOSSARIES

1 **[Contractor's] Foreman[78]:** means the person acting as an intermediary taking the work between entities having a demand for hiring employees and sub-leased employees. In case the [contractor's] foreman fails to pay wages in full or at all and fails to ensure other interests of the employees, then the employer being the principal is responsible to make payment of wages and ensure the interests of employees. Simultaneously, the employer shall have the right to require compensation from the [contractor's] foreman, or to request a competent State body to resolve the dispute in accordance with the law.

a. "Consolidation of enterprise" is a term used to refer to the case in which two or several enterprises (collectively referred to as consolidating enterprise) may merge into a new enterprise (collectively referred to as consolidating enterprise), and at the same time terminating the existence of the consolidated enterprises.

b. "Division of an enterprise" is the term used to refer to the case where a limited liability company or a shareholding company proceeds to divide its shareholders, members and properties to establish two or more new enterprises when belonging to one of the cases prescribed by the Vietnamese Law on enterprises.

c. "Merging of enterprise" is a term used to mean that one or several enterprises (collectively referred to as a merged enterprise) may merge with another enterprise (referred to as the merging enterprise) by transferring totally its sets of assets, rights, obligations and legitimate interests to the merged enterprise, and at the same time terminating the existence of the merged enterprise.

d. "Separation of enterprises" is the term used to refer to cases where a limited liability company or a shareholding company proceeds to separate by transferring a part of its existing assets, rights and obligations (collectively referred to as a separated

[78] Reference: "The [contractor's] foreman fails to pay wage" on the website of Hanoi Bar Associations dated 29th March 2019_ https://hoiluatsuhanoi.com/cai-thau/ ; Article 100 of the Labour Code 2019

company) to establish one or several limited liability enterprises, new joint stock enterprises (collectively referred to as separated enterprises) without terminating the existence of the separated enterprise.

2 **Allowances (wage)**[79]**:** means the monetary amount used to make up for working conditions, work complications, living conditions and the necessity of labour attraction that is not taken into account or not adequately included in the wage corresponding to the tasks or positions on the pay scale. For example: working under arduous, harmful conditions; work that requires professional skills and knowledge; working in remote, expensive or disadvantaged areas; unattractive work.

3 **An addendum to an employment contract**[80]: constitutes a part of such employment contract and has the same validity as the employment contract. An addendum to an employment contract may elaborate in detail or amend or supplement some of the articles of the employment contract, but not amend the term of the employment contract. In case there is a difference in the same issue between that of the addendum and that of the employment contract, the latter will prevail.

3.1 **Apprentices**: means subjects joining vocational training courses at the enterprise in order to train him or her at the workplace.

3.2 **Apprenticeship in order to work for the employer**[81]: means the employer recruits a worker to train him or her at the workplace. The duration of an apprenticeship shall be based on the training program at each level in accordance with the Law on Vocational Education

4 **Authorised representative**[82]**:** means an individual or a legal entity acting in the name and for the benefits of the principal enters into and performs civil transactions through the authorisation.

[79] Article 3.1.b of Circular 23/2015/TT-BLDTBXH
[80] Article 22 of the Labour Code 2019
[81] Article 61.1 of the Labour Code 2019
[82] Article 138.1 of the Civil Code 2015

5 **Citizen's residence** [83] : the place is their permanent or temporary residence. Each citizen is only allowed to register for permanent residence in a lawful place of residence and a permanent residence. Lawful residence may be under the ownership of or used by the citizens, or be leased, lent, or permitted to stay by State authorities, organisations or individuals as prescribed by the laws. For lawful residence rented, borrowed or accommodated by individuals or organisations in cities which are under the central government, the average area must be assured as prescribed by the City People's Council

6 **Collective bargaining**[84]**:** means negotiation and reaching an agreement between one party being one or more organisations representing employees with one other party being one or more employers or organisations representing employers, aimed at formulating labour conditions and provisions on the relationship between the parties and formulating a progressive, harmonious and stable employment relationship.

7 **Collective labour agreement** [85] **:** means an agreement reached via collective bargaining and entered into [signed] by organisation representing the employers and organisation representing the employees in writing.

8 **Collective labour dispute**[86]**:** means a dispute about the rights, obligations and interests arising between one or more organisations representing employees on the one hand and the employer or one or more organisations of the employer on the other hand during the process of establishing, implementing or terminating the employment relationship; [or] a dispute between organisations representing employees.

9 **Collective welfare benefits:** means the benefits that the employers offer, except mandatory benefits as prescribed by law, to encourage the spirit of working and retaining employees. These benefits depend on policy and economy and the employer's attention to the employees such as support

[83] Article 5.1 of Decree 31/2014/ND-CP
[84] Article 65 of the Labour Code 2019
[85] *Article 75.1 of the Labour Code 2019*
[86] Article 179 of the Labour Code 2019

for corporate activities, holidays, New Year holidays, Anniversaries, regular and irregular allowances, family affairs allowances, v.v.

10 **Conclude a new employment contract**[87]: means the employer concludes a new employment contract to replace the expired employment contract in case the employee is still working. In the common term for Human resource department used as renew, resign.

11 **Criteria for assessing the work completion**[88]**:** written issued by the employer after consultation with the representative organisations of employee collectives at the enterprise, in which they specify the criteria for assessing the work completion and is used as a basis for assessing the completion of work under the employment contract of the employees.

12 **Dangerous epidemics**[89]**:** is the occurrence of an infectious disease with the number of infected people exceeding the normally estimated number of infected people in a defined period in a certain area.

13 **Deferral of wage increase**[90]**:** means a form of penalty that under the decision of the employer, the term of a wage increase of the employee shall be suspended in comparison with the term stated in the employment contract, collective labour agreement or under the enterprise's internal policies, caused by the employee committing a violation of content in relation to labour discipline including regulations governing compliance with time, technology, and management of business and production in the internal labour regulations. The application term of such a form of a penalty shall not exceed 06 months.

14 **Definite term labour**[91]**:** means a contract in which the employer and the employee fix the term and the time of termination of the validity of the employment contract which must not exceed thirty-six (36) months from the effective date of the employment contract.

---

[87] Article 20.2 of the Labour Code 2019
[88] Article 12.1 of Decree 05/2015/ND-CP
[89] Article 2.13 the Law on Prevention and control of infectious diseases 2007
[90] Reference: The Book of Frequently Asked Questions in the Labour Field Lawyer Nguyen Huu Phuoc Question 122
[91] Article 20.1(b) of the Labour Code 2019

15 **Democratic regulations at the grassroots level:** means provisions on the rights and responsibilities of employees and employers, an organisation representing the employees with contents: the employer must be public; the employers are allowed to know, give opinions, decide, inspect and supervise contents, organise dialogues at the workplace, the conference on labour and other forms of democratic implementation at another workplace.

16 **Demotion**[92] **:** means a form of penalty where an employer issues a decision making an employee who is holding a certain position in the business cease to hold that position due to his or her breach of laws or the internal rules of the business but is not the fact that an employer decides to make an employee hold a position being lower than his/her current position.

17 **Discrimination in labour** [93] **:**means discrimination, exclusion or preference based on race, colour, national origin or social origin, ethnicity, sex, age, maternity status, marital status, religion, belief, political belief, disability, family responsibility or on the basis of HIV infection status, or because of the establishment, accession or activities in a trade union or employees' organisation at the enterprise adversely affecting equality regarding employment opportunity or trade or profession.

18 **Discussion at the workplace**[94]**:** means sharing information, consulting, discussing and exchanging opinions between the employer and the employees or organisation representing the employees on issues relevant to the rights, benefits and interests of the parties in the workplace, aimed at strengthening understanding, cooperation and mutual effort towards solutions solving problems in the joint interest [mutual benefit].

19 **Dismissal**: means the right of the employer to terminate the employment contract prior to the expiry of its term and completely depends on the

[92] Reference: The Book of Frequently Asked Questions in the Labour Field Lawyer Nguyen Huu Phuoc Question 133
[93] Article 3.8 of the Labour Code 2019
[94] Article 63.1 of the Labour Code 2019

employer's will. At the same time, it is the highest labour disciplinary measure due to violations of the labour law of the employees.

20 **Dividing, separating, merging, consolidating** [95] **:** are forms of reorganisation of enterprises.

21 **Economic crisis or recession**[96]**:** a decrease in the real gross domestic product over 02 or more quarters in a year, or a significant decline in economic activity over a long period of time for the economy to be in an increasingly serious situation.

22 **Economic reasons** [97] **:** cases such as crisis or economic recession, implementation of State policies when restructuring the economy or due to fulfilling international commitments.

23 **Elderly employee**[98]: means a person who continues working after the age of retirement as prescribed by the laws. The retirement age for employees will be adjusted in accordance with a roadmap for male employees who reach a full 62 years of age in the year 2028 and for female employees who reach a full 60 years of age in the year 2035.

24 **Employee reaches the retirement ages**[99]**:** means an employee who satisfies the conditions on the period for which social insurance contributions were paid as stipulated in the law on social insurance is entitled to pension benefits upon reaching the retirement age.

25 **Employee**[100]: means a person working for an employer pursuant to an agreement, who is paid wage by the employer and is subject to management and supervision by the employer

26 **Employer**[101]: means an enterprise, agency, organisation, co-operative, family household or individual who hires (or) employs a worker to work

[95] Articles 4.25, 192, 193, 194 and 195 of the Law on Enterprises 2014
[96] Excerpt from Wikipedia:
https://vi.wikipedia.org/wiki/Suy_tho%C3%A1i_kinh_t%E1%BA%BF;
https://vi.wikipedia.org/wiki/Kh%E1%BB%A7ng_ho%E1%BA%A3ng_kinh_t%E1%BA%BF_(Marx)
[97] Article 13.2 of Decree 05/2015/ND-CP
[98] Article 148.1 of the Labour Code 2019
[99] Article 169.1 of the Labour Code 2019
[100] Article 3.1 of the Labour Code 2019
[101] Article 3.2 of the Labour Code 2019

for such employer pursuant to an agreement; if the employer is an individual, then he or she must have full legal capacity for civil acts.

27 **Employment relationship**[102]: means social relations arising during the hiring and employment of workers and during wage payment as between employees, employer, organisations representing the parties and the competent State agencies. Employment relationship comprises individual [personal] employment relationship and collective employment relationship.

28 **Employment services organisations**[103]: means organisations having the function of providing consultancy, introducing jobs and providing vocational training to workers; of supplying and recruiting labourers at the employers' request; and of collecting and providing information on the labour market and implementing other duties in accordance with the law.

29 **Enterprise**[104]: means an organisation having its own name, having assets and a transaction office, and registered for establishment in accordance with law for business purposes.

30 **Extend the employment contract**[105]: the employee and the employer reach the new employment contract by signing before the definite-term employment contract is expired.

31 **Force majeure**[106]**:** means an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and admissible measures being taken.

32 **Gender equality**[107]**:** indicates that men and women have equal positions and roles and are given equal conditions and opportunities to develop their capacities for the development of their community and family, while also equally enjoying the achievement of such development.

[102] Article 3.5 of the Labour Code 2019
[103] Article 14.1 of the Labour Code 2012
[104] Article 4.7 of the Law on Enterprises 2014
[105] Articles 20 and 22 of the Labour Code 2019
[106] Article 156 of the Civil Code 2015
[107] Article 5.3 of the Law on Gender Equality 2006

Additionally, gender equality in the labour field indicates that men and women are equal in terms of qualifications and age in recruitment, are treated equally in workplaces regarding work, wages, pay and bonus, social insurance, labour conditions and other working conditions, and are equal in terms of qualifications and age when they are promoted or appointed to hold titles in the title-standard professions[108].

33 **Go-slow strike[109]:** means a non-official form of a strike to claim the employees' rights in the case they behave so that although the employees do not leave the workplace, they do not work or work moderately.

34 **Health insurance[110]:** means a mandatory form of insurance that shall be applied to entities under the Law on Health Insurance for health care but non-profit purposes organised by the State.

35 **Heavy, toxic or dangerous work:** means work that has characteristics regarding labour conditions being heavy, toxic or dangerous, adversely affecting the health of employees or being at high risk of affecting the lives of employees e.g. work for employees that involve great heights, work at sea, a muddy workplace, static working posture, frequent contact with toxic gas (HF) or chemicals, working in a radioactive environment or under the impact of radiation rays, constantly moving, stressful works, under the impact of noise and tremors in high intensity, etc. and shall fall within the list of arduous, hazardous and dangerous occupations under Circulars, Decisions of the Ministry of Labour, War Invalids and Social Welfare, and official correspondence issued by insurance competencies from time to time.

36 **Hourly wage[111]** means the wage paid to employees with paid wages calculated by reference to time the employees actually spent on the job on an hourly basis for their employment by employers and is calculated on

[108] Article 13 of the Law on Gender Equality 2006
[109] According to the Institute of Linguistics, Vietnamese Dictionary, Da Nang Publishing House - Canter for Dictionary Learning
[110] Article 2.1 of the Law on Health Insurance 2008 amended, supplemented by Article 1.1 of Law on amendments to some articles of the Law on Health Insurance No. 25/2008/QH12 2014
[111] Article 22.1(d) of Decree No. 05/2015/ND-CP being guided by Article 4.1(d) of Circular No. 23/2015/TT-BLDTBXH

the basis of the daily wage rates divided by the number of normal working hours in a day under the Labour Code 2019.

37 **Indefinite-term employment contract**[112]: means a contract in which the employer and the employee do not fix neither the term nor the time of termination of the validity of the employment contract.

38 **Individual labour dispute** [113] **:** means a dispute about the rights, obligations and interests arising between the employee and the employer during the process of establishing, implementing or terminating the employment relationship; between an employee and an enterprise or organisation sending the employee to work overseas pursuant to a contract; and between a sub-leasing employer and the sub-leased employee.

39 **Industry collective bargaining**[114]**:** means negotiating and reaching an agreement between one party being the industry trade union with one other party being an industry level organisation representing the employer, aimed at formulating labour conditions, provisions on the relationship between the parties and formulating a progressive, harmonious and stable employment relationship.

40 **Industry collective labour agreement**[115]**:** means a written agreement between the labour collective and the employer on working conditions which were reached via collective bargaining, therein, representatives competent to sign such an agreement are the Chairman of the industry union on behalf of the collective labour party and the representative of the organisation representing employers which participated in industry collective bargaining, on behalf of the employing party.

41 **Internal labour regulations:** is a document issued by the employers to maintain order, including general regulations of conduct between the employers and the employees, and is legal basis for disciplinary actions, contributing to improving labour productivity of the employees.

[112] Article 20.1.(a) of the Labour Code 2019
[113] Article 179 of the Labour Code 2019
[114] Article 65 and 72.3 of the Labour Code 2019
[115] *Article 73.1 and 87.1 of the Labour Code 2012*

Simultaneously, the internal labour regulations also strictly regulate the legal rights of the employees, which is the legal basis for the employees to protect their rights.

42 **Interns[116]:** means students who are studying at universities, colleges, etc. and even graduated students who do not have or have little working experience applying to intern at enterprises in order to learn and practice studied knowledge.

43 **Internship**: means the activities of interns who are helped and facilitated by enterprises by letting them access to practical jobs and to practice appliance of the knowledge learned at universities.

44 **Job loss allowance[117]:** is the amount paid by an employer to an employee who has worked for the regular employer for a full 12 months or more and lost his or her job due to structure, technology or economic reasons, or consolidation, merging, splitting and separating enterprises and cooperatives as prescribed by the labour laws, the job loss allowance is one month's wages for each working year, but at least two (02) months' salary. The length of a working period for calculating the job loss allowance means the total working time the employee actually worked for the employer minus the period for which the employee participated in unemployment insurance and minus the working period for which the employer has already been paid a severance allowance or job loss allowance. Wages for the purpose of calculating the job loss allowance for job loss means the average wage pursuant to the employment contract for the six (06) consecutive months immediately preceding job loss of the employee.

45 **Labour arbitration Councils[118]:** means an agency established by the decision of the chairman of the provincial people's committee, having the function of reconciling individual labour disputes, labour disputes about rights and labour disputes about the interests in cases prescribed by laws. Such Council shall be comprised of representatives of the professional

[116] See also Question No. 9 on Internship Contract in the Labour Law FAQs of the Author Nguyen Huu Phuoc Esq.
[117] Articles 44, 45, 49, 56.5 of the Labour Code 2012 and Article 47 of the Labour Code 2019
[118] Articles 185, 187 to Article 197, Article 203 of the Labour Code 2019

agency for labour under the provincial people's committee, representatives of the provincial labour union and persons nominated by organisations representing employers in the province after such organisations have reached an agreement. The number of members, criteria and the operational regime of labour arbitrators, organisation and operation of the labour arbitration Council shall be undertaken under the labour laws and other Government regulations.

46 **Labour coercion**[119]**:** means using force, threatening to use force or using other tricks to force an employee to work or do a job contrary to his or her will

47 **Labour conciliation** [120] **:** means an Alternative Dispute Resolution ("ADR") is performed by a labour conciliator outside the court. Except for the labour disputes which it was not mandatory to resolve with the conciliation procedure[121]. Labour conciliation instruction on the basis of respect for the rights and interests of the two disputing parties, and respect for the public interest of society and conformity with the law.

47.1 **Labour conciliators**[122]**:** means a person appointed by the chairman of the provincial people's committee in order to conciliate a labour dispute or a dispute about a vocational training contract; and to assist the development of the employment relationship on the date on which such conciliator receives the request from a party requesting dispute resolution or from a professional agency for labour under the people's committee.

48 **Labour discipline**[123]: is the term used to refer to the regulations on complying with the timetable, technology and executive management of business and production as set out in the internal labour regulations issued by employers and stipulated by law.

[119] Article 3.7 of the Labour Code 2019
[120] Articles 184, 188 and 193 of the Labour Code 2019
[121] Article 32 of the 2015 Civil Procedure Code
[122] Articles 184, 188 and 193 of the Labour Code 2019
[123] Article 117 of the Labour Code 2019

49 **Labour dispute about interests**[124]: means a dispute about interests arising between Parties during the process of establishing, implementing or terminating the employment relationship or collective labour dispute about benefits, or a dispute arising about a request of the labour collective to establish new labour conditions as compared with provisions of the law on labour, of a collective labour agreement, of internal labour rules or of other rules or lawful agreements during the process of negotiation between the labour collective with the employer.

50 **Labour dispute about the rights, obligations and interests arising**[125]**:** means a dispute between the parties during the process of establishing, implementing or terminating the employment relationship; [or] a dispute between organisations representing employees; [or] a dispute arising from relationships directly relevant to the employment relationship.

51 **Labour inspection**[126]**:** means the consideration, evaluation and handling undertaken by competent State agencies in the labour field in order to ensure that employers and the employees observe national labour laws and labour standards. The overall aims are to improve protection for the employees.

51.1 **Labour outsourcer**[127]**:** refers to an enterprise that provides labour outsourcing services as prescribed, hiring employees and signing the employment contracts with them but such employers do not directly use the employees but supply them for other employers.

51.2 **Labour outsourcing party**[128]**:** refers to an enterprise, agency, organization, cooperative, household or individual that has the need to use employees for a definite term but does not directly recruit employees, however hire employees from the outsourcers.

52 **Labour outsourcing**[129]: means an employee who entered into an employment contract with an employer namely a labour outsourcing

[124] Article 3.9 of the Labour Code 2012
[125] Article 179 of the Labour Code 2019
[126] "*Glossary of Labour Administration and Related Terms*"_ *Robert Heron and Liesbeth Unger Page 14*
[127] Article 3.1 of Decree 29/2019/ND-CP
[128] Article 3.2 of Decree 29/2019/ND-CP
[129] Article 52.1 of the Labour Code 2019

enterprise [being the first employer] is thereafter transferred to work for another employer and is subject to management by such other employer but maintains the employment relationship with the first employer.

53 **Labour rates[130]:** means defining the amount of work or the number of products made by an employee or some employees in a unit of time or regulating the amount of time deemed necessary to complete a unit of work or product. Labour rates are used as the basis for paying wages over employees' paid wages calculated by reference to products produced and are applied to each working step, each stage and to the whole manufacturing process of products or services on the basis of labour being organised in a scientific and logical manner.

54 **Labour standards**: means principles and standards relating to labour and relevant issues under the forms either of law or written recommendations which are promulgated by trusted labour organisations or competent State authorities.

55 **Labour usage plan:** is a document that the employer must develop when conducting structural or technological changes for economic reasons, or merging, consolidating, dividing or separating enterprises or cooperatives, transfer of property ownership, or the right of property using that affects two or more employees. In which, regulations on the list and number of employees continue to be used; employees are retrained to continue using; retired employees; employees transferred to part time work; the employee must terminate the employment contract; rights and obligations of employers, employees and relevant parties in the implementation of the labour usage plan.

56 **Legal representative of an enterprise** [131] : means an individual representing the enterprise to exercise the rights and perform the obligations arising out of transactions of the enterprise, and representing the enterprise to act as plaintiff, defendant or person with related interests

[130] Article 8 of Decree No. 49/2013/ND-CP supplemented by Article 1.1 of Decree No. 121/2018/ND-CP and the Article named "What is the labour rates? Summary of information about the labour rates?" on the website: https://vnresource.vn/hrmblog/dinh-muc-lao-dong-la-gi/

[131] Article 13.1 of the Law on Enterprises 2014

and obligations in arbitration proceedings or courts and to exercise other rights and perform other obligations in accordance with the law.

57 **Loss of capacity for civil acts**[132]: in case a person is incapable of being aware of or controlling his or her acts due to any mental or other illness and a court shall issue a decision declaring the former person as a person who has lost the capacity for civil acts based on the conclusion of forensic mental examination.

58 **Manager of an enterprise**[133]: means a manager of a company or a manager of a private enterprise, comprising of owner of a private enterprise, a unlimited liability partner, chairman of a members' council, member of a members' council, chairman of a company, chairman of a board of management, member of a board of management, a director or general director, and any individual holding another managerial position, who is authorised to enter into transactions that the company is a contracting party in the name of the company as stipulated in the company's charter.

59 **Material responsibility**: is the kind of responsibility which is performed by the property of the violating employees.

60 **Minimum area wage rates**[134]**:** means the lowest wage rates at the time stated as the basis for any arrangement between enterprises and employees on wage and wage payment which is regulated by the Government that the employees in compasses located in each region and not being agencies, organisations, professional entities of the Communist Party of Vietnam, the Government, State-sponsored socio-political and social organisations and associations at all levels, and armed forces.

61 **Minor employee**[135]: an employee under 18 years of age.

62 **Missing**[136]: a decision issued by the Court declaring at the request of a person with related rights and interests in case of a person disappearing

[132] Article 22 of the Civil Code 2015
[133] Article 4.18 of the Law on Enterprises 2014
[134] Article 5 of Decree No. 90/2019/ND-CP, Article 1, Article 2 of Decree No. 38/2019/ND-CP
[135] Article 143.1 of the Labour Code 2019
[136] Article 68 of the Civil Code 2015

for 02 consecutive years or longer and there is no reliable information on whether such person is still alive or dead even though notification and search measures have been fully applied in accordance with the civil procedure law.

63 **Monthly wage[137]:** means the wage paid to employees with paid wages calculated by reference to time actually spent on the job on a monthly basis for their employment by employers and is calculated on the basis of employment contract.

64 **Night work[138]:** means a case that employees work in the period of time from 10 pm until 6 am of the following day and shall be paid an additional minimum of 30% of the wage calculated at the wage unit price or wage for such work conducted during normal day time. According to the definition of ILO, according to international standards, night work can be understood that employees working between midnight and 5 am. However, hours being considered night work are determined in accordance with national laws and practice[139].

65 **Organisation representing the employees at the grassroots level[140]:** means an organisation established on a voluntary basis by the employees at any employing unit, aimed at protecting the lawful and proper rights and interests of the employees in the employment relationship via collective bargaining or via other forms stipulated in the labour law. Organisations representing the employees at the grassroots level comprise the grassroots [enterprise] trade union and an employees' organisation at the enterprise

66 **Organisation representing the employer [141]** : means a lawfully established organisation which represents and protects the lawful rights and interests of the employer in the employment relationship.

[137] Article 22.1(a) of Decree No. 05/2015/ND-CP being guided by Article 4.1(a) of Circular No. 23/2015/TT-BLDTBXH
[138] Articles 98 and 106 of the Labour Code 2012
[139] "Glossary of Labour Administration and Related Terms" Robert Heron and Liesbeth Unger_Page 16
[140] Article 3.3 of the Labour Code 2019
[141] Article 3.4 of the Labour Code 2019

67 **Part time working:** means an employee who works for less than the usual daily, weekly or monthly working hours as prescribed by labour laws, collective bargaining agreements or internal labour regulations.

68 **Pay rate increase**[142]**:** means the case that the pay rate within each title or group of titles stated in wage scales of an employee increases; the step within each rank of the title stated in wage tables of an employee increases; when such an employee meets conditions stated in the regime on promotion under his or her employment contract, collective labour agreements or stated in the internal rules of the employer.

69 **Pay rises**[143]**:** means the case that the wage rates being paid to employees under their signed employment contracts increases when such employees meet conditions stated in the regime on wage increases under their employment contracts, collective labour agreements or stated in the internal rules of the employers.

70 **Place of permanent residence**[144]: means a place where a citizen lives regularly, stably and permanently at a given locality and has registered his or her permanent residence.

71 **Place of temporary residence**[145]**:** means a place other than the registered place of permanent residence where a citizen lives and has registered his or her temporary residence.

72 **Prescriptive period for complaining**[146]**:** means the period for filing the first complaint is 180 days after the person filing the complaint receives or perceives the decision or acts of an employer, of an organisation or individual engaging in vocational education, of an enterprise or organisation providing Vietnamese guest worker programs, of an employment service provider or an organisation involved in creating employment for workers, or of an organisation in charge of holding

[142] Article 103 of the Labour Code 2019
[143] Article 103 of the Labour Code 2019
[144] Article 12.1 of the Law on Residence 2006
[145] Article 12.1 of the Law on Residence 2006
[146] Article 7 Decree 24/2018/ND – CP

examination and issuing national-level vocational certificates that he/she deems unlawful.

73 **Prescriptive period for suing:** means the time limit as prescribed by the laws; when such time limit expires, the suing right of litigant shall be lost.

74 **Probationary contract**: means a document of reaching an agreement on a probationary period of work and the rights and obligations of the two parties within that period.

75 **Probationary period of work:** means an agreement on a probationary period of work for an employee and the rights and obligations of the two parties within that period so that the employer may assess the employee's ability and expertise and the employee can consider the working environment and nature of work before the two parties officially enter into employment relationship through entering into an employment contract.

75.1 **Providing practical training to a trainee in order to work for the employer**[147]: means the employer recruits the trainee to guide him or her in job training and practical training, depending on the particular work or job at the workplace. The duration of the practical training must not exceed 03 months

76 **Reassignment of another work**[148]**:** if there are unexpected difficulties due to a natural disaster, fire, dangerous epidemic, application of measures to prevent or remedy a labour accident or occupational disease, power or water breakdown, or due to production and business requirements, the employer has the right to temporarily assign an employee to do work other than that specified in his or her employment contract

77 **Reduction of working capacity**[149]**:** means the health status of a normal employee suffering a decrease in comparison with his or her previous health status due to reasons such as sickness, labour accidents or other accidents, occupational disease etc., or means cases that the health status

[147] Article 61.2 of the Labour Code 2019
[148] Article 29 of the Labour Code 2019 and Article 8 of Decree 05/2015/ND-CP
[149] *Articles 145.3 and 178.1 of the Labour Code 2012*

of disabled workers is worse in comparison with the health status of a normal employee being same-gender and being their contemporaries making them difficult to enter into employment relationship.

78 **Representation**[150]: means a person acting in the name and for the benefits of the principal enters into and performs civil transactions, including:(i) the person be appointed, requested by the principal[151]; (ii) father, mother; (iii) guardian; and (iv) the person appointed by a court.

79 **Resign the employment contract**[152]: in case of the employment contract is declared wholly invalid because it was signed contrary to authority, the employee and the employer's authorised representative shall re-sign the employment contract.

80 **Rest breaks during working hours**[153]**:** means employees are entitled to a break during working hours in a certain period stated in the internal labour regulations of employers on the basis of complying with the labour laws that shall not be broken at work according to the characteristics of the jobs, rest periods necessary for physiological needs of humans, a rest period of 60 minutes every day for female employees having children under 12 months of age, a rest period of 30 minutes every day for menstruating female employees or another rest period under the laws.

81 **Rest breaks in order to transfer between shifts**[154]**:** means that employees are entitled to a break between consecutive shifts regardless of the fact that such employees work overtime during normal day time or on weekly days off or holidays under the labour laws. According to the

[150] Articles 134.1 and of 136 of the Civil Code 2015
[151] Article 135 of the Civil Code 2015
[152] Article 51.2 of the Labour Code 2019
[153] Article 108 of the Labour Code 2012, Articles 3 and 5 of Decree 45/2013/ND-CP, Response of the Ministry of Labour, War Invalids and Social Affairs in the Article "Shall it be calculated in paid working hours" published on the online newspaper of the Government of the Socialist Republic of Vietnam dated 13rd November 2017_ http://baochinhphu.vn/Tra-loi-cong-dan/Co-duoc-tinh-vao-thoi-gian-lam-viec-huong-luong/321744.vgp
[154] Article 110 of the Labour Code 2019 and taking reference from the Response of the Ministry of Labour, War Invalids and Social Affairs in the Article "The time of rest breaks in order to transfer between shifts of employees" published on the online newspaper of the Government of the Socialist Republic of Vietnam dated 06 May 2019
http://baochinhphu.vn/Tra-loi-cong-dan/Thoi-gian-nghi-chuyen-ca-cua-nguoi-lao-dong/365142.vgp

labour laws of Vietnam, employees working on shifts shall be entitled to a break of at least 12 hours before moving to another shift.

82 **Restructure**: Merging, dissolution of one or more parts of an enterprise or authority, or a change in product structure resulting in less employment.

83 **Retirement age**[155]**:** means age stipulated by each specific group of employees (e.g. male employees, female employees, employees whose ability to work is reduced, employees performing particularly heavy, toxic or dangerous work etc.) being used as the basis for determining whether employees fully satisfy the conditions for a pension under the Law on Social Insurance.

84 **Sanctioning of an administrative violation**[156]**:** means that a person with sanctioning competence imposes a sanction(s) on and applies a remedial measure(s) to an administrative violator in accordance with the law on sanctioning of administrative violations.

85 **Seasonal work:** means a fixed job but the working time of a worker is limited and dependent on the fluctuation of labour demand at different times of the year. For example, working time is limited to the harvest time of agricultural production or the peak seasons in the tourism and garment industry.

86 **Severance allowance**[157]**:** is the amount paid by an employer to an employee upon termination of the employment contract in case the employee satisfies the conditions for the subjects who are entitled to a severance allowance as prescribed by the labour laws. The employer is responsible to pay a severance allowance to any employee who has regularly worked for the employer for a full twelve (12) months or more, and the severance allowance is one half of one month's wage for each year of employment, except where [the employee] satisfies the conditions for entitlement to a pension and except in the case the employee arbitrarily leaves the job [gives up his or her job] without a satisfactory explanation

[155] Article 169 of the Labour Code 2019
[156] Article 2.2 of the Law on Handling of Administrative Violations 2012
[157] Articles 42, 48 and 56.5 of the Labour Code 2012 and Article 46 of the Labour Code 2019

for a period of at least five (05) consecutive working days. Wages for the purpose of calculating the severance allowance means the average wage pursuant to the employment contract for the six (06) consecutive months immediately preceding retrenchment of the employee.

87 **Sexual harassment in the workplace**[158]: means any act of a sexual nature by any person to another person at the workplace without the latter's wish or consent. Workplace means any place where an employee actually works pursuant to the agreement with or assignment by the employer.

88 **Social insurance**[159]**:** means the guarantee to substitute or partially offset an employee's income that is lost or reduced due to his or her sickness, maternity, labour accidents, occupational disease, retirement or death, on the basis of his or her contributions to the social insurance fund.

89 **Specific job with a duration of fewer than 12 months:** means a job whereby the employee is obliged to complete a certain job at the employer's request and upon completion, the employee has to hand over to the employer the results of such work with a duration of fewer than 12 months.

90 **Specific occupations:** labour occupations that require specific physical, mental and psychophysical characteristics.

91 **Staff**: means a common way of calling for workers in the modern market economy in agencies and organisations, sometimes used for low-level officials in an organisation. In essence, this is an employee in the term jurisprudence.

92 **Statutory pay rate**[160]**:** means the wage rate used as the basis from time to time for calculating the wage rate in wage tables, allowance rate, travel expenses, subsistence allowance, contributions, benefit regimes under the laws for civil servants and State employees, employees on payrolls and employees who have worked in agencies, organisations, professional

[158] Article 3.9 of the Labour Code 2019
[159] Article 3.1 of the Law on Social Insurance 2014
[160] Article 3 of Decree No. 38/2019/ND-CP

entities of the Communist Party of Vietnam, the Government, state-sponsored socio-political and social organisations and associations at all levels, and armed forces. Such a rate has changed year over year under Government regulations.

93 Strike[161]: means a temporary and voluntary cessation of work organised by the employee collective aimed at achieving demands during the process of resolution of a labour dispute, and where the organisation representing the employees with the right to conduct collective bargaining is one of the parties to the collective labour dispute which organises and leads the strike.

94 Subsidies (wage)[162]: means the monetary amount an employee is granted when he or she falls into a state of none or temporary suspension of employment, on the basis of the amount of money such employee has fulfilled the insurance obligation during the working period. Depending on each subject, the employee is entitled to different benefits which will be paid by the social insurance agency.

95 Technological change: is a change in part or the whole of production, business equipment or advanced technological processes in order to increase productivity, quality and efficiency of the production process or to create a new product or service to serve the market.

96 Technology secret[163]: refers to a solution, process or information that is gathered and obtained from research, manufacturing and trading, and is the decisive factor in determining the quality and competitive ability of technology and technological products; with or without accompanying instruments and facilities to convert resources into products.

97 Temporary residence card [164] : means a document issued by an immigration authority or a competent authority of the Ministry of Foreign

[161] Article 198 of the Labour Code 2019
[162] Refer to the link https://danluat.thuvienphapluat.vn/phan-biet-tro-cap-va-phu-cap-166236.aspx
[163] According to the Law on Technology Transfer 2017, it is not clear how technology secrets are recognized, but the recognition of technologies in Article 2 of this Law.
[164] *Article 3.13 of the Law Entry, Exit, Transit, and Residence of Foreigners in Vietnam 2014*

Affairs of Vietnam to a foreigner who is permitted to reside in Vietnam for a certain period of time and has the same validity as a visa.

98 **Temporary suspension of work**[165]**:** indicates an employer issuing a decision suspending the work of an employee within a specified period of time (being a maximum of 15 calendar days for normal cases and not exceeding 90 calendar days for cases in relation to finance or business secrets) during the disciplinary process for breaches committed being complex in nature and it is considered that any further work carried out by the employee may jeopardise the investigation.

99 **The collective bargaining Council**[166]**:** means an organisation operating within a specified period of time, established by the decision of the provincial people's committee as per the request from multi-enterprise collective bargaining parties on the basis of consensus to conduct such bargaining. The provincial people's committee being petitioned is the provincial people's committee in the locality where the participating enterprises have their headquarters, or if such enterprises have their headquarters in a number of provinces and cities under central authority then in the location selected by the parties. The Council shall hold negotiations as requested by the parties and automatically terminate its activities when a multi-enterprise collective labour agreement is entered into or as agreed by the parties. Such Council shall comprise a chairman, representatives of the negotiating parties, representatives of the provincial people's committee.

100 **The employee with disabilities**[167]: the employee who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties for the employee when performing work.

[165] *Article 128 of the Labour Code 2019*
[166] Article 73 of Labour Code 2019
[167] Article 2.1 of the Law on Person with Disabilities 2010

101 The National Wage Council[168] means an agency which advises the Prime Minister of the Government on the minimum wage rate and on wage policies applicable to workers.

102 The partially invalid employment contract[169]: in case of the contents of a part of the employment contract is illegal without affecting the residual contents of the employment contract.

103 The statue of limitation for dealing with breach of labour discipline: means a specific term stipulated in the laws that on expiry of this term, entities (being employees) who committed a breach of labour discipline are not subjected to a labour disciplinary hearing by the employer as of the occurrence of breaches of labour discipline.

104 The wholly invalid employment contract[170]**:** in case of being one of the following contents: the entire contents of the employment contract breach the law; a signatory to the employment contract contrary to authority or breaching the principles on voluntary commitment, equality, goodwill, cooperation and honesty; the job for which the employment contract was entered into is a work prohibited by the laws.

105 Trade secret [171] **:** means information obtained from financial or intellectual investment activities which have not yet been disclosed and can be used in business

105.1 Trade training contract[172]: means an agreement between an employer and an employee to provide training or re-training to the employee for improving his or her job and professional skills in Vietnam or overseas with funding provided by the employer, including funding donated to the employer by a business partner.

[168] Article 92.1 of the Labour Code 2019
[169] Article 49.2 of the Labour Code 2019
[170] Article 49.1 of the Labour Code 2019
[171] Article 1.2 of the Law on Intellectual Property as amended 2009
[172] Article 62 of the Labour Code 2019

105.2 Trainees: means subjects are recruited by the employer to guide him or her in job training and practical training, depending on the particular work or job at the workplace.

106 Transfer of assets owned[173], the right of enterprise property using: means an enterprise transfers property ownership and the right of enterprise property usage to another enterprise and may affect on the employment of many employees of the former enterprise.

107 Unemployment insurance[174]: means a scheme aiming to compensate part of the income of employees when they become unemployed, support them to receive vocational training, and maintain or seek employment on the basis of making contributions to the Unemployment Insurance Fund. According to the definition of ILO, this term is called unemployment insurance. Accordingly, unemployment insurance means a guarantee that workers will receive unemployment benefits when they have lost their jobs and therefore their wages. Schemes may be compulsory or voluntary, financed exclusively by contributions (from workers or from both employers and workers), or by contributions and subsidies from the State. Unemployment insurance schemes can be managed by the State, by the social partners, or by a private insurance firm[175].

108 Unilateral termination of an employment contract: means a legal act performed intentionally by an employee or an employer, is a form of termination of employment contract prior to the expiry of its duration and completely depends on the will of a party in the employment relationship. This legal act is expressed by a party in a certain form and can be conveyed, however, the other party's consent is not required.

109 Vocational training and development of vocational skills[176]: means the State encourages employers with sufficient conditions to provide vocational training and to develop vocational skills of the employees working for such employer and for other workers in society.

---

[173] Article 188 of the Civil Code 2015.
[174] Article 3.4 of the Law on Employment 2013
[175] "Glossary of Labour Administration and Related Terms" Robert Heron and Liesbeth Unger Page 31
[176] Article 61.1 of the Labour Code 2019

110 Wage payable by reference to completed pieces of work[177]means the wage being paid to employees with paid wages calculated by reference to completed pieces of work for their employment by employers and being calculated on the basis of the level of the volume and quality of work and the time taken to complete it. Of note, according to the definition of wage of ILO, normally employers pay employees wages in cash but in some cases may include an in-kind component for their employment[178].

111 Wage payable by reference to products (produced)[179]: means the wage paid to employees with paid wages calculated by reference to products produced for their employment by the employers and being calculated on the basis of the level of completion of product volume and product quality in accordance with the assigned labour rates and product unit prices.

112 Wage scales: means a document indicating the correlation of ratios of coefficients wage (pay rate) and wage group (the scale of wage) on the basis of minimum area wage rates regulated by Government, being the basis for wage payment and periodic consideration for wage increases undertaken by the employers in an open and transparent manner.

113 Wage tables[180]: means a document regulating specific wage rates for each type of work, profession, position, and correlation of wage ratios between employees working in the same business line in accordance with professional qualifications, experience or in accordance with the actual work undertaken by employees. The wage tables shall comprise the scale of wages, pay rate and wage coefficients.

114 Wages on ceasing work[181]: means the amount of wage that shall be paid by employers to the employees for their employment in some cases set forth below: (i) if [ceasing work] was due to the employer's fault, the employees are entitled to payment of the full wage; (ii) if [ceasing work] was due to the employees' fault, the employees are not entitled to payment

[177] Article 22.3 of Decree No. 05/2015/ND-CP being guided by Article 4.3 of Circular No. 23/2015/TT-BLDTBXH
[178] "Glossary of Labour Administration and Related Terms" Robert Heron and Liesbeth Unger Page 22
[179] Article 22.2 of Decree No. 05/2015/ND-CP being guided by Article 4.2 of Circular No. 23/2015/TT-BLDTBXH
[180] According to the interpretation of regulations on "wage tables" in Decree 204/2004 ND - CP
[181] Articles 99 and 207 of the Labour Code 2019

of wages and other employees in the same unit who also have to cease work shall be paid wages at a rate agreed on by the two parties but not less than the minimum area wages stipulated by the Government; (iii) if there is a breakdown in electricity or water through no fault of the employer or employee, or due to an objective cause such as a natural disaster, fire, dangerous epidemic, enemy destruction, relocation of operational address pursuant to a request of the competent State authority or for economic reasons, then the level of wages for ceasing work shall be agreed by the two parties in accordance with the labour law.

115 **Weekly wage**[182]**:** means the wages paid to employees with paid wages calculated by reference to time actually spent on the job on a weekly basis for their employment by employers and is calculated on the basis of the monthly wage multiplied by 12 and divided by 52.

116 **Work permit:** is a document issued by a Vietnamese competent State authority to a foreign employee when he or she is eligible to work in Vietnam. The work permit will prove that the foreign employee is granted a work permit and that his or her legal rights are properly protected by Vietnam labour laws.

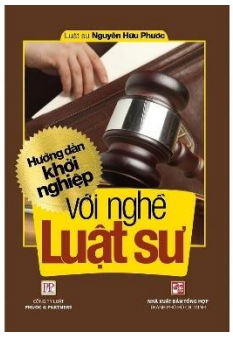
117 **Worker without an employment relationship**[183]: means a person working not on the basis of being hired through an employment contract.

- ⁂ -

[182] Article 22.1(b) of Decree No. 05/2015/ND-CP being guided by Article 4.1(b) of Circular No. 23/2015/TT-BLDTBXH

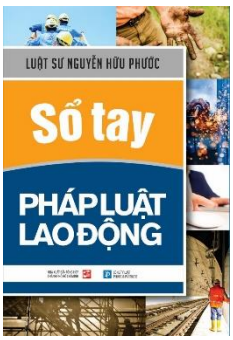
[183] Article 3.6 of the Labour Code 2019

RELATED PUBLICATION



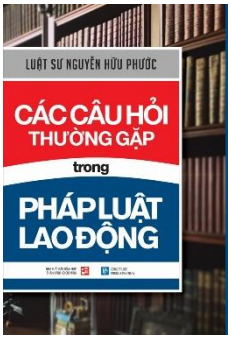
START-UP GUIDE WITH THE LAWYER PROFESSION

(Published by Phuoc & Partners in 2016 and reprinted 1st in 2017)



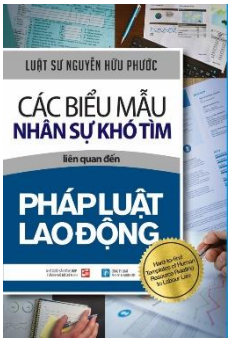
LABOUR LAW BOOKLET

(Published by Phuoc & Partners in 2018 and republished in 2021)



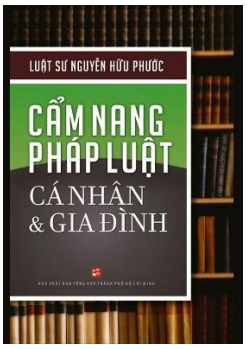
BOOK OF FREQUENTLY ASKED QUESTIONS IN THE LABOUR LAW

(Published by Phuoc & Partners in 2018)



HARD-TO-FIND TEMPLATES OF HUMAN RESOURCE RELATING TO LABOUR LAW

(Published by Phuoc & Partners in 2019 and republished in 2021)



FAMILY AND INDIVIDUAL LEGAL MANUAL

(Published by Phuoc & Partners in 2018 and republished in 2020)

ASK WHOM WHEN FACING DIFFICULTITES IN DIVORCE

(Published by Phuoc & Partners in 2020)

INTRODUCTION OF AUTHOR

Biography of Nguyen Huu Phuoc Esq.

Mr. Phuoc founded TLS law office (precursor of Phuoc & Partners Law Firm) in 2003. Before that, he served as Deputy Manager of the Tax & Legal Department of PricewaterhouseCoopers and KPMG, two of the big four international accounting firms in the world for more than 6 years and Managing Partner of Luat Viet Legal Consultants, a leading Vietnamese law firm for almost 02 years. After that, he founded Phuoc & Partners Law Co., Ltd and acted as Director cum Managing Partner.

Mr. Phuoc earned his Master of Laws (LLM) in the International Trade Law at Bristol Law School (UWE), a Bachelor of Laws (LLB) from the General University of Ho Chi Minh City, Vietnam and a Bachelor of Arts in languages (English) from the Pedagogical University in 1996. In addition to his legal background, he has also studied the Qualification Course and received accounting and tax certificates of ACCA (Association of Chartered Certified Accountants) which is the world's largest global professional accountancy body based in the UK.

Mr. Phuoc is the partner and group leader of the firm's Tax and Labour & Employment practices, with more than 20 years of legal practice experience. For the tax practice, Mr. Phuoc focuses his practice on transactional tax planning for a broad range of industries and business entities. Mr. Phuoc regularly drafts, reviews, and negotiates the tax provisions personally with a full range of corporate documents, including merger and acquisition agreements, legal opinions, and employment agreements. Mr. Phuoc also advises corporate clients on general tax compliance issues, including employment taxes, tax accounting and consolidated tax returns. For the labour & employment practice, Mr. Phuoc counsels clients on a variety of labour and employment issues, including compliance with the labour laws of Vietnam;

employment practices and policies; structuring the workforce; labour and employment implications of mergers and acquisitions; and hiring, firing, and retrenchment. He has represented clients before district and provincial labour agencies and courts in a broad range of employment litigation matters (these include, but are not limited to employment discrimination cases, trade secret and non-competition agreement disputes); and counselling in connection with human resources and benefit-related decisions.

In the early 2010's, in addition to his in-depth technical knowledge and leading experience in the tax and labour & employment practices, Mr. Phuoc developed and managed a new marriage and family law practice in Phuoc & Partners. The marriage and family law practice now ranges from divorce, visitation, community property divisions, prenuptial and post-nuptial agreements, child custody, child support, will and inheritance. Mr. Phuoc has also developed substantial trial experience in representing entrepreneur and showbiz related individuals and foreigners entangled in marriage and family law disputes out of court and at court.

From 2006 until now, Mr. Phuoc was named one of the leading Vietnamese lawyers in the field of tax and labour by Legal500, Chambers Asia and ALB based on the views of clients, peers, and other industry professionals. Particularly, Legal500 noted that "Managing partner Nguyen Huu Phuoc is particularly good, being knowledgeable about local laws, a good communicator, and quick to respond.

Mr. Phuoc has spoken at numerous professional and business seminars on the subjects of tax, labour & employment law, and the practice of law including events organized by HKBG, EuroCham, Vietnam Chamber of Commerce and Industry (VCCI) and the Bar Association of Ho Chi Minh City. He is also the author of numerous articles related to his specialty, and regularly contributes to journals focusing on tax and labour law as well as law practices in Vietnam. Mr. Phuoc has also been interviewed many times on daily newspapers/TV on tax and the labour laws of Vietnam as well as his experiences of practicing law.

Regarding the publication works, Mr. Phuoc is the author of 06 books on administration and law, civil code and labour code, including:

- **Start-up Guide with the Lawyer Profession** (published by Phuoc & Partners in 2016 and was reprinted at the first time in 2017)
- **Family and Individual Legal Manual** (published by Phuoc & Partners in 2018 and was republished in 2020)
- **Labour Law Booklet** (published by Phuoc & Partners in 2018)
- **Labour Law Compliance Handbook** (published by Phuoc & Partners in 2018)
- **Hard-to-Find templates of human resource** (published by Phuoc & Partners in 2019)
- **Ask Whom When facing Difficulties in Divorce** (published by Phuoc & Partners in 2020)

Besides, he is also the co-author of 02 lawyer practicing skill books namely:

- **Lawyer Handbook** (published by the Lawyer Federation of Vietnam in 2018 and re-published in 2019)
- **Teaching Book of Lawyer Practicing Skills** (published by the Juridical Academy of Vietnam in 2019)

Not stopping there, Mr. Phuoc had contributed his valuable time to translate two human resource books including:

- **Correct Human Resource Management** (published by VNHR in 2019); and
- **Clever Human Resource Management by data** (published by VNHR in 2019).

Professional Memberships

- Vice Chairman of the Executive Committee of the Vietnam Human Resource Club (VNHR), in charge of labour law consultancy to VNHR members.

- Member of the Board of the Vietnam Association of Corporate Directors (VACD) – in charge of the legal consultancy for VACD members.
- Vice Chairman of the Chief Sales & Marketing Officer (CSMO) Club, in charge of providing legal advices to CSMO members.
- Member of Vietnam Business Lawyers Club (VBLC).
- Member of the Bar Association of Ho Chi Minh City, Vietnam.

INTRODUCTION OF PHUOC & PARTNERS LLC

A. Our History

Phuoc & Partners was founded by Lawyer Nguyen Huu Phuoc in 2003, first lead practices focus with Tax, Labour & Employment. In 2004, Phuoc & Partners merges with serveral well-known litigation law office in Vietnam. Gain more experience about comprehensive issues in Tax, Labour & Employment, and other cooperative legal practice basis on the market-need. In 2006, Phuoc and Partners be set up as an new, independence partnership law office.

Currently, Phuoc & Partners is known as one of the major law firms in Vietnam with offices located in three main areas across the country, including its head office in Ho Chi Minh City, Hanoi (branch) and Da Nang (branches). Committed to providing a full-service to domestic and international customers, we could help our customers minimize administrative costs and focus on their core business. With nearly 100 legal consultants, we are confident to provide comprehensive legal services to meet the diverse needs of more than 2,000 clients domestically and internationally.

B. Lawyers

Phuoc & Partners believes that with professional quality of the team is the key to success. For nearly 20 years, Phuoc & Partners has recruited and worked with mainly bachelor of law, masters of law graduated from leading and prestigious law universities of Vietnam and abroad, many of whom have Practicing in leading international law firms of Vietnam. The expertise of Phuoc & Partners' lawyers is clearly reflected in our actual services, despite our traditional strengths such as Tax, Labour and Employment, Foreign Direct Investment, Businesses, Intellectual Property Protection and Dispute Resolution, Commercial Arbitration or in new areas pioneered by Phuoc & Partners such as Real Estate, Mergers

and Acquisitions, Litigation for Debt collection, and compliance with business laws. Over the years, Phuoc & Partners has affirmed its significant reputation both in Viet Nam and internationally.

C. Our Practice

Phuoc & Partners is distinguished from other law firms in Vietnam by providing its clients with a wealth of resources, a variety of legal advice practices. The breadth and depth of our workforce helps our team handle the most comprehensive legal issues of our clients through a closed process.

D. Honours and Awards

As a result of the trust of our clients, it is the motivation and effort of Phuoc & Partners' dedication, diligence and care in each legal services. For many years, Phuoc & Partners has been honoured as one of the leading law firms have been selected as winner of renowned awards established by some international organizations and magazines as mentioned below:

- ALB Legal News
- Asia Law
- Chambers Asia
- IFLR1000
- Legal 500
- Tax Directors Handbook
- WTR 1000

Read more books published by Author Mr. Nguyen Huu Phuoc:

- **Start-up Guide with the Lawyer Profession** (published by Phuoc & Partners in 2016 and was reprinted at the first time in 2017);
- **Family and Individual Legal Manual** (published by Phuoc & Partners in 2018 and was republished in 2020);
- **Labour Law Booklet** (published by Phuoc & Partners in 2018);
- **Labour Law Compliance Handbook** (published by Phuoc & Partners in 2018);
- **Hard-to-Find templates of human resource related documents** (published by Phuoc & Partners in 2019).
- **Ask Whom When facing Difficulties in Divorce** (published by Phuoc & Partners in 2020)

Ho Chi Minh City - Head Office:
42 Ngo Quang Huy Street, Thao Dien Ward,
Thu Duc City, Ho Chi Minh City, Vietnam.

Hanoi – Branch:
5th Floor, Vinachimex Building, 04
Pham Ngu Lao Street, Phan Chu Trinh Ward,
Hoan Kiem District, Hanoi

Da Nang – Branch:
85-87 Tran Phu,
Hai Chau Ward 1, Hai Chau District,
Da Nang City

Phone: +84 (28) 3622 3522 • Email: info@phuoc-partner.com • Website: www.phuoc partner.com