

EMPLOYMENT MANUAL

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EMPLOYMENT MANUAL¹

This Employment Manual is intended as an easy desk-top reference for the Chief Representative, the General Director, the Human Resources Manager and any person who wants a good understanding of Vietnam's labor laws. It is designed to orient management to issues with which it must be familiar. Even though the law on each subject has considerably more depth within the Labor Code and the many implementing and companion laws, decrees and circulars, this Manual should provide the reader with a good basic understanding. However, the Manual is a guide only; it is not a substitute for a comprehensive understanding of the labor laws.

If there is any recommendation that we can make that will go far to address labor issues before they become problems, it is to consider adopting a set of simple internal labor rules, and to have them registered with the local labor authorities. We discuss the importance of the internal labor rules in more detail in this Manual.

1. Source of employment and industrial relations laws

Source of employment and industrial relations laws include:

- Constitution 1992 (as amended in 2001); and
- Civil Code 2005

2. Relevant statutes

Statutes that are relevant to labor and industrial relations include:

- Labor Code 1994 (as amended in 2002);
- Civil Procedures Code 2004;
- Law on Trade Unions 1994; and
- Law on Enterprises 2005

See also **Schedule 1**

¹ This Employment Manual has been written by lawyers in the Vietnam offices of Russin & Vecchi and is current through September 2006.

In various places we refer to amounts in Vietnamese dong. The approximate exchange rate is US\$ = VND 16,000

3. Relevant government bodies, authorities, tribunals, agencies, commissions, councils or courts

3.1 Ministry of Labor, War Invalids and Social Affairs (“MOLISA”)

The MOLISA is a Government body with authority to discharge the State’s administration over issues that relate to labor, employment, and occupational safety and health. One of its major tasks is to assist the Government to establish and develop legal documents, including those that relate to labor and employment issues. It can also issue its own legal documents, like circulars, decisions or rules that regulate the employment relationship.

The MOLISA has power to direct, provide guidance, and supervise compliance with and implementation action of legal documents and national strategies on employment.

3.2 Provincial Departments of Labor, War Invalids and Social Affairs (“DOLISA”)

The DOLISA is a body under the People's Committee of a province or centrally-run city. It performs the function of State administration of issues that relate to employment within its respective locality. A company is subject to the DOLISA of the province or city in which it is located. DOLISA is responsible to deal with registration of a company’s Internal Labor Rules. It reviews applications for work permits for expatriates and reports on termination of employment, etc, as discussed throughout this Manual.

3.3 The Vietnam General Confederation of Labor

The Vietnam General Confederation of Labor, in conjunction with trade unions at all levels, has the function to supervise compliance with labor laws.

3.4 People’s Courts

The People’s Court at the district level has jurisdiction to settle labor disputes that relate to an entity that is located within the district and that do not involve a foreign element. By the term “not involve a foreign element”, we mean that neither party to the dispute is a foreigner. In particular, the employee is not an expatriate and/or the employer is not the representative office or branch of a foreign company².

The People’s Court in a province or centrally-run city has jurisdiction to settle labor disputes that involve a foreign element and that relate to an entity located within that province or city.

² According to the Civil Code, a representative office or a branch does not have legal status in Vietnam. The parent of the representative office or the branch is liable before the law for the activities of the representative office or the branch.

4. Main statutes dealing with employment

4.1 Main statutes

Employment is specifically regulated by the Labor Code and its implementing instruments, including decrees, decisions, and circulars (“**labor law**”). We will refer to these instruments where appropriate in connection with each subject we discuss in of this Manual. A list of such instruments is attached as **Schedule 1**.

4.2 Governing employees

Employees who are covered by the labor law include Vietnamese and foreign individuals who work for the following employer (“**employer**”):

- a company that is incorporated in Vietnam;
- a representative office or branch of a foreign or international organization or company in Vietnam;
- a Vietnamese organization or institution; or
- a Vietnamese individual.

In the following cases, it is uncertain whether or not an employee is covered by the labor law of Vietnam.

- a) An employee is recruited to be the General Director of a company that is incorporated in Vietnam.

According to the Law on Enterprises, a General Director is appointed by a company’s Board of Management or Members’ Council. Upon such appointment, the Board of Management or Members’ Council enters into an agreement to engage the appointee to be the General Director of the Company. Further, according to the implementing regulations of the Labor Code, a General Director is the representative of the company authorized to enter into labor contracts with the company’s employees. Therefore, it is not clear whether the engagement agreement between a company and its General Director constitutes a labor contract and is governed by the labor law. The MOLISA has informally advised that the relationship between a company and its General Director is governed by the company’s charter (i.e. articles of association) and resolutions, rather than by the labor law.

- b) A Vietnamese employee is recruited to be the chief representative of a foreign company’s representative office or to be the head of a foreign company’s branch in Vietnam.

According to implementing regulations of the Labor Code, a chief representative or the head of a branch is the representative of the employer in the representative office’s or the branch’s employment relationship with its employees. In the circumstances, it is not clear how an individual can be employed to be the chief representative or the

head of a branch of a foreign company. S/he cannot be in the position of both an employee and an employer in a labor contract. The issue, thus, remains unsolved. However, if s/he is a foreigner and is engaged directly under a contract with the parent company, such a contract is not subject to Vietnamese labor law because the labor law does not govern an employment relationship between an individual and an offshore entity.

4.3 Major employment terms and conditions

Major employment terms and conditions, and benefits are summarized in the attached **Schedule 2**.

5. Probation

Regulations on probation are provided in Article 32 of the Labor Code and are elaborated upon in Article 7 of Decree 44/2003/ND-CP of the Government dated May 9, 2003 (“**Decree 44**”). Decree 44 provides detail and guides the implementation of a number of articles of the Labor Code on labor contracts.

An employer and an employee may enter into an agreement on probation within the following context:

- A probationary period cannot exceed 60 days if the employee is recruited for a position that requires a professional or technical college qualification or above;
- A probationary period cannot exceed 30 days if the employee is recruited for a position that requires an intermediate-level qualification, or if s/he is recruited to be a technical worker or staff;
- A probationary period cannot exceed six days if the employee is recruited for other positions.

During the probationary period, the employee is entitled to a wage equivalent of at least 70% of the wage that s/he will be entitled to if s/he is recruited.

Upon expiration of the probationary period, the employer must give notice to the employee of the result of his/her probationary performance. If the performance meets requirements as set out in the agreement on probation, the employer must enter into a labor contract to recruit that employee. If, upon expiration of the probationary period, the employer does not give any notice and the employee continues to work for the employer, the employee is deemed to have been officially recruited.

During the probationary period, either the employer or the employee may terminate the agreement on probation, without need to give a notice. This would apply to the employer if, say, the job is not satisfactorily performed as required in the agreement on probation. Neither party is obliged to pay compensation for such early termination.

6. Over-time

6.1 Over-time working hours

Regulations on overtime working hours are provided in Article 69 of the Labor Code. These regulations are elaborated upon in Article 5 of Decree 195/CP of the Government dated December 31, 1994 (as amended by Decree 109/2002/ND-CP of the Government dated December 27, 2002) (“**Decree 195**”). Decree 195 provides detail, and it guides the implementation of a number of articles of the Labor Code on working time and rest periods.

An employer and an employee may agree on overtime working hours, provided that the number of overtime working hours is no more than four hours a day or 200 hours per year. In special cases (e.g. garment, seafood export, and in case of deadlines), overtime working hours can be up to 300 hours per year, upon approval of the relevant authorities. The law does not address the situation in which both employees and employer wish to exceed the maximum.

6.2 Over-time payment

Regulations on payment to employees who work over-time are provided in Article 61 of the Labor Code and are further elaborated upon in Article 10 of Decree 114/2002/ND-CP of the Government dated December 31, 2002 (“**Decree 114**”). Decree 114 provides detail and guides the implementation of a number of articles of the Labor Code on wages.

Employees who have to work overtime will be paid as follows:

- at least 150% of normal basic wage on a normal working day;
- at least 200% of normal basic wage on the weekly day off;
- 300% of normal basic wage on a public holiday or during fully paid leave days; and
- If an employee works overtime at night, s/he is entitled to an additional payment of 30% of the overtime day wage.

7. Compulsory superannuation, social security, provident fund pension

7.1 Social insurance

Currently, compulsory social insurance is provided in Article 149 of the Labor Code and is elaborated upon in Decree 12/CP of the Government dated January 26, 1995 (as amended by Decree 01/2003/ND-CP of the Government dated January 9, 2003) (“**Decree 12**”). Decree 12 promulgates the Social Insurance Rules.

Under the Labor Code and Decree 12, benefits from social insurance include:

- sick leave benefits;
- maternity leave benefits;
- pension benefits;
- allowance for work related accidents and occupational diseases; and
- survivor's benefits.

The levels of contributions by the employer and employees to the Social Security Fund are as follows:

- Employer contributes 15% of an employee's salary, of which 10% covers pension benefits and survivor benefits, and 5% covers sick leave benefits, pregnancy and maternity leave allowances, allowances for labor accidents and occupational diseases; and
- An employee contributes 5% of his/her salary which covers pension benefits and survivor benefits.

Contributions are based on the entire salary. That is, the entire contracted salary that an employee receives is the basis on which social insurance contributions and social insurance benefits are calculated.

There is a new Law on Social Insurance. It will go into effect on January 1, 2007. Among other things, the new Law will introduce an unemployment insurance benefits regime, and will change significantly some existing rules on social insurance payments to pay sick leave and maternity leave benefits.

One change brought about by the new Law on Social Insurance, relates to the quantum of salary on which contributions will be based to determine the amount that both employers and employees will contribute, and to determine social security benefits to the employee.

Under the new Law, social insurance contributions and payment of social insurance benefits are based on three elements. Change of any element will affect the social insurance contribution as well as the employee's social insurance benefits.

- contribution rate and level of benefits;
- base salary (the salary on which contributions are based and minimum salary); and
- period during which social insurance contributions or payment of benefits are made.

Unlike benefits calculated as discussed in Schedule 2, the new Law on Social Insurance sets a ceiling on the salary on which contributions will be calculated, and beyond which no contribution need be made. Employees' monthly salary is the basis on which contributions will be made and on which social insurance benefits will be paid. If total salary on which contributions are based is higher than twenty times the Government's minimum wage, then, for the purposes of calculating social insurance contributions/benefits, salary will be deemed to be fixed at twenty times the minimum wage ("maximum contribution salary"). Therefore, social insurance contributions and benefits will depend on the minimum wage fixed by the Government from time to time. The current legal minimum wage³ is VND350,000, and twenty times the minimum wage is VND7,000,000.

The Law on Social Insurance retains the same basic principles that apply under the current regulations, on how to determine social insurance benefits. However, the payment of the benefits will be governed by the "maximum contribution salary", instead of one hundred percent of an employee's contracted salary as under the current regime.

Further update on these changes will be made when the Law is in full effect, i.e. when its implementing regulations are available.

7.2 Health insurance

Regulations on health insurance are provided in Decree 63/2005/ND-CP of the Government dated May 16, 2005 ("**Decree 63**") and Inter-Ministerial Circular 21/2005/TT-TTLT-BYT-BTC of the Ministry of Health and Ministry of Finance ("**Inter-Ministerial Circular 21**"). The employer must contribute 2% of an employee's wage and an employee must contribute 1% of his/her wage to the Social Insurance Fund.

Health insurance covers hospital and medical treatment fees. An employee is entitled to reimbursement for hospital fees, medical treatment fees from the health insurance organization if s/he is treated by the clinic which s/he has registered with the health insurance organization. An employee may transfer from one clinic to another.

The employer is responsible to withhold from the employee's salary, the amount of social insurance and health insurance which the employee must pay, and to pay both the employer's and employee's contributions to the Social Insurance Fund. The Social Insurance Fund is managed by the MOLISA and is responsible to pay social insurance benefits and allowances to a beneficiary at rates determined by the State.

³ Art. 1 Decree 118/2005/ND-CP regarding adjustment of minimum wage.

8. Other Withholdings

The employer is obliged to withhold personal income tax (“**PIT**”) incurred by its employees in accordance with Circular No. 81/2004/TT-BTC dated August 13th, 2004 of the Ministry of Finance (“**Circular 81**”). The employer is responsible to declare, withhold and make payment of PIT incurred by its employees to the tax authorities.

An employee’s taxable income includes:

- salary;
- bonus;
- housing allowance. The taxable portion of this allowance is the actual payment up to 15% of the regular monthly income;
- tax payments by employer;
- personal electricity and water usage paid by the employer;
- other allowances for which an employee receives a fixed amount in cash each month; and
- some other benefits in kind.

The PIT that must be withheld and paid to the tax authorities, is calculated as follows⁴:

a) For Vietnamese staff:

Level	Average monthly income (Unit: VND 000)	Tax rate %
1	5,000 or less	0
2	Over 5,000 to 15,000	10
3	Over 15,000 to 25,000	20
4	Over 25,000 to 40,000	30
5	Over 40,000	40

b) For an expatriate:

Level	Average monthly income (Unit: VND 000)	Tax rate %
1	8,000 or less	0
2	Over 8,000 to 20,000	10
3	Over 20,000 to 50,000	20
4	Over 50,000 to 80,000	30
5	Over 80,000	40

9. Maternity

Regulations on maternity benefits are provided in Chapter X of the Labor Code and are elaborated upon in Decree 12.

9.1 Pregnancy and maternity leave benefits

A female employee who is pregnant or who gives birth is entitled to the following leave benefits:

- Three days off to attend three pregnancy examinations;
- In case of miscarriage, she is entitled to 20 days off work if the fetus is less than three months of age, and 30 days if the fetus is three months of age or more; and
- Length of maternity leave:

Working conditions	Period of leave
➤ Normal working conditions	4 months
➤ Strenuous work, harmful or dangerous conditions or in an area where the area allowance is indexed at 0.5 to 0.7	5 months
➤ Special job or occupation as provided by the MOLISA	6 months
➤ In case the baby dies	<ul style="list-style-type: none"> • 15 days from the date of birth if the baby dies at 60 days of age or more; or • 70 days from the date of birth, if the baby dies in less than 60 days of age.
➤ In case the employee gives birth to twins or more	In addition to the period above, the employee is entitled to an additional 30 days leave for each additional baby, calculated from the second baby.

If it is agreed by the employer, a female employee may take additional leave without pay when the regulatory maternity leave expires.

A female employee may return to work prior to the expiry of her regulatory maternity leave if she has at least two months rest after birth and if she can present a doctor's confirmation that her early resumption of work will not affect her health. In such case, the female employee continues to be entitled to the maternity leave allowance, in addition to her normal wages.

9.2 Maternity leave allowance

During the maternity leave, a female employee is entitled to receive a maternity allowance, including one hundred per cent of her salary during the maternity leave period and an additional allowance of one month's salary, provided that her regulatory social insurance contributions have been duly made to the Social Insurance Fund. Maternity leave allowance is paid by the Social Insurance Fund.

9.3 Working conditions

A female employee is entitled to the following working conditions if she is pregnant or if her baby is below 12 months of age:

- A female employee who is in her seventh month of pregnancy or later or whose baby is below 12 months of age, does not have to work overtime or at night, or to go on business to distant localities;
- A female employee who is employed in heavy work and is in her seventh month of pregnancy must be transferred to a position with more simple duties. Otherwise, s/he may work one hour less every day and still be fully paid; and
- A female whose baby is below 12 months of age, is entitled to a break of 60 minutes every day, and still be fully paid.

9.4 Termination of a labor contract of a female employee during maternity

An employer is not allowed to dismiss a female employee or unilaterally to terminate the labor contract of a female employee if she is pregnant or on maternity leave, or if she has a baby below 12 months of age, unless the company ceases operation.

If a female employee is pregnant or is on her maternity leave, or if she has a baby below 12 months of age, the employer must suspend the unilateral termination of her labor contract or must extend the period during which she may be examined for labor discipline, unless the company ceases its operation. The unilateral termination will be resumed and examination for labor discipline will be continued when her baby is 12 months full months of age.

10. Retirement

The retirement regime is regulated by Article 145 of the Labor Code and is elaborated by Decree 12. Rules on the retirement regime are summarized in **Schedule 3**

11. Disciplinary actions

Disciplinary actions can be taken by an employer against its employees in accordance with Chapter VIII of the Labor Code. Decree 41/CP of the Government dated July 6, 1995 provides more detail and guides implementation of a number of Articles of the Labor Code on labor disciplines and liabilities (as amended in Decree 33/2003//ND-CP of the Government dated April 2, 2003) (“**Decree 41**”).

However, in order to have solid grounds to take disciplinary action against an employee, the employer must prepare and file carefully worded Internal Labor Rules (“**ILRs**”). A discussion of ILRs is provided in Section 24 of this Manual.

An employee who breaches labor rules will, depending on the seriousness of the breach, be disciplined in one of the following manners:

- Reprimand, either oral or in writing:

This disciplinary action may be taken when an employee commits a minor breach for the first time.

- Extend the period during which wages may be increased for not more than six months, or transfer the employee to another job with a lower wage for a period of not more than six months, or remove the employee from the current position.

Such disciplinary action may be taken if an employee has been reprimanded in writing and commits another offense--the same or different offense--during the three subsequent months.

The law also allows an employer to include in its ILRs other circumstances in which it can take disciplinary action.

Disciplinary action is a compulsory, precedential action which action must be taken before the employer may dismiss an employee in the circumstances we discuss below. Therefore, we suggest that the employer should elaborate this information in the ILRs with as much detail as possible.

- Dismissal:

Dismissal can be applied only in the following circumstances. The law requires that the employer **MUST** specify those circumstances in its ILRs.

- an employee commits an act of theft, embezzlement, disclosure of business or technology secrets, or other conduct that causes serious damage to the assets or

well-being of the company. The law requires the employer to set out a specific level of damage for the purpose of this disciplinary action;

- an employee has been disciplined by extending the period for salary increase or by transfer to another position and that employee repeats his/her breach--either the same offense as the first breach or an offense other than the offense of the first breach--while s/he is undergoing disciplinary action for the previous breach;
- an employee who has committed a breach and has been disciplined by being removed from his/her position, repeats his/her breach--either the same or a different offense; or
- an employee takes an aggregate of five days off in one month or an aggregate of 20 days off in one year without the employer's permission and without plausible reason.

In addition to disciplinary action, the Labor Code allows the employer to claim compensation from an employee who damages tools and equipment or who causes damage to the assets of the company. It may also claim compensation from an employee who loses tools, equipment, or other assets given to him/her by the company, or who uses work-related materials at an excessive rate. The compensation, depending on the nature of each case, is equal to the whole or a part of the assets at the market price, and compensation is subject to the following limitations:

- If the damage is not serious (less than VND5,000,000) and is due to the employee's negligence, the amount of compensation is limited to three months salary and must be deducted gradually from the employee's salary; and
- If the employee causes damage due to the reason of force majeure, the employee does not have to compensate for such damage.

12. Internal investigations

An internal investigation of an alleged breach of the labor rules must be made in accordance with Article 87 of the Labor Code and Decree 41. Accordingly, in order to take disciplinary action against an employee, the employer must follow the rules set out below:

- The employer must have evidence, or even a witness, to prove the employee's wrongdoing;
- A representative of the Trade Union (if any) at the company, must be invited to be present when disciplinary action is taken, except for an oral reprimand;
- Disciplinary action must be made in the presence of the investigated employee. The investigated employee may defend himself or engage a lawyer, a public defense counselor, or another representative to defend against the allegations of the employer. If the investigated employee is absent three times upon notice of the employer, the employer may take the disciplinary action;

- Minutes of investigation of an employee's wrongdoing must be made and signed by the investigated employee, the representative of the Trade Union at the company and the employer. If there is no Trade Union at the company, the Trade Union at the province in which the company is located should be invited. The investigated employee and/or the representative of the Trade Union may note their reservation, or if they refuse to sign the Minutes, they may note the reason for their refusal.

Minutes of investigation on an employee's breach of the labor rules must include the following contents:

- Date and location of the investigation;
- Names and titles of persons who are present;
- The offense committed by the investigated employee, the level of breach and damages to the company (if any);
- Opinion of the investigated employee, his/her lawyer or counselor, and of the witness (if any);
- Opinion of the representative of the Trade Union; and
- Conclusion on the form of disciplinary action to be taken, level of damages and compensations (if any).

13. Restraint of trade/Non-compete

The labor law does not prohibit the employer to include a clause on restraint of trade or non-competition in a labor contract. We are of the view that the employer can include such a clause in a labor contract, and even do so in its ILRs.

14. No-solicitation of employees, customers and suppliers

The labor law does not prohibit the employer to include a clause on no-solicitation of employees, customers and suppliers in the labor contract. We are of the view that the employer can include such a clause in a labor contract and even in its ILRs.

The employer may prohibit its employees from taking commissions from vendors. This is not a criminal matter. It is an employment matter, and the employer can make its policy on the matter clear.

15. Confidentiality

There is no rule that relates to confidentiality clauses in a labor contract. We are of the view that the employer can include such clauses in a labor contract and even in its ILRs.

16. Use of Computer

The employer may monitor the use of computers at work and may take appropriate disciplinary actions against an employee who makes unauthorized use of a computer. However, in order to do so, the employer must set out in its ILRs, policies on the use of the computer at work, what constitutes a violation of such policies, which violations are subject to disciplinary actions, and what are the disciplinary consequences.

17. Drug and alcohol testing, police and criminal checks and general medical testing

The employer is generally allowed to conduct drug and alcohol testing, police and criminal checks, and general medical testing of its employees.

Decree 39/2003/ND-CP of the Government dated April 18, 2003 (“**Decree 39**”) provides details and guides the implementation of a number of Articles of the Labor Code. It permits the employer to require a person who applies for a job with the company, to submit his/her personal resume and health certificate or any other documents or records that it deems necessary.

The employer may also include in a labor contract or in the ILRs, a testing or investigation requirement of an employee that may be conducted during his/her employment term. However, mentioning such requirement is not enough. In order to take action against an employee who abuses drugs or alcohol, or who commits a criminal offense, or who has a health problem, carefully worded ILRs are required.

18. Termination of employment

Rules to terminate employment are provided in the Labor Code and its implementing regulations, including:

- Decree 44;
- Circular 21/2003/TT-BLDTBXH dated September 22, 2003 of the MOLISA (“**Circular 21**”), providing guidance of a number of articles of Decree 44;
- Decree 41; and
- Decree 39.

Rules on termination are summarized in **Schedule 4**

19. Retrenchment or redundancy

19.1 Retrenchment

Rules on retrenchment are provided in Article 17 of the Labor Code and elaborated in Decree 39. These rules are summarized at item 1.1 (a) of **Schedule 4**.

19.2 Redundancy

Rules on redundancy are provided in Article 31 of the Labor Code and are elaborated in Decree 39. These rules are summarized at item 1.1 (b) of **Schedule 4**.

20. Long service leave

An employee is entitled to long service leave in accordance with Section II Chapter VII of the Labor Code and Decree 195. Accordingly, an employee with

12 months service is entitled to have annual leave with full pay. The total of such annual leave days is:

- 12 days for an employee who works under normal working conditions;
- 14 days for an employee who does heavy, noxious or dangerous work or who works in a locality with harsh living conditions, or who is under 18 years of age; or
- 16 days for an employee who does especially heavy, noxious and dangerous work or who works in a locality with especially harsh living conditions.

The number of annual leave days will increase in proportion to an employee's seniority or experience in a job, or in proportion to an employee's service with an employer. The increase is one additional day for every five years of service.

21. Unions

Regulations on Trade Unions are provided in Chapter XIII of the Labor Code and the Law on Trade Unions. The responsibility to set up a Trade Union at a company is not with the company itself; it is the responsibility of the Trade Union of the province where the company is located to take the initiative.

22. Collective employment/collective bargaining -- e.g. Collective Labor Agreement ("CLA")

A CLA is a written agreement between the employees -- as one party -- and the employer -- as the other party -- in respect of working conditions and utilization of labor, and the rights and obligations of both parties in respect of employment relations. A CLA is made in accordance with Chapter V of the Labor Code and Decree 196/CP of the Government dated December 31, 1994 (as amended in Decree 93/2002/ND-CP of the Government dated November 11, 2002) ("**Decree 196**"). Decree 196 provides in detail and guides the implementation of a number of articles of the Labor Code on CLA.

A CLA is negotiated and signed by representatives of the employees and the employer, based on the principles of voluntary commitment and fairness. The representative of the employees, under the Labor Code, is the chairman of the Trade Union at the company.

It is the responsibility of the chairman of the Trade Union, when it is set up, to take the initiative to request -- on behalf of the employees -- the employer to enter into a CLA and to propose its terms and conditions.

Therefore, a CLA is not required unless and until a Trade Union is set up at a company as discussed in Section 21 of this Manual, and until it requests the employer to enter into a CLA.

23. Compulsory Worker's Compensation or compulsory insurance scheme for work-related accidents

Compensation for work-related accidents is paid to an injured employee in accordance with provisions of Chapter IX of the Labor Code. Those provisions are elaborated upon in Decree 06/CP of the Government dated January 20, 1995 (as amended by Decree 110/2002/ND-CP of the Government dated December 27, 2002) (“**Decree 06**”) and Circular 10/2003/TT-BLDTBXH dated April 18, 2003 of the MOLISA (“**Circular 10**”).

23.1 Compensation by the employer

Where a work-related accident occurs, the employer must bear all medical expenses incurred from the time of first aid or emergency treatment to completion of the medical treatment in respect of the injured employee.

Further, the employer is responsible to pay compensation to an employee who was injured in a work-related accident as summarized in part I of **Schedule 5**.

23.2 Allowances paid by the Social Insurance Fund

In addition to the compensation paid by the employer as discussed above, an employee who was injured in a work-related accident, is entitled to an allowance as paid by the Social Insurance Fund.

If the company does not make a compulsory social insurance contribution to the Social Insurance Fund as discussed in Section 7.1 of this Manual, it must pay the injured employee an allowance equal to the amount that would have been paid by the Social Insurance Fund and that is stipulated in Decree 12. The scale of this allowance is summarized in part II of **Schedule 5**. This payment is additional to the compensation discussed previously in this Section.

24. Employee Handbook or Company Regulations--i.e. ILRs

Regulations on ILRs are provided in Chapter VIII of the Labor Code and Decree 41.

A company must have ILRs if it has 10 or more employees, and it must register its ILRs with the DOLISA. The ILRs, after having been duly registered, must be notified to all employees.

The ILRs must include the following major contents:

- Working hours and rest breaks;
- Rules and discipline in the company;
- Occupational safety and hygiene in the work place;
- Protection of assets and confidentiality of technology and business secrets of the company; and
- Conduct that is in breach of labor rules and the penalties imposed for those breaches, and responsibility for damage.

Carefully worded ILRs are important in order for the employer to take disciplinary action against an employee, or to terminate a labor contract in case of an employee's poor performance (first bullet in item 1.2 of **Schedule 4**). It is difficult for a company to dismiss an employee for an offense if that offense is not specified in its ILRs or if the company does not have duly registered ILRs.

25. Transmission of business

According to Article 31 of the Labor Code, if a company undergoes a change, including a merger, consolidation, division, split, or a transfer of ownership, or transfer of the right to manage or to use its assets, the successor company is obliged to continue to implement the existing labor contracts of the employees of the affected company. That is, the existing terms and conditions of employment that were offered before the change will survive the change. No severance or redundancy allowances are paid to an employee if s/he continues to be employed.

26. Standard Employment Contract

A labor contract must be prepared on a standard form as issued by the MOLISA in accordance with Circular 21. A sample is attached as **Annex 1**. It contains particulars such as the nature of the work, working hours, employment duration, remuneration package, leave, bonus, insurance, etc. An employer may consider including additional terms in the form of an appendix to the standard contract, provided that such additional terms conform with the law. The employer and the employee must each keep one original of the labor contract.

27. Public Policy

On the one hand, Article 9 of the Labor Code states that “*the employment relationship between an employee and an employer is established and performed through negotiation and agreement on the principles of voluntary commitment, fairness, cooperation, mutual respect of legal rights and benefits, and full performance of undertakings*”. On the other hand, the Labor Code provides many terms and conditions that are compulsory in an employment relationship and that are not subject to negotiation or relinquishment by an employee or an employer. Those compulsory

terms and conditions are discussed throughout this Manual. Generally speaking, negotiation is permitted only if the negotiated terms and conditions are more favorable for an employee than legally compulsory terms and conditions. Other issues, which are not discussed in this Manual are flexible and the employer is free to negotiate with its employees and to include them in a labor contract and/or the ILRs.

28. Local language

According to Circular 21, a labor contract must be made in the Vietnamese language. If either the employer or the employee is a foreigner, the two parties may agree to add a foreign language to the Vietnamese language and to create a dual language labor contract.

Firm	Contact person	Direct line/e-mail
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ANNEX I

Standard Form of Labor Contract

THE SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Name of the Company: , date.....
Ref. No.:

LABOR CONTRACT

We, from one side, Mr./Mrs.: Nationality:
Position:
On behalf of: [the Company]
Address:
Telephone:

And from the other side, Mr./Mrs.: Nationality:
Date of birth: [day/month/year] Place of birth:
Profession:
Resident address:
ID Card Number: issued on:[day/month/year] by:
Reference Number of the Employment Record Book (if any): issued on
[day/month/year] at...

Agree to enter into this labor contract and commit to comply with the following terms and conditions:

Article 1: Duration and Contractual Works

- Type of contract: [indefinite or definite term]
- From (day/month/year)
- Working location:
- Professional Title:
- Position (if any):
- Duties:

Article 2: Working Regime

- Working time:
- Equipment to be provided:

Article 3: Benefits and Obligations of the Employee

1. Benefits:

- Means of transportation:
- Basic salary or remuneration:
- Method of payment:
- Allowances:
- Payment to be made on _____ monthly:
- Bonus:
- Salary promotion regime:
- Labor protection equipment to be provided:
- Resting time (weekends or weekdays off, annual leave, holidays...):
- Social and medical insurance:
- Training policies:
- Other benefits:

2. Obligations:

- Fulfill the works as agreed under this labor contract.
- Comply with manufacturing or trading orders, labor discipline and safety regulations, etc.
- Compensation for violation of labor disciplines and material liabilities:

Article 4: Rights and obligations of the employer

1. Obligations:

- Provide the work and fulfill the commitments as agreed under this labor contract.
- Fully and timely pay the employee the salary and other benefits as agreed under the labor contract or collective labor agreement (if any).

2. Rights:

- Manage the labor to fulfill the works as agreed under the labor contract (including arrangement, assignment, or temporary suspension of the works...)
- Temporarily suspend or terminate the labor contract, punish the employee in accordance with the laws, collective labor agreements (if any) and the employer's working regulations.

Article 5: Implementing Provisions

- Other labor issues, which are not included in this labor contract, shall be subject to collective labor agreements or the labor law in case there is no collective labor agreement.
- This labor contract is made in two originals having equal validity. Each original shall be kept by one party and effective as from (day/month/year). If the parties also execute annexes to this labor contract, the annexes shall have the same binding effect on the parties as does this labor contract.

This contract is made at on [day/month/year].

EMPLOYEE
(sign and full name)

EMPLOYER
(sign, seal and full name)

SCHEDULE 1

A. List Of Cited Laws, Decrees, Circulars And Regulations

No.	Name of legal documents	Issued by	Issued on
1.	Constitution 1992 (as amended in 2001)	National Assembly	April 15, 1992
2.	Civil Code 2005	National Assembly	June 14, 2005
3.	Labor Code 1994 (as amended in 2002)	President	July 5, 1994
4.	Civil Procedures Code 2004	National Assembly	June 15, 2004
5.	Law on Enterprises	National Assembly	November 29, 2005
6.	Law on Social Insurance	National Assembly	June 29, 2006
7.	Decree 195/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Working Times and Rest Periods (as amended by Decree 109/2002/ND-CP of the Government dated December 27, 2002)	Government	December 31, 1994
8.	Decree 196/CP Providing Details and Guiding the	Government	December 31, 1994

	Implementation of a number of Articles of the Labor Code on Collective Labor Agreements (as amended in Decree 93/2002/ND-CP of the Government dated November 11, 2002)		
9.	Decree 12/CP Promulgating the Social Insurance Rules (as amended by Decree 01/2003/ND-CP of the Government dated January 9, 2003)	Government	January 26, 1995
10.	Decree 41/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Disciplines and Material Liabilities (as amended in Decree 33/2003/ND-CP of the Government dated April 2, 2003)	Government	July 6, 1995
11.	Decree 06/CP (as amended in Decree 110/2002/ND-CP of the Government dated December 27/2002) on Labor Safety and Labor Hygiene on Labor Safety and Labor Hygiene	Government	January 20, 1995
12.	Decree 114/2002/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Wages	Government	December 31, 2002
13.	Decree 39/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on	Government	April 18, 2003

	Employment		
14.	Decree 44/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Contracts	Government	May 9, 2003
15.	Decree 63/2005/ND-CP	Government	May 16, 2005
16.	Circular No.10/2003/TT-BLDTBXH	MOLISA	April 18, 2003
17.	Circular No.21/2003/TT-BLDTBXH Providing Guidance of a number of Articles of Decree 44/2003/ND-CP on Labor Contracts.	MOLISA	September 22, 2003
18.	Circular No.81/2004/TT-BTC on Personal Income Tax	Ministry of Finance	August 13, 2004
19.	Inter-Ministerial Circular 21/2005/TT-TTLT-BYT-BTC	Ministry of Health and Ministry of Finance	July 27, 2005

B. List of Cited Laws, Decrees, Circulars and Regulations Classified by Subjects of the Manual

No.	Issue	Name of legal documents	Issued by	Issued on
5.	<i>Probation</i>	<ul style="list-style-type: none"> • Labor Code • Decree 44/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Contracts 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>May 9, 2003</p>
6.	<i>Over-Time</i>	<ul style="list-style-type: none"> • Labor Code • Decree 195/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Working Times and Rest Periods (as amended by Decree 109/2002/ND-CP of the Government dated December 27, 2002) • Decree 114/2002/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Wages 	<p>President</p> <p>Government</p> <p>Government</p>	<p>July 5, 1994</p> <p>December 31, 1994</p> <p>December 31, 2002</p>

10.	<i>Retirement</i>	<ul style="list-style-type: none"> • Labor Code • Decree 12/CP Promulgating the Social Insurance Rules (as amended by Decree 01/2003/ND-CP of the Government dated January 9, 2003) 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>January 26, 1995</p>
11.	<i>Disciplinary actions</i>	<ul style="list-style-type: none"> • Labor Code • Decree 41/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Disciplines and Material Liabilities (as amended in Decree 33/2003/ND-CP of the Government dated April 2, 2003) 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>July 6, 1995</p>
12.	<i>Internal Investigations</i>	<ul style="list-style-type: none"> • Labor Code • Decree 41/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Disciplines and Material Liabilities (as amended in Decree 33/2003/ND-CP of the Government dated April 2, 2003) 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>July 6, 1995</p>
13.	<i>Restraint of Trade/Non-compete</i>	<ul style="list-style-type: none"> • N/A. 		

14.	<i>No-solicitation of employees, customers and suppliers</i>	<ul style="list-style-type: none"> • N/A. 		
15.	<i>Confidentiality</i>	<ul style="list-style-type: none"> • N/A. 		
16.	<i>Use of Computer</i>	<ul style="list-style-type: none"> • N/A. 		
17.	<i>Drug and alcohol testing, police of criminal checks and general medical testing</i>	<ul style="list-style-type: none"> • Decree 39/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Employment 	Government	April 18, 2003
18.	<i>Termination of employment</i>	<ul style="list-style-type: none"> • Labor Code • Decree 44/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Contracts • Circular No.21/2003/TT-BLDTBXH Providing Guidance of a number of Articles of Decree 44/2003/ND-CP on Labor Contracts • Decree 41/CP Providing Details and Guiding the 	<p>President</p> <p>Government</p> <p>MOLISA</p> <p>Government</p>	<p>July 5, 1994</p> <p>May 9, 2003</p> <p>September 22, 2003</p>

		<p>Implementation of a number of Articles of the Labor Code on Labor Disciplines and Material Liabilities (as amended in Decree 33/2003/ND-CP of the Government dated April 2, 2003)</p> <ul style="list-style-type: none"> • Decree 39/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Employment 	<p>Government</p>	<p>July 6, 1995</p> <p>April 18, 2003</p>
19.	<i>Retrenchment or redundancy</i>	<ul style="list-style-type: none"> • Labor Code • Decree 39/2003/ND-CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Employment 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>April 18, 2003</p>
20.	<i>Long service leave</i>	<ul style="list-style-type: none"> • Labor Code • Decree 195/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Working Times and Rest Periods (as amended by Decree 109/2002/ND-CP of the Government dated 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>December 31, 1994</p>

		December 27, 2002)		
21.	<i>Unions</i>	<ul style="list-style-type: none"> • Labor Code 	President	July 5, 1994
22.	<i>Collective employment/collective bargaining - e.g. Collective Labor Agreements ("CLA")</i>	<ul style="list-style-type: none"> • Labor Code • Decree 196/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Collective Labor Agreements (as amended in Decree 93/2002/ND-CP of the Government dated November 11, 2002) 	President Government	July 5, 1994 December 31, 1994

23.	<i>Compulsory Worker's Compensation or compulsory insurance scheme relating to work-related accidents</i>	<ul style="list-style-type: none"> • Labor Code • Decree 06/CP (as amended in Decree 110/2002/ND-CP of the Government dated December 27/2002) on Labor Safety and Labor Hygiene • Circular No.10/2003/TT-BLDTBXH • Decree 12/CP Promulgating the Social Insurance Rules (as amended by Decree 01/2003/ND-CP of the Government dated January 9, 2003) 	<p>President</p> <p>Government</p> <p>MOLISA</p> <p>Government</p>	<p>July 5, 1994</p> <p>January 20, 1995</p> <p>April 18, 2003</p> <p>January 26, 1995</p>
24.	<i>Employee Handbook or Company Regulations - i.e. ILRs</i>	<ul style="list-style-type: none"> • Labor Code • Decree 41/CP Providing Details and Guiding the Implementation of a number of Articles of the Labor Code on Labor Disciplines and Material Liabilities (as amended in Decree 33/2003/ND-CP of the Government dated April 2, 2003) 	<p>President</p> <p>Government</p>	<p>July 5, 1994</p> <p>July 6, 1995</p>
25.	<i>Transmission of business</i>	<ul style="list-style-type: none"> • Labor Code 	<p>President</p>	<p>July 5, 1994</p>

26.	<i>Standard Employment Contract</i>	<ul style="list-style-type: none"> • Circular No.21/2003/TT-BLDTBXH Providing Guidance of a number of Articles of Decree 44/2003/ND-CP on Labor Contracts 	MOLISA	September 22, 2003
27.	<i>Public Policy</i>	<ul style="list-style-type: none"> • Labor Code 	President	July 5, 1994
28.	<i>Local language</i>	<ul style="list-style-type: none"> • Circular No.21/2003/TT-BLDTBXH Providing Guidance of a number of Articles of Decree 44/2003/ND-CP on Labor Contracts 	MOLISA	September 22, 2003

SCHEDULE 2
SUMMARY OF MAJOR LABOUR CONDITIONS AND BENEFITS

Working conditions	Number of days/hours	Payment to employees	Note
<p>1. Working time:</p> <ul style="list-style-type: none"> • Ordinary time 	<ul style="list-style-type: none"> ○ Maximum 8 hours/a day, or ○ Maximum 48 hours/a week 	<ul style="list-style-type: none"> ○ Day shift: 100% salary ○ Night shift (9pm to 5am in the South): 130% salary of day shift 	<p>An employee may work more than eight hours/day provided that the total working time/week does not exceed 48 hours.</p>
<ul style="list-style-type: none"> • Overtime 	<ul style="list-style-type: none"> ○ Maximum four (4) hours/day or 200 hours/year. ○ Maximum of 300 hours/year in special cases (eg, garment, seafood export, meet deadlines) 	<ul style="list-style-type: none"> ○ At least 150% on a normal work day; ○ At least 200% on a weekly- day off; ○ At least 300% on a public holiday or during fully paid 	<p>If an employee works overtime at night, s/he is entitled to an additional payment of 30% of overtime day salary.</p> <p><u>For example:</u> * Assume VND5,000</p>

		leave.	salary/hr on normal working day: * Overtime day salary: VND7,500/hr (=150% x VND5,000) * Overtime night salary: VND9,750/hr (=130% x VND7,500)
2. Break time	<ul style="list-style-type: none"> ○ At least one day off/week; ○ A break of 30 minutes⁵ if employee works 8 consecutive hours. ○ A break of 45 minutes if the employee works at night. ○ A break of 12 hours between each shift if the employee works in shifts 		Include the break of 30 or 45 minutes when counting working time.
3. Leave: • Public holidays	Eight (8) days	100% of salary	

⁵ The law does not provide a clear purpose; in practice, it is usually for meals, tea break, etc

<ul style="list-style-type: none"> • Annual leave 	<ul style="list-style-type: none"> ○ 12 days for normal working conditions ○ 14 days for strenuous, dangerous, or toxic work, <u>or</u> harsh living conditions, and if under 18 years of age; ○ 16 days for extremely strenuous; dangerous work, or in strenuous, dangerous or toxic jobs <u>in places with</u> harsh living conditions. 	<p>100% of salary</p>	<p>One annual day leave is added for every five (5) years of employment.</p>
<ul style="list-style-type: none"> • Personal leave 	<ul style="list-style-type: none"> ○ Three (3) days if an employee gets married; ○ One (1) day if an employee's children get married; ○ Three (3) days if an employee's parent (including parents-in-law), spouse or child dies. 	<p>100% of salary</p>	

SCHEDULE 3
Retirement benefits

- Age of retirement: Man: 60; Woman: 55

Note: If an employee reaches such age of retirement and has contributed to social insurance for 20 years or more, s/he is entitled to a monthly pension at the rate marked with an asterisk (*) in the table below. If one of the two conditions above is not satisfied, the employee is entitled to a monthly pension, but at a lower rate and if certain additional conditions are satisfied.

- Monthly pension:

Age of employee	Period of social insurance contribution	Additional conditions	Rate of benefits
➤ Man: 60 ➤ Woman: 55	20 years or more	None	Man: 45% + [2% x (years of insurance contribution-15)] (*) Woman: 45% + [3% x (years of insurance contribution-15)] (*)
➤ Man: 55 to less than 60	30 years or more	None	Man: 45% + [2% x (years of insurance

- | | | | | |
|---|--|-------------------------|--|--|
| <ul style="list-style-type: none"> ➤ Woman: 50 to less than 55 | <ul style="list-style-type: none"> ➤ Man: 55 ➤ Woman: 50 | <p>20 years or more</p> | <p>The employee must meet one of the following conditions:</p> <ul style="list-style-type: none"> ○ 15 years doing strenuous work or in a stressful job; or ○ 15 years working in a region which has a regional co-efficient of 0.7 or more; ○ 10 years in southern Vietnam or Laos prior to April 30, 1975 or in Cambodia prior to August 31, 1989. | <p>contribution-15)]</p> <p>Woman: 45% +[3% x (years of insurance contribution-15)]</p> <p>Man: 45% + [2% x (years of insurance contribution-15)]</p> <p>Woman: 45% +[3% x (years of insurance contribution-15)]</p> |
|---|--|-------------------------|--|--|

➤ Man: 60 or more	15 years to less than 20	None	Man: 45% + [2% x (years of insurance contribution-15)]
➤ Woman: 55 or more	years		Woman: 45% + [3% x (years of insurance contribution-15)]
➤ Man: 50 or more	20 years or more	Her/his capacity to work has	Man: 45% + [2% x (years of insurance contribution-15)] - [1% x (60-age at retirement)]
➤ Woman: 45 or more		been reduced by at least 61%	Woman: 45% + [3% x (years of insurance contribution-15)] - [1% x (60-age at retirement)]
➤ Man: irrespective of age.	20 years or more	Her/his capacity to work has	Man: 45% + [2% x (years of insurance contribution-15)] - [1% x (55-age at retirement)]
➤ Woman: irrespective of age		been reduced by at least 61%	Woman: 45% + [3% x (years of insurance contribution-15)] - [1% x (50-age at retirement)]

One-off social insurance allowance: If an employee is not entitled to a monthly pension, s/he is entitled to a one-off social insurance allowance or the employee can wait until s/he reaches retirement age in order to be entitled to a monthly pension. A one-off social insurance

allowance is a lump sum payment of one month's average salary which formed the basis for the employee's contribution to the social insurance fund, for each year that the employee made contributions to the insurance fund.

SCHEDULE 4
Termination of employment

Item No.	Type of termination	Final payment and entitlement to employees	Process to terminate	Note
<u>1.</u>	<u>Termination by the Employer</u>			
1.1	Termination for convenience without cause			
1.1 (a)	Retrenchment: Termination due to changes of the structure or technological changes, such as changes of part or all of the equipment, machinery, technology process, or changes in the organizational structure: merger, consolidation, dissolution of some departments (Article 17 of the Labor Code)	“Job loss allowance”	<p>If there is a need to terminate labor contracts of <u>many</u> employees, the employer must announce the list of affected employees.</p> <p>The employer decide to terminate labor contract of each affected employee upon consultation and agreement with the Trade Union at the Enterprise, based on the employee’s number of years in services, qualifications and skills, family conditions etc.</p>	<ul style="list-style-type: none"> ○ Job loss allowance is one-month’s salary for each year of employment; ○ Payable to an employee who has at least 12 full months of service; ○ Years of service are rounded up if at least six (6) months.

			A 30-day prior notice on the termination must be sent to the DOLISA before a labor contract is so terminated.	
1.1 (b)	Redundancy: Termination due to merger, consolidation, division, separation, ownership transfer of assets of the employers (Article 31 of the Labor Code)	Job loss allowance	<p>The employer must work out a plan to use employees after the event. Such a plan must include the following contents:</p> <ul style="list-style-type: none"> • Number of employees that continue to be employed; • Number of employee that are re-trained for employment in other positions; • Number of retired employees; • Number of employees whose labor contracts must be terminated; and • Plan to pay retraining costs, allowances and other benefits to the affected employees. 	

			The plan must be reviewed and commented by the Trade Union at the Enterprise (if any) and then must be sent to the DOLISA.	
1.1 (c)	<p>Automatic termination (Article 36 of the Labor Code), including:</p> <ul style="list-style-type: none"> • Labor contract expires; • Task stated in the labor contract completed; • Employer and employee agree to terminate labor contract; • Employee is sentenced to serve jail term or is prevented from performing the job in accordance with a decision of the court; and • Employee dies or is declared missing by a court. 	Severance allowance	No procedures required.	<ul style="list-style-type: none"> ○ Severance allowance is one-half of one-month's salary for each year of employment; ○ Payable to an employee who has at least 12 full months of service; ○ Years of service are rounded up if at least six (6) months.
1.2	Termination for causes			
	An employer may unilaterally terminate a labor contract on the following grounds (Article 38 of			

	the Labor Code):			
	<ul style="list-style-type: none"> Employee repeatedly fails to perform his/her work in accordance with the terms of his/her contract. 	“Severance allowance”	<p>To be able to make a unilateral termination, it is necessary that employee be booked or warned in writing at least twice in a month, but still fails to redress his/her shortcomings. The following notice must be also given to the affected employee before termination.</p> <ul style="list-style-type: none"> A 45-working day prior notice if his/her labor contract has an indefinite term; A 30-working day prior notice if his/her labor contract has a definite term of from 12 months to up to 36 months; or A 3-working day prior notice if his/her labor contract is made on a seasonal basis or has a term of less than 12 months. 	<p>Termination of an employee for this cause is not easy. However, with carefully worded Internal Labor Rules and labor contract, a company has a better opportunity to establish grounds and a framework for termination.</p>

	<ul style="list-style-type: none"> • Employee is ill and remains unable to work after having received treatment for certain periods of time • Employer must reduce production after trying all measures to recover from an event of force majeure; and • Employer ceases its operations 	<p>Severance allowance</p> <p>Severance allowance</p> <p>Severance allowance</p>	<p>The following notice must be also given to the affected employee before termination:</p> <ul style="list-style-type: none"> • A 45-working day prior notice if his/her labor contract has an indefinite term; • A 30-working day prior notice if his/her labor contract has a definite term of from 12 months to up to 36 months; or • A 3-working day prior notice if his/her labor contract is made on a seasonal basis or has a term of less than 12 months. 	
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<p>1.3</p>	<p>Termination for disciplinary violations</p>			
	<p>Employee is disciplined by dismissal (Article 85 of the Labor Code), if</p> <ul style="list-style-type: none"> • S/he commits an act of theft, embezzlement, disclosure of business or technological secrets, or engages in conduct that is seriously detrimental to the assets or well-being of the employer. • S/he recommitts an offence after s/he is disciplined by: delayed wage increase, transfer to another position, removal. • S/he takes an aggregate of five (5) days off in one month or 20 days off in one year without acceptable reasons. 	<p>No severance allowance</p>	<p>Before dismissing an employee, the employer must consult the Trade Union at the Enterprise. If there is no Trade Union at the Enterprise, or if there is, but no agreement is reached between the Enterprise and the Trade Union on the dismissal, the employer must send a notice on the dismissal to the DOLISA. After 30 working days from the date on which the notice is received by the DOLISA, the employer may issue decision to dismiss the employee. The employer must be liable for such decision. The affected employee may dispute such decision on dismissal to the courts.</p>	<p>Termination of an employee in this case is not easy. Carefully worded Internal Labor Rules are necessary for a company to establish sound grounds and a framework for termination.</p>

Item No.	Type of termination	Final payment and entitlement to employees	Process to terminate	Note
<u>2.</u>	<u>Termination by the Employees</u>			
2.1	Termination without causes			
2.1 (a)	Automatic termination (Article 36 of the Labor Code): See Item 1.1 (c) of this Schedule.	Severance allowance	No procedures required	
2.1 (b)	Unilateral termination of an <u>indefinite term</u> labor contract (Article 37.3 of the Labor Code)	Severance allowance	A forty five- working day prior notice must be given the employer	<p>This type of termination can apply only to an indefinite term labor contract.</p> <p>An employee is <u>not required</u> to have/give any reason in order unilaterally to terminate an indefinite term labor contract.</p>

2.2	Termination for causes			
	<p>An employee under a <u>definite term labor contract</u> may unilaterally terminate his/her labor contract on the following grounds (Article 37 of the Labor Code):</p> <ul style="list-style-type: none"> • S/he is assigned a duty or assigned work at a location, which duty or location, is not consistent with her/his labor contract; or the working conditions under her/his labor contract are not satisfied; • S/he is not paid in full or in time as provided in her/his labor contract; • S/he is maltreated or forced to do in appropriate duties (for example duties which are not appropriate in terms of her/his gender or which may affect her/his health or dignity); • S/he or her/his family encounters such 	<p>Severance allowance</p> <p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>	<p>A three- working day prior notice must be given the employer.</p> <p>- ditto -</p> <p>- ditto -</p> <p>A thirty- working day prior notice must</p>	<p>Evidence of causes is essential for a termination.</p>

<p>difficulty that s/he is not able to continue to work under her/his labor contract. For example, s/he moves to live in another locality, and it is difficult for her/his to travel to the workplace; or s/he goes abroad to reside; or s/he has to look after her/his spouse, her/his parents or her/his spouse's parents, or to look after her/his child, who are ill for three months or more;</p> <ul style="list-style-type: none"> • S/he is appointed to a permanent position in a people's elective body or in a state authority; • She is pregnant and must take a rest as prescribed by a doctor; or • S/he suffers from an illness or accident and has been under treatment for three consecutive months. 	<p>- ditto -</p> <p>- ditto -</p> <p>- ditto -</p>	<p>be given the employer.</p> <p>A thirty- working day prior notice must be given the employer.</p> <p>Subject to the prescription of the doctor</p> <p>A three- working day prior notice must be given the employer.</p>	
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SCHEDULE 5

Compensations/ allowances for Work-related accident

I. Compensations/allowances paid by the company to an injured employee

Item No.	The injured employee's reduced working capacity	Entitlement	
		Accident occurred without fault of the injured employee	Accident occurred due to the fault of the injured employee
		(A)	(B)
1.	By 5% to 10%.	Compensation equal to at least one and one-half month's contracted salary and salary allowance (if any).	Allowance equal to 40% of the compensation in 1(A).
2.	By more than 10% to below 81%.	Compensation for reduction of working capacity from 5% to 10%, plus 40% of one month's contracted salary for every additional percentage of reduced working capacity.	Allowance equal to 40% of the compensation in 2(A).
3.	81% or more, or the employee dies ⁶ .	Compensation equal to at least 30 months' contracted salary and salary allowance (if any).	Allowance equal to at least 12 months' salary and salary allowance (if any).

⁶ If an employee dies in a work-related accident, the compensation is paid to his/her family.

II. Allowances paid by the Social Security Fund

1. An employee whose working capacity is reduced by 5% to 30% is entitled to the following lump-sum payment:

The injured employee's reduced working capacity	Lump-sum allowance
5% to 10%	4 months' minimum salary ⁷
11% to 20%	8 months' minimum salary
21% to 30%	12 months' minimum salary

2. An employee whose working capacity is reduced by at least 31% is entitled to receive the following monthly allowance from the day s/he is discharged from the hospital:

The injured employee's reduced working capacity	Monthly allowance
31% to 40%	0.4 month's minimum salary
41% to 50%	0.6 month's minimum salary
51% to 60%	0.8 month's minimum salary
61% to 70%	1.0 month's minimum salary
71% to 80%	1.2 months' minimum salary
80% to 90%	1.4 months' minimum salary
91% to 100%	1.6 months' minimum salary

⁷ Minimum salary is fixed by the Government from time to time. The current minimum salary is provided in Decree 181/2005/ND-CP and is VND 350,000.