Guidebook for Implementation of the Labor Code 2019 at enterprises

June 2021

LIST OF ABBREVIATIONS

LC 2019	Labor Code No. 45/2019/QH14 of the Socialist Republic of Vietnam passed by the National Assembly as of 20 November 2019
LC 2012	Labor Code No. 10/2012/QH13 of the Socialist Republic of Vietnam passed by the National Assembly as of 18 June 2012
LOE 2020	Law on Enterprises No. 59/2020/QH14 of the Socialist Republic of Vietnam passed by the National Assembly as of 17 June 2020
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EVFTA	European - Vietnam Free Trade Agreement
ILO	International Labor Organization
PC	People's Committee
EO	Employee Organization
EOIE	Employee Organization In the Enterprise
GEO	Grassroots Employee Organization
ERO	Employer Representing Organization
GTU	Grassroots Trade Union
DOLISA	Department of Labor, Invalids and Social Affairs
MOLISA	Ministry of Labor, Invalids and Social Affairs
VCCI	Vietnam Chamber of Commerce and Industry
CB	Collective Bargaining
CBIE	Collective Bargaining In The Enterprise
MECB	Multi-Enterprise Collective Bargaining
CLA	Collective Labor Agreement
MECLA	Multi-Enterprise Collective Labor Agreement
LR	Labor Relationship
LC	Labor Contract
ILRs	Internal Labor Regulations
LDs	Labor Disciplines
DC	Damage Compensation
MW	Minimum Wage
LUP	Labor Utilization Plan
SI	Social Insurance
HI	Health Insurance
UI	Unemployment Insurance

FOREWORD

LC 2012 was passed by Legislature XIII of the National Assembly at its 3rd Session on 18/06/2012 and became effective from 01/05/2013. From its adoption, this Labor Code helped to correct many limitations of the previous one. However, after several years of application, many shortcomings and inadequacies in LC 2012 were exposed regarding the governing of labor relationship, especially in the context where Vietnam experiences rapid growth rates in terms of labor market, labor productivity enhancement, and improvement of human resource management, under the impact of the 4th industrial revolution.

On the other hand, the National Assembly in recent years has issued many new acts with changes to the content and structure of this Labor Code. In addition, Vietnam has approved the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and signed the EU-Vietnam Free Trade Agreement (EVFTA), under which member countries are obliged to comply with the basic principles and rights of workers in accordance with the 1998 Declaration of the International Labor Organization (ILO). Commitments in the above free trade agreements are also those of Vietnam as a member of the United Nations and are obligations of a member country within the ILO.

The advent of LC 2019 was deemed as an inevitable consequence to solve the above problems and has been basically and comprehensively modified to: (i) Contribute to perfecting the institution of a socialist-oriented market economy, promoting the labor market; basically solving problems and creating a more open and flexible legal framework to improve competitiveness; (ii) better protect the legitimate rights and interests of employees and employers; ensure the harmony of interests between employees and employers in line with the current socio-economic situation in order to build a harmonious, stable and progressive ER; (iii) Satisfy the requirements on institutionalization of Constitution 2013 with respect to basic rights and obligations of citizens in the field of employment, and ensure consistency and uniformity of the legal system; (iv) Meet the requirements on international economic integration.

Role and objective of the Guidebook to assist employers in preparing for the changes brought in by the LC 2019.

In response to the needs of enterprises to be updated and to learn about new regulations. With the support of The ILO's Bureau for Employers′ Activities in Bangkok (ACTEMPT), The ILO office in Hanoi; The Bureau for Employers′ Activities, Branch of the Vietnam Chamber of Commerce and Industry in Ho Chi Minh City (VCCI-HCM) coordinated the compilation of this Guidebook to update employers of the important changes in LC 2019 in comparison to LC 2012, enabling employers to comply with current regulations on employment. This will help them come up with necessary reforms in the management apparatus as well as to hold dialogues or collective bargaining sessions to protect the rights and obligations of employers and employees in accordance with law, avoiding conflicts between the parties.

Accordingly, enterprises should be aware of the important changes mentioned in this Guidebook

regarding the following issues: LCs; form of LCs; things that employers must not do when entering into LCs; performance of LCs; probationary period; assigning employees to other jobs than LCs; temporary suspension of LCs; the employee's right to unilaterally terminate LCs; the employer's right to unilaterally terminate LCs; holding dialogues at the workplace; collective bargaining; principles in paying salaries and bonuses; overtime working; holidays and new year holidays; employment of elderly employees; retirement age.

Notably, this Guidebook is mainly designed for production and business enterprises. Enterprises engaged in conditional business lines such as labor outsourcing should refer to other materials for detailed instructions.

Contents of this Guidebook include: Introduction about MECB; LR and LCs; termination of LCs; Salary; Holidays and New Year Holidays - Regulations on overtime working; Retirement; Female employees; Labor discipline.

The contents of this Guidebook are organized by parts, each of which analyzes a key component as mentioned above. This Guidebook clarifies the differences in the provisions of LC 2012 and LC 2019 along with new legal documents governing the employment relationship, thereby providing solutions and recommendations to enterprises in the process of reforming those changes.

VCCI-HCM would like to sincerely thank Lawyer Tran Thanh Tung and his partners from GVL Law Firm for the close cooperation during the process of compiling this Guidebook; Thank Mrs. Tran Thi Lan Anh – Deputy Secretary General of VCCI for the support; Mr. Chang Hee Lee, Director and partners at the ILO office in Hanoi; Mr. Lee Dong Eung - ACTEMPT - ILO in Bangkok, experts in labor law and human resources at agencies and businesses have contributed to VCCI-HCM in completing this Guidebook.

This is an open Guidebook, when the first edition is completed, there will be many new laws and regulations that have not been updated. For any professional contributions, please contact the Bureau for Employers´ Activities, VCCI-HCM: Phone: 0283 9325169; Email: bea@vcci-hcm.org.vn

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I. LABOR RELATIONSHIP

Labor relationship (LR) is a special one as the subject in this relationship is the employee who is always in a weaker position than employers in any negotiations or agreements on labor matters. Therefore, the definition and formulation of the LR have always been a key point from the perspective of labor law. Accordingly, LC 2019 inherits the provisions from LC 2012 but incorporates the following new regulations.

1. Subjects in the labor relationship

LC 2019 continues to affirm that the LR is a social relationship arising from the hiring or using of employees in which salaries are paid, and further states that subjects in the LR include not only employees and employers, but also their representative organizations, and competent state agencies. It is noteworthy that LC 2019 recognizes for the first time the role and status of the EO established by employees at the enterprise. This is a new point to protect legitimate rights and interests of employees to the extent of an LR at the grassroots level, and in the broader context, it is how Vietnam can internalize the international labor standards and fulfill Vietnam's commitments when it joins CPTPP and EVFTA.

2. Signs of a labor relationship

An LR has particular characteristics different from normal civil relations. Accordingly, LC 2019 emphasizes for the first time the signs to identify an LR or an LC as follows: (i) work under an agreement, (ii) payment of wage or salary, (iii) one party is managed or directed by the other, regardless of the name of the agreement signed by the two parties.[1]

With this change, it will be more transparent for employers and employees to determine if they are establishing an LR which is governed by the Labor Code and for which an LC must be signed, or if it is just normal service provision relationship which is governed by the Civil Code and only require a service contract, particularly those jobs which by nature are special and unstable, such as jobs under projects or freelance jobs. Only when accurately identifying the relationship between the parties, can employers and employees develop appropriate provisions in a contract to ensure compliance with law, such as the term and termination of a contract, salary/wage, benefits for employees, and LDs.

[1] Article 13.1 LC 2019

Therefore, employers should review the contracts signed with all individuals to see if there are any signs of an employment relationship as mentioned above, especially the signs of management over those individuals, e.g. requiring them to follow a schedule of working hours and break time, LDs and other regulations in the ILRs to sign appropriate contracts.

3. Basic rights and obligations of employees and employers and the prohibited acts as prescribed by LC 2019

LC 2019 inherits the core regulations of LC 2012 on basic rights and obligations of employees and employers, but employers should pay attention to the following changes:

(a) LC 2019 presents a specific definition of discrimination in labor in Article 3.8. Accordingly, discrimination is defined as a behavior with one of the following natures: (i) discriminate, (ii) eliminate or (iii) prefer based on the characteristics and status of employees which are also given in the same article. In particular, employers should note that discrimination can be interpreted more broadly to include some practical aspects such as age, pregnancy, or such mental aspects as personal opinions or family responsibilities. In addition, the Labor Code also provides additional exceptions that are not considered discriminatory such as (i) due to special requirements of a job, or (ii) the acts of maintaining or protecting the jobs for vulnerable employees.

(b) LC 2019 adds the right of employees to establish, join and engage in the activities of the EO,[2] instead of just in the trade union under the Vietnam General Confederation of Labor as prescribed previously. This is consistent with a broader definition of an EO, including organizations which are established by employees themselves at the enterprises.

(c) LC 2019 continues to prohibit the acts of sexual harassment in the workplace. Sexual harassment in the workplace is defined in LC 2019 as follows: "*any act of a sexual nature committed by any person against others in the workplace who do not expect or accept it. Workplace means any place where the Employee actually works as agreed with or assigned by the employer*"[3]. In addition, LC 2019 raises the level of compliance by requiring enterprises to establish and implement the solutions for preventing and fighting workplace sexual harassment, fully and in detail, such as specifically defining in the ILRs the acts of sexual harassment, liabilities, order and

[2] Article 5.1 (c) LC 2019
[3] Article 3.9 LC 2019

procedure for handling workplace sexual harassment, time limits and procedures for settling a complaint, the forms of LD and DC for victims of sexual harassment.[4] Employers should add these contents to the ILRs which must be registered with the competent state authority.

(d) LC 2019 further prohibits employers from "*intervening in or manipulating the establishment, voting, work plans and activities of the grassroots employees' organization, including financial supports or other economic measures aimed at nullifying or impairing the representative function of the grassroots employees' organization, or discriminating among grassroots employees' organizations*"[5]. It is evident that the above regulation aims at limiting and preventing the influence of employers on the operation of the GEO, indirectly affecting the GEO's decisions, and impairing its function of protecting legitimate rights and interests of employees.

(e) A principle of salary payment is added: "*Employees must not restrict or interfere with the employee's right to self-determination of salary expenditure; not force employees to spend their salaries on purchasing goods or services of the employer or another company designated by the employer*".[6] This regulation is intended to protect the legitimate interests of employees when many employers now require employees to, at the employee's cost, buy products from the enterprise due to high inventory levels or for marketing purposes.

II. PROBATION

Employers should pay attention to some new points regarding probation as follows:

1. Probationary period

LC 2019 allows a probation up to 180 days for the positions of corporate managers in accordance with the LOE 2020, Law on management and use of state capital to invest in production and business at enterprises.[7]

This change stems from the fact that, for senior positions such as directors, general directors or other persons holding managerial positions, employers need a long enough probation period to evaluate their performance, cultural fit, results of production and business under the management of these personnel. The previous probationary period of only 60 days as a maximum cannot ensure a proper evaluation of the capabilities of senior personnel, which is a basis to consider

[4] Article 8.3 LC 2019, Article 69.2 (d) Decree 145/2020/ND-CP
[5] Article 175.2 LC 2019
[6] Article 94.2 LC 2019
[7] Article 25.1 LC 2019

signing official LCs.

However, it is important for employers to identify the scope of *" corporate managers"* to have a basis for applying the probationary period of up to 180 days, here are a few tips:

(a) Under the LOE 2020, corporate managers mean *"managers of private enterprises and companies, including owners of private enterprises, unlimited liability partners, Chairmen of the Members' Council, members of the Members' Council, company presidents, chairmen of the board of directors, members of the board of directors, directors or general directors, and individuals holding other managerial positions as stipulated in the company charter"*.[8]

(b) In terms of an LR, only the positions of directors/general directors are established on the basis of an LR as they meet the criteria in Section I.2 above. For other positions such as Chairmen of the Board of Directors, Chairmen of the Members' Council, members of the Members' Council, members of the Board of Directors will, as prescribed by the LOE 2020, be established via an election or appointment, because owners and these managers will receive remunerations in lieu of salaries.

(c) In addition, if employers wish to apply a 180-day probationary period to managers other than the above-mentioned positions as defined by the LOE 2020, such as chief financial officers, sales managers, marketing managers and other managerial positions etc., it is necessary to include a clear definition of corporate managers in the company's charter.

2. Cases of applying no probation

According to LC 2019, probation will not be applied to employees who enter into definite LCs of less than 1 month[9] instead of seasonal contracts as prescribed in LC 2012.[10] Thus, according to LC 2019, employers may apply probation for any contract of more than 1 month, compliant with the maximum probationary period prescribed by law, regardless of whether it is seasonal work as previously prescribed in LC 2012 or a fixed, continuous job.

3. Form of a probationary agreement

One of the important changes is that LC 2019 allows employers and employees to

[8] Article 4.24 LOE 2020
[9] Article 24.3 LC 2019
[10] Article 26.2 LC 2012

choose between including a probationary provision in LCs and entering into a separate probationary contract, instead of only allowing to enter into probationary contracts as prescribed by LC 2012. This new point will help employers overcome some of the following difficulties:

(a) Minimize or simplify paperwork for enterprises when they have to prepare and sign both types of contracts including probationary contracts and labor contracts, while most of their contents are similar to each other.

(b) Minimize risks for employers, especially at the end of a probationary period when employers announce successful probation results and propose to sign official LCs, but employees do not give any feedback *(silent)* on such proposal; as a result, employers may be sanctioned if they do not enter into LCs with those employees who have passed probation successfully.[11]

(c) Previously, many enterprises have included a provision on probation in the LC but LC 2012 only recognizes the practice of entering into probationary contracts. This may lead to a risk that LCs may be considered as executed at the time of signing, i.e. from the first day of probation, and then employers must comply with the regulations applicable to an LC, especially the provision on when it is possible to unilaterally terminate LCs as well as the obligation to give prior notification, instead of the provision on termination of probation for any reason without prior notice in accordance with Article 29.2 of LC 2012.

Currently, in case of unsatisfactory probation, either party may, as prescribed in Articles 27.1 and 34.13 of LC 2019, cancel the probationary contract or the signed LC without prior notice and compensation.

With this change, employers should consider including the provision on probation in LCs. Accordingly, it should be noted that, when incorporating the provision on probation into LCs, employers need to clearly specify the salary, benefits, rights and obligations in the probationary period if these are different from those in the term of LCs.

4. Noteworthy issues for employers regarding a probation

(a) How to deal with the case of directors or general directors failing to pass a probation?

[11] Article 9.2 of Decree 28/2020/ND-CP

If at the end of a probationary period corporate managers like directors or general directors have unsatisfactory results, employers must, in addition to giving a notice of unsatisfactory probation results, carry out the process of dismissing the director or general director in accordance with the LOE 2020.

(b) The probationary period expires but employees continue to work

In the past, there were many cases where the probationary period expired but employees kept going to work even though official LCs between employers and employees had not been signed.

Although a regulation on this issue is not included in the LC 2012 and its guiding documents, according to Precedent No. 20/2018/AL, an LR has actually been established after the probationary period expires and the two parties will have to comply with the regulations on performing LCs, terminating LCs, and paying compulsory insurances etc. This Precedent applies the provisions of LC 2012, but in our judgment after considering the similarities in the provisions on probation of LC 2012 and LC 2019, this Court viewpoint may will still be maintained during the effective period of LC 2019.

Therefore, employers need to comply with the regulations on notification of probation results and signing LCs (*if the two parties have previously entered into probationary contracts*), keeping documents as evidence and taking appropriate steps to deal with the case where the probationary period has expired but employees continue to work even though they have been notified of unsatisfactory probation results, or when employees do respond to the proposal on signing LCs.

(c) Multiple probationary periods

Both LC 2012 and LC 2019 allow only one probationary period for one job.[12] In the past, many employees are asked to pass a second or more probationary period. However, except where employees assume 02 types of jobs/positions at the enterprise, asking employees to pass more than one probationary period is against the labor law and employers may be sanctioned for this conduct.

[12] Article 27 LC 2012 and Article 25 LC 2019

III. LABOR CONTRACT

1. Types of labor contracts

As prescribed in Article 20.1 of LC 2019, there are only 02 types of LCs including:

(a) Indefinite-term LCs; and

(b) Definite-term LCs (no more than 36 months).

With this change, it should be noted that LC 2019 no longer provides for seasonal LCs or specific-task LCs of less than 12 months. Instead, employers and employees may only enter into either an indefinite-term LC or a definite-term LC (no more than 36 months).

2. Obligation to provide information and prohibited acts when entering into a labor contract

LC 2019 contains the following remarkable changes:

(a) Require both employers and employees to provide truthful information

Previously, LC 2012 also has a regulation on providing information before entering into LCs. However, this obligation only amounts to the level of a principle, and there is not any mechanism for the parties to protect themselves when one party violates this important obligation. By adding the word *"truthful"* in Article 16,[13] LC 2019 emphasizes that not only must the parties provide information but they must also provide truthful information to ensure the principle of entering into LCs in Article 15.1 of LC 2019, and transparency and fairness in the implementation of LCs. In addition, LC 2019 also creates a mechanism for employees and employers to protect themselves when either party does not comply with this obligation. Specifically, either party may unilaterally terminate LCs when one party provides untruthful information as required in Article 16 of LC 2019 when signing LCs, affecting the performance of LCs or the recruitment of employees.[14]

Therefore, employers should present clear and transparent recruitment requirements. In addition, employers may consider sending the employee a job offer in advance when they wish to enter into an LC, thereby clearly stating the details that must be provided in order to sign an LC according

[13] Article 16 LC 2019
[14] Articles 35.2(g) and 36.1(g) LC 2019

to Article 16.1 of LC 2019 to avoid confusions or omissions arising from oral discussions.

(b) Force employees to work under LCs in order to pay debts to employers

The regulation that prohibits employers from forcing employees to perform LCs in order to pay debts is a new point of LC 2019[15]. This is to prevent forced labor as stipulated in the basic international labor conventions of the ILO, partly to prevent employers from taking advantage of debt collection to *"exploit"* employees' labor power. Article 5.1(a) of LC 2019 stipulates that employees have the freedom to choose jobs, workplaces, and are not forced to work. Therefore, when the lender forces the borrower to perform LCs to offset the debts, the employee's freedom of choice of employment has been lost. In addition, this behavior also has adverse impacts on the process of signing, implementing and terminating LCs. Specifically, this puts the employee at a disadvantaged position in the negotiations over job benefits and other terms when signing LCs. It is likely that the employee's rights will be violated during the performance of LCs, and it is also hard to terminate LCs before the employee pays off all the debts to the employer.

3. Agreement on working locations

According to LC 2019, in case employees works regularly in many different locations, employers must specify all of these locations[16] in LCs instead of only the main working locations[17] as previously prescribed. Therefore, employers should prepare LCs properly according to this regulation, especially when employees have to work on projects in many different locations.

4. Entering into electronic LCs

LC 2019 recognizes that electronic LCs which are made in the form of a data message in accordance with the law on electronic transactions are as valid as a written LC.[18] Thus, employers may choose to sign electronic LCs in the form of a data message, such as LCs made in PDF format and sent to employees via electronic means such as email. However, employers should pay attention to the Law on electronic transactions with regard to the conditions for a data message to

[15] Article 17.3 LC 2019

[16] Article 3.3(b) Circular 10/2020/TT-BLDTBXH issued by the MOLISA on 12/11/2020 detailing and guiding a number of articles of the Labor Code on the contents of labor contracts, collective bargaining councils, and occupations and jobs that adversely affect the reproductive and child rearing functions

[17] Article 4.3(b) Decree 05/2015/ND-CP

[18] Article 14.1 LC 2019

be valid as the original, as well as the regulations on electronic signatures before entering into electronic LCs.

5. Renewal of LCs

While LC 2012 allows the contract term to be amended once via signing an appendix[19], LC 2019 stipulates that the term of an LC cannot be amended by an appendix.[20]

With this change, employers should note the following issues:

(a) In practice, enterprises typically sign an appendix to amend the term of an LC with respect to the first and the second definite-term LCs. Therefore, before having to sign an indefinite-term LC, the parties can sign up to two definite-term LCs and two appendices to amend the term of such LC.

(b) However, with the new regulations in LC 2019, when the first definite-term LC expires, employers may only sign one more definite-term LC and then they must sign indefinite-term LCs.

6. Cases of signing multiple definite-term LCs

LC 2019[21] provides new regulations that allow employers to sign multiple definite-term LCs in the following cases:

- Directors in enterprises with state capital;
- Elderly employees;[22]
- Foreign employees working in Vietnam;[23]
- For employees who are members of the management board of the GEO, if their LCs expire during their office term, employers must extend the signed LCs until the end of the office term.[24]

As such, this change of LC 2019 has solved the two problems regarding the renewal of LCs for elderly employees and foreign employees working in Vietnam as

[19] Article 5 Decree 05/2015/ND-CP
[20] Article 22.2 LC 2019
[21] Article 20.2(c) LC 2019
[22] Article 149.1 LC 2019
[23] Article 151.2 LC 2019
[24] Article 177.4 LC 2019

follows:

(a) Elderly employees:

They are special subjects because their working capacity depends on their physical status from time to time. Previously, LC 2012 and its guiding documents stipulate that employers may extend the term of LCs or sign new LCs with elderly employees who are healthy enough according to the conclusion of a medical facility.[25] However, LC 2012 and its guiding documents do not provide further regulations on the types of LCs that employers may sign with elderly employees. As a result, the application of this regulation became inconsistent and rather confusing. Specifically, some enterprises rely on the valid period of the health certificate *(valid within 12 months from the date of examination)*[26] to sign definite-term LCs of 12 months. Other enterprises sign definite-term LCs *(with the number of times allowed by LC 2012)* and then sign indefinite-term LCs.

In addition, if employers wish to terminate LCs with elderly employees when the enterprise does not need them, or because the employees are not healthy enough, employers must reach an agreement with them in order to terminate LCs.[27] However, employers will face difficulties if elderly employees do not agree to terminate their LCs, especially in case employers have previously signed indefinite-term LCs with them.

It is evident that the new regulation of LC 2019 helps to unify the understanding on the form through which enterprises enter into LCs with elderly employees. This is also appropriate for the unstable health of elderly employees.

(b) Foreign employees working in Vietnam:

Under Article 151.2 of the LC 2019, term of the LCs with foreign employees working in Vietnam shall not exceed the term of their work permit. When hiring foreign employees working in Vietnam, two parties can agree to enter into definite term LCs for many times.

LC 2019 has resolved the shortcomings of LC 2012 in that the work permit of foreign employees working in Vietnam is only valid for a maximum of 2 years while employers may only sign 02 definite-term LCs and then have

[25] Article 6.1 Decree 05/2015/ND-CP
[26] Article 8.3 (a) Circular 14/2013/TT-BYT dated 06/5/2014
[27] Article 6.2 Decree 05/2015/ND-CP amended by Decree 148/2018/ND-CP

to sign indefinite-term LCs.

With these new points of LC 2019, enterprises that are employing foreign employees to work in Vietnam may consider signing multiple definite-term LCs as permitted by LC 2019 and in consistency with the term of work permits.

7. Authority to enter into LCs

Employers should note the following points:

(a) According to LC 2012, when employing a person under 15 years of age, employers only need to, with the consent of such employee, sign a written LC with the employee's legal representative.[28]

(b) According to the new regulations of LC 2019, when employing a person under the age of 15, employers must enter into a written LC with the signatures of such person and his/her legal representative.[29]

(c) However, both LC 2012 and LC 2019 miss the regulation for the case of signing LCs with directors/general directors of enterprises. In fact, this case must still be handled in accordance with the LOE 2020. Accordingly, the person who signs LCs with directors/general directors is the chairman of the Members' Council for a limited liability company with two or more members[30] or the chairman of the board of directors for a joint stock company.[31]

8. Appendix to labor contract

As mentioned, and analyzed in Section III.5 on renewal of LCs, the most important change in this regard is that the term of LCs cannot be amended by an appendix.

9. Suspending labor contracts

LC 2019 contains some new points about suspending LCs as follows:

(a) Providing for additional cases where an LC may be suspended, including: (i) Employees to join militia forces, (ii) Employees are authorized to assume the rights and responsibilities of the enterprise with respect to its capital

[28] Article 164.2 LC 2012
[29] Article 18.4 (c) LC 2019
[30] Article 55.2(dd) LOE 2020
[31] Article 153.2(i) LOE 2020

invested in another enterprise;[32]

(b) Inheriting the cases where LCs may be suspended as prescribed in Decree 05/2015/ND-CP guiding LC 2012[33], and generally providing for one of the cases where LCs may be suspended in the LC 2019, specifically: Employees are appointed as managers of one-member limited liability companies in which 100% charter capital is held by the State and employees are authorized to exercise the rights and responsibilities of the representative for the State's capital share in enterprises.

However, please note that:

(i) According to Article 88.2(a) of LOE 2020, one-member limited liability companies owned by the parent company of a State-owned economic group, a State-owned corporation, a parent company in the parent - subsidiary model (the subjects which may suspend LCs as permitted by LC 2012) are no longer considered as one-member limited liability companies with 100% charter capital held by the State. Therefore, when employees are appointed as managers in these companies, employers may no longer suspend LCs with such employees in accordance with LC 2019;

(ii) Unlike the previous regulations, LC 2019 only stipulates that when an employee is appointed as a manager of one-member limited liability companies with 100% charter capital held by the State, his/her LC can be temporarily suspended, without listing the specific managerial positions such as members of the members' council, the company's president, or controllers etc., whose LCs may be suspended. Therefore, based on Article 4.24 of LOE 2020, if the titles of controller, deputy general director (deputy director) or chief accountant are not clearly defined as managers in the company's charter, then when employees are appointed to hold these titles, they will not fall into the cases where LCs may be suspended under Article 30.1(dd) of LC 2019.

(c) Clarifying the employer's obligations during the period of suspension of LCs. Specifically, during the period of suspension of LCs, employees are not entitled to salaries, rights and benefits as agreed in LCs, unless otherwise agreed by the two parties or provided for by law.[34]

[32] Articles 30.1(a) and 30.1(g) LC 2019
[33] Article 9 Decree 05/2015/ND-CP
[34] Article 30.2 LC 2019

(d) Employers are only obliged to reinstate employees to the jobs as agreed in LCs if the LCs are still valid,[35] so if employees show up at the workplace after the LCs have expired, employers may not need to reinstate the employees (*unless otherwise agreed by the parties*). This is appropriate because the LC may expire before the employee returns to work (*employees have 15 days from the expiration of the period of suspension to return to work*).

10. Vocational training, apprenticeship and training contracts

In LC 2019, there are some notable changes to the regulations on vocational training and apprenticeship stipulated in LC 2012 as follows:[36]

a) LC 2019 provides definitions to distinguish between *"vocational training"* and *"apprenticeship"*. Specifically, *"vocational training"* is a process in which employers recruit people for ***vocational training*** at the workplace. For an *"apprenticeship"*, it is a process in which employees ***are instructed to do a job according their positions***.

b) Particularly, LC 2019 limits the duration of an apprenticeship to no more than 03 months to prevent employers from taking advantage of this regime to prolong the apprenticeship period unnecessarily in order to avoid signing LCs. In addition, LC 2019 also requires employers to arrange vocational training schedules according to the training program of each level in accordance with the Law on Vocational Training.

c) LC 2019 clearly stipulates that training contracts *(in vocational training or apprenticeship)* will be implemented in accordance with the Law on Vocational Training to make it easier for businesses to comply with law consistently. Employers and employees may agree on the salaries paid in training periods to improve qualifications and skills, and in domestic or foreign re-training periods under training contracts.[37] As opposed to previous LC 2012, employers must pay salaries at the level specified in LCs, if the parties wish to change the salary level during this training period (*it may be because employees do not fully engage in labor as they do during normal working time*) then they must amend the LCs and comply with the provisions on amending LCs such as prior notification, and repeat the same process of amending LCs when the training period expires to restore the salary level. Therefore, this regulation is in line with actual application,

[35] Article 31 LC 2019
[36] Articles 61 and 62 LC 2019
[37] Article 62.2(b) LC 2019

putting employers at a proactive position and heightening the agreement and fairness between the parties.

CHAPTER II. TERMINATING LABOR CONTRACTS

From the legal viewpoint, the termination of LCs in accordance with the current law is implemented in two ways: (1) exercising the right to terminate LCs; and (2) LCs automatically terminate, specifically:

- Exercise of the right to terminate LCs means that employers or employees (a) exercise the right to terminate LCs intentionally and lawfully by way of reaching an agreement or due to a violation by one party of the applicable law or the enterprise's internal policies; or (b) LCs are terminated intentionally and unlawfully by one party.

- LCs automatically terminate includes the cases in which LCs are deemed as terminated lawfully by themselves.

This part of the Guidebook will thoroughly present the ***noteworthy points*** about the cases of exercising the right to terminate LCs and the cases of automatic termination of LCs in accordance with the current labor law.

I. TERMINATION OF LABOR CONTRACTS BY EMPLOYERS

1. Dismissal

(a) Conducts subject to the disciplinary action of dismissal

Generally, LC 2019 inherits from LC 2012 the conducts which must be subject the disciplinary action of dismissal. The number and types of conducts prescribed by LC 2019 are not removed or reduced as compared to LC 2012. According to the current law, employees having one of the following conducts will be dismissed:[38]

(i) Theft;

(ii) Embezzlement;

(iii) Gambling;

(iv) Deliberately injuring others;

[38] Article 125 LC 2019

(v) Using drugs at the workplace;

(vi) Disclosing trade secrets and technological know-hows;

(vii) Infringing intellectual property rights of employers;

(viii) Causing serious damage or threatening to cause extremely serious damage to the properties and interests of employers;

(ix) Sexual harassment at the workplace as specified in the ILRs;

(x) Having been disciplined in the form of extension of the salary raise period or office removal and committing a relapse while not yet acquitted; and

(xi) Quitting jobs for 5 (five) cumulative days in a period of 30 (thirty) days, or for 20 (twenty) cumulative days in a period of 365 (three hundred and sixty-five) days counted from the first leave day without ***legitimate reasons***.

Legitimate reasons are construed to include natural disasters, fires, employees themselves or their relatives falling ill with certification by competent medical facilities, and other cases specified in the ILRs.

(b) Process of imposing the disciplinary action in form of dismissal

Please refer to Chapter III, Section III hereof for the Process of imposing the disciplinary action of dismissal.

(c) Some new points in the disciplinary form of dismissal

Among the above conducts, "*sexual harassment at the workplace as specified in the ILRs*" is an additional conduct that will be subject to the disciplinary action in form of dismissal according to LC 2019.

Sexual harassment in the workplace is not an emerging problem, but not until recently have countries paid attention to this conduct. Most notably, in June 2019, at the 108th International Labor Conference, the ILO adopted Convention No. 190 on Ending Violence and Harassment at the workplace, this marks an important milestone for the international movement in fighting against workplace violence and sexual harassment. Catching up

with the trend above, LC 2019 has for the first time made it into law and officially introduces the disciplinary action in form of dismissal against people who commit sexual harassment at the workplace.

The conduct of sexual harassment has been defined more clearly by way of describing and listing[39], indicated by labor law, sexual harassment may occur in the form of an exchange such as an offer, request, suggestion, threaten or force to exchange sex for any job-related benefit; or acts of a sexual nature that are not intended to be an exchange but cause the working environment to become uncomfortable and insecure, causing damage to the mental and physical health, and the life of the sufferer[40].
Conducts of sexual harassment in the workplace may include:[41]

(i) Physical acts including conducts, gestures, or physical contacts which are of a sexual nature or suggest an exchange of sex;

(ii) Verbal sexual harassment including face-to-face communication, communication over the phone or by electronic means with sexual contents or intentions; and

(iii) Non-verbal sexual harassment including body language; visual display or description of sexual materials or materials related to sexual activities, directly or electronically.

Employers are also allowed to concretize these conducts in the ILRs to use it as a basis for imposing disciplinary actions.[42] In addition, for the purpose of determining the location where sexual harassment is committed, the workplace is defined relatively broadly and comprehensively,[43] thereby helping to widen the application sphere of the labor law in preventing sexual harassment.

In addition to the new points in the concept of sexual harassment, the order and procedures for handling sexual harassment, compensation for damage and remedial measures are also required to be specified in the ILRs.[44]

[39] Article 84.2 Decree 145/2020/ND-CP
[40] Article 84.1 Decree 145/2020/ND-CP
[41] Articles 84.1 and 84.2 Decree 145/2020/ND-CP
[42] Article 125.2 LC 2019
[43] Article 84.3 Decree 145/2020/ND-CP
"Workplace ... is any place where the employee actually works as agreed with or assigned by the employer, including places or spaces related to the employee's job such as social activities, seminars, training events, official business trips, meals, phone conversations, communication activities by electronic means, vehicles arranged by the employer from residence to workplace and vice versa, residence provided by the employer and another location as determined by the employer."
[44] Articles 69.2.(d) and 85.1.(dd) Decree 145/2020/ND-CP

Furthermore, the responsibilities of employees, employers and GEOs for preventing and combating sexual harassment are also specified more specifically by the current law.[45] *(Please see the relevant contents which are presented in Chapter III, Section IV hereof)*

2. Cases for employers to unilaterally terminate LCs

Depending on the prior notification obligation, LC 2019 divides the cases where employers are allowed to unilaterally terminate LCs into 02 main groups, particularly:

(a) Cases of termination of LCs where prior notification is required[46]

(i) Employees regularly fail to complete their tasks under LCs, determined according to the employer's regulations on assessing the task completion level;

(ii) Employees suffering any sickness or accident that has been treated but the working capacity is not recovered, particularly:

- For indefinite-term LCs: has been treated for 12 (twelve) consecutive months; or
- For definite-term LCs of 12-36 (twelve to thirty-six) months: has been treated for 6 (six) consecutive months; or
- For definite-term LCs of under 12 (twelve) months: has been treated for over half the term of LCs.

In this case, when the employee's health recovers, employers will consider signing LCs with the employees.

(iii) Due to natural disasters, fires, dangerous epidemics, hostilities or relocation, reduction of production and business scale at the request of competent state agencies, and employers have taken all remedies but still have to retrench employees;

(iv) Employees to reach the retirement age as prescribed in Article 169 of LC 2019, unless the parties agree otherwise; and

[45] Article 86 Decree 145/2020/ND-CP
[46] Article 36.1 LC 2019

(v) Employees to provide untruthful information as prescribed in Article 16.2 of LC 2019 when entering into LCs, affecting recruitment decisions ("*employee's untruthful information*").

Employee's untruthful information is construed as including his/her full name, age, gender, residence, educational background, professional skills, certificates of health conditions and other issues at the employer's request directly related to the signing of LCs.

When unilaterally terminating LCs in one of the above cases, employers must give a prior notice of:

(i) at least 45 (forty-five) days for indefinite-term LCs;

(ii) at least 30 (thirty) days for definite-term LCs of 12 (twelve) to 36 (thirty-six) months;

(iii)

(iv) at least 03 (three) working days for definite-term LCs of less than 12 (twelve) months and the cases where employees suffering a sickness or accident which has been treated but the working capacity is not recovered as prescribed in Section I.2.(a).(ii) of this Chapter; and

(v) comply with the period of prior notification for some special business lines, occupations, or jobs as set out in Section II.1.(d) of this Chapter.

(b) Cases of termination of LCs where prior notification is not required[47]

(i) Employees, of their own free will, quit jobs for 05 (five) consecutive working days or more without ***legitimate reasons***; and

(ii) Employees do not show up at the workplace after the suspension period of LCs expires as prescribed in Article 31 of LC 2019.

3. Some new points and notes when employers exercise the right to unilaterally terminate the LCs pursuant to LC 2019

Compared to LC 2012, LC 2019 adds 03 (three) more cases where employers are

[47] Article 36.3 LC 2019

allowed to unilaterally terminate LCs as follows:[48]

(a) Employees reach the retirement age as prescribed in Article 169 of LC 2019

According to LC 2012, meeting the requirements on the years of social insurance payment and the age of pension entitlement is a basis for terminating LCs.[49] LC 2012 also allows employers to continue using elderly employees if needed.[50] However, the labor law then fails to mention the case that if employers no longer need to use elderly employees who reach the retirement age but do not have enough years of SI payment, what employers should do to terminate LCs. In fact, if the parties cannot reach an agreement, employers will have no basis to terminate LCs with employees. Accordingly, with this new regulation, LC 2019 removes this inadequacy and partly creates a fairer legal corridor for employers and elderly employees to reach an agreement on employment.

(b) Employees, of their own free will, quit jobs for 05 (five) consecutive working days or more without legitimate reasons

As previously prescribed,[51] if employees, of their own free will, quit jobs for 05 (five) consecutive working days or more without ***legitimate reasons***, this is only the basis for imposing the disciplinary action of dismissal. However, with this new regulation, employers may exercise the right to unilaterally terminate LCs with violating employees without prior notice.[52]

(c) Employees provide untruthful information as prescribed in Article 16.2 of LC 2019 (*directly related to the conclusion of LCs that employers require*) when entering into LCs, affecting the recruitment decision.

LC 2012 stipulates that employees are obliged to provide information directly related to the conclusion of LCs at the employer's request.[53] However, LC 2012 does not provide any remedy for employers to protect their rights in the LR in case employees violate this obligation. With this new regulation, LC 2019 has provided employers with a remedy to use when employees provide untruthful information.

[48] Article 36.1.(dd); (e); (g) LC 2019
[49] Article 36.4 LC 2012
[50] Article 167.1 LC 2012
[51] Article 126.3 LC 2012
[52] Article 36.1.(dd) LC 2019
[53] Article 19.2 LC 2012

However, in order to terminate LCs, employers must prove that employees have provided untruthful information which "*affects the recruitment decision*". In fact, the current regulations still do not provide specific guidance on this issue, so the assessment of what "*affects the recruitment decision*" still depends on personal opinions which are qualitative in nature. Therefore, in this case, employers should collect sufficient and specific evidence. In addition, if necessary, employers can also consult the local labor management authority on this issue to have a basis for implementing this regulation.

4. Provide a separate regulation on the period of prior notification by employers for some special business lines.

The current labor law separates and prescribes the period of prior notification for a number of special business lines, occupations and jobs. Accordingly, there are some business lines, occupations or jobs which are considered as special and for which the period of prior notification is also regulated more clearly.[54] *(Please refer to this content in Section II.1.(d) of this Chapter).*

II. UNILATERAL TERMINATION OF LABOR CONTRACTS BY EMPLOYEES

Similarly, to the case of unilateral termination of LCs by employers, LC 2019 also depends on the prior notification obligation to divide the cases where employees are allowed to unilaterally terminate LCs into 02 main groups, particularly:

1. Cases of termination of LCs where prior notification is required

Employees may unilaterally terminate LCs but they must give employers a prior notice of:[55]

(a) At least 03 (three) working days for definite LCs of under 12 (twelve) months;

(b) At least 30 (thirty) days for definite-term LCs of 12 (twelve) to 36 (thirty-six) months;

(c) At least 45 (forty-five) days for indefinite-term LCs; and

(d) At least 120 (one hundred and twenty) days for indefinite-term LCs or definite-term LCs of 12 (twelve) months or more or at least one quarter of

[54] Article 36.2.(d) LC 2019 and Article 7 Decree 145/2020/ND-CP
[55] Article 35.1 LC 2019 and Article 7 Decree 145/2020/ND-CP

the contractual term for definite-term LCs of less than 12 (twelve) months for special business lines, occupations or jobs, including:

(i) Aircraft crew members; aircraft maintenance technicians, aviation maintenance personnel; flight operations personnel;

(ii) Corporate managers as defined by the Law on Enterprises, Law on management and use of State capital to invest in production and business at enterprises;

(iii) Crew members working on Vietnamese ships operating abroad; crew members that Vietnamese enterprises sub-lease to work on foreign vessels; and

(iv) Other cases prescribed by law.

2. Cases of termination of LCs where prior notification is not required[56]

Employees have the right to unilaterally terminate LCs without prior notice in the following cases:

(a) Not to be assigned to the correct jobs or working locations, or the Employer cannot provide the working conditions as agreed, except for cases prescribed in Article 29 of LC 2019;

(b) Not to be paid in full or in time; except for the cases prescribed in Article 97.4 of LC 2019;

(c) To be maltreated, hit, insulted, or suffer from the conducts of employers that affect their health, dignity or honor; or to be forced to work;

(d) To be sexually harassed in the workplace;

(e) Female employees to stop working due to pregnancy as prescribed in Article 138.1 of LC 2019;

(f) To reach the retirement age as prescribed in Article 169 of LC 2019, unless the parties agree otherwise; and

(g) Employers provide untruthful information as prescribed in Article 16.1 of LC 2019 which affects the performance of LCs *("employer's untruthful*

[56] Article 35.2 LC 2019

information").

Employer's ***untruthful information*** includes information on the jobs, working locations, working conditions, working hours, break time, occupational safety and hygiene, wages, payment methods, SI, HI, UI, regulations on protecting trade secrets, technological know-hows and other issues at the employee's request in relation to the signing of LCs.

3. New points related to the unilateral termination of LCs by employees

(a) According to LC 2012,[57] only employees working under indefinite-term LCs may unilaterally terminate LCs without any reason. However, according to the current labor law, all employees including those working under indefinite-term LCs, definite-term LCs of 12 (twelve) to 36 (thirty-six) months or less than 12 (twelve) months have the right to unilaterally terminate LCs but with prior notification.[58]

(b) According to LC 2012, only the employees suffering an illness or accident which has been treated but the working capacity is not restored have the right to terminate LCs without prior notice, otherwise under no circumstance may employees terminate LCs without prior notice, even in that case, employers are at fault. Therefore, all the cases mentioned in Section II.1 of this Chapter are subject to the provision on prior notification as prescribed by LC 2012; however, with the changes of LC 2019, employees can rely on these cases to unilaterally terminate LCs without prior notice.

(c) As the employee's right to unilaterally terminate LCs is expanded according to LC 2019, a number of conditions for employees to unilaterally terminate LCs according to the previous regulations have also been omitted, particularly:[59]

(i) Employees are unable to continue performing LCs due to personal or family difficulties;

(ii) Employees are elected to full-time positions in public offices or are appointed to positions in State bodies; and

(iii) Employees suffering any sickness or accident that has been treated

[57] Article 37.3 LC 2012
[58] Article 35.1 LC 2019
[59] Article 37.1.(d); (dd); (g) LC 2012

but the working capacity is not recovered.

(d) Like the employer's right, the current labor law also grants employees the right to unilaterally terminate LCs if it is found that employers have provided untruthful information as stipulated in Article 16.1 of the Labor Code, which affects the performance of LCs.[60]

(e) LC 2019 sets a separate notification period for employees working in special business lines, occupations, and jobs[61] who wish to unilaterally terminate LCs, as presented in Section II.1.(d) of this Chapter.

III. TERMINATION OF LCs DUE TO CHANGES IN STRUCTURE OR TECHNOLOGY, OR BECAUSE OF ECONOMIC CONDITIONS

Termination of LCs due to changes in structure or technology, or because of economic conditions, basically stems from the actual demands of an enterprise in management and operation, which is aimed at helping enterprises use their resources effectively, increase efficiency and enhance competitive advantages.

Accordingly, when the changes in structure or technology, or unfavorable economic conditions as specified by labor law affect the employment of one or more employees *(at least two employees),* employers may retrench employees by terminating their LCs if the statutory conditions are satisfied and employers must fully comply with the process and procedures as required by labor law.

1. Bases for identifying structural or technological changes; or unfavorable economic conditions.

Similar to LC 2012 and relevant guiding documents, LC 2019 does not give any specific definition or explanation for the terms "*structural or technological changes*", and "*unfavorable economic conditions*", but only lists the cases in which it can be considered that structural or technological changes, or unfavorable economic conditions have occurred, including:[62]

(a) The cases in which structural or technological changes have occurred

(i) Change the organizational structure, or re-organize labor force;

(ii) Change the process, technology, machinery, business and

[60] Article 35.2.(g) LC 2019
[61] Article 35.1.(d) LC 2019 and Article 7 Decree 145/2020/ND-CP
[62] Article 42 LC 2019

production equipment which attaches to the employer's business lines; and

(iii) Change products, or product structure.

(b) The cases in which unfavorable economic conditions have occurred

(i) Economic crisis or depression; and

(ii) Implement the State's policies and laws for restructuring the economy or implementing international commitments.

2. Process of retrenching employees

The retrenchment of employees due to structural or technological changes, or unfavorable economic conditions must be in compliance with the steps as prescribed by law. Regardless of the internal issues of the employer related to the issuance of resolutions/decisions on the change of structure and technology (*which are governed by the law on enterprises*), from the perspective of labor law, employers need to take the necessary steps as below when retrenching employees due to structural or technological changes, or unfavorable economic conditions.

(a) **Step 1**: Employers make a list of employees who will be retrained for continued employment.[63]

(b) **Step 2**: Employers develop an LUP after consulting the GEO, if a GEO has been established.[64]

(c) **Step 3**: Employers hold a workplace dialogue to discuss the development of an LUP and publicly announce at the workplace the main contents of the dialogue ***within 03 working days*** from the end of the dialogue.[65]

(d) **Step 5**: Employers publicly notify the LUP to the employees within 15 days of approval of the LUP.[66]

(e) **Step 6:** Employers consult the GEO in which the employee is a member about the retrenchment, for enterprises in which a GEO has been established.[67]

[63] Article 42.3 LC 2019
[64] Article 44 LC 2019
[65] Article 41 Decree 145/2020/ND-CP
[66] Article 44.2 LC 2019
[67] Article 42.6 LC 2019

(f) **Step 7:** Employers hold a dialogue at the workplace to discuss the retrenchment of employees and publicly announce at the workplace the main contents of the dialogue ***within 3 working days*** of ending the dialogue.[68]

(g) **Step 8:** Employers notify the employees and the provincial PC of the retrenchment. This notice must be sent 30 days prior to the issuance of a decision on terminating LCs with the employees.[69]

(h) **Step 9:** Employers issue the decision(s) on terminating LCs with the employees.

(i) **Step 10:** Employers finish paying employees the relevant amounts within 14 (fourteen) working days of termination of LCs *(except where the payment period may be extended to no more than 30 (thirty) days)*[70], and complete other relevant procedures for the employees (*Please refer to the employer's responsibilities when terminating LCs as described in Chapter III, Section V.1 hereof*).

3. New points to note when implementing the process of retrenching employees due to structural or technological changes; or unfavorable economic conditions according to LC 2019

(a) For structural or technological changes

(i) If the structural or technological changes only affect the job of ***a single employee***, employers can only retrench this employee when the following conditions are met:[71]

- Having consulted the GEO in which the employee is a member about the retrenchment, for enterprises in which a GEO has been established.

  Thus, if the employee is not a member of any GEO at the enterprise, it is not necessary for employers to consult the GEO about the retrenchment of this employee.

- Having held a workplace dialogue about the retrenchment

[68] Article 41 Decree 145/2020/ND-CP
[69] Article 42.6 LC 2019
[70] Article 48 LC 2019
[71] Articles 42.6 and 63.2(c) LC 2019

of this employee.

This is a new and mandatory procedure for employers as required by LC 2019 Regarding this provision, please see the content related to the order and procedure for holding a workplace dialogue as presented in Chapter IV hereof. An important point to note about the participants in the dialogue in this case is that, in addition to the participants specified in Article 38.3 of Decree 145/2020/ND-CP, all or some relevant employees must be invited to join the dialogue, ensuring to have the participation of a female member of the GEO when discussing issues related to the rights and interests of female employees as stipulated by LC 2019.[72]

- Having given a prior notice of 30 (thirty) days to the provincial PC and the employee.

  Thus, compared to LC 2012 and relevant guidelines, LC 2019 and the applicable Decree 145/2020/ND-CP have set out additional procedural requirements for employers, even when the structural or technological changes only affect the job of a single employee.[73]

  LC 2012 does not have a clear provision on prior notification in case of terminating LCs due to structural or technological changes, even for employees working under definite-term LCs or indefinite-term LCs (*The prior notification period in this case (30 or 45 calendar days for the respective types of LCs) is complied with by enterprises mainly for the reason that there have been labor disputes and the competent court also requires them to comply with similar procedures to the cases where enterprises unilaterally terminate LCs in order to best protect the interests of employees)*. Now, as stipulated in LC 2019, employers must notify the employees 30 (thirty) days in advance about the termination of LCs due to the changes in structure and technology.

(ii) If structural or technological changes affect the employment of ***two***

[72] Article 38.4 Decree 145/2020/ND-CP

[73] LC 2012 only requires employers to consult the grassroots employees' organization and give a prior notice of 30 days to the labor authority of the provincial level in case of retrenching many employees (Article 44.3)

or more employees, employers must build and implement an LUP and prioritize retraining employees to continue using them if there are new positions.[74] An LUP must contain the key details specified in Article 44.1 of LC 2019. For enterprises where a GEO[75] has been established, employers must consult the GEO when developing an LUP, and hold a workplace dialogue to discuss it.[76] If employees are not members of any GEO at the enterprise, employers are not required to consult the GEO about the LUP but only need to hold a workplace dialogue to discuss the LUP.

After performing the above steps and procedures, if there is no solution and employers have to retrench the employees, they must fulfill the following requirements:[77]

- Employers have consulted the GEO in which the employee is a member about the retrenchment, for enterprises in which a GEO has been established;

- Employers have held a workplace dialogue on the retrenchment of employees in accordance with the order and procedure for holding dialogues as prescribed by law; and
- Have given a prior notice of 30 (thirty) days to the provincial PC and the employee.

(b) For unfavorable economic conditions

(i) If unfavorable economic conditions affect the employment of only one employee, employers can only retrench this employee when satisfying the conditions specified in Section III.3.(a).(i).[78]

(ii) If unfavorable economic conditions affect the employment of many employees (two or more employees), employers must develop and implement an LUP[79] and meet the prerequisites as stated in Section III.3.(a).(ii).

In general, LC 2019 seems to tighten the process and procedure for terminating

[74] Article 42.3 LC 2019
[75] Article 44.2 LC 2019
[76] Article 41.1 Decree 145/2020/ND-CP
[77] Articles 42.6 and 63.2(c) LC 2019
[78] Articles 42.6 and 63.2(c) LC 2019
[79] Article 42.4 LC 2019

LCs due to structural or technological changes; or unfavorable economic conditions. This is aimed at allowing employees to "*know*" and "*understand*" more about the plan of employers on changing the organizational structure or technology, or about the economic conditions of enterprises, thereby protecting their rights and interests via communication with their employers. From a practical point of view, the additional procedures just added as mentioned above may prolong the process for retrenching employees due to structural or technological changes; or unfavorable economic conditions.

4. The employer's obligation to pay redundancy pay upon termination of LCs due to structural or technological changes; or unfavorable economic conditions

In case employers have to retrench employees and terminate their LCs due to structural or technological changes, or unfavorable economic conditions, they must pay redundancy salaries to the employees who have full 12 (twelve) months of service or more.[80]

5. Noteworthy points upon termination of LCs due to structural or technological changes, or unfavorable economic conditions

(a) Determine if the enterprise really undergoes any structural or technological changes

In recent years, the changes in structure or technology are often carried out under some popular forms, such as: completely dissolving a department of an enterprise; or consolidating existing departments into a larger one; or rename, split or merge existing departments/divisions, etc.

However, since LC 2019 still does not have a clear guideline on how to define the relevant terms, such as "*change of organizational structure, reorganization of labor force*", or "*department*" etc., it will largely depend on the personal viewpoints of the local labor authority or the competent court when determining whether the enterprise has actually undergone structural or technological changes, in order to settle any labor disputes related to structural or technological changes.

Therefore, enterprises need to carefully consider the reason of "structural or technological changes" before terminating LCs to make sure that they can convince the competent court if a dispute occurs.

(b) Development and implementation of an LUP

[80] Article 42.5 LC 2019

As mentioned above, developing an LUP is a mandatory procedure in case the jobs of two or more employees are affected by structural or technological changes, or unfavorable economic conditions. In fact, this is the most difficult and risky procedure for employers because:

(i) In an LUP, employers need to explain convincingly why the structural or technological changes or the unfavorable economic conditions lead to the retrenchment of the related employees;

(ii) For enterprises where a GEO has been established, employers must consult the GEO when developing an LUP, and hold a workplace dialogue to discuss it. Although labor law does not require that the contents of an LUP must be approved by the GEO for enterprises where a GEO has been established, or by the people participating in the dialogue, but disagreeing or unfavorable opinions given by the GEO in which the employee is a member or by the people participating in the dialogue will create a premise for objections from the employee, or give rise to additional requests for explanation from the local labor authority, thereby, prolonging the process of retrenching employees due to structural or technological changes, or unfavorable economic conditions.

On the other hand, with the current regulations, it can be understood that if the GEO has not been established at the enterprise, employers may not need to take the step of consulting the GEO when developing an LUP. However, to err on the side of caution, when falling into this case, employers should consult the local labor management agency before deciding to skip this step.

IV. TERMINATION OF LABOR CONTRACTS IN OTHER CASES

1. Termination of LCs in other cases according to LC 2019

According to Article 34 of LC 2019, in addition to the cases of terminating LCs as analyzed, LCs will also be terminated in one of the following cases:

(a) Expiry of LCs;

(b) The work stated in the LC has been completed;

(c) Both parties agree to terminate the LC;

(d) Employees are sentenced to imprisonment but are not entitled to a suspended sentence or are not released under the provisions of Article 328.5 of the Criminal Procedure Code, subject to death penalty or prohibited from doing the jobs specified in LCs according to the judgment or decision of a Court;

(e) Employees who are foreigners working in Vietnam and are expelled under a legally effective court judgment or decision, or under a decision of a competent state agency;

(f) Employees die or to be declared by a court to have lost civil act capacity, be missing or dead;

(g) Employers who are individuals die or are declared by a court to have lost civil act capacity, be missing or dead;

(h) Employers who are not individuals terminate their operations or are notified by the business registration agency under the provincial PC that there is no legal representative or any other person authorized by the legal representative;

(i) Employers are subject to any split, division, consolidation, merger; sale, lease, conversion of business type; transfer of ownership and use rights of assets of an enterprise or cooperative;

(j) Work permits expire for foreign employees working in Vietnam; and

(k) In case the probationary agreement is included in the LC and employees fail to meet the requirements or one party cancels the probationary agreement.

Thus, compared to LC 2012, LC 2019 adds a number of new cases of terminating LCs, including: *(e), (h), (i), (j) and (k).*

LC 2019 also removes the provision regarding the case of termination of LCs when employees meet the conditions on the time of SI payment and the age of pension entitlement as prescribed in Article 36.4 of LC 2012. When employees fall into this case, either party may unilaterally terminate LCs when employees reach the retirement age (*as analyzed above*).

When LCs are terminated under the cases listed in Section IV.1 above, employers must notify the employees in writing of the termination of LCs, except for the cases

mentioned in Section IV.1.(d), IV.1.(e), IV.1.(f), and IV.1.(g).[81]

2. Expiry of LCs

If the signed LCs between employees and employers have definite terms and the parties do not wish to renew LCs after they expire, then the LCs will automatically terminate. Please note that, if employees are members of the managing board of the GEO and their LCs expire during their office term, then the LCs must be extended to the end of the term.

3. Negotiating to terminate LCs

Pursuant to Article 34.3 of LC 2019, LCs may be terminated by negotiation between employers and employees. In principle, the negotiation to terminate LCs may be conducted at any time as desired by the parties. In this case, LCs will be terminated at the time as determined and agreed upon by the parties.

4. Employees are sentenced to imprisonment but are not entitled to a suspended sentence or are not released under the provisions of the Criminal Procedure Code

Compared to Article 36.5 of LC 2012, LC 2019 provides more conditions for terminating LCs when employees are sentenced to imprisonment according to the Criminal Procedure Code. Accordingly, LCs will only be terminated if the following two conditions are satisfied: (a) employees are sentenced to imprisonment, and (b) are not entitled to a suspended sentence or are not released under Article 328.5 of the Criminal Procedure Code.

5. Employers are subject to any split, division, consolidation, merger; sale, lease, conversion of business type; transfer of ownership and use rights of assets of an enterprise or cooperative

Compared to LC 2012, LC 2019 expands the cases where LCs may be terminated when enterprises transfer the ownership and use rights of assets of the enterprise or cooperative. When an enterprise is merged or consolidated with another enterprise or it is split, the new enterprise *"is not required"* to continue using the existing number of employees and will amend or supplement LCs as stipulated in LC 2012.

Under the current law, when an enterprise is subject to any split, division, consolidation, merger; sale, lease, conversion of business type; transfer of ownership and use rights of assets of an enterprise or cooperative that affects the

[81] Article 45.1 LC 2019

employment of many employees, employers must develop an LUP as specified in Section III.3.(a).(ii). Both current employers and the new employers are responsible for implementing the approved LUP, instead of only the new employers responsible for implementing the LUP as previously stipulated in LC 2012.

If employees are retrenched in the circumstances mentioned in this Section, they will be entitled to redundancy pay.

6. Work permits expire for foreign employees working in Vietnam

According to Article 156 of LC 2019, work permits will cease to be effective in the following cases:

(a) Work permits expire;

(b) Termination of LCs;

(c) Contents of LCs are not consistent with the contents of work permits;

(d) The actual jobs are different from those stated in the issued work permits;

(e) Contracts which are the basis for issuing work permits expire or are terminated;

(f) The foreign partner notifies in writing that it stops sending foreign workers to work in Vietnam;

(g) Vietnamese enterprises, organizations, or partners, or foreign organizations in Vietnam that employ foreign workers terminate their operations; and

(h) Work permits are revoked.

Accordingly, when foreign employees work in Vietnam under a work permit fall into one of the above cases, the LCs signed with these foreign employees will automatically terminate.

7. In case the probationary agreement is included in LCs and employees fail to meet the requirements or one party cancels the probationary agreement

In the labor market, there is a reality that employees provide untruthful information when entering into LCs, or they deceive employers by providing fake diplomas and certificates to be recruited. Therefore, LC 2019 clearly stipulating

that LCs will be terminated if the probationary results are not satisfactory will provide employers with more powers to deal with the related issues when the above cases happen. The termination of LCs in this case is also appropriate as one of the parties no longer wishes to implement the probationary agreement and desires to seek a new and better job opportunity (for employees), or to find employees fitter with the requirements of the enterprise.

V. EMPLOYERS' RESPONSIBILITIES UPON TERMINATION OF LABOR CONTRACTS

1. Employers' responsibilities upon termination of LCs in accordance with LC 2019

(a) Within 14 (fourteen) working days of termination, employers and employees are responsible for paying each other all the amounts related to their rights and interests,[82] including the followings:

(i) Outstanding salaries and SI, HI, UI premiums under LCs;

(ii) Untaken annual leave days;

(iii) Outstanding amounts due as of the date of terminating LCs; and

(iv) Severance allowance equal to half a month's salary for each year of service or redundancy pay equal to one (01) month's salary for each year of service for the period without paying UI premiums, if payable as prescribed by law (*Please see the formulas for calculating severance allowance and redundancy pay as described below*).

(b) The above time limit for payment may be extended but not more than 30 (thirty) days from the LC termination date if the termination falls into one of the following cases[83]:

(i) Employers who are not individuals terminate their operations;
(ii) Employers terminating LCs due to structural or technological changes, or business reasons;

(iii) Employers are subject to any split, division, consolidation, merger; sale, lease, conversion of business type; transfer of ownership and use rights of assets of an enterprise or cooperative; and

[82] Article 48 LC 2019
[83] Article 48.1 LC 2019

(iv) Employers are under the influence of natural disasters, fires, hostility or epidemics.

(c) Employers must work with the SI agency to confirm the payment period of SI and UI for the employees, and return SI books and other documents *(if any)* to employees.[84]

(d) In addition to the said responsibilities, employers are also obliged to provide employees with copies of documents related to the employee's employment upon request. [85]

Please note that:

- Corresponding to the above regulation, the current labor law also allows employers to request payment from employees for all the amounts related to the employer's interests within 14 (fourteen) working days of termination of LCs.

- Severance allowance and redundancy pay are calculated as follows:

Severance allowance	**=**	**A**	*	**½ B**
	=	**[X – Y - Z)]**	*	**½ B**
Redundancy pay	**=**	**A**	*	**B**
	=	**[X – Y - Z)]**	*	**B**

In which:	A is the total duration of employment used for calculating severance allowance/redundancy pay, which is rounded as follows: ❖ Calculate by year (full 12 months); ❖ If there is any fraction of a year </= 06 months, rounded to 1/2 year; ❖ If there is any fraction of a year > 06 months, rounded to 1 year.
	B is the salary used to calculate severance allowance/redundancy pay.

[84] Article 48.3.(a) LC 2019 and Article 21.5 Law on SI
[85] Article 48.3.(b) LC 2019

	B is the average salary of the 06 preceding consecutive months prior to termination[86]
	X is the total time the employee has actually spent working for the employer. X includes the time spent at work; probationary period; the time spent on studying as assigned by employers; the leave period under sickness or maternity regime as provided for by the law on social insurance; the paid time off from work for treatment or rehabilitation as a result of occupational accidents or diseases, as stipulated by the law on occupational safety and hygiene; the paid time off from work to perform civic duties as prescribed by law; the time off from work not due to the fault of employees; weekly days off under Article 111, paid days off under Articles 112, 113, 114, and 115.1; the time spent on the duties of the EO according to Articles 176.2 and 176.3, and the period of temporary suspension from work according to Article 128 of the Labor Code[87].
	Y is the duration of payment to the UI fund. Y includes the duration of payment to the UI fund as stipulated by law, and the duration in which the employees who are not required by law to participate in UI receive payments from employers for the amounts equivalent to UI premiums in addition to salaries, as stipulated by labor law and the law on UI.[88]
	Z is the duration of employment in which employers have paid severance allowance/redundancy pay

2. Some new and remarkable points about the employer's responsibilities upon termination of LCs in accordance with LC 2019

(a) LC 2019 changes some contents about the employer's obligation to pay relevant amounts to employees upon termination of LCs, specifically:

(i) The deadline for paying relevant amounts related to the employee's benefits has been extended from 07 (seven) working days according

[86] Article 8.5.(a) Decree 145/2020/ND-CP
[87] Articles 8.3.(a) and 8.4 Decree 145/2020/ND-CP
[88] Article 8.3.(b) Decree 145/2020/ND-CP

to LC 2012 to 14 (fourteen) working days according to LC 2019;[89] and

(ii) LC 2019 also adds a number of cases that are considered special and in which the deadline for payment of the amounts related to employee's benefits upon termination of LCs may be extended to 30 (thirty) days, specifically: sale, lease, or conversion of business type.[90]

(b) Compared to LC 2012, LC 2019 stipulates that when LCs are terminated, employers upon request are obliged to provide employees with copies of documents related to the employee's employment.

(c) According to LC 2019, the provision on prior notification of the expiration of a definite-term LC is no longer mandatory.

LC 2012 stipulates that employers must notify in writing at least 15 (fifteen) days before the date of expiration of a definite-term LC to remind employees of the time of termination; however, according to LC 2019, the obligation to notify of the termination in advance is no longer mandatory. According to Decree No. 28/2020 dated 01/03/2020 on sanctioning of administrative violations in the field of labor, social insurance, and sending Vietnamese employees to work abroad under contracts, violating the prior notification obligation related to the expiration of an LC is also not considered an administrative violation by employers and is no longer subject to any sanctions.

However, it can be understood that the employer's obligation to notify in advance of the termination of a definite-term LC is previously set forth in order not to panic employees, to help them prepare mentally for the next jobs; therefore, employers should still consider notifying employees in advance so that they can make suitable arrangements.

VI. LEGAL CONSEQUENCES WHEN LABOR CONTRACTS ARE TERMINATED UNILATERALLY AND UNLAWFULLY

1. LCs are terminated unilaterally and unlawfully by employers

(a) Employers' responsibilities for unilateral and illegal termination of LCs according to LC 2019

[89] Article 48.1 LC 2019
[90] Article 48.1.(c) LC 2019

In general, LC 2019 does not make significant changes to the employer's responsibility for unilateral and illegal termination of LCs in comparison to LC 2012. Accordingly, if employers unilaterally and illegally terminate LCs, they must bear the following legal consequences:[91]

(i) Reinstate employees under the signed LCs; (are caused) and pay salaries, SI, HI and UI premiums for the days when they are not allowed to work plus at least 2 (two) months' contract salary[92].

If the jobs as agreed in LCs no longer exist but the employees still wish to work for employers, the two parties will negotiate to amend or supplement LCs.

If employers violate the provision on prior notification as specified in Article 36.2 of LC 2019, employers must pay an amount corresponding to the contract salary paid for the non-notified days.

(ii) If employees no longer desire to work, employers must, in addition to the payable amount as mentioned in Section VI.1.(a).(i) above, pay severance allowance in order to terminate LCs.

(iii) In case employers do not wish to reinstate employees and employees agree so, the two parties will, in addition to the amount employers have to pay as in Section VI.1.(a).(i) above and the severance allowance, agree on an additional compensatory amount which is at least equal to 02 (two) months' contract salary in order to terminate the LCs.

(b) Noteworthy issues

(i) In case the positions or jobs as agreed in LCs no longer exist and employees still want to work, the two parties will negotiate to amend or supplement LCs.

Similar to LC 2012, the current LC 2019 still does not clearly regulate the case in which if the parties cannot reach an agreement on amending or supplementing LCs, for example, cannot reach an agreement on a new job or new salary, then how can they handle this issue. In principle, if the position and job as agreed in LCs no

[91] Article 41 LC 2019
[92] Article 41.1 LC 2019

longer exists and the parties cannot reach an agreement, employees still have the right to continue executing the signed LCs.

If the negotiation produces no result, employers may also choose to assign the employees to other jobs different from LCs due to production and business demands as specified in Article 29 of LC 2019. In this case, employers can temporarily assign the employees to other jobs different from LCs but this period must not exceed 60 (sixty) cumulative working days in a year. Of note, this option is only appropriate when employers have specified in the ILRs the situations in which employers may temporarily assign employees to jobs different than those in LCs due to the demands of production and business. In addition, employers must ensure to comply with other regulations on the assignment of employees to other jobs than those in LCs as stipulated in Article 29 of LC 2019.

(ii) In case employers do not wish to reinstate employees and employees agree so

In this case, if employers and employees cannot reach an agreement on a compensatory amount as stated in Section VI.1.(a).(iii) above, employees may still return to work and employers must reinstate them.

2. LCs are terminated unilaterally and unlawfully by employees

On the employee's part, LC 2019 inherits the provisions of LC 2012 on the employee's obligations when they unilaterally and unlawfully terminate LCs. Accordingly, employees will have the following obligations:[93]

(a) They will not be entitled to severance allowance.

(b) Must pay compensation to employers equivalent to half a month's contract salary plus an amount corresponding to the salary paid for the non-notified days.

(c) Must reimburse employers the training costs, if any.

VII. NULLIFIED LABOR CONTRACTS AND DEALING WITH NULLIFIED LABOR CONTRACTS

[93] Article 40 LC 2019

1. Cases of nullified LCs

(a) LCs are nullified wholly

According to LC 2019,[94] LCs will be nullified wholly in the following cases:

(i) All contents of LCs are in contravention of law;

(ii) The person entering into LCs does not have the authority to do so, or violating the principles of voluntariness, equality, goodwill, cooperation and honesty when entering into LCs; and

(iii) The jobs stated in LCs are prohibited by law.

Thus, compared to the previous regulations, the current labor law no longer provides for the case in which LCs are nullified for the reason that they restrict or hinder the right of employees to establish, join and engage in activities of Trade Unions. The current labor law no longer mentions the provision stipulating that, if any part of an LC which provides for the rights and interests of employees lower than those in labor law, or the applicable ILRs or CLA, or any part which restricts other rights of employees, then that part will be nullified[95] wholly.

(b) LCs are nullified partially

According to the current law, LCs will be nullified partially when the nullified part violates law but does not affect the rest of the LCs.

Similar to the case in which LCs are nullified wholly, the current labor law has removed the provision stipulating that if any part of an LC which provides for the rights and interests of employees lower than those in labor law, or the applicable ILRs or CLA, or any part which restricts other rights of employees, then that part will be nullified wholly or partially.

2. Dealing with LCs which are nullified partially

In the spirit of inheriting the provisions from LC 2012, according to the current law, when LCs are declared to be nullified partially, the LCs will essentially be dealt with as follows:[96]

[94] Article 49 LC 2019
[95] Article 50.3 LC 2012
[96] Article 51.1 LC 2019

(a) Rights, obligations and benefits of employees will be handled in accordance with the applicable CLA, or in the absence of a CLA, the labor law.

(b) The parties will amend and supplement the part of LCs which is declared to be nullified to make it consistent with the CLA or labor law.

With regard to this point, Decree 145/2020/ND-CP has specific instructions for the case in which the parties cannot reach an agreement on amending and supplementing the nullified part. Accordingly, if this situation occurs, the partially nullified LCs will be dealt with as follows:[97]

(i) Terminate LCs;

(ii) Rights, obligations and interests of both parties arising from the beginning of the partially nullified LCs to the termination thereof will be settled according to the applicable CLA, or in the absence of a CLA, the labor law.

If the salary in the nullified LCs is lower than that as specified in labor law or the applicable CLA, the two parties must negotiate to correct the salary and make it consistent with law, and employers are responsible for calculating the difference between the re-negotiated salary and the one specified in the nullified LCs to reimburse the employees for the actual working days under the nullified LCs;[98]

(iii) Pay severance allowance;

(iv) The time employees have spent working under the nullified LCs will be counted as the time they spend working for employers, and use it as a basis for implementing the regimes under labor law.

For other issues related to the handling of partially nullified LCs, the current law clearly states that these issues will be under the court's jurisdiction as prescribed by the Civil Procedure Code.

3. Dealing with LCs which are nullified wholly

[97] Article 9.3 Decree 145/2020/ND-CP
[98] Article 9.2 Decree 145/2020/ND-CP

Based on the reason that makes LCs become nullified wholly, the current labor law divides wholly nullified LCs into 02 (two) groups to deal with, including: (i) dealing with LCs which are wholly nullified since a signatory is not duly authorized or the principle in entering into LCs is violated; and (ii) dealing with LCs which are wholly nullified since all contents of LCs are in contravention of law or the jobs stated in LCs are prohibited by law.

(a) Dealing with LCs which are wholly nullified since a signatory is not duly authorized or the principle in entering into LCs is violated[99]

In principle, similar to previous regulations, when an LC is declared to be wholly nullified in this case, employees and employers must ***re-sign the LC in a lawful manner***. If the parties do not re-sign the LC which has been declared to be wholly nullified, then such LC will be dealt with as per Section VII.2.(b).

As prescribed by law previously, within 15 (fifteen) days of receiving the decision on declaring an LC to be wholly nullified for a signatory is not duly authorized, the labor management agency of the locality where the enterprise is headquartered is responsible for instructing the parties to re-sign the LC.[100] However, this content is not reiterated in LC 2019 and Decree 145/2020/ND-CP. Accordingly, the deadline for the parties to re-sign LCs is not specified.

Regarding the rights and obligations of employees from the beginning of the nullified LCs until the LCs are re-signed, the current law also clearly stipulates that:

(i) If the rights and interests of each party in LCs are not lower than those prescribed in the applicable law or CLA, then the rights and interests of employees will be governed by the nullified LCs;

(ii) If the provision about the rights, obligations and interests of each party is in contravention of law but does not affect other provisions of the LCs, then the rights, obligations and interests of employees will be governed by Section VII.2.(b).(ii); and

(iii) The time employees have spent working under the nullified LCs will be counted as the time they spend working for employers, and use it as a basis for implementing the regimes under labor law.

[99] Article 10 Decree 145/2020/ND-CP
[100] Article 11.1 Decree 44/2013/ND-CP

(b) Dealing with LCs which are wholly nullified since all contents of LCs are in contravention of law or the jobs stated in LCs are prohibited by law[101]

When LCs are declared to be wholly nullified in this case, employees and employers ***must sign new LCs in a lawful manner***. The rights and obligations of employees arising from the beginning of the nullified LCs until new LCs are signed will be governed by Section VII.3.(a).

If a new LC is not signed, the parties will terminate the existing LC. Then, the rights and obligations of employees arising from the beginning of the nullified LCs until the termination thereof will be governed by Section VII.3.(a). Please note that, similar to previous regulations,[102] employers must pay employees a mutually agreed amount but for each year of service no less than one month's regional minimum wage applicable to the locality where employees work and stipulated by the Government at the time of declaring the LCs to be nullified. The length of employment for calculating allowance will be determined in accordance with law. In addition, employers must pay severance allowance for the LCs entered into before the nullified LCs, if any.

[101] Article 11 Decree 145/2020/ND-CP
[102] Article 15.1 Circular 30/2013/TT-BLDTBXH

CHAPTER III. LABOR DISCIPLINES

I. OVERVIEW ON LABOR DISCIPLINES

As defined in LC 2019, LDs are interpreted more broadly than in LC 2012; accordingly, LDs mean the regulations on compliance with requirements in respect of time, technology, operation of production and business which are issued by employers in the ILRs and as regulated by law.[103]

For the process of imposing disciplinary actions, LC 2019 has generally provided clearer and stricter regulations, in which the principle of encouraging employees to participate in the employees' organization continue to be applied in order to better protect their rights and interests.

II. FORMS OF IMPOSING LABOR DISCIPLINE

According to LC 2019, there are 4 (four) forms of LD, including:

1. Reprimand;

2. Extending the salary raise period for no more than 06 (six) months;

3. Removal from office; and

4. Dismissal.

In which, prolonging the salary raise period to no more than 06 (six) months and removal from office are separated into two independent disciplinary forms, instead of being combined into a single disciplinary action as previously prescribed in Article 125.2 of LC 2012. In general, this is only a technical adjustment that does not make any difference from the legal viewpoint.

III. PROCESS OF IMPOSING LABOR DISCIPLINE

In general, the current labor law[104] provides quite clear and detailed regulations and guidelines on the process and principle of imposing LD, accordingly:

1. When detecting a violation of any LD, employers, at the time of the violation, must document the violation and notify the GEO in which the employee is a member, the legal representative of the employee under 15 years of age; or collect evidence

[103] Article 117 of LC 2019
[104] Article 122 LC 2019 and Article 70 Decree 145/2020/ND-CP

to prove the fault of the employee if employers detect the violation after it has occurred.

2. Within the statute of limitations for imposing LD, employers will make preparations for an LD hearing as follows:

   (a) At least 05 (five) working days prior to the LD hearing, employers will notify the content, time and location of the LD hearing, full name of the LD violating employee, and the LD suffering violation to all members attending the meeting, including the GEO in which the violating employee is a member, the violating employee, the legal representative of the employee under 15 years of age *("attendants"*) and ensure that these Attendants receive such notice before the meeting; and

   (b) Upon receiving notices from employers, the attendants must confirm with the employers about their attendance. If one of the attendants cannot attend the meeting at the notified time and place, employees and employers will agree on an alternative time or location for the meeting; If the two parties cannot reach an agreement, employers will decide the time and location of the meeting.

3. Within the statute of limitations for imposing LD, employers will hold a disciplinary meeting as follows:

   Employers hold an LD hearing at the notified time and location. If one of the ***attendants*** does not confirm his/her attendance or is absent, employers will still hold the LD hearing;

   The LD hearing must be recorded in minutes which must be approved and signed by the attendants before the end of the meeting, if someone does not agree to sign the minutes, the minutes writer will clearly note on the minutes his/her full name, the reason for not signing *(if any)*.

4. Within the statute of limitations for imposing LD, the competent person will issue an LD imposing decision which is sent to the attendants.

IV. SOME NEW REGULATIONS AND NOTEWORTHY POINTS IN LC 2019 REGARDING LABOR DISCIPLINES

1. One of the most remarkable points of LC 2019 relating to LDs is that in addition to the ILRs, the behaviors agreed upon in LCs and as provided for by law may also

serve as a basis for imposing LD,[105] while LC 2012 prescribes that it is prohibited to impose LDs on the behaviors not specified in the ILRs[106].

In relation to the above regulation, as prescribed in Article 69.1 of Decree 145/2020/ND-CP, employers must issue ILRs in writing if 10 (ten) or more employees are employed, if less than 10 employees are used, it is not required to issue ILRs in writing but a provision on LDs and material liability must be included in their LCs. Thus, in case of including in LCs a provision on LDs and material liability, it can be understood that this only applies to those employers who hire less than 10 employees.

The current labor law does not clearly stipulate how to impose LDs on the violations specified by law. If a certain violation has been regulated by labor law, is it necessary for employers to specify such violation in the ILRs as before? Due to the lack of clear regulations on this issue, employers should still specify in the ILRs the conducts in violation of LDs to avoid potential risks.

2. Previously, LC 2012 requires the attendance of the GEO, or the trade union executive committee of the immediate superior level if the GTU has not been established at the enterprise.[107] This rule applies regardless of whether the employee is a trade union member or not.

   According to the current LC 2019, LDs may only be imposed with the attendance of the GEO in which the violator is a member.[108] With this new regulation, it can be understood that, if the employee is not a member of any GEO at the enterprise, LDs may be imposed without the attendance of the GEO.

   This is one of the great reforms in LC 2019, helping to reduce the procedures and encouraging employees to participate in GEOs so that their rights and interests are better protected.

3. The current labor law continues to give employers the right to suspend the employee's job when his/her violation is of a complicated nature which may cause difficulties to the investigation if the employee keeps working. The employee's job may only be suspended after the employer has consulted the GEO in which the violating employee is a member.[109] Thus, if the employee is not a member of any GEO at the enterprise, it may not be necessary for the employer to consult the GEO when deciding to suspend the employee's job.

[105] Article 127.3 LC 2019
[106] Article 128.3 LC 2012
[107] Articles 3.1 and 123.2.(b) LC 2012
[108] Article 122.1(b) LC 2019
[109] Article 128.1 LC 2019

4. LC 2019 stipulates[110] that the person competent to impose LDs is the one authorized by the employer to enter into LCs as defined in Article 18.3 of LC 2019 or the person specified in the ILRs. Accordingly, the current labor law has expanded the list of persons competent to impose LDs by adding to this list those who are specified in the ILRs for the flexible application where necessary.

[110] Article 69.2 (i) Decree 145/2020/ND-CP

CHAPTER IV. INTRODUCTION ABOUT EMPLOYEE ORGANIZATIONS IN THE ENTERPRISE, WORKPLACE DIALOGUE AND COLLECTIVE BARGAINING

LC 2019 clearly shows the efforts that Vietnam has made to localize the provisions in international conventions and treaties in which Vietnam is a member. Prominent efforts are reflected through the changes with respect to workplace dialogue and collective bargaining, thereby promoting democracy and equality between employers and employees. The above changes, in general, set up a new and stricter mechanism to protect employees' interests, however, there are also some problems that may arise in application.

I. OVERVIEW ON EMPLOYEE ORGANIZATIONS IN THE ENTERPRISE

1. Introduction about GEOs under LC 2019

Compared to LC 2012, LC 2019 provides a new mechanism that is more flexible and autonomous in protecting the employees' interests at the grassroots level. Accordingly, in addition to GTUs, GEOs will include a new type of organization called ELEO.[111]

At the enterprise's level, a GTU is a socio-political organization which is established by employees on a voluntary basis and represents employees in protecting their legitimate rights and interests.[112] Trade unions are well-organized from the central to grassroots levels. The operations, organizational structure, establishment conditions, powers and duties of Trade Unions are governed by the Trade Union Law and its guiding documents.

Historically, in the process of perfecting the legal system, Trade Unions were officially and firstly referred to in the Trade Union Law 1957 (*applied only in the North of Vietnam*), after the country was unified, the Trade Union Law 1990 and now Trade Union Law 2012. Since then, the above legal document has been used as the basis for governing the Trade Unions at the grassroots level to protect the legitimate rights and interests of employees in accordance with labor codes issued time from time. Accordingly, LC 1994 for the first time stipulates the rights of employees to establish, join and operate a trade union,[113] and the above rights have been maintained in subsequent labor codes despite amendments, additions and replacements.

Being more flexible than the previous labor codes, in addition to GTUs, LC 2019

[111] Article 3.3 LC 2019
[112] Article 10 Constitution 2013 and Article 5.1 Law on Trade Unions 2012
[113] Article 7.2 LC 1994

also allows employees to establish and participate in the operation of an EOIE.[114] In principle, this organization operates independently and in parallel with a GTU to represent employees and protect their legitimate rights and interests.[115] In general, the addition of EOIEs is part of the process of improving the Vietnamese law consistent with Convention 98 and as required by the CPTPP and EVFTA.

However, please note that the EOIE is a new mechanism which is still in the process of development. Thus, the following analysis may be incomplete as it is only based on the existing regulations of LC 2019 and other guiding documents.

2. Establishment of EOIEs

An EOIE is established and registered by employees with a competent state authority which will issue a registration certificate.[116] Upon registration, an EOIE must have the minimum number of members who are employees working in the enterprise.[117] Up to now, the minimum number of members as well as the process, order, procedure and dossier for the establishment of an EOIE have not been specified, pending guiding documents from the Government.

In addition, the management board of an EOIE must be elected by employees and stated in the establishment dossier, who must meet the following conditions: [118] (i) being Vietnamese employees currently working for the enterprise; (ii) not being prosecuted for criminal liability, not serving penalties or criminal records have not been removed for crimes of infringing upon national security, human rights, citizen's freedom rights and democracy, and any crimes of infringing upon the property rights as prescribed by the Criminal Procedure Code.

Regarding the funds for operation of an EOIE, this issue has not been prescribed in the current labor law. In Article 174.1.g of LC 2019 providing for membership fees, it can be interpreted that when registering to become members of an EOIE, employees must pay membership fees (maybe *on a monthly basis similar to union fees*); however, it is not known whether there is the contribution of employers as similar to a Trade Union. If yes, do employers have to increase the amounts spent on those organizations, or maintain the existing percentage of fund appropriation and divide it equally among the organizations. This issue needs further guidance from the Government.

[114] Article 170.2 LC 2019
[115] Article 170.2 LC 2019
[116] Article 172.1 LC 2019
[117] Article 173.1 LC 2019
[118] Article 173.2 LC 2019

3. Prohibited acts of employers in relation to the establishment, participation in and operation of GEOs

With the purpose of preventing employers from obstructing the establishment, participation in and operation of GEOs or discriminating against employees who are members of GEOs, LC 2019 stipulates a number of prohibited acts of employers as follows:[119]

(a) Requesting employees to participate in, not to participate in or leave a GEO in order to be recruited, or to sign or renew LCs;

(b) Dismissing or disciplining employees, unilaterally terminating LCs, not renewing LCs, or assigning employees to other jobs;

(c) Discriminating against employees in terms of salary, working time, other rights and obligations in the employment relationship;

(d) Obstructing, causing difficulties in order to weaken the operation of GEOs; and

(e) Intervene with or manipulate the process of establishment, election, plan development and organization of activities by GEOs.

4. Obligations of employers and notes for GEOs

In order to ensure that GEOs can operate smoothly, the law sets out a number of obligations that employers need to comply with. Accordingly, in addition to prohibiting the acts of obstructing the establishment, participation in and operation of GEOs as well as recognizing and respecting the rights of these organizations, LC 2019 also imposes a separate obligation that employers need to discharge to managing members of GEOs.[120]

Please note that, employers must enter into written agreements with the management board of GEOs when they commit one of the following acts against a managing member of GEOs:[121]

(a) Unilaterally terminate LCs;

(b) Assigning employees to other jobs;

[119] Article 175 LC 2019
[120] Articles 2 and 177.1 LC 2019
[121] Article 177.3 LC 2019

(c) Impose the disciplinary action in form of dismissal;

In case the parties cannot reach an agreement, the parties must report this issue to the labor management agency under the provincial PC. Employers may only make a decision on this matter after 30 days of the report. If employees disagree with the decision of employers, such employees or the management board of GEOs may have this labor dispute resolved in accordance with statutory procedures. Since there is no longer the provision on the support obligation of the immediate superior Trade Union, if employees fail to reach an agreement with employers on the matters above, the GTU is also not obliged to report this dispute to the immediate superior Trade Union.

In addition, for employees who are members of the management board of a GEO, if their LCs expire during their office term, employers must extend the signed LCs until the end of the office term.[122]

Employers still have to pay salary to members of the management board of GEOs when they perform the assignments on behalf of employees at the enterprise. However, employers may raise objections if the GEO adversely affects normal operations of the enterprise when contacting employees at the workplace.[123]

5. Roles and functions of EOIEs

(a) For employees

Similar to GTUs, EOIEs play as an organization to protect the lawful rights and interests of employees, as well as a place to solve problems arising between employees and employers. During the employment, employees will definitely need to make comments or raise expectations or even have conflicts with employers that need to be resolved transparently and publicly. Then, employees can turn to the EOIE to present their issues that need to be resolved, and the EOIE will work directly with employers on these issues.

The advent of an EOIE makes GTUs not the only organization in protecting the legitimate rights and interests of employees in enterprises. In fact, there have been several comments that GTUs are still uncertain in negotiations and dialogues with employers, and not enthusiastic enough to resolve the issues brought to them.[124] To solve the above problem, if employees realize

[122] Article 177.4 LC 2019
[123] Articles 176.1(a) and 176.1.(g) LC 2019
[124] http://vuit.org.vn/tin-tuc/t2788/mot-so-ton-tai-han-che-va-kho-khan-vuong-mac-trong-to-chuc-hoat-dong-cua-cong-doan-trong-cac-doanh-nghiep-hien-nay.html *(referred to on 15/02/2021)*

that the GTU does not properly or fully perform its functions and duties, employees can set up a representative organization independent from the GTU with the rules, regulations, accession conditions, and structure etc. set forth by employees themselves. This contributes to creating the employees' autonomy and self-determination in protecting their legitimate rights and interests.

In terms of functions, an EOIE is similar to a GTU, it will represent employees to perform the following duties: (1) Conduct collective bargaining with employers; (2) Conduct dialogues at the workplace; (3) Give comments on the construction of the salary scale, payroll, labor norms, ILRs and other issues of employees; (4) Represent employees to resolve complaints and disputes; and (5) Organize and lead strikes in a lawful manner.[125] However, unlike a GTU, an EOIE is not regulated by law to have the function of giving advice and instructions to employees when entering into or performing LCs, the function of giving legal advice as well as the right to request competent State agencies to settle issues relating to the interests of one or many employees.

Considering the nature of the above-mentioned functions and the employee-representing role, EOIEs definitely can assist employees with the above issues. Since the operation scope of this organization has not yet been specified, it is necessary to wait for written guidelines from the Government or if the guiding document does not specify the operation scope, then this should be clearly specified in the organization's charter when it is established.

(b) For employers

EOIEs are considered as an information bridge between employees and employers in the employment relationship. With the assistance of this organization, employers can gather opinions, thoughts and aspirations of employees about working regimes, facilities, salary, bonus, working method, working hours and break time; especially businesses with a large number of employees, thereby they can make appropriate and harmonious adjustments for all parties. This helps to reduce damages to enterprises arising from conflicts, disputes, complaints, or strikes. In addition, it also contributes to creating a friendly and efficient working environment, making employees want to dedicate themselves to their work, and building a reputation for enterprises.

[125] Article 178 LC 2019

In terms of functions, similar to the analysis in Section I.5.(a) above, EOIEs will represent employees to work with employers on the issues related to legitimate rights and interests of employees.

II. WORKPLACE DIALOGUE

1. An overview on the new points and difficulties in implementation

(a) Workplace dialogue and the democracy rule are implemented based on a model with multiple GEOs.

As analyzed in Section I, unlike LC 2012 which builds the regulations on dialogue based on the model of GTU as the only organization that represents employees at the grassroots level,[126] LC 2019 allows employees to set up, participate in and operate an ELEO.[127] Thus, in case of a dialogue, the participants, on the part of the employee, may include representatives of the Executive Committee of the GTU *(if a GTU has been established)* and representatives of EOIE(s).

As an example about the participants in a dialogue, if an enterprise has not established or is not eligible to establish a GTU, but the employees have established an EOIE, then the participants in a dialogue will, on the employee's side, include just representatives of the EOIE or must also include representatives of the immediate superior Trade Union as stipulated in Article 3.4 of LC 2012 "*The employees' organization at the grassroots level is the executive committee of the grassroots trade union or the executive committee of the immediate superior Trade Union of the place where the grassroots Trade Union has not been established*."

In response to the above issue, and as analyzed in Section I.1, LC 2019 has changed almost the entire concept of a GEO, leading to changes in the way the provisions related to this organization are applied. Accordingly, for the processes in which a GEO is involved, they also involve the engagement of the GTU and the EOIE. In case a GTU has not been established but an EOIE has been established, it can be understood that the dialogue only requires the presence of representatives of the EOIE. This change brings about flexibility, autonomy and proactivity in the protection of the interests of employees, as well as reducing the workload for the immediate superior Trade Union.

[126] Article 3.4 LC 2012
[127] Article 170.2 LC 2019

However, this change also gives rise to questions relating to workplace dialogues when the enterprise has not established or is not eligible to establish both a GTU and an EOIE, then which organization will represent employees to coordinate with employers in holding workplace dialogues. Regarding the issue of representing employees in workplace dialogues, enterprises can apply the mechanism of representative group similar to the case where there are employees who do not participate in any GEO. Accordingly, employers will assist employees to select representatives for the dialogue,[128] and this representative group will perform such tasks as: Collecting and summarizing opinions from employees, making preparations for the dialogue, and representing employees in the dialogue with employers.[129] In terms of nature and the implementation process, the mechanism of representative group meets the statutory conditions and is appropriate for this case, although the law does not point out a specific mechanism to be applied.

(b) Specific regulations on the quantity and composition of participants in the dialogue

LC 2012 and its guiding documents do not contain specific regulations on the quantity and composition of participants in the dialogue, which makes enterprises confused about which representatives and how many of them will join the dialogue. In addition, for enterprises with a large number of employees, up to hundreds or even thousands of employees, but the representatives of employees participating in the dialogue are not commensurate with the large scale, making it less effective in collecting opinions from employees in the dialogue.

To correct this problem, LC 2019, particularly Decree 145/2020, details the number of participants and who to join the dialogue on the part of both the employee and employer as follows:

(i) On the employer's part[130]

Employers are allowed choose the quantity and composition of participants in the dialogue after considering the operation or business conditions, contents of the dialogue and work arrangements. However, to ensure the quality of the dialogue, employers need to comply with the following regulations:

[128] Article 37.1 Decree 145/2020/ND-CP
[129] Article 37.4 Decree 145/2020/ND-CP
[130] Article 38.1 Decree 145/2020/ND-CP

- Participants: The presence of the employer's legal representative is required; and

- Number of participants: At least 03 persons.

(ii) On the employee's part[131]

The GEO and the representative group of employees are responsible for determining the number and who to join the dialogue based on production and business conditions, work arrangements, structure and quantity of employees, and the factor of gender equality, as follows:

- At least 03 persons for enterprises with less than 50 employees;

- At least 04 - 08 persons for enterprises with 50 to under 150 employees;

- At least 09 - 13 persons for enterprises with 150 to under 300 employees;

- At least 14 - 18 persons for enterprises with 300 to under 500 employees;

- At least 19 - 23 persons for enterprises with 500 to under 1,000 employees; and

- At least 24 persons for enterprises with 1,000 or more employees.

Please note that, the number of participants will be determined by the GEO and the representative group corresponding to the percentage of members of their organization and group over the total number of employees in the enterprise.[132]

This list of representatives is determined every 2 years and must be publicly announced at the workplace. In the period between two terms, if there is any representative member who cannot continue to join a dialogue, employers or each GEO or representative group will choose alternative

[131] Article 38.2 Decree 145/2020/ND-CP
[132] Article 38.2.(b) Decree 145/2020/ND-CP

representative members from the organization or group and add them to the list which will then be announced publicly at the workplace.[133]

However, the law does not specify the time limit for addition of an alternative member from the time a member ceases to be a participant. It can be understood that the addition will be made before the dialogue takes place or at the time when representative members are selected to the list of participants for the next term.

In addition, one point that employers should keep in mind when organizing a dialogue is that, in addition to the participants above, employers need to reach an agreement with the GEO and the representative group on the number of employees invited to join the dialogue. The law encourages employers to invite all employees but this is not mandatory. Instead, employers can invite a number of employees relevant to the content of the dialogue. However, it is necessary to have the participation of female employees (*the number is not specified*) in the dialogue related to the rights and interests of female employees,[134] for example: Working hours, break time, policies for female employees who are pregnant and nursing children under 12 months old etc.[135]

(c) Clearly regulating responsibilities of the parties in relation to workplace dialogues

In practical application, employers and GTUs are often confused and out of step with each other in the implementation of dialogues because LC 2012 only provides general principles but lacks specific regulations to define the responsibilities of each parties when they organize a workplace dialogue.

To solve the above problem, LC 2019 and its guiding documents have clearly defined and separated the responsibilities taken by employers and GEOs for each specific activity as follows:

(i) For employers[136]

- Employers are responsible for coordinating with GEOs *(if any)* to organize a workplace dialogue;

[133] Article 38.3 Decree 145/2020/ND-CP
[134] Article 38.4 Decree 145/2020/ND-CP
[135] Articles 136 and 137 LC 2019
[136] Articles 37.1, 37.2 and 37.3 Decree 145/2020/ND-CP

- Ensuring that the grassroots democracy regulations at the workplace contain all of the following main contents:
  - Rule of dialogue at the workplace;
  - The quantity and composition of participants of each party as analyzed in Section II.1.(b);
  - Number of annual dialogues and their holding times;
  - The way to organize periodical dialogues, dialogues as requested by one or two parties, or ad hoc dialogues;
  - Responsibilities of the parties when participating in dialogues;
  - Granting of the rights of managing members of the GEO to the representative members participating in the dialogue who are not managing members of the GEO; and
  - Other contents *(if any)*.
- Appointing representatives to participate in workplace dialogues;
- Arranging the location, time and other necessary facilities to hold workplace dialogues; and
- Upon request, report the implementation of dialogues and grassroots democracy regulations to the State management agency in charge of labor.

(ii) For GEOs and representative groups[137]

- Appoint representative members to participate in dialogues;
- Advise employers on the contents of the grassroots democracy regulations;

[137] Article 37.4 Decree 145/2020/ND-CP

- Collect and summarize opinions from employees, and prepare the contents for discussion in the dialogue; and

- Participate in the dialogue with employers in accordance with the grassroots democracy regulations.

When responsibilities of the parties are separated and specified clearly, both employers and GEOs know what they need to do to prepare for workplace dialogues, avoiding confusion during the process of implementing dialogues. This also prevents the situation where a party desires to do something but fails to find a basis to make a request, making it ambiguous for both parties to determine their rights and obligations.

From the perspective of enterprises, with the above provisions, enterprises can be more proactive in ensuring the rights of employees related to workplace dialogues, minimizing complaints or lawsuits that may arise in relation to these rights, which may make employers subject to sanctions by competent labor management authorities. In addition, enterprises also have grounds to reject unreasonable requests from employees or GEOs which are beyond their statutory rights. Therefore, employers can adjust and orient the process of organizing workplace dialogues.

(d) Adding the form of ad hoc dialogue

In general, the contents for discussion with employees in workplace dialogues have been specified in LC 2012. However, these contents are only regulated generally, such as business situation, working conditions, implementation of LCs, CLA, ILRs, regulations and commitments, other agreements in the workplace, and some other contents.[138] In fact, with this regulation, enterprises will almost be able to choose freely the contents of dialogue with employees. In addition, employees are only allowed to make recommendations on a number of contents, such as building, amending, or supplementing ILRs, other regulations and documents related to obligations, rights and benefits of employees; building, amending, or supplementing salary scales, payrolls and labor norms; proposing the contents of collective bargaining.[139] Thus, the participation of employees stops at *"making recommendations"* via its representative organization as the GTU *(if any)*, and these contents are not compulsory for discussion in dialogues.

[138] Article 64 LC 2012
[139] Articles 5.1 and 5.2 Decree 149/2018/ND-CP

To enhance democracy at the workplace, LC 2019 lists the cases in which employees are allowed to make recommendations as specified in Decree 149/2018/ND-CP, and accordingly, these are the cases in which employers must hold dialogues at the workplace.[140] . Particularly, there are 7 cases in which employers must hold dialogues at the workplace, including:

(i) When employers issue regulations on evaluating the employee's performance

Regular failure to complete the assignments under LCs is one of the bases for employers to unilaterally terminate LCs. However, LC 2012 does not regulate the responsibility for developing the regulation on evaluating the employee's performance, but this regulation is mentioned in a guiding decree of LC 2012, which is Decree 05/2015/ND-CP.[141] Meanwhile, LC 2019 directly regulates this responsibility of the employer and uses it as a basis to refer to the case in which a workplace dialogue is required.

(ii) When employers retrench employees due to changes in structure or technology, or unfavorable economic conditions

LC 2019 stipulates that if employers have to retrench employees due to structural or technological changes, or unfavorable economic conditions, they must consult and hold a dialogue with the GEO in which the employees are members.[142]

(iii) When employers develop an LUP

In addition to holding a dialogue at the workplace when developing an LUP, LC 2019 also stipulates that employers must notify employees of this plan within 15 days from the date of approval of the LUP.[143]

(iv) When employers build salary scales, payrolls and labor norms

As prescribed by LC 2019, when building salary scales, payrolls and labor norms, employers must hold a dialogue at the workplace,

[140] Article 63.2.(c) LC 2019
[141] Article 38.1.(a) LC 2012 and Article 12 Decree 05/2015/ND-CP
[142] Article 42.6 LC 2019
[143] Article 44.2 LC 2019

consult the GEO for enterprises where a GEO has been established, and must make a public announcement at the workplace before implementation.[144]

However, the current labor law does not specify the time limit for making a public announcement after these are passed, and only requires employers to announce them before implementation. Therefore, employers should be aware of this provision on publicly announcing salary scales, payrolls and labor norms a reasonable period before implementation.

(v) When employers develop the regulation on rewards

According to Article 104 of LC 2019, although employers have the right to decide whether or not to build the regulation on rewards, but when they have decided to develop this regulation, employers must consult the GEO, hold a workplace dialogue and publicly announce this regulation.

Like the analysis in Section II.(d).(iv) above, LC 2019 does not specify a deadline for employers to publicize this regulation at the workplace, so they should consider announcing this regulation on rewards a reasonable period before implementation.

(vi) When employers issue, amend or supplement ILRs

LC 2019 further requires employers to consult the GEO (if any) about the amendment and supplementation of ILRs before implementation.[145] Accordingly, employers must hold a workplace dialogue when issuing, or even amending or supplementing ILRs.

A practical issue of note is that when employers register ILRs or the amended or supplemented ILRs, it is unclear whether the competent labor management agency will require enterprises to provide proofs that a workplace dialogues has been held. However, when a relevant labor dispute occurs and it is necessary to refer to the corresponding regulations of the ILRs to settle the dispute, such as the cases of imposing disciplinary actions, compensation for material damages, assigning employees to other jobs different from LCs etc., the complaint settlement agency or the Court may consider the validity of the process by which the ILRs are issued,

[144] Article 93.3 LC 2019
[145] Article 118.3 LC 2019

amended or supplemented before registration, including whether the enterprise has held a dialogue with employees about the ILRs, or amended or supplemented ILRs.

(vii) When employees are suspended

Similar to LC 2012, LC 2019 allows employers to suspend employees when they commit a complicated violation and if the employees are allowed to continue their work, it will be difficult to verify the violation. Accordingly, the employees will be suspended after employers have consulted the GEO in which the employees are members and have held a dialogue at the workplace.[146]

In general, LC 2012 and LC 2019 are similar to each other in that they require employers to consult the GEO upon occurrence of the cases in which a workplace dialogue is required. However, in order to be consistent with the mechanism that allows multiple GEOs to be established besides a GTU, LC 2019 further stipulates that when there are such cases as retrenchment of employees due to structural or technological changes, or economic reasons; or suspension of employees, employers only have to consult the GEO in which the related employee is a member. If an employee is not a member of any GEO for the reason that: (i) the enterprise has not established or is not eligible to establish a GEO, or (ii) these organizations have been established but the employee does not choose any organization to join, can the enterprise hold a dialogue for the cases in which the employee is involved without consulting the GEO as required by law?

We believe that when there is not any guiding document for the above situation, enterprises will be confused about the way to handle relevant cases. Therefore, it is necessary to provide detailed guiding documents for the above provisions of LC 2019 to make it more convenient for enterprises.

2. Process and noteworthy issues when holding workplace dialogues

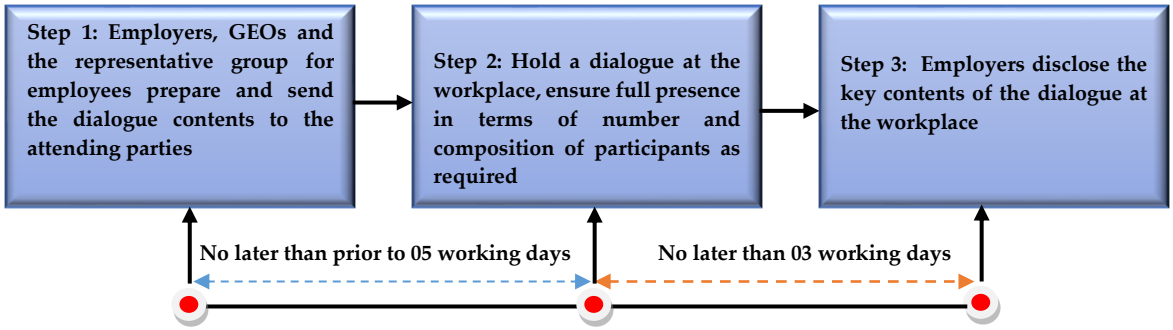
The process and method for holding workplace dialogues must be specified by employers in the grassroots democracy regulations as a basis for implementation, and these regulations must be disclosed to employees.[147] Accordingly, the process for holding various forms of dialogue will be as follows:

[146] Article 128.1 LC 2019

[147] Articles 37.2 and 48 Decree 145/2020/ND-CP

(a) Holding periodic dialogues at the workplace

When holding periodic dialogues at the workplace, employers should comply with the process outlined below:[148]



Some issues employers need to be aware of when holding a dialogue:

(i) pay attention to the quantity and composition of participants in the dialogue to ensure legal compliance as analyzed in Section II.1.(b), if not, the dialogue can be considered invalid. The conditions for holding a dialogue are as follows: [149]

- For employers: The attendance of the legal representative or the person authorized in writing is required.
- For employees: Over 70% of the representative members are required to be present in the dialogue as mentioned in Item II.1.(b).

(ii) The dialogue must be recorded in minutes which are signed by the legal representative or the authorized person of the employer and by the representative of each GEO (*if any*) and by the representative of the representative group for employees (*if any.*)[150] In the absence of both aforesaid organizations, to ensure legal compliance, all employees participating in the dialogue need to sign the minutes.

(iii) Employers are responsible for publicly announcing the main contents of the dialogue no later than 03 days from the end of the dialogue.[151] Therefore, in the minutes of dialogue, it is necessary to clearly indicate the key contents of the dialogue and specify which

[148] Article 39 Decree 145/2020/ND-CP
[149] Article 39.4 Decree 145/2020/ND-CP
[150] Article 39.4 Decree 145/2020/ND-CP
[151] Article 39.5 Decree 145/2020/ND-CP

contents to be disclosed, in order to avoid the problems related to the contents of the dialogue and the contents to be disclosed.

(iv) Regarding the form of public disclosure, as the law does not clearly stipulate the form of disclosure of the main contents of the dialogue, employers can, depending on the characteristics of their enterprises in terms of production, business, and labor arrangement, and the contents to be disclosed, choose the same form of disclosure as implementing the grassroots democracy regulations,[152] as follows:

- Post the contents at the workplace;
- Disclose the contents at the meetings between employers and GEOs, the representative group for employees or the employees;
- Give written notice to GEOs and the representative group for employees in order to notify the employees;
- Disclose the contents on the internal communication system; and
- Other means not prohibited by law.

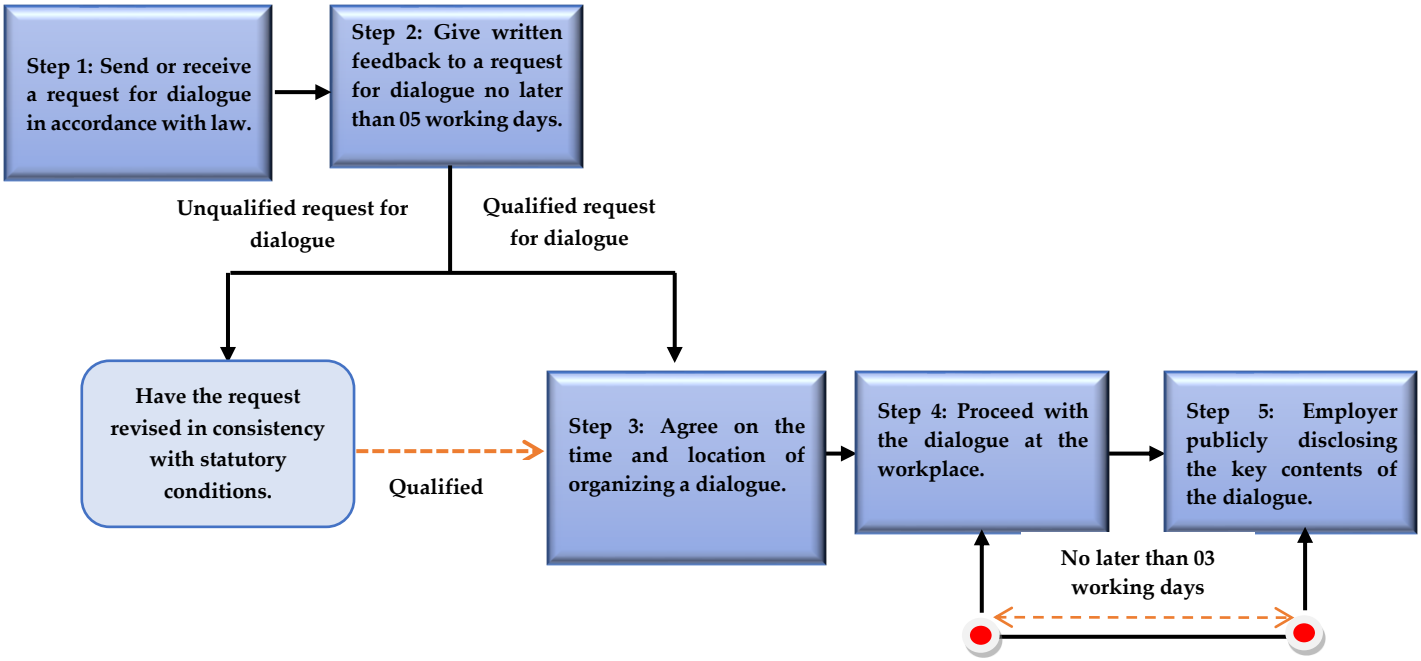
For avoidance of doubt, employers may stipulate the form of disclosure of the main contents of a dialogue in the democracy regulations, which will be notified to employees.

(v) Simultaneously, within 03 (three) days of ending the dialogue, the EO *(if any)*, the representative group of the employee dialogue *(if any)* is also responsible for disseminating the main contents of the dialogue to employees who are its members[153].

(b) Holding a dialogue at the request of one or more parties

When employers send or receive a qualified request for a dialogue in accordance with law, they must hold a dialogue at the workplace according to the following process:

[152] Article 43.2 Decree 145/2020/ND-CP
[153] Article 39.5 of Decree 145/2020/ND-CP



Some issues that employers should be aware of when holding a dialogue at a request:

(i) A request for workplace dialogue should satisfy the statutory conditions to be considered valid and binding on the other party. Accordingly:

- In case the employer is the requesting party, the contents of dialogue must be approved by the employer's legal representative.[154]

- In case employees are the requesting party, the contents of dialogue must be approved by at least 30% of the representative members participating in the dialogue.[155]

If the request for dialogue from employees does not satisfy the said requirement, the employer may refuse to hold a dialogue, but must reply within 05 working days of receiving the request, stating the reason and having the request amended or supplemented in consistency with the statutory conditions.

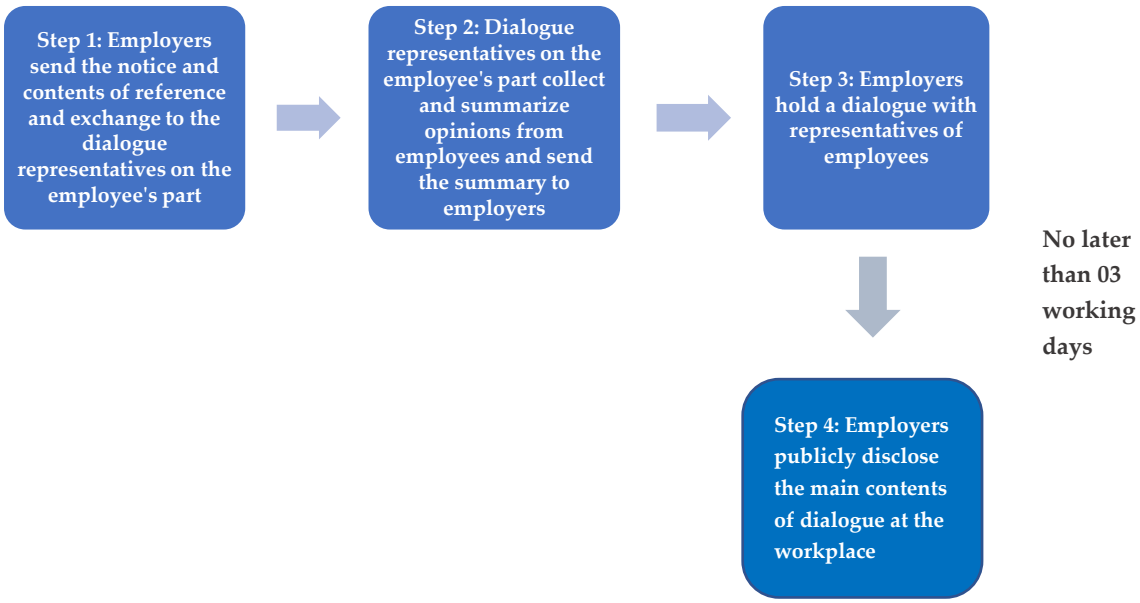
[154] Article 40.1.(a) Decree 145/2020/ND-CP
[155] Article 40.1.(b) Decree 145/2020/ND-CP

(ii) Employers, either on their own or in coordination with GEOs (if any), appoint a person to be in charge of minuting the dialogue progress. At the end of the dialogue, this person will read the contents of the minutes to the parties and sign the minutes. Notably, the minutes need to be signed by the representatives of the parties as presented in Section II.1.(b).[156]

(iii) Within 03 working days of the end of the dialogue, employers must disclose the main contents of the dialogue (it is necessary for the parties to decide on which contents in the minutes to be disclosed) in one of the forms as analyzed in Section II.2.(a).(iv) and EO *(if any)*, the representative group of the employee dialogue *(if any)* disseminate the key dialogue contents to employees as their members.[157]

(c) Holding ad hoc dialogues

For the cases in which employers must consult the GEO about (1) the regulation on evaluating the employee's performance; (2) the retrenchment of employees due to changes in structure, technology or economic reasons; (3) an LUP; (4) salary scales, payrolls and labor norms; (5) the regulations on rewards, and (6) ILRs,[158] the process is as follows:[159]



Some issues employers should be aware of when holding ad hoc dialogues:

[156] Articles 40.3 and 39.4 Decree 145/2020/ND-CP
[157] Article 40.4 Decree 145/2020/ND-CP
[158] Article 41.1 Decree 145/2020/ND-CP
[159] Article 41.1 Decree 145/2020/ND-CP

(i) Upon occurrence of a situation in which a dialogue must be held, employers have to send a written notice and the draft contents for reference to the representative members. However, law does not stipulate a specific time limit for employers to send a notice of consultation, but it is understood that this will be done before applying the regulations in need of advice. Therefore, employers need to refer to the plan of implementation to determine a reasonable time limit for serving the notice and related documents.

(ii) Regarding the contents of the written notice, LC 2019 and the guiding documents do not regulate the particular contents that should be included in this notice. As predicted, there will be no regulations governing the form of the above notice, because this document is unique and depends on each specific case as well as the contents of dialogue. However, based on the nature of the document which is to notify the employer's representative members participating in the dialogue of the case in need of dialogue, therefore, the notice should have some basic contents as follows:

- Present the situation that needs to be discussed, and indicate the legal bases for holding the dialogue.
- Request the representative members on the employee's part to collect opinions from employees, and specify the deadline to return the summary of opinions.
- Noting the time of collecting opinions (during working hours or not) and the location for collecting opinions (*if any*).

(iii) Similarly, the current labor law does not specify a time limit for the representative members on the employee's part to collect opinions from employees. Therefore, in order to ensure the progress of applying the new regulations, as we propose in Section II.2 (c).(ii) above, employers need to specify the deadline for the representative members on the employee's part to return the summary of opinions mentioned in the notice. At the same time, it is necessary to coordinate with and push the dialogue representative members on the employee's part in order to ensure the progress of applying the new regulations and contents as scheduled.

(iv) The quantity and composition of participants as well as the dialogue minutes and signatures of the representatives of the parties will be similar as stated in Section II.2.(a).(ii).

(v) No later than 03 working days from the end of the dialogue, employer need to publicly disclose at the workplace the main contents of the dialogue.[160]

Simultaneously, the EO (if any), the representative group of the employee dialogue (if any) disseminate the key dialogue contents to employees as their members. Regarding this issue, employers need to comply with Section II.2.(a).(iv) as presented above.

(vi) For the cases of suspension of employees as presented in Section II.1.(d).(vii), employers and GEOs in which the suspended employees are members can discuss this issue in writing or via direct communication between the representatives of employers and the representatives of GEOs.[161] Accordingly, unlike other cases, employers can choose the form of written communication instead of holding a dialogue. Please note that, the representative of employees in this case is the GEO in which the employees are members. If the employees are not members of any GEO, employers should coordinate with the GEO *(if any)* to instruct these employees to select a representative member participating in the dialogue with employers, the number of members will be determined according to Section II.1.(b).[162] However, if employers have not established any GEO, which organization will represent the employee in this case, since LC 2019 has removed the provision related to the support of the immediate superior trade union. This is the period of reviewing and promulgating guiding documents, so it is possible that, in the coming time, labor management agencies will provide additional guidance on this issue.

III. COLLECTIVE BARGAINING IN THE ENTERPRISE (CBIE)

Unlike the process of dialogue at the workplace, the CBIE is pending the written guidance on implementation from the competent authority. Meanwhile, the LC 2019 is still considered to be general principles and many issues have not yet been clarified. Therefore,

[160] Article 41.1.(e) Decree 145/2020/ND-CP
[161] Article 41.2 Decree 145/2020/ ND-CP
[162] Article 37.1 Decree 145/2020/ ND-CP

Section III will mainly introduce readers the new points of the LC 2019 related to CBIE and the way to implement the CBIE in accordance with the current regulations.

1. Overview on the new points of the LC 2019

(a) Supplementing the form of CBIE

The LC 2019 allows the one party as one or more GEOs and the other party as one or more Employers or EOs[163] to participate in the CBIE. This form will be analyzed and presented in detail in Section IV below.

(b) Amending and supplementing the contents of the CBIE

The LC 2019 supplements many CB contents, allowing each party to freely raise the issues it is concerned about and find necessary. Accordingly, the additional contents include:[164] *(i) bonuses, meals and other regimes; (ii) labor norms; (iii) conditions and means of operation of GEOs; relationship between the Employer and the GEO; (iv) mechanisms and methods of prevention and resolution of LD; (v) ensuring gender equality, protecting maternity leave and annual leave; prevention of violence and sexual harassment in the workplace.*

In addition, the LC 2019 also has a change in the introduction of other bargain contents. Instead of other contents that must be considered necessary by both parties as before, under the new regulations, other bargain contents may be those in which either party or both parties are interested in. This change helps the contents bargained by the parties to become adequate and covers issues that one party or all parties are concerned about.

(c) Clarifying the right to request the CB by a GEO

According to the new regulations of the LC 2019, there may be many GEOs in the enterprise. Therefore, in order to clarify the right to request the CB of an organization and avoid conflicts among organizations and members, the LC 2019 has concretized the right to request the CB of a GEO.

Specifically, the GEO has the right to request the CB when reaching the quorum of the total number of employees in the enterprise according to the governmental regulations. In case an enterprise has many GEOs meeting the regulations, the organization with the right to request the bargain is the

[163] Article 65 LC 2019
[164] Article 67 LC 2019

organization with the largest number of members in the enterprise. Other GEOs can participate in the CB upon obtaining the consent by the GEO entitled to request the CB.

In case the enterprise has many GEOs of which no organization meets the regulations, the organizations have the right to voluntarily combine together to request the CB provided that the total members of these organizations must meet the minimum rate as prescribed.[165]

Accordingly, the amendment and supplement of the regulations on the right to CB in favour of the GEOs in the enterprise aim to comply with the provision that in the same enterprise, there may be one or more GEOs as stated in Section I.1 of this guidebook.

At present, the Government has not issued a written guideline to regulate the minimum number of members over the total employees. Therefore, the determination of the right to request a CB has not been done yet.

(d) Supplementing regulations on representatives participating in the CBIE

The LC 2019 supplements regulations on the participants of each party in order to comply with the regulation that in the same enterprise, there may be one or more GEOs. Accordingly, the provisions of the new labor law allow each party to decide for itself the composition of its participants in the CB and the right to decide on the number of representatives of each organization participating in the CBIE provided that it must comply with the quorum over the total number of employees of the enterprise and as mentioned in Section III.1.(c) specifically as follows:

(i) In case of many GEOs participating in the CB on the condition of the approval by the organization entitled to request the CB, the GEO entitled to request such CB will decide the number of representatives of each other bargaining organization.

(ii) In case of many GEOs participating in the CB under the voluntary combination method because no organization meets the quorum requirements, the number of representatives of each organization will be agreed upon by such organizations. If no agreement can be reached, each organization shall determine the number of participating representatives corresponding to the total members of

[165] Article 68 LC 2019

its own over the total members of the organizations. [166]

In addition, the LC 2019 also supplements a provision that allows each party to the CB to invite its superior representative organization to appoint participants as bargaining representatives and the other party may not refuse.[167] The CB representatives of each party may not exceed the number the parties originally agreed upon, unless otherwise agreed by the other party.

(e) Supplementing the provision on the time limit of CB and the time limit of failed CB

In overcoming the shortcomings of the LC 2012, the current labor law has supplemented the regulation on the time limit of CB. Accordingly, the time limit must not exceed 90 days from the date of bargain commencement, unless otherwise agreed by the parties.[168] Such a regulation is in accordance with reality, avoiding a prolonged bargain of the parties, which is time consuming, costly and ineffective.

In addition, the LC 2019 also enables a separate law on the time limit of failed CB to provide a solution after bargain. Specifically, the failed CB does not fall into one of the following cases:

(i) A party refuses to bargain or fails to initiate a negotiation within no more than 30 days of receipt of the request for bargain; [169]

(ii) The time limit of 90 days of bargain commencement has expired but the parties fail to reach an agreement; [170]

(iii) The time limit of 90 days of bargain commencement has not expired, but the parties have jointly identified and declared about the failed CB. [171]

In addition, in case of a failed bargain, the bargaining parties proceed with the procedures for resolving LD in accordance with those specified in Chapter XIV of the LC 2019. Furthermore, the LC 2019 also stipulates that,

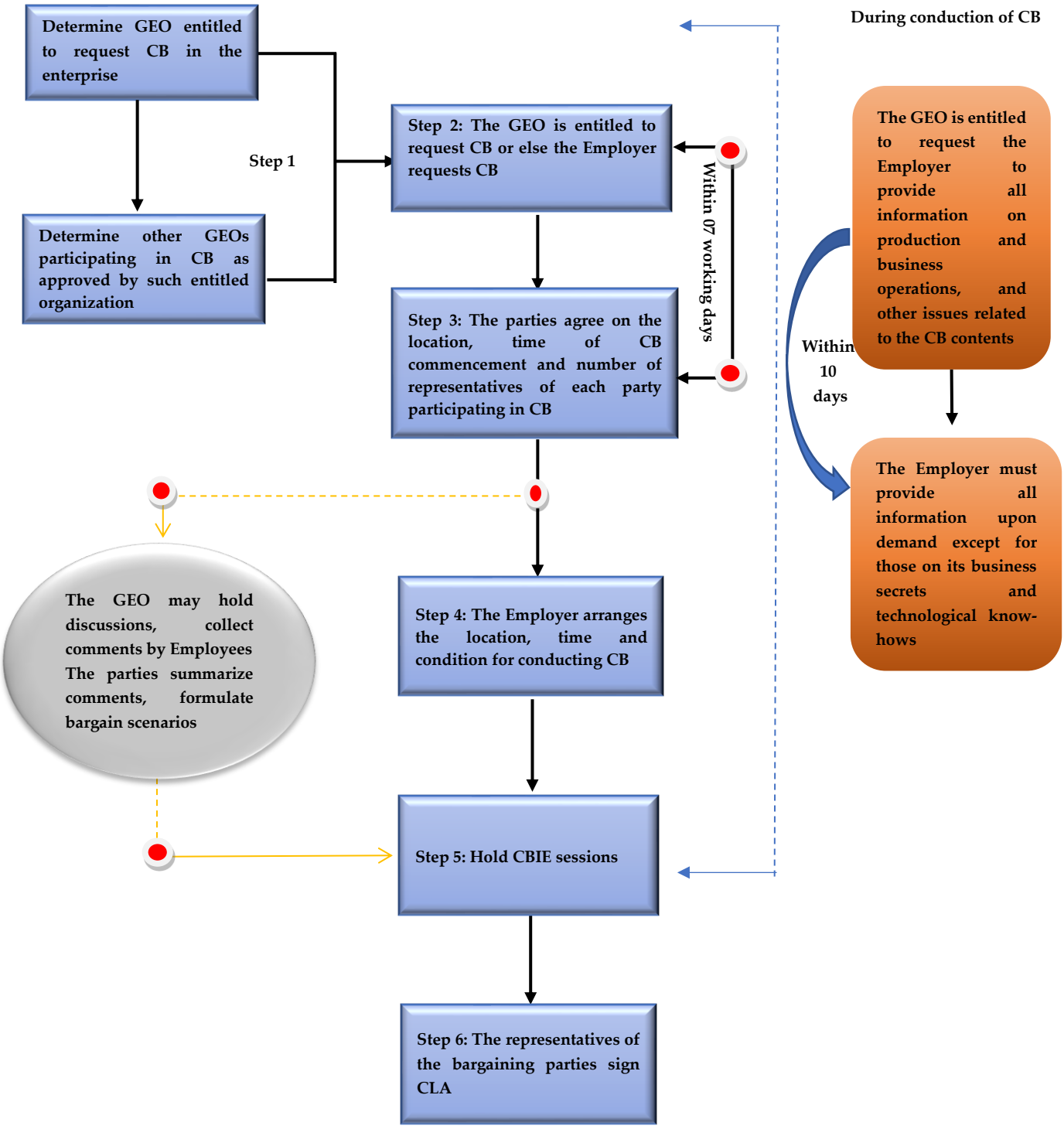
[166] Article 69.2 LC 2019
[167] Article 69.3 LC 2019
[168] Article 70.2 LC 2019
[169] Articles 70.1 and 71.1.(a) LC 2019
[170] Articles 70.2 and 71.1.(b) LC 2019
[171] Articles 70.2 and 71.1.(c) LC 2019

in settling any LD, the GEO may not hold any strike.[172] This regulation aims to help enterprises operate stably and avoid disturbances and any impact on their business.

2. Collective bargaining process in the enterprise

Compared with the LC 2012, the process of CBIE shows difference in the subjects participating in the CBIE as well as the changes in regulations on the time, rights and obligations of the parties participating therein as analyzed above. Accordingly, the process of CB according to the LC 2019 is shown through the following diagram:

[172] Article 71.2 LC 2019


Determine GEO entitled to request CB in the enterprise
Step 1
Determine other GEOs participating in CB as approved by such entitled organization
Step 2: The GEO is entitled to request CB or else the Employer requests CB
Within 07 working days
Step 3: The parties agree on the location, time of CB commencement and number of representatives of each party participating in CB
The GEO may hold discussions, collect comments by Employees The parties summarize comments, formulate bargain scenarios
Step 4: The Employer arranges the location, time and condition for conducting CB
Step 5: Hold CBIE sessions
Step 6: The representatives of the bargaining parties sign CLA
During conduction of CB
The GEO is entitled to request the Employer to provide all information on production and business operations, and other issues related to the CB contents
Within 10 days
The Employer must provide all information upon demand except for those on its business secrets and technological know-hows

The process of CBIE is specified according to the following steps:

Step 1: Determining a GEO that has the right to request a CBIE will comply with Section III.1.(C).

Step 2: The GEO has the right to request or the employer to make a request for CB toward the enterprise and the enterprise is not allowed to refuse the request.[173] Currently, the law does not regulate the content and form of the request. However, it is necessary to ensure the basic contents, including occurrence context, issues to be bargained, reason for bargain, proposed time and location *(if any)*, etc.

Step 3: The parties participating in the CB reach an agreement on the bargaining location and commencement time within 07 days of receipt of the request and bargain contents. The LC 2019 stipulates the responsibility to arrange the time, location and necessary conditions to organize the CB sessions belongs to the employer.[174] Therefore, enterprises should pay attention to the said conditions to ensure the good preparation of the CB sessions before the meeting time according to regulations. ***During this period***, the parties reach mutual agreement on the number of their representatives in the preparation of the CB. The right to decide on the number of representatives of employees and employers is specified as follows:

- On the part of an employer, he directly participates in or appoints his representative to participate in the CB;

- On the part of employees, their right to decide on the number of representatives will be determined as described in Section III.1. (d).

In addition, the LC 2019 provides for that the employer must not cause difficulties, hinder or interfere with the GEO's process of discussing and collecting opinions of the employees. [175]

Step 4: The Employer arranges the location, time and condition for conducting CB as agreed upon with the GEO.

Step 5: Within 30 days of receipt of the CB request, the parties must initiate the CB through the organization of the CB sessions participated by the parties' representatives. The bargain contents at the sessions must be documented,

[173] Article 70.1 LC 2019
[174] Article 70.1 LC 2019
[175] Article 70.4 LC 2019

clearly stating the agreed contents by the parties and contents with different opinions. The CB minutes must be signed by the representatives of the bargaining parties and the minutes preparer. After that, the GEO must publicly and widely publish the CB minutes to all employees.

Step 6: The representatives of the bargaining parties will sign a CLA if the bargain is successful.

Notably, during the said CB, the GEO is entitled to request the Employer to provide all information on production and business operations, and other issues related to the CB contents. Within 10 days of receiving any request from the employee representative, the Employer shall provide information on production and business operations and related contents except for those on its business secrets and technological know-hows

IV. REGULATIONS ON MULTI-ENTERPRISE COLLECTIVE BARGAINING (MECB)

1. Overview on MECB

The MECB is a new form of bargain stemming from the process of localizing ILO Convention 154 into CB.[176] Accordingly, Convention 154 defines that the CB is any bargain between the one party as an employer or a group of employers or one or more employer organizations and the other party as one or more employee organizations. The LC 2019 inherits almost all of the said definition, opening up a form of agreement between many enterprises and their many GEOs.

The advent of this form brings employers benefits from cooperation in bargaining with other employers in the development of policies, 'general regulations on salaries, working conditions' and other matters related to the LR. The MECB targets the enterprises that have such similarities as labor skills, operation area, industry and working conditions for the reasons of (i) enhancing bargaining power through the connection among enterprises; (ii) building labor relationships well and bringing stability to enterprises in the same industry or enterprises that have common points in terms of organization and operation modes; (iii) saving time on bargaining at enterprise level; (iv) helping create a balance in terms of salaries and benefits for employees working in the same industry and enterprise size.

This provision also brings employees positive consequences such as (i) ensuring a balance in salaries and benefits for employees who do not have a standard labor relationship or who work in small companies; (ii) helping set minimum standards of working conditions in different enterprises; (iv) establishing general rules and

[176] Article 2 Convention 154 on collective bargaining

general regulations to reduce inequality within and among enterprises.

Like the principle of CB in general, the MECB is built on the basis of voluntariness, cooperation, goodwill, equality, openness and transparency among enterprises[177] through the participation of many GEOs and different enterprises as well as the competent State authority at the provincial level (*if required*). Thereby, there is a guarantee that, the MECB, so to speak, will be more objective, democratic and equal than the CBIE.

Enterprises need to note that, the LC 2019 also adds many contents of CB in general and CBIE in particular. In addition, it also allows each party to freely raise the issues it is concerned about and find necessary. Accordingly, the additional contents include: *(i) bonuses, meals and other regimes; (ii) labor norms; (iii) conditions and means of operation of GEOs; relationship between the Employer and the GEO; (iv) mechanisms and methods of prevention and resolution of LD; (v) ensuring gender equality, protecting maternity leave and annual leave; prevention of violence and sexual harassment in the workplace.* [178] In addition, the LC 2019 also has a change in the introduction of other bargain contents. Instead of other contents that must be considered necessary by both parties as before, under the new regulations, other bargain contents may be those in which either party or both parties are interested in. This change helps the contents bargained by the parties to become adequate and the interests of both employees and enterprises are guaranteed. The employer should pay attention to this issue for implementation.

2. Process of conducting multi-enterprise collective bargaining

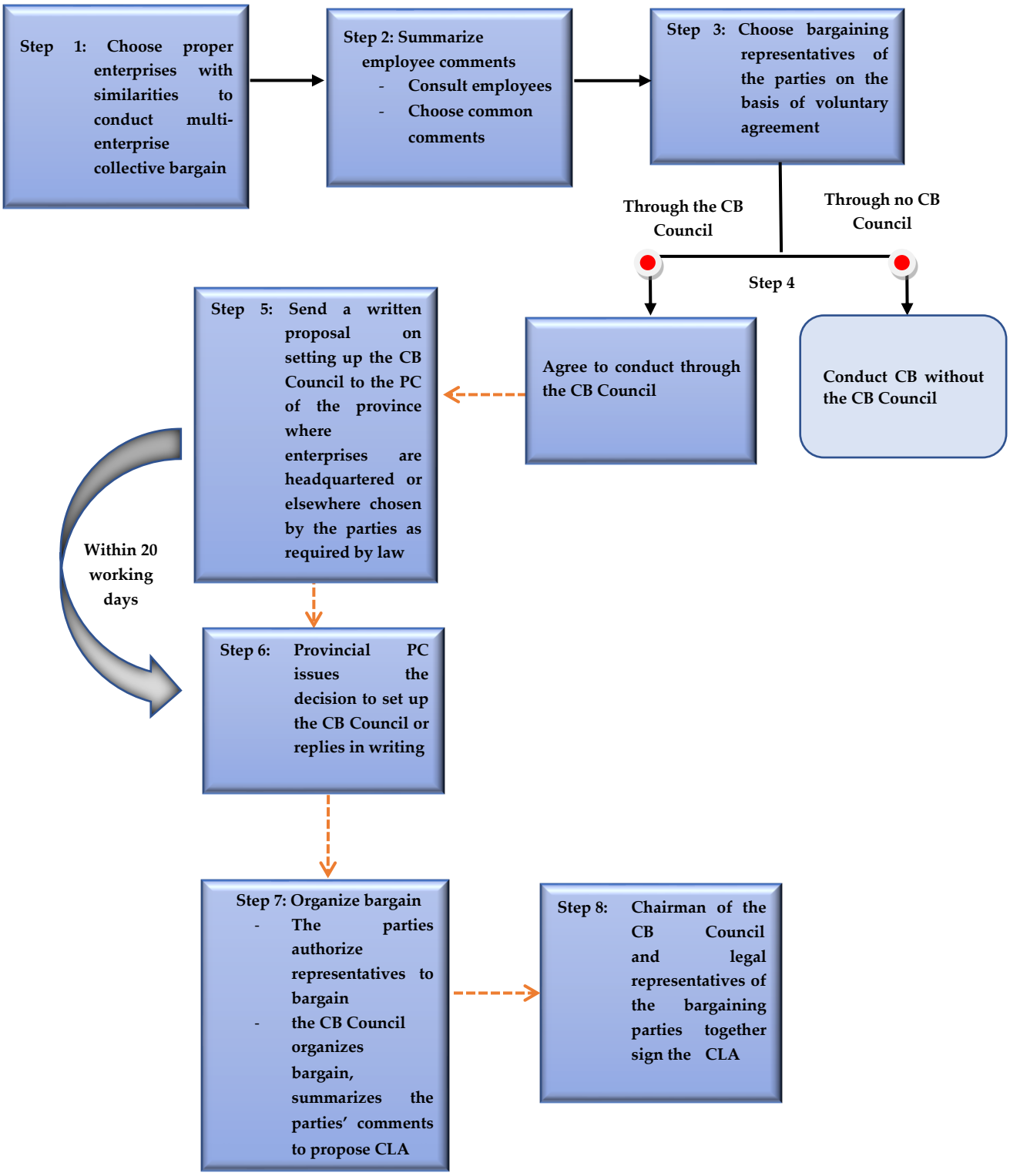
For the purpose of enhancing the parties' freedom of agreement, the process of conducting the MECB will be agreed upon by the parties, including the agreement to conduct CB through the CB Council as provided in Article 73 of the LC 2019.[179] Accordingly, the bargaining may take place in two forms: (1) the enterprises and their GEOs will cooperate with each other to organize the bargaining or; (2) the parties, on the basis of consensus, send documents to the People's Committee of the province where the enterprises are headquartered to establish the CB Council with the participation of the representatives of the provincial People's Committee in the bargaining.

However, due to the principle of free agreement between the parties, the current law does not enable a uniform process for conducting MECB in both forms. By analyzing various CB processes and newly enacted regulations, we provide the

[177] Articles 66 and 72.1 LC 2019
[178] Article 67 LC 2019
[179] Article 72.2 LC 2019

following reference process:

The diagram is concretized by the following steps:



Step 1: Select enterprises that have similar characteristics of production and business activities and LR, which can operate in the same area or in different areas.[180]

Step 2: Each enterprise builds a bargain scenario based on its actual situation, collecting comments, choosing common comments for bargain. The scenarios will be compared with one another and enterprises select groups of common opinions that are suitable for most enterprises to build bargain scenarios. At the same time, the parties agree to whether bargain through the CB Council or not.

Step 3: After reaching an agreement, enterprises send a written notice on the organization of the CB as well as the time, location and contents of the bargain to the GEO of each enterprise (*if any*).

Each party appoints its legal representatives to participate in a bargain and together agree on the number and composition of participants.

Step 4: Conducting organizing the MECB in case of bypassing the Council.

Step 5: In case the parties choose to bargain through the CB Council, the parties appoint a representative to send a written request for establishment of the CB Council to the provincial PC where the head office of the enterprises is located or where the parties choose if the members are based in different centralized provinces and cities.[181] It should be noted that the said request should contain the following contents: [182]

(a) Information about participating enterprises includes: Name of an enterprise; head office; full name of the legal representative of the enterprise; full name of the representative of the GEO;

(b) Full name, job position or title of the person who is mutually agreed to appoint as the Chairman of the CB Council, together with the written consent of the person proposed to be the Chairman of the CB Council. In case, enterprises do not agree on who is the chairman of the council, it will be decided by the chairperson of the PC of the province where the request is made;

[180] Article 73.1 LC 2019
[181] Article 73.1 LC 2019
[182] Article6.2 Circular 10/2020/TT-BLDTBXH

(c) List of members representing each party to the bargaining in the CB Council;

(d) Expected contents agreed by the parties on the bargain contents, operation time of the CB Council, the CB plan, support activities of the CB Council (*if any*).

Step 6: Within 20 working days of receipt of the written request from the representatives of the parties, the PC of the province is responsible for issuing a decision to establish the CB Council. In case of failure to decide on setting up the CB Council, it must reply in writing, clearly stating the reason.

Step 7: The CB Council conduct the bargain at the request of the parties.

Step 8: The Chairman of the CB Council and the legal representatives of the bargaining parties sign the multi-enterprise **collective labor agreement** (MECLA) if the bargain is successful.

3. Signing a multi-enterprise collective labor agreement

(a) Subjects signing MECLA

According to the new regulations on the signing subjects in the LC 2019, an MECLA is signed by legal representatives of the bargaining parties in case of the parties conducting bargain by themselves. For a MECLA conducted through the CB Council, it will be signed by the CB Council Chairman and the legal representatives of the bargaining parties.[183]

However, the current labor law contains no regulations guiding how to be considered legal representatives, at the same time, showing a difference from the composition and number of participants in any dialogue in the workplace. Accordingly, it can be understood that the legal provisions are "left open" for the parties to decide for themselves the number and participants of the CB. Therefore, to ensure the legality of a representative to attend the CB, the appointment of a representative must be done through a written decision, signed by a legal representative or another agency that has the authority to decide according to the enterprise charter.

(b) Forms, contents and employee opinion collection through MECLA

[183] Article 76.4 LC 2019

The form and content of CLA in general and MECLA in particular, play an important role in the application and implementation of CLA. In the event that a CLA violates the principles of any form or content prescribed by law, the CLA is likely to be void if the parties have a dispute. Accordingly, the employer will, first of all, be subject to the loss of costs for the organization, formulation and implementation of a CBA. Therefore, upon organizing, building, bargaining and establishing a CLA, the employer should pay attention to the following issue:

(i) In terms of form

The CLA, including the MECLA, must be in writing[184] and the signatory must be in full authority.[185]

As analyzed in Section IV.3.(a), the law does not specify the participants in bargaining and signing the CLA. So, the participating representative of the employer will be decided by the enterprises themselves. Accordingly, enterprises need to rely on the charter or internal regulations of the enterprise to determine which title is authorized to appoint a representative participating in the bargaining and the appointed individuals must be actively working and directly or indirectly engaged in the LR with the employees. The process of appointing a representative should be done in writing, signed and sealed by the enterprise.

(ii) In terms of contents

The content of a CLA must not be contrary to the law and is encouraged to be more beneficial to the employee than the law. [186] This is a fairly broad regulation for the employer. So, in order to ensure the legality of the CLA, the bargaining parties need to set up a section to review the legality of the CLA, especially important issues such as salaries, bonuses, working time, rest time (*please pay attention to regulations for female employees*), ...

Through this section, the parties can agree by themselves if the bargaining bypasses the CB Council and should propose a plan to establish a CB Council in case of bargaining through the CB

[184] Article 75.1 LC 2019
[185] Article 86.2.(b) LC 2019
[186] Article 75.2 LC 2019

Council.[187] The law allows the parties to agree to set up "*other sections*" of the CB Council's composition[188] but this must be proposed in the plan to establish a CB Council, which is submitted to the provincial PC.

(iii) Collecting employee opinions

There must be a guarantee that the objects of the consultation include all employees at the enterprises participating in the bargaining against enterprises that have not yet established their GEOs or all members of the leadership of the GEOs at the participating enterprises. An enterprise that has more than 50% of the collected employees who give their agreeing votes will join the signing of the MECLA.[189]

(c) Responsibilities of the Employer after the signing of the MECLA

(i) Each enterprise must disclose its employees the signed MECLA. The form of disclosure is considered by the enterprise based on the characteristics of its operation and business on the condition of ensuring the openness and easy access.[190]

(ii) In addition, within 10 days of signing the MECLA, the employer participating in the agreement must send 01 copy of the CLA to the DOLISA where the participating enterprises are headquartered.[191]

(d) Validity and term of a MECLA

The regulations on validity and term are generally applicable to all types of CLA, so the validity and term of a MECLA also follow the general regulations.

Accordingly, the parties have the right to agree on the effective date of the MECLA and the same must be recorded directly in this document.[192] In case the parties do not agree on the effective date, it will be counted from the date the parties sign the MECLA. Regarding the scope of application, the MECLA is applicable to all enterprises and the employees of the enterprises

[187] Article 6.4 Circular 10/2020/TT-BLDTBXH
[188] Article 6.4.(a) Circular 10/2020/TT-BLDTBXH
[189] Article 76.2 Circular 10/2020/TT-BLDTBXH
[190] Article 76.6 LC 2019
[191] Article 77 LC 2019
[192] Article 78.1 LC 2019

participating in the MECLA.[193]

4. Implementation and application of MECLA

(a) Case of an existence of both CLAIE and MECLA

The LC 2019 allows an enterprise an existence of both CLAIE and MECLA. Accordingly, if the employer has established a CLAIE before signing a MECLA and there are different provisions between the two Agreements with respect to the rights, obligations and interests of the employee, the content that is most beneficial to the employee will be followed. [194]

(b) Case of expanding the scope of application, joining and withdrawing from the MECLA

(i) Expanding the scope of application

In order to encourage enterprises to participate in and sign the MECLA to better ensure the rights and interests and responsibilities of the parties, especially for the employees, the LC 2019 stipulates the expansion of the scope of application of the MECLA. Accordingly, to carry out the expansion of the scope of application, the following conditions must be satisfied: [195]

- Only applying to enterprises with the same industry, trade or field in industrial zones, economic zones, export processing zones, high-tech zones;
- The MECLA has the scope of application accounting for over 75% of employees or over 75% of enterprises in the same industry, trade or field in industrial zones, economic zones, export processing zones, high-tech zones; and
- The Employer or the GEO there (if any) requests the competent State agency to decide to expand the scope of application of a part or all of the MECLA to the aforesaid enterprises.

Specific provisions on the sequence, procedures and authority to

[193] Article 78 LC 2019
[194] Article 81.1 LC 2019
[195] Article 84.1 LC 2019

decide to expand the application of MECLA will be outlined in the guiding documents issued by the Government.[196]

(ii) Joining and withdrawing from the MECLA

Along with the expansion of the scope of application of the MECLA, the LC 2019 adds regulations on joining and withdrawing from the MECLA.

Specifically, in case of any need, an enterprise may join a MECLA with the consent of all the enterprises and the GEOs thereat as members of the MECLA, unless a decision has been made to expand the scope of applying the MECLA as aforesaid. Similarly, an enterprise as member of the MECLA may withdraw from it when there is consensus from all the employers and the GEOs in the enterprises as members of the MECLA, unless there are special difficulties in production and business.

The sequence and procedures for applying for joining and withdrawing from MECLA have not been specified in the legal documents. To implement this regulation, it is necessary to await written instructions from the competent authority.

5. Noteworthy issues for enterprises to implement and apply the MECLA

For the first time, the Labor Code regulates on an MECLA and enables a new mechanism for the CB Council. Therefore, in addition to the notes mentioned in each of the said presentations, enterprises should pay attention to a number of other issues in the application and implementation of this regulation as follows:

(a) In addition to an existing GTU, a GEO *(if established other than GTU in an enterprise*) may not have much experience in organizing, building and implementing CB in general. Therefore, enterprises need to proactively coordinate with the provincial PC in organizing the training and retraining on CB skills for all parties, for GEO representatives as participants in training courses in CB skills. In addition, in case of need, enterprises can request the Provincial PC to support in providing information and data on socio-economic issues, labor market and LRs to aim promotion of the CB. The provincial PC is responsible for the implementation of the said issues in accordance with Article 74 of the LC 2019.

[196] Article 84.2 LC 2019

(b) The LC 2019 has many changes to enterprise policies related to female employees, to which enterprises should pay attention upon bargaining related issues that affect the rights and interests of female employees, and it is necessary for enterprises to consult with representatives of female employees of each enterprise.

(c) Because the process of conducting the MECB is decided by the involved parties, so during its implementation, enterprises may encounter many problems and confusion in the application. Enterprises can rely on the sample process outlined in Section IV.2 and adjust in line with the needs, purposes and characteristics of each participating enterprise in the bargain. As the law allows the parties to agree provided that the participating enterprises ensure the correct and full implementation of the statutory obligations as stated in each of the said sections.

(d) With regard to the implementation and application of a MECLA, in case an enterprise has both CLAIE and MECLA, the enterprise may consider taking the following steps to ensure compliance with the law: (i) determining which type of Agreement an enterprise must apply; (ii) considering and comparing regulations on the rights, obligations and interests of employees in those CLAs and summarizing the most beneficial contents into a document; (iii) comparing and replacing the contents on the rights, obligations and benefits between the document and the LC in the direction that is most beneficial to the employee (*in case the LC is concluded before the effective time of the CLA*).

CHAPTER V. SALARY

I. MINIMUM WAGE

According to the LC 2019, the MW is the lowest salary paid to employees who do the simplest jobs in normal conditions to ensure the minimum living standards of employees and their families in accordance with socio-economic development conditions.[197] Compared with the LC 2012, the way of establishing the MW has been adjusted. Accordingly, the MW is only established by the region, no longer defined by the industry and is fixed only by the month and hour, no longer fixed by the day. [198]

Thus, according to the LC 2019, the concept of industry MW has been removed. In industry CLA, the parties will no longer need to agree on an industry MW like before. The salary according to the job or title in the LC agreed between the employer and the employee just needs to be not lower than the regional MW regulated by the Government. However, it should be noted that if before the effective date of the LC 2019 *(January 1, 2021)*, the signed industry CLA has determined that the industry MW is higher than the regional MW (the content that ensures that the employees have the more favorable rights and conditions than the LC 2019) but the industry CLA has not been amended and supplemented, the enterprise still has to ensure that the salary according to the job or title in the LC with the employee is not lower than the identified MW in the industry CLA to which the participating enterprise is a member. [199]

For the fixing of regional MW by the time, although the LC 2012 has provided for the fixing of regional MW by the month, day and hour, the Government, in practice, only issues regional MW by the month on a yearly basis without providing regional MW by the day and by the hour. Therefore, there is practically no minimum limit on hourly and daily salaries that are paid to employees, if any. In the opinion of some labor management agencies and courts, it is necessary to ensure that the daily and hourly salary when calculated in a month is not lower than the regional MW by the month as stipulated by the Government. In order to overcome the shortcomings of the LC 2012, the current labor law stipulates that the National Wage Council will have the function of reviewing, recommending and giving consultation to the Government on the regional MW to be established (including MW by the month and MW by the hour).[200] With this regulation, it is promised that in the near future, there will be two regional MWs (by the month and by the hour) issued and announced by the Government, providing a clearer basis for determining the salary of employees in each specific case.

[197] Article 91.1 LC 2019
[198] Article 91.2 LC 2019
[199] Article 220.2 LC 2019
[200] Article 49.1 Decree 145/2020/ND-CP

II. SALARY SCALE, PAYROLL AND LABOR NORMS

1. Principles of building salary scale, payroll and labor norms

According to the LC 2019, the employer must build the salary scale, payroll and labor norms as a basis for recruiting, using employees, agreeing to the salary according to the job or title recorded in the LC and pay employees their salaries.[201] Accordingly, the building of the salary scale, payroll and labor norms are still the compulsory obligations of the employer, which is similar to the previous LC 2012.

However, instead of the salary scale, payroll and labor norms as the basis for salary agreement as specified in the LC 2012, the LC 2019 has been adjusted to better fit the fact that the salary scale, payroll and labor norms are just the basis for agreeing to the salary by the job and by the title. Because in addition to the salary by the job and by the title, a salary is also constituted by other items such as salary allowances and other additional payments. Moreover, the principles of building salary scale, payroll and labor norms have been also simplified by the LC 2019. Specifically:

For the salary scale and payroll, the LC 2019 stipulates that the salary by the job or by the title will not be lower than the MW. [202] As the basis for agreeing to the salary by the job or by the title recorded in the LC, the MW shown in the salary scale and payroll must also ensure the condition is equal to or higher than the regional MW as regulated above by the Government.

However, unlike the LC 2012, the LC 2019 no longer sets out the principles of building the salary scale and payroll such as (i) at least 7% higher than the regional MW regulated by the Government for jobs or titles that demand any training, apprenticeship; (ii) at least 5% or 7% higher than the salary of the job or title working under normal working conditions, for the job or title with working conditions that are (especially) heavy, toxic, dangerous; and (iii) the difference between two adjacent salary grades must be at least 5%.[203]

In general, according to the new regulations in the LC 2019, it can be seen that the employer is more proactive in building the salary scale and payroll. However, to avoid potential legal risks, in addition to ensuring such salary is not lower than the regional MW regulated by the Government, the employer should also consider the said principles of building the salary scale and payroll to ensure that the same is both suitable for enterprise activities and reasonable for the general labor market.

[201] Article 93.1 LC 2019
[202] Article 90.2 LC 2019
[203] Articles 7.2 and 7.3 Decree 49/2013/ND-CP

Note that the conditions that are at least 7% higher than the regional MLTT prescribed by the Government for jobs or titles requiring trained and apprenticed employees are still regulated in Decree 90/2019/ND-CP stipulating regional minimum wages applied from January 1, 2020 until now. However, the Decree is issued based on the Labor Code 2012 and relevant legal guiding documents. Therefore, the upcoming Decree on the new regional minimum wage might no longer impose this condition.

For the labor norm, the LC 2019 stipulates that the labor norm must be the average level to ensure that the majority of employees can perform it without having to prolong normal working hours and must be tested before the official promulgation. [204] However, the LC 2019 no longer has a regulation on applying the time to test the labor norm (no more than 3 months) before the official issuance and the cases where enterprises must adjust the labor norm in case of test application *(the actual performance calculated by the output is 5% lower or 10% higher than the assigned level; the actual performance calculated by the time is 5% higher or 10% lower than the assigned level.)* [205] Thus, similarly to the salary scale and payroll, the employer will also decide and set up the labor norm by himself. However, to ensure the suitability and reasonableness of labor norms, enterprises should consider following the principles of applying the said norms upon building labor norms.

2. Building the salary scale, payroll and labor norms

According to the LC 2019, upon building the salary scale, payroll and labor norms, the employer must consult with the GEO of the place where it has been put in place and must publicly declare the salary scale, payroll and labor norms at the workplace before implementation.[206] Thus, according to the Labor Code 2019, employers still have to consult the grassroots employee organization *(if any)* and must publicly announce the salary scale, payroll and labor norms at the workplace before implementation as before. However, the LC 2019 has removed the regulation that requires the employer to send the salary scale, payroll, and labor norms to the labor management State authority of the district where the employer's production and business establishment is located. However, employers are required to hold a dialogue to discuss with employees the contents of the salary scale, payroll and labor norm upon building the salary scale, payroll and labor norms. The consultation of the GEO *(if any)* will be conducted at the same time as the process of organizing dialogue according to the labor law. [207]

[204] Article 93.2 LC 2019
[205] Article 8.4 Decree 49/2013/ ND-CP
[206] Article 93.3 LC 2019
[207] Article 63.2 (c) LC 2019 and Article 41.1 Decree 145/2020/ ND-CP

With this new regulation, it can be seen that the LC 2019 is further heightening the exchange between the employer and the employee in terms of matters related to the
rights of the employee, especially salary, reducing administrative procedures between the employer and the state labor management agency. Therefore, although the LC 2019 no longer sets out many principles of building salary scale, payroll and labor norms, the requirement on holding a dialogue upon building the salary scale, payroll and labor norms will be a step toward ensuring the balance of the interests of the parties. Enterprises upon building the salary scale, payroll and labor norms must still ensure the reasonableness by appropriately explaining each given salary level and norm as analyzed above. Organizing dialogues upon buiding the salary scale, payroll and labor norms is a novelty of the LC 2019 that enterprises should pay attention to comply with the law.

III. SALARY PAYMENT AND PRINCIPLE OF SALARY PAYMENT

In addition to the fact that the employer has to pay employees salaries directly, fully and on time, the LC 2019 sets out many new principles in the issue of salary payment by the employer to employees. Specifically:

1. Forms of salary payment

Based on the job nature and production and business conditions, the employer and the employee agree in the LC on the forms of time-based, product-based and flat salary.[208] Compared with the 2012 Labor Code, the Labor Code 2019 no longer requires the employer to notify the employee at least 10 days in advance of changing the form of salary payment.[209] However, it should be noted that the form of salary payment is one of the mandatory contents of the LC.[210] Therefore, when changing the content of the form of salary payment in the labor contract, the employer must still notify the employee at least 03 working days in advance and obtain the consent of the employee before the change.[211]

With regard to time-based salaries, according to the new regulations, employees entitled to time-based wages will be paid based on their working time by month, week, day, and hour as agreed in the LC. Although the previous labor law has provided the salary by month, week, day and hour, the salary of any week, day, hour is not determined by the parties in the LC but is calculated and determined

[208] Article 96.1 LC 2019 and Article 54.1 Decree 145/2020/ND-CP
[209] Article 94.1 LC 2019
[210] Article 21.1 (D) LC 2019
[211] Article 33 LC 2019

on the basis of monthly salary.[212] This leads to the fact that even if the parties choose to pay weekly, daily, and hourly wages, the parties always have to agree on the monthly salary in the LC as the basis for calculating weekly, daily, and hourly wages according to regulations. In order to overcome this shortcoming, the current labor law gives more reasonable provisions. Accordingly, the employer and employee will determine and specifically agree in the LC on the salary by month, week, day, and hour depending on the form of salary payment that the parties choose based on the nature of job and production and business conditions. Cases of calculating salary in time units other than the originally agreed form of payment will be determined according to the following principles:

(a) Monthly salary is paid for one working month.

(b) Weekly salary is paid for one working week. In case the LC agrees on the monthly salary, the weekly salary will be determined by the monthly salary multiplied by 12 months and divided by 52 weeks.

(c) Daily salary is paid for one working day. In case the LC agrees on the monthly salary, the daily salary will be determined by the monthly salary divided by the number of normal working days in the month according to the law that the enterprise chooses. In case the LC has a weekly salary agreement, the daily salary will be determined by the weekly salary divided by the number of working days per week as agreed in the LC.

Note that the current labor laws no longer limit the number of normal working days in a month (*a maximum of 26 days)* when calculating daily salaries. Therefore, when calculating the daily salary in case of an LC agreeing on a monthly salary, the number of normal working days in the month as a basis for calculating the daily salary may be more than 26 days *(for example, 27 days.)*

(d) Hourly salary is paid for one working hour. In case the LC agrees on a monthly, weekly or daily salary, the hourly wage will be determined by the daily salary divided by the number of normal working hours in a day.

For product-based salaries, product-based salaries are paid to employees who receive the same, based on the completion of product quantity and quality according to the labor norms and unit price of a delivered product.

For a flat salary, the flat salary is paid to the employee entitled to a flat salary, based on the volume, work quality and time to be completed.

[212] Article 4.1 Circular 23/2015/TT-BLDTBXH, amended and supplemented by Circular 47/2015/TT-BLDTBXH

Employees' salaries under the said payment methods will be paid in cash or through their personal accounts opened at banks. In case of a salary paid through an employee's personal account opened at the bank, the employer must pay charges related to the account opening and salary remittance.[213]

In addition, the LC 2019 also allows the employee to authorize another person to receive salary payment in case he cannot receive the salary directly.[214] It is considered reasonable for an employee to authorize another person to receive the salary, especially if he is paid in cash but he cannot receive the salary directly from his illness or accident. Therefore, in the event of an authorization to receive salary payments, the employer should pay attention to ensure that the authorization is legal to avoid disputes related to the failure to pay salaries or the case of having not yet paid to employees in the future.

2. Salary payment period

Employees who are entitled to hourly, daily or weekly salaries will be paid by hour, day or week, or paid in lump sum as agreed by the two parties, and lump sum payment must be made not later than 15 days. Employees receiving monthly salaries are paid once a month or twice a month. The time of salary payment is agreed upon by both parties and must be set at a periodical point in time. For employees who are entitled to product-based or flat salaries, they will be paid as agreed by the two parties; if the work must be done for many months, monthly salary advance will be made according to the volume of work performed in the month.[215] In particular, the regulation on the salary payment period for employees who receive monthly salary is a new point compared to those in the LC 2012. The regulation on the time of salary payment set at *"a periodical point in time"* rather than *"a fixed point in time of the month"*[216] is more accurate if the number of days in the month is less *(e.g. February has 28 or 29 days)* or more *(e.g. October or December has 31 days)* than usual. Thus, in practice, the time of salary payment in an LC is usually agreed as *"the 25th day of every month"* or *"the last day of the month"*.

If due to force majeure, the employer has taken all remedies but cannot pay salaries in time, the delay must not exceed 30 days; if a salary is delayed for 15 days or more, the employer must compensate the employee with an amount at least equal to the interest over the late payment calculated according to the interest rate of 1-month term deposit announced at the time of salary payment by the bank where

[213] Article 96.2 LC 2019
[214] Article 94.1 LC 2019
[215] Articles 97.1, 97.2 and 97.3 LC 2019
[216] Article 23.2 Decree 05/2015/ND-CP

the employer opens the salary payment account.[217] Accordingly, the 1-month term deposit interest rate will no longer follow the rate announced by the State Bank of Vietnam at the time of salary payment.[218] Employers will rely on the interest rate announced by the commercial bank where they open their salary payment accounts to calculate interest on late salary payment to employees in this case.

3. Other noteworthy issues upon paying salaries

In addition to the new points about the forms and period of salary payment as analyzed above, the LC 2019 also has other provisions that the employer should pay attention to upon paying salaries to employees as follows:

(a) Notice of payroll list

Each time the salary is paid, the employer must notify the payroll list to the employee, clearly stating the salary, overtime salary, night work salary, content and deducted amount *(if any)*.[219] The current labor law does not provide guidance on the form of making the notice in this case. However, in order to keep up with the practical activities of enterprises as well as based on the recognition of the labor law about the signing of LCs via electronic means[220], enterprises can perform the notice of payroll list to the employee's personal email address in which his paid amounts in that month need to be clearly stated.

(b) Salary payment currency

The salary stated in the LC and the salary paid to the employee is in Vietnamese Dong, in case the employee is a foreigner in Vietnam, it may be in foreign currency.[221] This provision of the LC 2019 is not a novelty, but it provides more direct and clearer regulations on the application of salary payment salaries to employees, instead of those that refer to the law on foreign exchange like before. [222]

(c) Failure to interfere with the spending of salary by the employee

The LC 2019 lays down new regulations on the decision to spend salaries by employees. The employer is not allowed to restrict or interfere with the

[217] Article 97.4 LC 2019
[218] Article 24.2(b) Decree 05/2015/ND-CP
[219] Article 95.3 LC 2019
[220] Article 14.1 LC 2019
[221] Article 95.2 LC 2019
[222] Article 21.3 Decree 05/2015/ND-CP and Article 4.14 Circular 32/2013/TT-NHNN

employee's right to self-determination to spend the salary; or force the employee to spend the salary on buying goods or using services of the employer or other units designated by the employer. [223]

IV. OVERTIME SALARIES, NIGHT WORK SALARIES

The regulations on overtime salaries and night work salaries in the LC 2019 have no change compared to those of the LC 2012. Employees working overtime are paid according to the salary unit price or the salary based on the job that is being performed as follows: (i) on weekdays, at least equal to 150%; (ii) on weekends, at least equal to 200%; and (iii) on public holidays, Tet holidays, paid days off, at least equal to 300% excluding the salary for public holidays, Tet holidays, paid days off for employees receiving daily salary. Employees working at night are paid an extra amount of at least 30% of the salary calculated according to the salary unit price or the actual salary paid by the job on a normal working day. Employees working overtime at night, in addition to overtime salaries and night work salaries, they are also paid an additional 20% of the salary calculated according to the salary unit price or the salary based on the daytime job of the normal working day or weekends or public holidays or Tet holidays.[224] However, for clarity, the current labor law has provided detailed formulas to guide the calculation of salaries in each case. Specifically:

1. Overtime salary[225]

(a) For employees who are paid by time

Employees are paid overtime when working outside normal working hours prescribed by the employer and calculated by the following formula:

Overtime salary	=	Actual hourly salary of a job being performed on a normal working day	x	At least 150% or 200% or 300%	x	Number of overtime hours

In which:

- The actual hourly salary of the job being performed on a normal working day is determined as follows:

[223] Article 94.2 LC 2019
[224] Article 98 LC 2019
[225] 55 Article 55 Decree 145/2020/ND-CP

$$\text{Actual hourly salary of a job being performed on a normal working day} = \frac{\text{Actual salary of a job being performed for the month or week or day when employees work overtime}}{\text{Total number of actual working hours corresponding to the month or week or day when employees work overtime}}$$

Note:

- The actual salary paid for the current job for the month or week or the day the employee works overtime ***does not include*** overtime salaries, overtime salaries for night work, salaries for public holidays and New Year holidays, paid days off; bonuses and initiative bonuses; mid-shift meal allowances, gas, telephone, travel, housing, child babysitting and child nursing allowances; supports for the death, marriage of a relative, the employee's birthday or occupational disease and other supports and allowances not related to the performance of the job or the title stated in LC.

- The total number of actual working hours corresponding to the month or week or day when the employee works overtime ***must not exceed*** the number of normal working days in a month and the number of normal working hours in a day or a week as prescribed by law, which the business chooses and does not include overtime hours.

    - At least equal to 150% of the actual hourly salary of the current job on a normal working day, applicable to overtime hours on weekdays; at least equal to 200% of the actual hourly salary of the current job on a normal working day, applicable to overtime hours on weekends; at least equal to 300% of the actual hourly salary of the current job on a normal working day, applicable to overtime hours on public holidays, Tet holidays, paid days off, excluding the salary of public holidays, Tet holidays, paid days off for employees entitled to daily salaries.

(b) For employees who are paid by product

Employees are paid overtime when working outside normal working hours to perform an extra quantity or volume of products in addition to the quantity or volume of products according to labor norms as agreed with the employer, which is calculated using the following formula:

Overtime salary	=	Product-based salary unit price of a normal working day	x	At least 150% or 200% or 300%	x	Number of overtime products

In which:

- At least equal to 150% of the unit price of the product-based salary of a normal working day applicable to overtime products on weekdays; at least equal to 200% of the unit price of the product-based salary of a normal working day, applicable to overtime products on weekends; at least equal to 300% of the unit price of the product-based salary of a normal working day, applicable to overtime products on public holidays, Tet holidays and paid days off.

(c) Working overtime on public holidays and Tet holidays that coincide with weekends and working overtime on compensatory days off when public holidays and Tet holidays that coincide with weekends

Employees who work overtime on public holidays and Tet holidays that coincide with weekends will be paid overtime salaries on public holidays and Tet holidays. In case of working overtime on compensatory days off when public holidays and Tet holidays that coincide with weekends, employees will be paid overtime salaries on weekends.

2. Night work salary[226]

(a) For employees who are paid by time, the night work salary is calculated as follows:

Night work salary	=	Actual hourly salary for the current job on a normal	+	Actual hourly salary for the current job on a normal	x	At least 30%	x	Number of working hours at

[226] Article 56 Decree 145/2020/ND-CP

working day working day night

In which:

- Actual hourly salary for the current job on a normal working day is determined in the same manner as described in Section IV.1.(a) of this Chapter.

(b) For employees receiving product-based salaries, the night work salary is calculated as follows:

Night work salary	=	Unit price of the product-based salary of a normal working day	+	Unit price of the product-based salary of a normal working day	x	At least 30%	x	Number of products worked at night		

3. Overtime salary for night work[227]

(a) For employees who are paid by time, the overtime salary for night work is calculated as follows:

Overtime salary for night work	=	Actual hourly salary of the current job on a normal working day	x	At least 150% or 200% or 300%	+	Actual hourly salary of the current job on a normal working day	x	At least 30%	+	20%	x	Daytime hourly salary of a normal working day or weekend or public holiday, Tet holiday, paid day off	x	Number of working hours at night

In which:

- Actual hourly salary for the current job on a normal working day is determined in the same manner as described in Section IV.1.(a) of this Chapter.

- Daytime hourly salary on a normal working day or weekend or

[227] Article 57 Decree 145/2020/ND-CP

public holiday or Tet holiday or paid day off is determined as follows:

- Daytime hourly salary of a normal working day is calculated at least 100% of the actual hourly salary of the current job on a normal working day in case the employee does not work overtime during daytime of that day (before working overtime at night); at least equal to 150% of the actual hourly salary of the current job on a normal working day in case the employee has worked overtime during daytime of that day (before working overtime at night).

- Daytime hourly salary on a weekend is at least equal to 200% of the actual hourly salary of the current job on a normal working day.

- Daytime hourly salary on a public holiday or Tet holiday or paid day off is at least equal to 300% of the actual hourly salary of the current job on a normal working day.

(b) For employees receiving product-based salaries, the overtime salary for night work is calculated as follows:

Unit price of the daytime product-based salary of a normal working day or weekend or public holiday or Tet holiday or paid day off

$$\text{Overtime salary for night work} = \left| \begin{array}{l} \text{Unit price of the product-based salary of a normal working day} \times \text{At least 150\% or 200\% or 300\%} \\ + \text{Unit price of the product-based salary of a normal working day} \times \text{At least 30\%} \\ + 20\% \times \text{Unit price of the daytime product-based salary of a normal working day or weekend or public holiday or Tet holiday or paid days off} \end{array} \right| \times \text{Number of products worked overtime at night}$$

In which:

- The unit price of daytime product-based salary of a normal working day or weekend or public holiday or Tet holiday or paid day off is determined as follows:

- Unit price of the daytime product-based salary of a normal working day is at least equal to 100% of the unit price of the product-based salary of a normal working day in case the employee does not work overtime during daytime of that day (before working overtime at night); at least equal to 150% of the unit price of the daytime product-based salary of a normal working day in case the employee works overtime during daytime of that day (before working overtime at night.)

- The unit price of the daytime product-based salary of a weekend is at least equal to 200% of the unit price of the product-based salary of a normal working day.

- The unit price of the daytime product-based salary of a public holiday or Tet holiday or paid day off is at least 300% of the unit price of the product-based salary of a normal working day.

V. JOB CEASE SALARY

Pursuant to the LC 2019, in case of job cease, the employee will also be paid a job cease salary similarly to the LC 2012. In case of a job cease due to the employer's fault, the employee will be paid the full salary according to the LC. If it is due to the employee's fault, such employee will be not paid; other employees in the same unit who have to cease working will be paid at the rate agreed upon by the two parties but not lower than the MW. [228]

However, in case of having to cease working due to electricity and water problems without the fault of the employer or due to natural disasters, fires, dangerous epidemics, enemy sabotage, relocation of operation sites as required by the competent State agencies or for economic reasons, according to the LC 2019, the two parties agree on the job cease salary in two cases. In case of a job cease for 14 working days or less, the job cease salary is agreed upon not lower than the MW.

In case of the same for more than 14 working days, the job cease salary will be agreed upon by both parties but must ensure that the job cease salary for the first 14 days is not lower than the MW. This is a new point of the LC 2019 that is more beneficial for the employer. Compared with the LC 2012, the job cease salary in the said objective cases will no longer be required to always be equal to or higher than the MW. The employer only needs to ensure that the job cease salary for the first 14 days is not lower than the MW.

In the event of a job cease from the 15th day onwards, the job cease salary will depend

[228] Articles 99.1 and 99.2 LC 2019

entirely on the agreement of the parties (for example, lower than MW.) This is considered appropriate, both protecting the interests of employees and reducing the burden on enterprises in negative objective situations, especially in the current context of the Covid-19 pandemic.

VI. REWARDS

Regarding forms of reward for employees, in addition to monetary bonuses as prescribed by the LC 2012, the LC 2019 supplements bonuses to employees in form of property or in other forms based on business and production results and level of work completion of the employee.[229] According to the Civil Code, a property may be objects, money, valuable papers and property rights.[230] Thus, in addition to monetary bonuses, employers can reward employees with other in-kind values.

In fact, many enterprises have rewarded employees in kind including motorbikes, cars, apartments, stocks ... Therefore, the LC 2019 expands and diversifies the forms of reward that can be suitable with the reward practices at some of the said enterprises. However, rewarding with property and other non-cash items is really meaningful, encourages and improves labor productivity only when such bonuses are valuable or necessary or easily liquid. Enterprises need to consider arranging, distributing and deciding on reasonable bonuses and forms to effectively reward, attract human resources and create competition in labor.

Reportedly the reward is an optional issue and in case the employer has regulations on rewards, he will be required to issue a reward policy and must be disclosed at the workplace. At the same time, the reward regulations must obtain consultation from the GEO of the place where the GEO has been put in place.[231] Like the case of the salary scale, payroll and labor norms, according to the LC 2019, the employer is required to hold a dialogue to discuss the contents of the reward regulations before their issuance. The consultation of the GEO (if any) will be conducted at the same time as the process of organizing dialogue according to the labor law. [232]

[229] Article 104.1 LC 2019
[230] Article 105.1 Civil Code 2015
[231] Article 104.2 LC 2019
[232] Article 63.2(c) LC 2019 and Article 41.1 Decree 145/2020/ND-CP

CHAPTER VI. WORKING TIME - BREAK TIME

I. NORMAL WORKING TIME

1. Working time

According to the LC 2019, normal working hours must not exceed 8 hours per day and 48 hours per week. Employers have the right to define working hours on a daily or weekly basis but must notify the employee; in case of weekly calculation, normal working hours must not exceed 10 hours per day and 48 hours per week. [233]

Thus, the regulations on normal working hours of the LC 2019 still inherit those of the LC 2012. However, the LC 2019 supplements that the employer is required to notify the employee about the working time regime by the day or by the week selected by the employer. Regarding this issue, the current labor law has not yet specified the form of the aforesaid notice but because the working time is a compulsory content at the ILRs;[234] at the same time, the ILRs will also be notified to the employee and posted in the necessary positions at the workplace.[235] So, from the point of view of a number of labor management agencies, the obligations to notify and post the ILRs may be considered to have been fulfilled by the Employer according to the said provision.

2. Break time during working hours

According to the LC 2019, employees who work 06 hours or more in a day are entitled to a break of at least 30 consecutive minutes between hours, and at night, they are entitled to a break of at least 45 consecutive minutes between hours.[236] Meanwhile, the LC 2012 Labor Code only stipulates the minimum break between hours *(30 minutes when working in the daytime or 45 minutes when working at night)* in case the employee works continuously for 8 hours or 6 hours. Thus, unlike the LC 2012, the minimum break between hours according to the LC 2019 will be applied to all cases where the employee works 06 hours or more in a day, regardless of whether it is continuous or not.

In addition, for the cases where the employees have working hours falling both in the daytime and in the night time *(from 22:00 to 06:00 of the next day)* [237], the new

[233] Articles 105.1 and 105.2 LC 2019
[234] Article 118.2 LC 2019
[235] Article 118.4 LC 2019
[236] Article 109.1 LC 2019
[237] Article 106 LC 2019

labor law also has clear regulations to calculate the break time for employees in this situation. A break between hours of at least 45 consecutive minutes is applicable to employees who work 06 hours or more in a day, including at least 03 working hours in the night working time frame.[238] For example, an employee who has working hours from 20:00 to 04:00 of the next day will be entitled to at least 45 minutes of break between hours according to legal regulations.

Regarding the calculation of a break between hours during working time, similarly to the LC 2012, it will rely on the basis of employees working in *"continuous shifts"*. However, the concept of a *"continuous shift"* under the new regulations will be completely different from the previous regulations. In the past, a *"continuous shift"* was defined as a working shift with 08 or 06 consecutive working hours,[239] while according to the current labor law, a *"continuous shift"* is the case where a shift is organized and meets the conditions for a continuous shift as prescribed. Specifically:

(a) A work shift is the period of time the employee has worked from the beginning of the assignment until the end and the handover of the assignment to another person, including working hours and breaks between hours.

(b) Shift work organization is the arrangement of at least 02 people or 2 groups of people taking turns to work on the same working position, calculated for a period of 01 day *(24 consecutive hours)*.

(c) Continuous shift is a shift that satisfies the following conditions:

  (i) The employee works in the shift from 06 hours or more; and

  (ii) The transition time between two adjacent work shifts does not exceed 45 minutes.

Thus, according to the LC 2019, the factor considering *"continuous shift"* is no longer based on the number of continuous working hours in a shift. In order to be considered a *"continuous shift"*, a job position must have at least two shifts or more in a 24-hour period, with the alternation and handover between employees. Working time in each work shift *(including working time and break time)* must be from 06 hours or more. The transition time between two adjacent work shifts does not exceed 45 minutes. For example:

[238] Article 64.1 Decree 145/2020/ND-CP
[239] Articles 108.1 and 108.2 LC 2012 and Article 5.1 Decree 45/2013/ND-CP

Ref. No.	Cases	Types			Notes
		Not working on shift	Working on shift	Working on continuous shift	
1	8 consecutive hours in a day, break of 30 minutes between hours	✓			There is no alternation to work on the same work position.
2	Shift 1: 06:00 to 12:00, break of 30 minutes between hours. Shift 2: 14:00 to 20:00, break of 30 minutes between hours.		✓		There is an alternation to work on the same working position but the transition time between two adjacent shifts is more than 45 minutes (120 minutes.)
3	Shift 1: from 06:00 to 14:00, break of 30 minutes between hours. Shift 2: 14:00 to 22:00, break of 30 minutes between hours. Shift 3: 22:00 to 06:00 of the next day, with a break of 45 minutes between hours.			✓	There is an alternation to work on the same working position and the transition time between two adjacent shifts does not exceed 45 minutes.

In addition, the employer will decide when to take a break during working hours, but must not arrange this break at the start or end of the shift.[240] Employees

[240] Article 64.3 Decree 145/2020/ND-CP

working in shifts are entitled to at least 12 hours off before moving to another shift. Enterprises should pay attention to the new regulations on work shifts and continuous shifts as aforesaid for the calculation of the break between hours into the working time to ensure the employee's shift break is implemented in accordance with law. In addition, employers and employees are also encouraged to negotiate the break time between hours counted into the working time for other cases that do not have to work in *"continuous shifts"*.[241]

II. WORKING OVERTIME

The LC 2019 stipulates that overtime is the working time outside of normal working hours according to the law, CLA or ILRs.[242] In inheritance of the previous legal regulations, the organization of overtime work must satisfy certain conditions and comply with the law.

1. Overtime conditions

Compared with the LC 2012, in general, the conditions for the employee's consent to work overtime and the limit of overtime hours are still maintained by the LC 2019. However, the condition to arrange compensatory leave after each overtime up to 07 consecutive days[243] in a month has been eliminated by the LC 2019. Thereby, the arrangement of compensatory leave instead of the payment of overtime salaries is no longer appropriate. The employer must pay overtime salaries to the employee in all cases where the employee works overtime in accordance with the law. Cases of arrangement of compensatory leave in lieu of overtime salary payment may expose enterprises to risks related to failure to pay overtime salaries to employees.

According to the LC 2019, the employer is entitled to use the employee to work overtime upon fully meeting the following requirements:

(a) Employee's consent to work overtime

The request for an employee's consent is one of the mandatory requirements when organizing any overtime work. In addition to the LC 2012, the current labor law additionally stipulates the contents that require the consent of the employee to participate in overtime work, including[244] (i) overtime time; (ii) overtime workplace; and (iii) overtime work. In practice, overtime agreements primarily deal with overtime hours, and usually will

[241] Article 64.4 Decree 145/2020/ND-CP
[242] Article 107.1 LC 2019
[243] Article 106.2 (c) LC 2012 and Article 4.3 Decree 45/2013/ND-CP
[244] Article 59.1 Decree 145/2020/ND-CP 59.1

not refer to the workplace and overtime work. Therefore, with this provision, enterprises should pay attention to the overtime agreement ensuring sufficient contents in accordance with laws.

Also, the current labor law provides a written form of overtime agreement for employers and employees to refer to when signing overtime agreements in separate writing.[245] However, the current labor law does not specify whether an overtime agreement via a digital software system is acceptable. With the prevailing development of electronic technology, the application of software systems to some issues of salary calculation, annual leave registration, etc. and a few other similar matters have been done quite commonly. Based on the labor law that allows LCs to be concluded via electronic means in the form of data messages[246], many views suggest that overtime agreements can also be conducted through digital software as aforesaid without necessarily signing any paper agreement. However, to avoid potential risks, the overtime agreement software system must fully show the contents of the time, workplace and overtime work as well as clearly show the employees' consent to the aforesaid overtime contents.

(b) Limit of overtime hours

In addition to satisfying the conditions for the employee's consent to work overtime, upon organizing overtime work, the employer must ensure that the number of overtime hours does not exceed the same as prescribed below.

(i) Limit of overtime hours worked in a day and in a month

Total overtime hours must not exceed 50% of normal working hours in a day when working overtime on a normal working day. In case of applying the regulation on normal working hours on a weekly basis, the total number of normal working hours and overtime hours must not exceed 12 hours in a day. The total number of overtime hours of the employee does not exceed 40 hours in a month.[247] Thus, from the said regulation, it can be seen that, from January 1, 2021, the maximum number of overtime hours of an employee in a month will be increased from 30 hours to 40 hours compared with the LC 2012.

[245] Form No. 01/PLIV Appendix IV issued together with Decree 145/2020/ND-CP
[246] Article 14.1 LC 2019
[247] Article 107.2 (b) LC 2019 and Articles 60.1 and 60.2 Decree 145/2020/ND-CP

Apart from ensuring the total number of overtime hours does not exceed 12 hours in a day, when working overtime on public holidays, Tet holidays and weekends,[248] the new labor law also adds a limit of overtime hours in case of part-time jobs. In this case, the total number of normal working hours and overtime hours must not exceed 12 hours per day.[249]

(ii) Limit of overtime hours in a year

The employee's overtime hours must not exceed 200 hours per year.[250] However, in some industries, occupations, jobs or in certain cases, the employer is allowed to use the employee to work overtime for no more than 300 hours per year.

Cases of organizing overtime work from over 200 hours to 300 hours in a year are also supplemented by the LC 2019 in comparison with the LC 2012, specifically including the following cases: [251]

- Manufacturing, processing exports in such sectors as textile, garment, leather, footwear, electricity, electronics, processing of agricultural, forestry, salt industry, and aquatic products;
- Production and supply of electricity, telecommunications, oil refining; water supply and drainage;
- In case of handling jobs demanding highly professional and technical employees the labor market cannot adequately and promptly provide;
- In case of any urgent work that cannot be delayed due to the seasonal nature, the timing of the materials or products or in order to solve any arising work due to unforeseen objective factors, weather consequences, natural disasters, fires, enemy sabotage, lack of electricity, lack of raw materials, technical problems of production lines;
- Urgent and undelayable cases arising from objective factors

[248] Article 60.4 Decree 145/2020/ND-CP
[249] Article 60.3 Decree 145/2020/ND-CP
[250] Article 106.2(c) LC 2019
[251] Article 107.3 LC 2019 and Article 61 Decree 145/2020/ND-CP

directly related to public service activities in state agencies and units;

- Public service delivery; medical examination and treatment services; services for education and vocational education;

- For direct production and business jobs in enterprises, normal working hours do not exceed 44 hours per week.

(iii) Upon organizing any overtime work over 200 hours to 300 hours in a year, the employer must notify in writing DOLISA.[252] Unlike the previous labor law, this notification must be made at DOLISA in different places, including (i) the locality where the employer organizes overtime work from 200 hours to 300 hours in a year; and (ii) the locality where the head office is located, if the head office is located in a centralized province or city different from the locality where the employer organizes overtime work from over 200 hours to 300 hours in a year. Employers must notify within 15 days of working overtime from over 200 hours to 300 hours per year and in the form prescribed by the Government.[253]

Note that the break time between counted into working hours of a continuous shift is reduced when calculating the total number of overtime hours in a month or year to determine compliance with the limit of working hours as specified.[254]

2. Working overtime in special cases

Working overtime in special cases is an exception that does not need to meet the overtime working conditions as described above. According to the LC 2019, the employer has the right to request an employee to work overtime on any day without limitation on the number of overtime hours and the employee is not allowed to refuse in the following cases:[255]

(a) Executing mobilization orders to ensure defense and security duties in accordance with law;

(b) Performing works to protect human lives and property of agencies,

[252] Article 107.4 LC 2019
[253] Article 62 Decree 145/2020/ND-CP
[254] Article 60.5 Decree 145/2020/ND-CP
[255] Article 108 LC 2019

organizations or individuals during the prevention and recovery of consequences of natural disasters, fires, dangerous epidemics and catastrophes, except in case of any risk affecting the employee's life and health in accordance with the law on occupational safety and hygiene.

In general, the LC 2019 still maintains special cases of working overtime as prescribed in the LC 2012, but supplements the employee's right to refuse to work overtime if the employer requires the employee to work overtime to perform tasks to protect human lives and property of agencies, organizations and individuals during the prevention and recovery of consequences of natural disasters, fires, dangerous epidemics and catastrophes that threaten employees' lives and health in accordance with the law on occupational safety and hygiene.

III. WEEKLY LEAVE

The regulations on weekly days off of the LC 2019 are generally not much changed compared to the previous ones. Each week, the employee is entitled to at least 24 consecutive hours off. In special cases, because the employer cannot take weekly leave due to any labor cycle, the employer is responsible for ensuring that the employee is entitled to an average of at least 04 days off per month.[256]

However, for the arrangement of weekly days off, the regulations of the LC 2019 have changed: the employer has the right to decide to arrange the weekly days off on Sunday or other *"definite day"* of the week but such arrangement must be recorded in ILRs.[257] The LC 2019 seems to have a more open regulation for the employer to decide on a weekly day off in using the term *"definite day"* rather than *"fixed day"* as stated in the LC 2012.[258] The employer does not have to stipulate that weekly days off are Monday, Tuesday, Wednesday, etc. but can come up with a general rule, as long as the employee can rely on that rule to determine his weekly days off. This will help most enterprises use groups of employees working alternately throughout the week *(including Saturday and Sunday)*, avoid fixing the weekly day off to remove the "knot".

However, the current labor law has not yet provided a detailed guide as a more solid basis for the said interpretation. For reference purposes, some labor management agencies agree to the said view. Because this is a new point without clear guidelines and practices, and in order to avoid legal risks, enterprises should consult the labor management agency of the locality where they are located before regulations are incorporated into the ILRs or agree on relevant issues in the LC as well as the CLA *(if any)*.

[256] Article 111.1 LC 2019
[257] Article 111.2 LC 2019
[258] Article 110.2 LC 2019

IV. LEAVE ON PUBLIC HOLIDAYS, TET HOLIDAYS

According to the LC 2019, employees are entitled to take leave from work and receive full salary during the following public holidays and New Year holidays: [259]

(i) Solar New Year: 01 day (January 1 of solar calendar);

(ii) Lunar New Year: 05 days;

(iii) Victory Day: 01 day (April 30 of solar calendar);

(iv) International Labor Day: 01 day (May 1 of solar calendar);

(v) National Day: 02 days (September 2 of solar calendar and 1 day immediately preceding or following);

(vi) Hung Vuong's death anniversary: 01 day (the 10th of the third lunar month).

Therefrom, it can be seen that the National Day has been increased by the LC 2019 from 1 day to 2 days, including September 2 of solar calendar and 1 day immediately preceding or following. Besides, another point enterprises should note is that the Lunar New Year holidays as well as the aforesaid National Day holidays will not be decided by the employer. Employers will not be able to choose either of the following options of Lunar New Year holidays: 1 day at the end of the year and 4 first days of the lunar year, or 2 days at the end of the year and 3 first days of the lunar year.[260] Instead, every year, based on practical conditions, the Prime Minister decides specifically on New Year holidays and National Day holidays.[261] Thus, with the new regulations, the Tet holiday schedule in enterprises across the country will be consistent.

V. ANNUAL LEAVE

1. Annual days off

Employees who have worked for a full 12 months for an employer are entitled to annual leave and enjoy full salary according to the LC as follows: [262]

(a) 12 working days for an employee who works under normal conditions;

[259] Article 112.1 LC 2019
[260] Article 8.1 Decree 145/2020/ND-CP
[261] Article 112.3 LC 2019
[262] Article 113.1 LC 2019

(b) 14 working days for minor employees, handicapped employees, employees in heavy, hazardous or dangerous jobs;

(c) 16 working days for workers in particularly heavy, hazardous or dangerous occupations.

For every 5 years working for an employer, the number of annual leave days of the employee according to the said regulations is increased by 01 day correspondingly.[263]

Thus, the minimum number of annual leave days remains unchanged according to the LC 2019. But for the annual leave days increasing with the seniority, the LC 2019 determines the basis for enjoying is *"a full 05 working years"*. There is no controversy over whether the employee has to work for full 05 years or only needs to enter the fifth working year to enjoy the annual leave days increased according to the seniority as specified in the LC 2012.

2. Calculation of annual leave days in special cases

For an employee who has worked less than 12 months for an employer, the number of annual leave days is in proportion to the number of working months.[264] Instead of the regulation *"in proportion to the working time"* in general as prescribed in the LC 2012, the LC 2019 has clearly determined that the number of annual leave days in favor of employees who have worked less than 12 months will be *"in proportion to the number of working months"*. In fact, the determination of the number of annual leave days in case of less than 12 working months "in proportion to the number of working months" is not new because the previous labor law also has regulations on guiding how to calculate the number of annual leave days for the case of working under a year, in which the number of annual leave days clearly shown in this case can be calculated *"in proportion to the number of working months"*. Specifically in this case, the number of annual leave days is calculated as follows: take the number of annual leave days plus the number of extra days off according to the seniority *(if any)*, divide by 12 months, multiply by the number of actual working months in the year to calculate the number of annual leave days; the result of calculation is rounded in the units column, if the decimal is greater than or equal to 0.5, then round up to 01 unit.[265] This calculation is still maintained by the current labor law, but the requirement for rounding calculation results has been removed.[266]

[263] Article 114 LC 2019
[264] Article 113.2 LC 2019
[265] Article 114.2 LC 2012 and Article 7 Decree 45/2013/ND-CP
[266] Article 66.1 Decree 145/2020/ND-CP

In addition to the case that the employee has not worked for a full 12 months, the new labor law supplements a way to calculate the number of annual leave days if the employee has not worked for a full number of months. Accordingly, if the total number of working days and paid days off of the employee *(public holidays, Tet holidays, annual leave days, paid personal leave days)* accounts for 50% of the normal working days of the month according to the agreement, that month is counted as 01 working month to calculate the annual leave days.[267] This is a completely new regulation of the labor law to which enterprises should pay attention so that the regulation of calculating annual leave days for employees in the ILRs and CLA *(if any)* is consistent with the law.

3. Employer's responsibility to regulate the annual leave schedule

The LC 2019 stipulates that the employer is *"responsible"* to stipulate the annual leave schedule after consulting with the employees and must notify them in advance.[268] While the LC 2012 stipulates that this is the *"right"* of the employer, not the *"responsibility"* of the employer.[269]Thus, there is a huge difference between the LC 2019 and the LC 2012. The regulation of the annual leave schedule of the employee is no longer an option but the responsibility of the employer.

Therefore, enterprises, especially those in the manufacturing industry should pay attention to prescribing an appropriate annual leave schedule and notify the employee in advance in case employees are requested to arrange their annual leave in line with business and production activities of the enterprise.

4. Salary payment for unused annual leave days

According to the Labor Code 2019, in case of having not yet taken annual leave or having partly taken annual leave days due to resignation or retrenchment, the employees will be paid a salary by the employer for the untaken days.[270] Thus, the Labor Code 2019 has removed the case "for other reasons" where the employer must pay the salary for the untaken annual leave days as prescribed in the Labor Code 2012.[271] Enterprises should note that under the new regulations, the salary payment for unused leave days only applicable when the LC is terminated *(due to resignation or retrenchment.)*

Current practice shows that some enterprises and employees have agreed to

[267] Article 66.2 Decree 145/2020/ND-CP
[268] Article 113.4 LC 2019
[269] Article 111.2 LC 2019
[270] Article 113.3 LC 2019
[271] Article 114.1 LC 2012

convert annual leave days to working days to solve the urgent needs of the job in certain cases. However, the said conversion may lose the meaning of the annual leave to regenerate labor productivity. The new Labor Code 2019 has provided a clear legal basis for determining that the conversion of annual leave to normal working days and salary payment for untaken annual leave is not in accordance with law. For the said behavior, enterprises may run the risk of being considered unwilling to arrange for employees to take annual leave and pay salaries instead of such annual leave arrangement.

VI. PERSONAL LEAVE, UNPAID LEAVE

The LC 2019 adds adoptive children and adoptive parents in case of personal leave with full salary. Accordingly, the employee is entitled to take personal leave with full salary and must notify the employer in the following cases: [272]

(i) Marriage: 03 days off;

(ii) Marriage of natural and adoptive children: 01 day off;

(iii) Death of any natural parent, adoptive parent; any natural parent, adoptive parent of either spouse; either spouse; any natural child, adoptive child: 03 days off.

For the case of unpaid leave, the provisions of the LC 2012 are still maintained in the LC 2019. The employee is entitled to 01 day of unpaid leave and must notify the employer of the death of any paternal grandfather, paternal grandmother, maternal grandfather, maternal grandmother, any of the siblings; of the marriage of any father, mother, any of the siblings. In addition, the employee can agree with the employer to take unpaid leave outside of the cases as aforesaid by law.[273]

[272] Article 115.1 LC 2019
[273] Articles 115.2 and 115.3 LC 2019

CHAPTER VII. RETIREMENT AGE AND WORKING AFTER RETIREMENT AGE

I. RETIREMENT AGE

1. Retirement age under normal working conditions

According to the LC 2012, the retirement age of the employee under normal working conditions is age 60 in full for male employees and age 55 in full for female employees.[274] However, according to the LC 2019, the retirement age will be increased according to the roadmap until they reach age 62 in full for male employees by 2028 and age 60 in full for female employees by 2035. Specifically, the employees' age retirement under normal working conditions is 60 years and 03 months old in full for male employees and 55 years and 04 months old in full for female employees; thereafter, an increase of 3 months per year for male employees until they reach age 62 in full by 2028 and an increase of 4 months per year for female employees until they reach age 60 in full by 2035.[275]

The roadmap for adjusting an employee's retirement age is made according to the table below:

Male employees		**Female employees**	
Retirement year	**Retirement age**	**Retirement year**	**Retirement age**
2021	60 years and 3 months old	2021	55 years and 4 months old
2022	60 years and 6 months old	2022	55 years and 8 months old
2023	60 years and 9 months old	2023	56 years old
2024	61 years old	2024	56 years and 4 months old
2025	61 years and 3 months old	2025	56 years and 8 months old
2026	61 years and 6 months old	2026	57 years old
2027	61 years and 9 months	2027	57 years and 4

[274] Article 187.1 LC 2012
[275] Article 169.2 LC 2019, Article 4.1 Decree 135/2020/ND-CP

	old		months old
From 2028 onwards	62 years old	2028	57 years and 8 months old
		2029	58 years old
		2030	58 years and 4 months old
		2031	58 years and 8 months old
		2032	59 years old
		2033	59 years and 4 months old
		2034	59 years and 8 months old
		From 2035 onwards	60 years old

Thus, the retirement age according to the LC 2019 has increased compared to the past. Increasing the retirement age is necessary to meet human resources for socio-economic development, promote the ability of employees, respond to challenges from aging population, ensure the sustainability of the insurance fund and advance gender equality through narrowing the retirement age gap between men and women.

2. Earlier retirement than the retirement age under normal working conditions

Unless otherwise provided by law, employees in the following cases may retire at an earlier age but not over 05 years old than the retirement age under normal working conditions at the time of retirement:[276]

(a) Employees have 15 years or more of doing (especially) heavy, hazardous and dangerous occupations or jobs on the list issued by MOLISA;

(b) Employees who have been working for 15 years or more in areas with extremely difficult socio-economic conditions on the list issued by the Minister of MOLISA, including working time in the areas with a regional allowance coefficient of 0.7 or higher before January 1, 2021.

[276] Article 5.1 Decree 135/2020/ND-CP

(c) Employees suffer a working capacity impairment of 61% or more;

(d) Employees spend a total time of full 15 years or more on doing (especially) heavy, hazardous and dangerous occupations or jobs on the issued list in an area with especially difficult socio-economic condition as aforesaid.

The earliest retirement age of an employee is specified in the table below:

Male employees		**Female employees**	
Retirement year	**Earliest retirement age**	**Retirement year**	**Earliest retirement age**
2021	55 years and 3 months old	2021	50 years and 4 months old
2022	55 years and 6 months old	2022	50 years and 8 months old
2023	55 years and 9 months old	2023	51 years old
2024	56 years old	2024	51 years and 4 months old
2025	56 years and 3 months old	2025	51 years and 8 months old
2026	56 years and 6 months old	2026	52 years old
2027	56 years and 9 months old	2027	52 years and 4 months old
From 2028 onwards	57 years old	2028	52 years and 8 months old
		2029	53 years old
		2030	53 years and 4 months old
		2031	53 years and 8 months old
		2032	54 years old
		2033	54 years and 4 months old
		2034	54 years and 8 months old

		From 2035 onwards	55 years old

3. Older retirement than the retirement age under normal working conditions

Employees with highly professional and technical qualifications and in some special cases can retire at an older age but not more than 05 years old than the retirement age under normal working conditions at the time of retirement.[277] Accordingly, employees can retire at an older age when agreeing with the employer to continue working after the retirement age. The termination of the LC and the settlement of the SI benefits for employees in this case will be conducted according to the same labor law as in other normal cases and in accordance with the law on SI.[278]

Because the increase of the employee's retirement age is related to his use after retirement age by the employer, enterprises should pay attention to the time of the employee's retirement in this case for the payment of SI premiums or related amounts for employees to comply with the law. This issue will be analyzed in detail in the part of the LC signing with elderly employees below.

II. NOTEWORTHY ISSUES UPON USING ELDERLY EMPLOYEES

Elderly employee is a person who continues working after his retirement age under normal working conditions.[279] Since working after the retirement age has a direct impact on the employee's health, the use of elderly employees will need to comply with separate regulations. Compared with the LC 2012, the LC 2019 have generally adjusted, abolished most of the conditions for using elderly employees and respecting the agreement of the parties on using elderly employees.

1. Elderly employees' health

According to the LC 2012, before employing the elderly employees, the employer must ensure that the employee is healthy according to the conclusion of the medical examination and treatment facility established and operating in accordance with the law.[280] However, this condition is no longer regulated in the LC 2019. The employer will consider whether to recruit or continue to use the employee after the retirement age or not. This is also reasonable as it is a matter directly related to the employer's right to use employees.

[277] Article 169.4 LC 2019
[278] Article 6 Decree 135/2020/ND-CP
[279] Article 148.1 LC 2019
[280] Article 167.1 LC 2012 and Article 6.1 Decree 05/2015/ND-CP, supplemented and amended by Decree 148/2018/ND-CP

But in the process of using elderly employees, the LC 2019 still requires the employer to take responsibility for taking care of the health of the elderly employees at the workplace. In addition, the employer is also not allowed to use the elderly employee to do *(especially)* heavy, hazardous and dangerous jobs or occupations that adversely affect the health of the elderly employee, except in case of ensuring safe working conditions.[281]

2. Working time of elderly employees

According to the previous labor law, in case of using elderly employees, the employees may have their daily working hours shortened or be subject to application of the part-time working regime. This also applies to employees in the last year prior to retirement.[282]

According to the LC 2019, the shortening of working hours for or application of the part-time working regime to elderly employees in the last year before retirement is no longer a mandatory requirement for the employer. In case of working after the retirement age, the elderly employee can reach an agreement with the employer on shortening the working hours or applying the part-time working regime. [283] That is, the employer is no longer obliged to shorten working hours or apply part-time working regime to employees in the last year before retirement. For elderly employees, the working hours of the employees will be up to the agreement of the parties, which can be shortened or similar to other ordinary employees.

3. LC with elderly employees

According to the LC 2012, in case of a need, the employer can agree with the elderly employee who is healthy enough to extend the term of the LC or sign a new LC.[284] However, according to the new regulation, the two parties may agree to enter into multiple definite term LC upon using elderly employees.[285]

This regulation is intended to be consistent with the adjustments related to the LC of the LC 2019. In particular, the LC 2019 no longer allows the change of the term of the LC with its appendix.[286] Therefore, the parties cannot extend the term of the existing LC upon using the elderly employees.

[281] Articles 149.3 and 149.4 LC 2019
[282] Articles 166.2 and 166.3 LC 2012
[283] Article 148.2 LC 2019
[284] Article 167.1 LC 2012
[285] Article 149.1 LC 2019
[286] Article 22.2 LC 2019

In addition, the LC 2019 also clearly identifies the type of labor contract signed with the elderly employee as a definite term LC and the parties can enter into a multiple definite term LC without having to change the type of signed LC. Although there have been more favorable adjustments for employers to use elderly employees, this regulation only solves the problem in case the parties sign a new LC but have not yet solved the problem related to the LC signed before the employee is full retirement age. Therefore, the question is whether parties are required to enter into a new LC when employing elderly employees. Or in other words, will the LCs signed with employees before the retirement age remain valid if the employer continues to use employees after that?

Therefore, when the employee reaches the full retirement age, but he continues to work after the retirement age, there will be 2 cases as follows:

(a) Case 1: The parties terminate the signed LC and agree to enter into a new LC

As a rule, in case of reaching full retirement age, the parties can agree[287] or exercise each party's right to unilaterally[288] terminate the LC. Then, if continuing to use employees after the retirement age, the parties will agree to enter into a new LC according to the type of definite term LC.

The employer should note that in this case, the employer must ensure full compliance with the rights of the employee under the newly signed LC. The employer will not be entitled to unilaterally terminate the newly signed LC because the employee reaches full retirement age as prescribed in Article 36.1 (D) of the LC 2019. Therefore, the employer needs to ensure that the LC signed with the elderly employee complies with the right type of LC in accordance with the law.

(b) Case 2: The parties continue to perform the signed LC after the employee reaches full retirement age

Given the cases of allowing the termination of the LC, the LC 2019 does not provide for the automatic termination of the LC when the employee reaches full retirement age except where either party exercises the right to unilaterally terminate its LC. Therefore, in principle, the signed LC will remain valid after the employee reaches full retirement age until the LC is terminated in one of the statutory cases.

[287] Article 34.3 LC 2019
[288] Articles 35.2 (e) and 36.1 (D) LC 2019

The employer should note that even though the new LC has not been entered into, the continuation to implement the signed LC after the employee reaches full retirement age is also considered to be a use of the elderly employee. Therefore, the employer needs to ensure compliance with the regulations related to the use of elderly employer, such as ensuring the health of employees at the workplace, failure to use elderly employees to do the jobs that are heavy, hazardous, dangerous, etc.

Regarding the right to unilaterally terminate the LC, the Labor Code 2019 stipulates that either party has the right to unilaterally terminate the LC in case the employee reaches full retirement age, unless otherwise agreed.[289] As analyzed in case 1, the parties may not have the right to unilaterally terminate the LC in case the employee reaches full retirement age and if the parties entering into the new LC agree on the use of elderly employees. However, the current labor law does not provide a clear basis for determining whether the continued employment of employees after the retirement age under the previously concluded LC is implied as another agreement of the parties. If this is considered an agreement of the parties on the use of elderly employees, the parties will lose the right to unilaterally terminate the LC in accordance with the said provisions. Therefore, in order to avoid potential legal risks for legal issues that have not been clearly defined, enterprises should exercise the right to unilaterally terminate LCs with employees at the time of their reaching retirement age in case of no need to continue to employ elderly employees. In case of any need to employ employees after their retirement age, an enterprise may terminate the signed LC and enter into a new LC with any employee as in case 1 described above.

4. Participating in and paying SI premiums for elderly employees

Considering those who must pay compulsory SI, employees working under LCs with a term of full 01 month or more will be subject to compulsory SI.[290] However, pensioners who are entering into LCs are not subject to compulsory SI.[291] Thus, the participation in and payment of compulsory SI for elderly employees will depend on and be considered on the basis of whether the elderly employee is receiving a pension.

As stated in terms of the said retirement age, the employee is entitled to retire at a

[289] Articles 35.2 (e) and 36.1 (D) LC 2019
[290] Articles 2.1 (a) and 2.1(b) SI Law 2014
[291] Article 123.9 SI Law 2014

maximum of 5 years older than the prescribed retirement age as agreed with the employer upon continuing to work after the retirement age. Therefore, in case the elderly employee has not yet retired and has not yet enjoyed the retirement benefits according to the law on SI, the employer is obliged to participate in and pay compulsory SI in full for the employee as prescribed.

In contrast, in case the elderly employee who is enjoying a pension, the employer will not have to participate in and pay compulsory SI for the employee according to the said regulations, but is responsible for paying the employee an extra amount at the same time as the salary payment period, which is equivalent to the level that the employer pays compulsory SI, HI and UI for employees in accordance with the law on SI, HI and UI.[292]

[292] Article 168.3 LC 2019

CHAPTER VIII. REGULATIONS FOR FEMALE EMPLOYEES AND GENDER EQUALITY

In general, the health care regimes for female employees according to the current labor law are still maintained and inherited based on the previous regulations that have been supplemented, adjusted and changed. On the basis of ensuring equal rights of female and male employees, a number of previously exclusive regimes for female employees will also apply to male employees on a case-by-case basis. In particular, employers need to note some key new points as follows:

I. CASES OF PROHIBITING DISMISSAL OR UNILATERAL TERMINATION

According to the 2019 LC, an employer may not dismiss or unilaterally terminate an employee's LC for reasons of marriage, pregnancy, maternity leave, raising a child under 12 months of age, unless the employer is an individual who is deceased, declared by the Court as deprived of civil act capacity or missing or the employer is non-individual to terminate its operation or is notified by a specialized business registration agency under the provincial PC of the fact that it does not have a legal representative, an authorized person to perform the rights and obligations of the legal representative.[293]

The said provisions have expanded the subjects of application compared to the LC 2012.[294] If the restriction on the employer's right to dismiss or unilaterally terminate the LC previously applied to female employees only, now according to the new provisions, such restriction will equally apply to male employees.

II. WORKING AT NIGHT, OVERTIME AND GOING ON FARAWAY BUSINESS

Under the previous labor law, employers are not allowed to employ female employees to work at night, work overtime and go on faraway business in the following cases: (i) become pregnant from the 7th month or from the 6th month if working in highland, remote, border and island areas; and (ii) raising a child under 12 months old.[295]

The current labor law still maintains the said provision but allows the employer to use the employee raising a child under 12 months old to work at night, work overtime and go on long-distance business trips, if agreed by that employee.[296] Note that the said provision also applies to male employees who are nursing children under 12 months of age. Thus, according to the LC 2019, in case the employee *(male or female)* is raising a child under 12 months of age agrees, the employer can request the employee to work at night, work overtime and go on faraway business.

[293] Article 137.3 LC 2019
[294] Article 155.3 LC 2012
[295] Article 155.1 LC 2012
[296] Article 137.1 LC 2019

III. DOING (ESPECIALLY) HEAVY, HAZARDOUS AND DANGEROUS JOBS OR OCCUPATIONS THAT ADVERSELY AFFECT REPRODUCTIVE AND CHILD REARING FUNCTIONS

1. Assigning to lighter and safer jobs or reducing 1 working hour each day for female employees

According to the LC 2012, female employees who do heavy work when they are 7 months pregnant are allowed to change to lighter jobs or have their daily working hour reduced by 1 hour while enjoying full salaries.[297] In addition, employers are also not allowed to use female employees to do jobs that affect the reproductive and child-rearing functions on the list promulgated by the MOLISA in coordination with the Ministry of Health.[298] However, according to the new regulations, for female employees that do *(especially)* heavy, hazardous and dangerous jobs or occupations or do the same that adversely affects reproductive functions and child rearing during pregnancy and have notified the employer, the employer can assign them to lighter, safer jobs or reduce by 1 working hour each day without cutting salary, rights and benefits until end of the period of child rearing under 12 months of age.[299]

As such, for female employees that do *(especially)* heavy, hazardous and dangerous jobs or occupations, the LC 2019 has extended the period to enjoy this benefit for them. A female employee may be transferred to a lighter job or have a daily reduction of 01 working hour during pregnancy and until the end of the period of raising children under 12 months of age provided that employees must give the employer a notice. The time of pregnancy before her notice will not be considered for settlement by the employer.

In addition, the LC 2019 no longer absolutely bans the use of female employees for jobs that affect reproductive and child rearing functions. The employer may still use female employees to do the said jobs, but in case employees are pregnant and send the employer a notice, he must assign them to a lighter job or reduce by 1 working hour each day for female employees during their pregnancy and until end of the period of child rearing under 12 months of age like the case of using female employees to do *(especially)* heavy, hazardous and dangerous jobs or occupations.

2. Employer's responsibility to provide information when employing employees

[297] Article 155.2 LC 2012
[298] Article 160.1 LC 2012
[299] Article 137.2 LC 2019

in occupations or jobs that adversely affect reproductive functions and child rearing

MOLISA has also issued a list of occupations and jobs that adversely affect reproductive function and child rearing related to not only female employees but also male employees.[300] Accordingly, the employer has the following responsibilities:

(a) Make public disclosure so that employees know about occupations and jobs that adversely affect reproductive functions and child rearing at the workplace;

(b) Provide adequate information about the harm as well as measures to prevent and control the dangerous and harmful factors of occupations and jobs that adversely affect reproductive functions and child rearing at the workplace for employees to whether choose and decide to work;

(c) Conduct pre-employment health checkups, periodic health checkups, occupational disease checkups and ensuring occupational safety and hygiene conditions as prescribed by law upon employing employees to do occupations and jobs that have a negative impact on reproductive functions and child rearing.

IV. BREAK TIME DURING THE PERIOD OF MENSTRUATION AND REARING CHILDREN UNDER 12 MONTHS OF AGE

Like the previous labor law, the current labor law still allows female employees to take 30 minutes off each day during their menstruation; to take 60 minutes off their jobs each day during the period of rearing children under 12 months of age. They are entitled to full salaries for the time off[301] under the LC. However, the current labor law has provided new additional regulations to which the employer should pay attention.

Break time for female employees during their menstruation: [302]

(i) During their menstruation, female employees are entitled to a 30-minute break each day counted into working hours and still receive full salaries under the LC. The number of days with the break time during menstruation is agreed upon by both parties in accordance with the actual conditions at the workplace and the needs of female employees, but must be at least 03 working days per month; the

[300] Article 10 and Appendix attached to Circular 10/2020/TT-BLDTBXH
[301] Article 137.4 LC 2019
[302] Article 80.3 Decree 145/2020/ND-CP

specific break time for each month is informed by the female employee to the employer;

(ii) In case the female employee requests more flexible leave than the said regulations, the two parties will agree to be arranged in line with the actual conditions at the workplace and the needs of the female employee;

(iii) In case a female employee has no need to take leave and is allowed by the employer to work, such employee will be paid additional salary according to the job that such employee has done during her leave period and this working period is not included in her overtime hours.

Break time during the period of raising children under 12 months old:[303]

(i) Female employees who are nursing children under 12 months of age are entitled to take a 60-minutes break each day during their working time in order to breastfeed, pump milk, store milk and have a rest. The break time is still entitled to the full salary according to the LC;

(ii) In case a female employee has a more flexible need for leave than the said regulations, such employee will agree with the employer on arranging leave in line with the actual working conditions and the needs of the female employee;

(iii) In case a female employee has no need to take leave and is agreed by the employer to let her work, she will be paid additional salary according to the job that she did during the leave.

Thus, the current labor law has added the provision that: (i) the parties are entitled to agree on the leave during the period of menstruation and nursing children under 12 months of age more flexibly than before; and (ii) in case of failure to take a break of 30 minutes during menstruation or a break of 60 minutes for raising children under 12 months old and with the employer's consent, the employee is paid additional salary according to the job that the employee did during the break period.

It should be noted that, for female employees doing *(especially)* heavy, hazardous and dangerous jobs or occupations that adversely affect reproductive and child rearing functions, if they are not assigned to a lighter and safer job while raising a child while raising a child under 12 months of age, in addition to the 60-minute break every day during the working time as prescribed above, they will be reduced by 1 working hour each day.[304] For example, if an employee has a normal daily working time of 08 hours, the

[303] Article 80.4 Decree 145/2020/ND-CP
[304] Articles 137.2 and 137.4 LC 2019

employee will be reduced by 01 hour thereof to experience only 07 working hours and will have a 60-minute break during that 7-hour working period. Thus, for female employees who fall into this situation, depending on their agreement on arranging break time, they employee may be entitled to a 2-hour break per day with still full salary under the LC.

V. INSTALLATION OF LACTATION ROOMS TO PUMP AND STORE BREAST MILK

According to the current labor law, employers are encouraged to install lactation rooms to pump and store breastmilk in line with the actual conditions of the workplace, the needs of female employees and the capabilities of the employer. However, unlike previous regulations, for employers who employ 1,000 or more female employees, it is compulsory to install lactation rooms to pump and store breastmilk at the workplace.[305]

Therefore, enterprises that employ 1,000 or more female employees should pay attention to the said provisions to properly comply and ensure compliance with the law.

VI. GUARANTEE OF JOBS FOR EMPLOYEES DURING THEIR MATERNITY LEAVE

Unlike the previous regulations, the LC 2019 has expanded the subjects of application in terms of job guarantee for employees during their maternity leave. Accordingly, male employees upon their wives' birth, employees adopting children under 6 months old, female employees as surrogates and employees as mothers asking for surrogacy are entitled to take maternity leave in accordance with the law on social insurance. Simultaneously, the old job will be guaranteed for restoration when returning to work after the end of the maternity leave as prescribed, without any reduction in salary and rights and benefits compared to before the maternity leave. In case the old job is no longer available, the employer must arrange another job for them with a salary not lower than the salary before the maternity leave.[306]

VII. SUPPORT DURING CARE OF SICK CHILDREN AND IMPLEMENTATION OF CONTRACEPTIVE MEASURES

The LC 2019 has had some regulations adjusted to embody equality between male and female employees and be more consistent with the law on SI. Accordingly, during the time off work for taking care of sick children under 07 years old, antenatal care, miscarriage, curettage, abortion, stillbirth, pathological abortion, contraceptive measures, sterilization, employees including male employees are entitled to allowances in accordance with the

[305] Article 7.5 Decree 85/2015/ND-CP and Article 80.5 Decree 145/2020/ND-CP
[306] Article 140 LC 2019

law on SI.[307]

VIII. ASSISTANCE AND SUPPORT FOR BABYSITTING AND KINDERGARTEN COSTS

According to the 2012 LC, the employer is obliged to support in cash or in kind a part of the babysitting and kindergarten costs for female employees with children at the age in need of babysitting and kindergarten. The level and duration of support will be agreed upon by the employer with the female employees' representative.[308]

However, according to the new regulations, employers will be obliged to assist and support babysitting and kindergarten costs for both male and female employees.[309] Based on specific conditions, the employer will develop plans to assist and support in cash or in kind a part of the babysitting and kindergarten costs for employees with children at the age in need of babysitting and kindergarten. The employer decides the level and duration of support after discussing with employees through dialogue at the workplace.[310]

[307] Article 141 LC 2019
[308] Article 154.4 LC 2012 and Article 9.1 Decree 85/2015/ND-CP
[309] Article 136.4 LC 2019
[310] Article 82 Decree 145/2020/ND-CP

CONCLUSION

The Guidebook results from the process of learning out and summarizing the latest regulations on LR adjustment to help readers get an overview on the change of the Labor Code. Thereby, the contents directly related to the rights and obligations of the employer such as changes in the implementation of the LC, regulations related to the LC are emphasized and clarified. In addition, the Guidebook also puts emphasis on the contents for employers to note in the establishment of new organizations in the enterprise, and CB activities and CLA signing are built according to the diagrams as well as the multistep processes that make it easy for the reader to perform.

Hopefully, the information provided in the Guidebook is complete and meets your needs of understanding and applying the labor law to the management and employment of employees to meet production demands and operations of enterprises and limit arising risks and disputes between employers and employees.

Thank you, readers, for your concern and time referring to the Guidebook.