

## LEGAL UPDATE

### DRAFT LABOUR CODE

The current Labour Code is being reviewed and revised by the Ministry of Labour, Invalids and Social Affairs (**MOLISA**). According to the draft dated 21 March 2017 (**Draft Code**), there will be several significant changes. The Draft Code is expected to enter into force on 1 January 2019.

Below we will set out the most important changes for you. It is important to note that the Draft Law is still in the stages of finalisation. The key points as highlighted below may therefore be further revised, and further guidance will be needed from the relevant authorities of Vietnam.

#### 1. Parties to a Labour Contract

The current Labour Code does not specifically state who is authorised to enter into a labour contract. In the Draft clearly specifies the parties that can enter into a labour contract. In particular, the employee must himself or herself enter into the labour contract (except for employees between 13 and 15 years) with the employer represented by its legal representative as the counterparty. The legal representative may authorise another person to enter into the contract on his or her behalf. Note that the Draft Code does not address who would be authorised to sign the legal representative's own labour contract.

#### 2. Automatic conversion

The current Labour Code provides for the automatic conversion of a definite term contract into an indefinite term contract, if the employee continues to work for the employer after the contract expires but the parties fail to sign a new contract within 30 days of the expiry. Under the same circumstances a seasonal contract will be converted into a 24 months' definite term contract. The Draft Code provides that, when a definite term contract or seasonal contract expires the parties may sign a new labour contract with the same term as the original. When this (second) labour contract expires, the parties must enter into an indefinite term contract. When a definite term contract or seasonal contract expires, and the employee continues working without entering into a new contract, the definite term contract or seasonal contract will automatically be converted into an indefinite term contract.

#### 3. Unilateral termination

##### 3.1 Employee

Under the current Labour Code, an employee may terminate an indefinite term labour contract without cause, subject to 45 days' notice. For other types of contracts, termination without cause is not possible.

Under the Draft Code, with respect to the right of unilateral termination by the employee, there will be two options:

1. The term remains the same as under the current Labour Code; or
2. Will allow the employee to terminate any type of labour contract without cause, subject to prior notice of 5, 30, or 45 days respectively, depending on the type of labour contract.

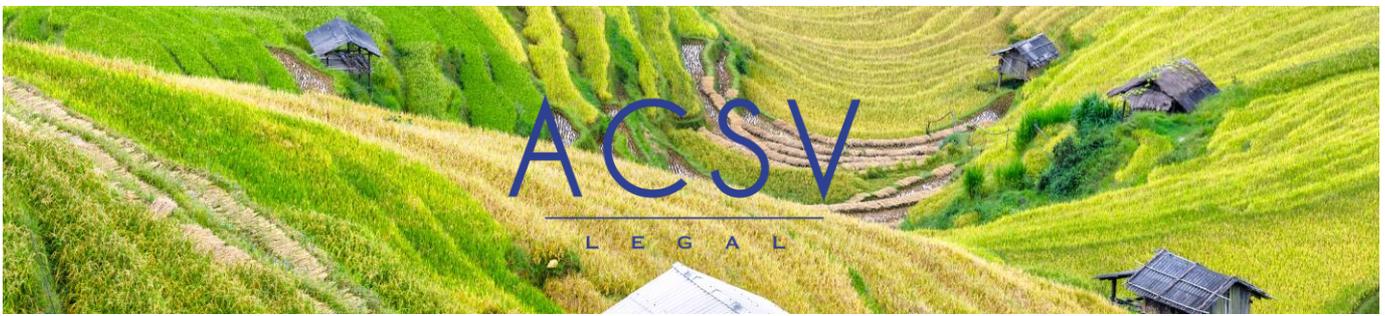
In addition to this, the employee is not required to provide prior notice to the employer when certain conditions as laid down in the labour contract are not kept. For example, when the employee is not assigned to the agreed job or workplace, not working under the agreed working conditions, not paid in full or on time, maltreated, sexually harassed, subject to forced labour, or is a pregnant female employee who must take leave as prescribed by a competent health establishment.

##### 3.2 Employer

There will be no change with regard to the right of an employer to unilaterally terminate the labour contract. However, the Draft Code adds two new circumstances for unilateral termination, which will allow the employer to unilaterally terminate a labour contract. The employer will be able to terminate unilaterally upon discovery that the employee has provided false personal information or when the employee reaches retirement age. However, to be able to terminate the labour contract on the ground that false information was provided, the labour contract should be drafted in such a way that include relevant warranties, representations and covenants.

#### 4. Transfer of employees

The Draft Code provides that in case of an acquisition, a merger, a consolidation, a split or transfer of ownership, the current employer will be responsible for formulating a post-



transaction labour usage plan. He also needs to notify the employees at least 15 days in advance of the date he begins to formulate the labour usage plan. Under the current Labour Code, no notice period is required.

#### **5. Salary and payment**

Under the Draft Code, the definition of “salary” basically does not change much. However, the Draft Code requires employers to present the following information to employees each time salary payments are made: the method of salary payment; base salary, bonus, and allowances; overtime compensation; and deductible amounts for social, health, and unemployment insurance contributions. This would mean a significant increase in paperwork for most employers.

#### **6. Overtime hours**

Under the current Labour Code, the amount of overtime may not exceed 50% of regular working hours a day and is capped at 30 hours per month or 200 hours per year. Some exceptions exist for special cases in which overtime of 300 hours a year is allowed by the Government.

Under the Draft Code, the amount of overtime may not exceed 12 hours a day with a maximum of 400 hours per year. Exceptions are possible for certain urgent cases. Like under the current Labour Code in some cases the employee cannot refuse to work overtime and new in the Draft Code is that now is described under which circumstances overtime work must be agreed with the employee.

#### **7. Overtime pay**

Under the Draft Code, the overtime pay will increase. The Government is considering the following two options. The first one is only increase the overtime payment for working overtime at night and the second option is increase all payments when working overtime. The second option might mean a significant increase of salary for the employee who works overtime and thus an increase in costs for the employer.

#### **8. Protection of female employees**

Under the current Labour Code, a female employee who performs heavy work must be transferred to lighter work from the 7<sup>th</sup> month of her pregnancy or have her shift

reduced by one working hour every day while still receiving her full salary.

In the Draft Code the employer of a female employee who is pregnant or raises a child under 12 months must re-adjust the employee’s job or transfer her to another job if the existing job endangers her health.

As mentioned before, a pregnant female employee has the right to unilaterally terminate or suspend her contract if a medical establishment certifies that continuing to work would adversely affect her pregnancy. The notice period shall be designated by the competent medical/healthcare facility.

#### **9. Retirement age**

There are two options mentioned in the Draft Code. The first one is to keep the current retirement age and the second is to increase the retirement age in accordance with a schedule commencing from 1 January 2021. The retirement age for women will go from 55 to 60 years, and for men from 60 to 62 years.

#### **10. Employee representatives**

Under the current Labour Code, the employee representatives are the executive committee of the internal trade union or the district-level trade union. Under the Draft Code, employee representatives can also be members of an organisation which is not operating under the Vietnam Labour Federation and is registered with a competent authority.

#### **For more information, please contact:**

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