

LABOUR CODE 2019: A COMPARATIVE ANALYSIS

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This article¹ is a joint publication between TND Legal² and Kien Thuc Phap Ly³.

This article is designated to provide the readers with an overview of the significant changes adopted by the Labour Code 2019. For the readers' ease of reference, this article is structured in three parts as below.

- Part 1 illustrates the changes/supplementations which are in favor of the *employers* adopted by the Labor Code 2019.
- Part 2 illustrates the changes/supplementations which are in favor of the *employees* adopted by the Labor Code 2019.
- Part 3 illustrates other changes/supplementations adopted by the Labor Code 2019.

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NOTES

- [Newly added] : The provisions / requirements newly added by the Labour Code 2019 which cannot be found in the Labour Code 2012
- [Changed] : The provisions / requirements already governed by the Labour Code 2012 but is changed under the Labour Code 2019
- [Removed] : The provisions / requirements specified in Labour Code 2012 but is removed under the Labour Code 2019.

¹ The Vietnamese version of this article can be found on
<<https://kienthucphaply.com/2020/12/31/bo-luat-lao-dong-2019-so-sanh-chi-tiet/>>

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³ Kien Thuc Phap Ly is a legal knowledge center with free open access <www.kienthucphaply.com>

No.	Labor Code 2019	Labor Code 2012
1.	Favorable Changes for Employer	
1.1.	Termination of labor contract	
	<p>[Art. 34] [Newly added] Adoption of new termination events for labor contract:</p> <ul style="list-style-type: none"> ▪ Upon the deportation of the foreign employee; ▪ Upon the invalidity of the work permit of the foreign employee (i.e. expiry of the work permit, withdrawal or the work permit, content of labor contract being inconsistent with that of the issued work permit, work conducted by the foreign employee being inconsistent with the permitted work specified in the work permit and other events of invalidity⁴); ▪ Upon the failure to meet the probationary requirement or the unilateral termination of the probation agreement which is incorporated into and as a part of the labor contract. 	[Not Applicable]
1.2.	Causes of unilateral termination of labor contract by the employer	
	<p>[Art. 36.1] [Newly added] Adoption of new unilateral termination causes for labor contract on the employer's end:</p>	[Not Applicable]

⁴ See more: Art. 156 of the Labor Code 2019.

	<ul style="list-style-type: none"> ▪ Upon the employee reaching to the retirement age⁵; ▪ Upon the employee arbitrarily quitting the jobs without a satisfactory explanation for a period of at least 5 consecutive working days; ▪ Upon the discovery of information provided by the employee when executing the labor contract (i.e. residential address, academic background, health conditions and other information⁶) being untruthful and such an untruthfulness adversely affects the recruitment of employees. 	
<p>1.3. Advance notice requirement on unilateral termination of labor contract by the employer</p>		
	<p>[Art. 36.2] [Changed] Period of serving advance notice on unilateral termination on the employee is categorized as below:</p> <ul style="list-style-type: none"> ▪ For an indefinite-term labor contract, at least 45 days; ▪ For a definite-term labor contract (duration of which ranges from 12 – 36 months), at least 30 days; ▪ For a definite-term labor contract (duration of which is below 12 months), at least 3 days. ▪ In the events of (i) <i>second bullet point of Section 1.2 above</i> or (ii) failure of employee to attend the workplace 	<p>[Art. 38]</p> <ul style="list-style-type: none"> ▪ All unilateral termination of labor contract must subject to the period of serving advance notice on the employee. The statutory period is essentially carried forward to the Labor Code 2019, except for (i) the labor contract for seasonal type is removed by the Labor Code 2019 and (ii) there is

⁵ As from 2021, the retirement age is subject to change set out in the following roadmap: (i) In 2021, the retirement age applicable to male employee is full 60 years-old and 3 months and to female employee is full 55 years-old and 3 months; (ii) For the period thereafter, the retirement age shall be added 3 months for male employee and 4 months for female employee on an annual basis so long as the such a progressive raise shall be ended in 2028 for male in which the applicable retirement age for them shall be fixed at 62 years-old and in 2035 for female in which the applicable retirement age for them shall be fixed at 60 years-old. *See more:* Art. 169 of the Labor Code 2019.

⁶ *See more:* Art. 16.2 of the Labor Code 2019.

	upon the expiry of the suspension of performance of labor contract, advance notice is not required.	no exceptions to the rule of serving advance notice as in Labor Code 2019.
1.4.	Illegal unilateral termination of the employer	
	[Art. 41.1] [Newly added] In case the employer terminates the labor contract illegally and reinstates the affected employee then such affected employee shall return the severance allowance and unemployment allowance to the employer.	No requirement on returning the allowance received by the employee from the employer
1.5.	Discussion at workplace	
	[Art. 63] [Changed] The employer is required to arrange periodic discussion at workplace only once a year.	[Art. 65] The employer shall hold periodic discussion at workplace every 3 months.
1.6.	Wage scales, wage tables and labor rates	
	[Removed] No requirement on the mandatory registration of wage scales, wage table, labor rates to the district level administrative authority for labor.	[Art. 93.2] Upon the formulation of wage scales, wage tables and labor rates, the employer is required send them to the district level administrative authority for labor.
1.7.	Payment in the case of working suspension	
	[Art. 99.3] [Newly added] In the event of working suspension due to objective causes (i.e. breakdown in electricity or water through no fault of the employer or due to a natural disaster, fire, dangerous epidemic, enemy destruction, relocation of operational address pursuant to a request of the competent State authority or for economic reasons) leading to working suspension for more than 14 days, the employer and the employee may negotiate on suspension wage subject to the following principles as below:	[Art. 98.3] The suspension wage applicable to working suspension due to objective causes must at all times be not lower than the minimum wage regardless of whether the suspension period is below or above 14 days.

	<ul style="list-style-type: none"> ▪ For the first 14-day of suspension period, the suspension wage must not be less than the minimum wage; and ▪ For the period thereafter, no minimum requirement is set and the suspension wage is wholly subject to the agreement of the parties. 	
1.8.	Liability for material loss	
	[Article 129.1] [Newly added] The compensation of the employee for damaging tools, equipment, or other assets may also be subject to the internal labor rule, in addition to the laws.	[Art. 130.1] Laws are the only applicable basis for this case.
1.9.	Dismissal	
	[Art. 125.2] [Newly added] Sexual harassment is added as a cause for dismissal.	[Not Applicable]
1.10.	Statutory limitation for handling labor discipline	
	<p>[Art. 123.2] [Changed] If on expiry of any period in which the employer shall not dealt with a breach of labor discipline, the limitation period has expired or has less than 60 days, the period for dealing with a breach of labor discipline may be extended but not exceeds 60 days from the expiry of any period.</p> <p>Such provision helps the employer to <u>extend the statutory limitation in the case the remaining time is not enough to proceed the discipline procedure.</u></p>	<p>[Art. 124] The limitation period is only extended in the case that on the expiry of any period in which the employer shall not dealt with a breach of labor discipline, the limitation period has expired, or else, <u>the employer has to proceed the discipline procedure in the remaining time without any extension.</u></p>
2.	Favorable Changes for Employees	

2.1.	Organization representing the employees	
	<p>[Art. 3.3] [Newly added] Trade union (at grassroots level or directly superior level) is no longer the only organization representing the employees. Other organization established by the employees themselves in an enterprise is also recognized as an organization representing the employees at the grassroots level.</p>	<p>Other than trade union, the Labor Code 2012 does not recognize other organizations set up by the employees.</p>
2.2.	Unilateral termination of labor contracts by the employees	
	<p>[Art. 35] [Changed/Removed] No reasons/causes are required as the basis for the employee to unilateral terminate his/her labor contract. The unilateral termination from the employees is legally valid so long as:</p> <ul style="list-style-type: none"> ▪ In terms of an indefinite term labor contract, a 45-day advance notice of termination is served on the employer; ▪ In terms of a definite term labor contract (duration of which ranges from 12-36 months), a 30-day advance notice of termination is served on the employer; ▪ In terms of a definite term labor contract (duration of which is below 12 months), a 3-day advance notice of termination is served on the employer; and <p>In some particular cases (i.e. incorrect job assignment, failure of the employer to pay salary in time or in full, employee being suffered sexual harassment, work abusive labor coercion, pregnancy of female employee subject to resting demand, retirement age of employee, untruthful</p>	<p>[Art. 37] Unilateral termination of the labor contract from the employee must be made on the basis of particular causes (essentially same as those referred to in the third bullet point specified in the left column of Section 2.2). All unilateral termination must subject to the requirement for advance termination notice.</p>

	information provided by the employer ⁷), no advance termination notice is required.	
2.3.	Payment of wages	
	[Art. 96.2] [Changed] In case of payment made via bank account, the employer is responsible for paying the service fees for opening the bank account and remitting wages.	[Art. 94.2] The employer and the employee shall reach an agreement regarding the service fees for opening the bank account and remitting wages.
	[Art. 95.2] [Newly added] The employer is allowed to pay foreign labor working in Vietnam in foreign currencies.	[Art. 95.2] This provision is absent in Labor Code 2012 but is provided in Decree 05/2015/ND-CP ⁸ .
	[Art. 95.3] [Newly added] Each payment of wage made by the employer must be accompanied by a statement recording wage payment, overtime wage payment, night work wage payments, and the item and amount of money withheld or deducted (if any).	[Not Applicable]
	[Art. 94.1] [Changed] The employee may receive payment of wages via their lawful representative	[Art. 96] It is vague whether salary can be paid to the lawful representative of the employee.
	[Art. 94.2] [Newly added] Strict prohibition is imposed on the employer from interfering with the decision on usage of wages of the employee and forcing employee to spend his/her wages on purchasing goods or using services of the employer.	[Not Applicable]
2.4.	Discussion at workplace	

⁷ Kindly refer to the texts of Art. 35 of the Labor Code 2019 for details.

⁸ Decree No. 05/2015/ND-CP on defining and providing guidance on the implementation of a number of contents of the labor code issued by the Government on 12 January 2015.

	<p>[Art. 63] [Newly added] Added a number of circumstances under which the employer must arrange for the discussion at work place, which are:</p> <ul style="list-style-type: none"> ▪ An employee regularly fails to perform the work in accordance with the labor contract; ▪ The employer restructures, changes technology or has economic reasons; ▪ The employer formulates labor usage plan; ▪ The employer formulates wage scales, wage tables and labor rates; ▪ The employer grants bonuses; ▪ The employer issues internal labor rules; and ▪ The employer decides to suspend employees from working. 	<p>[Not Applicable]</p>
<p>2.5. Working overtime</p>		
	<p>[Art. 107.2] [Changed/Newly added] The total overtime hours shall not exceed <u>40 hours</u> in a month and 200 hours in a year. The total overtime hours may reach 300 hours in year in the following cases:</p> <ul style="list-style-type: none"> ▪ Production and processing of export products being textiles, garments, leather, shoes, electrical and electronic components, and processing of agricultural, forestry, salt and aquatic products; 	<p>[Art. 106.2] The total overtime hours shall not exceed <u>30 hours</u> in a month and 200 hours in a year.</p> <p>Decree No. 45/2013/ND-CP⁹ did provide the cases in which the total overtime can reach up to 300 hours per year which are essentially quite similar to those provided in the Labor Code 2019 (as indicated in the left column) but in a more measurable manner with few supplementations.</p>

⁹ Decree No. 45/2013/ND-CP Implementing the Labour Code on working hours, rest breaks, and occupational safety and hygiene issued by the Government on 10 May 2013.

	<ul style="list-style-type: none"> ▪ Power production and supply, telecommunications, oil refining, water supply and water drainage; ▪ In order to resolve work requiring highly qualified technicians which the labor market is unable to fully and promptly supply; ▪ In order to resolve urgent work which cannot be delayed due to it being of a seasonal nature and the timing of supplying of raw materials and products, or in the case of resolving work/jobs arising due to unforeseeable objective factors due to the consequences of weather, natural disaster, fire, enemy attack, power shortage, lack of raw materials, or technical problems with a production line; ▪ Other cases as regulated by the Government. 	
2.6. Rest breaks		
	<p>[Art. 109] [Changed] The rest breaks are not included in the number of working hours. Only in case an employee works a shift of at least 6 consecutive hours or more, the rest break shall be included in working hours.</p>	<p>[Art. 108] The rest break shall be included in the number of working hours.</p>
	<p>[Art. 112.1(dd)] [Newly added] On the National Day (2nd September), an employee is entitled to have fully paid days off for 2 days, the second day of September of each calendar year plus the immediately preceding or immediately following day.</p> <p>The employee is entitled to <u>11 days of public holidays</u> in total.</p>	<p>[Art. 115] The employee only has one fully paid day off in National Day.</p> <p>The employee is entitled to <u>10 days</u> of public holidays in total.</p>

	[Art. 115.1(c)] [Newly added] The employee is entitled to have fully paid days off in the case of death of adoptive parent or adopted child.	[Not Applicable]
2.7.	Provisions in relation to female employees	
	[Art. 137.1(b)] [Changed] the employee MAY employ a female employee to do night work, overtime, or to go on business trips to remote areas <u>when the female employee is nursing a child under 12 months</u> if such is agreed by the female employee.	[Art. 155.1(b)] The employee is NOT permitted to employ a female employee to do night work, overtime, or to go on business trips to remote areas <u>when the female employee is nursing a child under 12 months</u> .
	[Art. 137.3] [Newly added] In a case where the labor contract expires while the female employee is pregnant or nursing a child under 12 months of age, such employee is prioritized to entering into a new labor contract with the employer	[Not Applicable]
2.8.	Apprenticeship and practical training	
	<p>[Art. 61] [Changed/Newly added] Apprenticeship and practical training are explicitly separated. In which,</p> <ul style="list-style-type: none"> ▪ <i>Apprenticeship</i> in order to work for the employer means the employer recruits a worker to train him or her in the workplace; and ▪ <i>Providing practical training</i> to a trainee in order to work for the employer means the employer recruits the trainee to guide him or her in job training and practical training depending on the particular work or job at the workplace. <p>Duration for practical training shall NOT exceed <u>3 months</u>.</p>	<p>No line is drawn between apprenticeship and practical training.</p> <p>No limitation on the period for practical training is set out.</p>

3.	Other regulations	
3.1.	Scope of the Labor Code	
	[Art. 13.1] [Newly added] Any agreements not being labelled as “labor contract” but its substances are sufficient to be treated as labor contract (i.e. payment of salary, management and oversight of one party) shall be deemed as labor contract and governed by the Labor Code 2019.	[Not Applicable]
	[Art. 3.8] [Newly added] Added the definition of “labor discrimination” which means <i>discrimination on the grounds of race, skin color, nationality, ethnicity, gender, age, pregnancy, marital status, religion, opinion, disability, family responsibility, HIV infection, establishment of or participation in trade union or internal employee organization in a manner that affects the equality of opportunity of employment.</i>	The term is used in several provision of the Labor Code 2012 but is undefined.
	[Art. 3.9] [Newly added] Added the definition of “sexual harassment” which means <i>any sexual act of a person against another person in the workplace against the latter’s will. “workplace” means the location when an employee works under agreement or as assigned by the employer.</i>	The term is used in several provision of the Labor Code 2012 but is undefined.
3.2.	Labor Contract	
	[Art. 14.1] [Newly added] In addition to verbal and written form, labor contract can be entered into in the form of data messages which has the same validity as those made in written form.	Only verbal and written form are acknowledged.
	[Art. 14.2] [Changed] Verbal contract is only available for jobs with term of less than <u>1 month</u> .	[Art. 16.2] Verbal contract is only available for jobs with term of less than <u>3 month</u> .

	[Art. 17.3] [Newly added] Working as a means to pay debt owned by the employee to the employer is prohibited.	[Not Applicable]
	[Art. 20.1] [Removed] There are only two types of labor contracts, which are: <ul style="list-style-type: none"> ▪ Definite term labor contract (less than 36 months); and ▪ Indefinite term labor contract. 	[Art. 22] There are three types of labor contract, which are: <ul style="list-style-type: none"> ▪ Definite term labor contract (12 to 36 months); ▪ Indefinite term labor contract; and ▪ Seasonal or specific job contract.
	[Art. 20.2(c)] [Changed] Upon the expiry of a definite term labor contract, no limitation is imposed on the number of the definite term labor contract may be signed <u>if the employee is senior worker¹⁰ or foreigner¹¹</u> .	[Article 22.2] The parties are only allowed to sign one additional labor contract with definite term, when a definite term labor contract expires without any exception.
	[Art. 22.2] [Newly added] The term of labor contract cannot be amended by its appendix.	[Art. 24] No specific restriction is imposed on amendment to the term of labor contract via its appendix.
3.3.	Probation	
	[Art. 24] [Newly added] A probation agreement can either be incorporated into a labor contract or made in a separate agreement	[Art. 26.1] It is vague whether the probation agreement can be incorporated into the labor agreement as the Labor Code 2012 only stipulated the separate form of the probation agreement.
	[Art. 25.1] [Newly added] The probation period for employee being enterprise manager pursuant to Law on Enterprise could reach up to 180 days.	[Art. 27] The probation period, regardless of positions, for any work of any nature or complexity could not be longer than 60 days.
3.4.	Obligations of the contracting parties upon termination of labor contract	

¹⁰ See more: Art. 149.1 of the Labor Code 2019.

¹¹ See more: Art. 151.2 of the Labor Code 2019.

	<p>[Art. 48.1] [Newly added] Period for making payment relevant to each other's interest is 14 days and may be extended to maximum <u>30 days</u> under the following circumstances:</p> <ul style="list-style-type: none"> ▪ An employer not being an individual terminates its operation; ▪ The employer restructures, changes its technology or for economic reasons; ▪ There is a separation, division, consolidation or merger of the enterprise or co-operative; or a sale, leasing out, conversion of enterprise type; or a transfer of the ownership or use right of the assets of the enterprise or the co-operative; and; ▪ There is a natural disaster, fire, enemy sabotage or dangerous epidemic. 	<p>[Art. 47.2] Period for making payment relevant to each other's interest is 7 days and may be extended to maximum 30 days under the same circumstances as indicated in the left column of this Section 3.4¹².</p>
3.5. Bonuses		
	<p>[Art. 104] [Newly added] Bonuses can be made in various forms subject to the discretion of the employer (i.e. monetary form or assets).</p>	<p>[Art. 103] Monetary form is the only form acknowledged for bonuses.</p>
3.6. Labor discipline		
	<p>[Art. 117] [Newly added] Labor discipline includes rules stipulated in internal labor rules and <u>laws</u>.</p>	<p>[Art. 118] Labor discipline includes rules in internal labor rules</p>

¹²

Decree No. 148/2018/ND-CP on amendments to Decree No. 05/2015/ND-CP issued by the Government on 12 January 2015 on defining and providing guidance on the implementation of a number of contents of the labor code issued by the Government on 24 October 2018.

<p>[Art. 118] [Changed] Internal labor rules must be adopted by the employer <u>regardless of its employment size</u>. Internal labor rules in written form is required if the employer has 10 employees or more.</p>	<p>[Art. 119] It could be understood that the employer having less than 10 employees does not have to issue internal labor rules.</p>
<p>[Art. 118.2] [Newly added] Added new fundamental contents of the internal labor rules:</p> <ul style="list-style-type: none"> ▪ Prevention of sexual harassment in the workplace; and the sequence and procedures for dealing with a breach being an act of sexual harassment in the workplace; ▪ Cases in which an employee may be temporarily transferred to undertake work being different from that specified in his or her labor contract; and ▪ The competent person in imposing disciplinary measures. 	<p>[Not Applicable]</p>
<p>[Art. 126] [Changed] Any <u>repeated act</u> of a labor discipline violation (which has already been handled) OR a <u>new act of an labor discipline violation</u> within the following period:</p> <ul style="list-style-type: none"> ▪ Within 3 months, if the discipline measure for the already committed violation is reprimand; or ▪ Within 6 months, if the discipline measure is deferment of wage salary; or ▪ Within 3 years, if the discipline measure is demotion. <p>The labor disciplinary decision shall <u>not</u> be automatically cleared.</p>	<p>[Art. 127] Only <u>repeated act</u> (not new act) is considered as the cause for not clearing the labor disciplinary decision automatically.</p>
<p>3.7. Work permit</p>	

	<p>[Art. 154] [Newly added] Another case whereby the foreign employee is exempt from obtaining work permit in the course of working in Vietnam, which is the foreign employee who has married to a Vietnamese citizen and residing within the Vietnamese territory.</p>	<p>[Not Applicable]</p>
	<p>[Art. 155] [Changed] Extension of work permit can be made for one-time only.</p>	<p>No limitations are provided on how many times may the work permit be extended.</p>