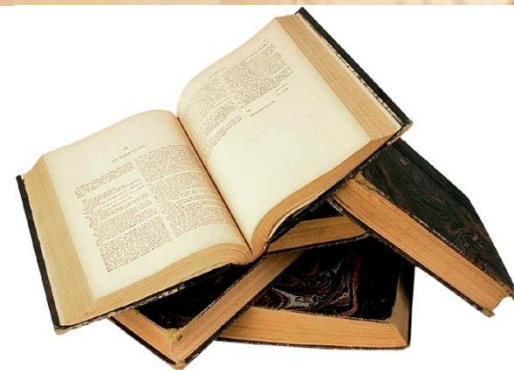


VIETNAM NEW LABOUR CODE

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6th July 2012



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Content



General View of Vietnam New Labour Code

The Key Changes in Labour Code

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A. General View of Vietnam New Labour Code

1. CONTENT

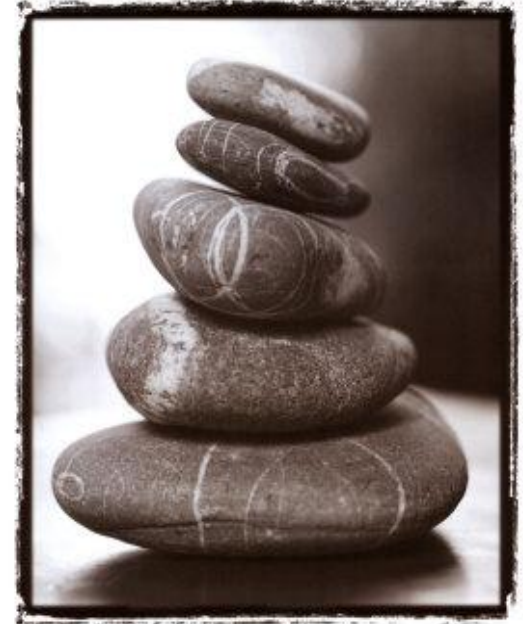
2. EFFECTIVE DATE

3. NEW POINTS IN LABOUR CODE



CONTENT & EFFECTIVE DATE

1. The new Labour Code contains 17 chapters and 242 articles. There will be 20 decrees issued by the Government to guide the implementation of the new Labour Code.
2. Effective date: new Labour Code will take full effect from 1st May 2013



BALANCE

The universe is empty. You cannot capture it.
If you try to change it, you will ruin it.
If you try to hold it, you will lose it.
— Tao Te Ching



New points in Labour Code

1. Labour sub-leasing: Sub-leasing is a new legal concept and first introduced in Vietnam by the New Labour Code
2. Situations where the Labour Contract is invalid
3. Employees' Representatives
4. Enterprise dialogues
5. Collective labour agreement
6. Home help, part-time employees

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B. The Key Changes in Labour Code

- 1. Chapter III: LABOUR CONTRACT, LABOUR SUB-LEASING**
- 2. Chapter V: DIALOGUE IN THE WORKPLACE, COLLECTIVE NEGOTIATION**
- 3. Chapter VI: SALARY / WAGES**
- 4. Chapter VII: WORKING TIME AND REST TIME**
- 5. Chapter VIII: LABOUR DISCIPLINE, MATERIAL RESPONSIBILITY**
- 6. Chapter X,XI,XII: OTHER REGULATIONS**

Chapter III: Labour Contract

CURRENT LABOUR CODE

NEW LABOUR CODE

**Type of
labour
contract**
(Article 22)

- Within 30 days from the date the labour contract expires, if a new contract is not signed: labour contract of less than 12 months will become an **indefinite one**

- Within 30 days from the date the labour contract expires, if a new contract is not signed: labour contract of less than 12 months will become one with a definite term of **24 months**

**Content
of
Contract**
(Article 23)

- Employer can put into the labour contract a clause protecting Company technology and business secrets including content, duration and compensation in cases of violation by the employee

Chapter III: Labour Contract

	CURRENT LABOUR CODE	NEW LABOUR CODE
Probationary period <i>(Article 26, 28)</i>	<ul style="list-style-type: none">▪ Salary applicable to the probationary period is at least 70% of the salary for the relevant job.	<ul style="list-style-type: none">▪ Seasonal labour contracts do not require probation▪ Salary applicable to the probationary period is to be at least 85% of the salary for the relevant job.
Moving employee to another job <i>(Article 31)</i>	<ul style="list-style-type: none">▪ Salary of the new job equals at least 70% of the last job's salary.	<ul style="list-style-type: none">▪ Salary of the new job to equal at least 85% of the last job's salary.

Chapter III: Labour Contract

CURRENT LABOUR CODE

**Part – time
employees
(Article 34)**

**Contract
termination
(Article
36, 47)**

NEW LABOUR CODE

- Part-time employees are entitled to the same rights and obligations as full-time employees
- When a labour contract expires: employers are not permitted to terminate a contract with employees who are union officers and on union terms
- Employees must be informed about the contract termination 15 working days before the labour contract expires

Chapter III: Labour Contract

	CURRENT LABOUR CODE	NEW LABOUR CODE
Employee unilaterally terminates the contract (Article 37)	<ul style="list-style-type: none">▪ Notice period: 3 working days for less than 12 month contract, 30 working days for 12 – 36 month contract, 45 working days for indefinite term contracts	<ul style="list-style-type: none">▪ Notice period: 3 working days for less than 12- month contract, 30 days for 12 – 36 month contract, 45 days for indefinite term contracts
Employer unilaterally terminates the contract (Article 38)	<ul style="list-style-type: none">▪ After mutual agreement with the Grassroots Trade Union OR▪ After informing Department of Labour, 30 days in the following cases: when an employee has a long-term illness treatment OR frequently does not get the job done OR an employee is disciplined with dismissal as the penalty	<ul style="list-style-type: none">▪ When employee does not present him/herself in the work place within fifteen (15) days after labour contract suspension period▪ No mention of mutual agreement with Grassroots Trade Union or informing Department of Labour▪ Need to inform an employee who has a long-term illness treatment, as defined in the regulations, 3 days in advance

Chapter III: Labour Contract

CURRENT LABOUR CODE

- When the employer does not want to re-employ the employee, the employer has to compensate the employee: salary for days not worked + severance allowance + **2 months** contractual salary + additional compensation as agreed

**Employer
unilaterally
terminates
the contract
illegally**

(Article 42)

**Organization
restructuring,
technology
change and
economic
reasons**

(Article 43)

NEW LABOUR CODE

- When the employer does not want to re-employ the employee, the employer has to compensate the salary for days not worked + social insurance, health insurance + severance allowance + **2 months** contractual salary + at least 2 months salary as additional compensation
- If, because of **economic reasons**, the employer cannot continue to employ the employees, employer must pay the lost-job allowance and inform the Department of Labour 30 days in advance

Chapter III: Labour Contract

CURRENT LABOUR CODE

NEW LABOUR CODE

**Invalid
labour
contract**

(Article 50)

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- All contents of a labour contract are contrary to law
- The person signing the labour contract was not fully authorized
- The works included in the labour contract are prohibited by law
- The labour contract obstructs or prevents an employee from participation in or working for a Trade Union.

Chapter III: Labour sub-leasing

NEW LABOUR CODE

What is labour subleasing?

(Article 53)

Requirement for labour sublessor

(Article 54)

- Labour sub-leasing means assigning an employee recruited by the labour sublessor to work for, and be subject to the management of, the labour sublessee; however, the labour relationship between the employee and the labour sublessor remains intact and no employment relationship is created between the employee and the labour sublessee (i.e. end user entity).
- Labour sublessor has to make a deposit as sub-leasing is a condition business
- Labour subleasing term not to exceed 12 months
- Has to execute labour sublease activities for employees in accordance with the Government regulations

Chapter III: Labour sub-leasing

NEW LABOUR CODE

Labour sub-leasing contract

(Article 55)

- Labour sub-leasing contract to define:
 - Workplace, position, job description, requirements of sub-leased employee
 - Term, start time of the job
 - Working time and rest time
 - Obligation of each party to sub-leased employee
- Legal rights and interests of employees in labour sub-leasing contract must not be less than in the signed labour contract.

Chapter III: Labour sub-leasing

NEW LABOUR CODE

Rights & responsibilities of sub-lessor company *(Article 56)*

- Inform employees of the contents of the labour sub-leasing contract
- Sign and implement the labour contracts with employees in accordance with the provisions of the New Labour Code
- Record and report to authorities: number of sub-leased employees, number of enterprises receiving the sub-leased employees, sub-leasing fees.
- Apply disciplinary procedure when sub-leased employee breaches the labour rules of sub-lessee company

Rights and responsibilities of sub-lessee company *(Article 57)*

- Inform, guide sub-leased employees about the internal labour rules and regulations
- Not discriminate between sub-leased employees and official employees
- Not transfer sub-leased employees to another employer
- Discuss with a sub-lessor company the official hiring of the sub-leased employee(s)
- Provide evidence of labour rules violations by sub-leased employees in cases requiring disciplinary action

Chapter III: Labour sub-leasing

NEW LABOUR CODE

Rights & responsibilities of a sub-leased employee (Article 58)

- Perform the task as agreed in signed labour contract.
- Follow working instructions, comply with regulations, labour discipline and the collective labour agreement of the sub-lessee company
- Keep the right to terminate unilaterally the labour contract as stipulated in Labour Code
- Discuss with sub-lessee company the possibility of signing a labour contract when it is expired or when the task is done.

Chapter V: Dialogue in the workplace, Collective Negotiations

NEW LABOUR CODE

Dialogue in the workplace (Article 63)

- Purpose: information sharing, enhance understanding between employers and employees in order to build labour relations in the workplace
- Conduct periodically once every 3 months or at the request of either party

Collective Negotiations (Article 66)

- Purpose:
 - Building labour relations
 - Establishing working conditions as a basis for registration of collective labour agreement
 - Solving problems and difficulties in implementing the rights and obligations of each party in labour relations
- Within 7 days after a request is received, the other party must accept and propose the timeline to start the negotiations, which must not exceed 30 days after the request is received.

Chapter VI: Salary / Wages

	CURRENT LABOUR CODE	NEW LABOUR CODE
Salary/Wage scales <i>(Article 93)</i>	<ul style="list-style-type: none">▪ Employers have to register salary/wage scales with the labour authorities and these must be approved before implementation in the enterprise.	<ul style="list-style-type: none">▪ Registration of the salary/wage scales no longer required; employer to send the scale to labour authorities for awareness & overview only
Form of payment <i>(Article 94)</i>	<ul style="list-style-type: none">▪ Inform employees of the form of salary / wage payment	<ul style="list-style-type: none">▪ Employer is required to inform employees 10 days in advance when changing the form of salary / wage payments

Chapter VI: Salary / Wages

CURRENT LABOUR CODE

NEW LABOUR CODE

**Wages for
overtime
working,
night-shift
working
(Article 97)**

- On holidays, day off with pay, at least **300%** extra pay **including** the salary for the holiday, day off with pay
 - An employee working over-time on nightshift is entitled to a supplemental wage which is equal to **30% of the daytime wage**
- On holidays, day off with pay, at least **300% extra pay excluding** the salary for the holiday, day off with pay
 - An employee working over-time on nightshift is entitled to: the daytime overtime wage + **30%** of the wage applied to **ordinary working time** + **20%** of the **daytime wage**

Chapter VII: Work time / Rest time

	CURRENT LABOUR CODE	NEW LABOUR CODE
Ordinary working time (Article 104)	<ul style="list-style-type: none">Working time not to exceed 8 hours/day or 48 hours/weekNot to exceed 48 hours/week in cases where weekly working hours apply	<ul style="list-style-type: none">Working time not to exceed 8 hours/day and 48 hours/weekNot to exceed 48 hours/week and 10 hours/day in cases where weekly working hours apply
Night-time work (Article 105)	<ul style="list-style-type: none">Night-time work: 10PM to 6AM for the North, 9PM to 5AM for the South	<ul style="list-style-type: none">Night-time work: from 10PM to 6AM

Chapter VII: Work time / Rest time

CURRENT LABOUR CODE

NEW LABOUR CODE

Working overtime

(Article 106)

- Overtime work not to exceed **4 hours/day, 200 hours/year**

- Overtime work not to exceed **50% of the daily working hours, 30 hours/month and 200 hours/year**

Public holidays

(Article 115)

- Employee is entitled to **9 days off/year** fully-paid, including **4 days** off on Tet holidays

- Employee is entitled to **10 days off/year** fully-paid, including **5 days** off on Tet holidays
- **Foreign employees** are entitled to enjoy 1 day off on their traditional **new year's holiday** and 1 day off for their own **National Day** in addition.

Chapter VIII: Labour discipline, Material responsibility

CURRENT LABOUR CODE

- Before issuing labour regulations, employers must consult the Company Trade Union
- Within 10 days, Department of Labour has to feed back to enterprises about any supplement requirement
- Labour regulations take full effect 10 days after the Labour Department receives the registration
- Enterprises with less than 10 employees are not required to have labour regulations

NEW LABOUR CODE

- Before issuing labour regulations, employers must consult the employees' collective representatives (for non-union companies)
- Within 7 days, the Labour Departments have to respond to enterprises about where supplements are needed
- Labour regulations take full effect 15 days after the Labour Department receives the registration
- Enterprises with less than 10 employees are not required to have labour regulations

Labour regulations

*(Article
119-122)*

Chapter VIII: Labour discipline, Material responsibility

CURRENT LABOUR CODE

- Maximum **3 months** from the date of the violation, not to exceed **6 months** in special cases

**The
limitation of
disciplinary
(Article 124)**

NEW LABOUR CODE

- Maximum **6 months** from the date of the violation. In cases which are directly related to finance, assets, revealing technology/business secrets, there will be a maximum of **12 months**.
- An employee who has committed acts of theft, embezzlement, gambling, intentionally causing injury, using drugs within the workplace, disclosing technology and business secrets, infringing employer's intellectual property

**Disciplinary
dismissal
(Article 126)**

Chapter VIII: Labour discipline, Material responsibility

CURRENT LABOUR CODE

NEW LABOUR CODE

Damage compensation (Article 130)

- Non-serious damage: the compensation is 3 months salary maximum
 - Where causing damage to instruments, equipment or serious damage to the assets, the employee has to compensate in line with the law regulations
- Where the employee causes damage and the value does not exceed 10 months of the zone minimum wage, the compensation is a maximum of 3 months' salary
 - Where the employee loses instruments, equipment or assets of the enterprise, he/she has to provide compensation for part or full current market value; or follow the articles if there is a **liability contract** between employee and employer

Chapter X,XI,XII: Other regulations

	CURRENT LABOUR CODE	NEW LABOUR CODE
Maternity leave for female employees (Article 157)	<ul style="list-style-type: none">▪ Total 4 months, prior to and after birth▪ Able to return to work after at least 2 months maternity leave and with a certificate from the doctor	<ul style="list-style-type: none">▪ Total 6 months, prior to and after birth▪ Able to return to work after at least 4 months maternity leave and with a certificate from the doctor▪ As of 1st May 2013, a female employee who is still on maternity leave shall be entitled to maternity leave provided under the new Labour Code.
Foreign workers (Article 173)	<ul style="list-style-type: none">▪ Work permit: follow the terms of labour contract but not to exceed 36 months	<ul style="list-style-type: none">▪ Work permit: maximum 2 years▪ Removed the work permit exception for foreign workers who work in Vietnam for less than 3 months.

Chapter X,XI,XII: Other regulations

NEW LABOUR CODE

Employee as home help

*(Article
179 - 183)*

- Employer must sign labour contract in writing with home help.
- The term of the labour contract is decided by both parties. Either party may unilaterally terminate the labour contract, notice 15 days in advance
- Employer pays home help an amount of social insurance, health insurance as prescribed by law for employee to buy insurance himself/herself
- Employer pays home help fares when the home help terminates work and returns home except where the home help terminates the labour contract prior to its expiration.
- Home help pays compensation as agreed or prescribed by regulation of law for any damage or loss of property of the employer
- It is strictly forbidden for employer to assign work to the home help without labour contract and to keep her/his Identification Card.

Chapter X,XI,XII: Other regulations

CURRENT LABOUR CODE

NEW LABOUR CODE

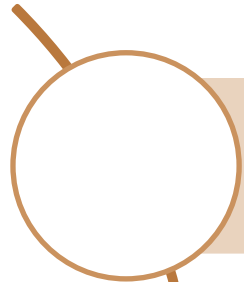
The Pension Age

(with Social Insurance payment)

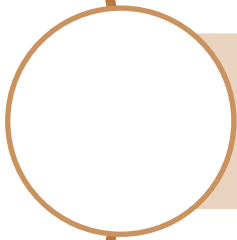
(Article 187)

- Male when reaches 60 years old and female when reaches 55 years old.
- Male when reaches 60 years old and female when reaches 55 years old.
- Qualified, highly technical employees and employees at managerial level are able to extend 5 more years of pension age.

Content



General View of Vietnam New Labour Code



The Key Changes in Labour Code



Conclusion

Conclusion

1. General Comments on New Labour Code
2. What will Enterprises need to do to prepare for when the New Labour Code take full effect in 2013?



General Comments on New Labour Code

1. Solves some of the longstanding problems in the current labour code.
2. More humanization and employee protection.
3. More rights and interests for employees.
4. More obligations and costs for Enterprises.
5. May lead to shortage of human resources because of longer maternity leave
6. May lead to lack of funds from Social Security
7. Labour sub-leasing: In line with global trends, but there are still limits and differences with other countries in Asia and over the world.

What do Enterprises need to do to prepare?

1. Review their labour regulations, proposals for collective agreement
2. Adjust the content of labour contracts to comply with new Labour code
3. Consult a professional/expert before dismissing employees
4. Develop a back-up plan for female employees when on maternity leave
5. Consider carefully their production plan in order to avoid excessive overtime (not more than 30 hours/month under New Labour Code)
6. As labour sub-leasing is officially public, enterprises should consider it as a solution for unskilled human resources and seasonal work in order to have better risk management and labour cost management.





THANK YOU