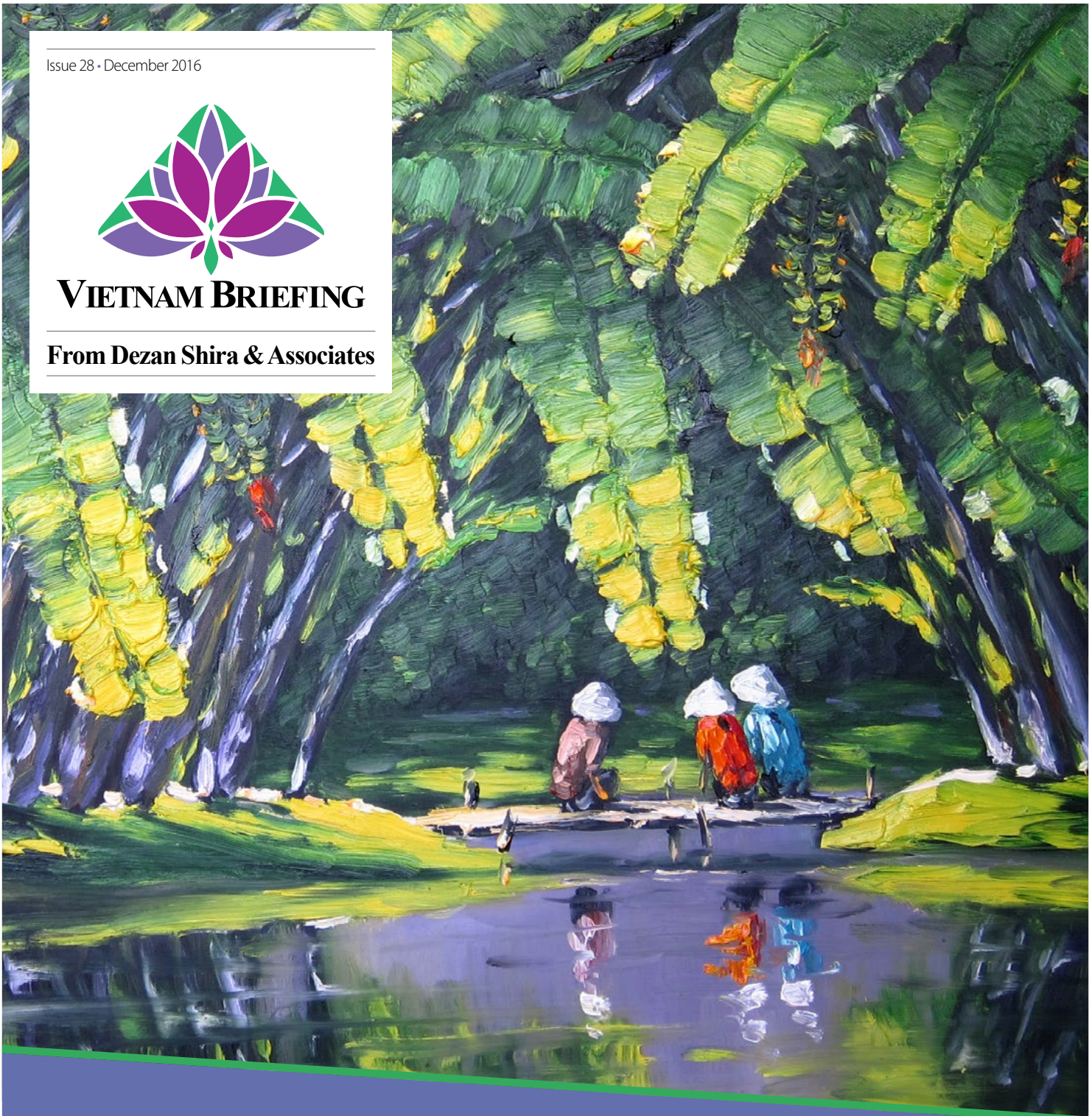


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**VIETNAM BRIEFING**

**From Dezan Shira & Associates**



# Managing Contracts and Severance in Vietnam

**P.04** Identifying Trends in Vietnamese Labor

**P.07** Permitted Contract Structures Under Vietnamese Labor Code

**P.10** Contract Termination and Severance Obligations

# Introduction



**Alberto Vettoretti**  
Managing Partner  
Dezan Shira & Associates  
Vietnam Offices

Vietnam is undergoing a significant transformation in economic development, moving from conventional production of low cost goods towards the output of more technologically intensive products. While presenting significant opportunities for foreign investors, this has simultaneously created a strain on domestic labor markets. With a finite pool of skilled labor, now more than ever before, investors are exposed to issues stemming from the sourcing of qualified talent and the retention of existing workers for the long term.

Although changes within Vietnam's economic and production landscape do present challenges, a firm understanding of contracting laws and decisive action on the part of human resource managers can effectively safeguard and manage these issues as they arise. To ensure that these dynamics are minimized, it is of critical importance that investors maintain an understanding of Vietnam's existing labor laws as well as employ systems of monitoring to catch and assess new legislation as it is released.

In this issue of Vietnam Briefing, we discuss the prevailing state of labor pools in Vietnam and outline key considerations for those seeking to staff and retain workers in the country. We highlight the increasing demand for skilled labor, provide in depth coverage of existing contract options, and showcase severance liabilities that may arise if workers or employers choose to terminate their contracts.

Dezan Shira & Associates has a growing team of human resource specialists throughout Vietnam providing our clients with years of combined experience in assisting foreign enterprises navigate and effectively manage staffing and retention issues in the country. For questions on how to best optimize contracts, manage hiring, and navigate issues of severance, please contact us at [vietnam@dezshira.com](mailto:vietnam@dezshira.com)

Kind regards,

**Alberto Vettoretti**



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# Identifying Trends in Vietnamese Labor

By Dezan Shira & Associates, Hanoi  
Editor: Zolzaya Erdenebileg

Vietnam has experienced considerable economic development over the past two decades. Within that period of time, the country has had one of the fastest GDP growth rates in the world, averaging 6.2 percent from 2000 to 2015, transforming it into a lower-middle income country. It has been largely successful with its transition to a market-driven economy thus far, generally keeping unemployment rates at around two percent. In the first quarter of 2016, Vietnam's unemployment rate remained stable at 2.25 percent.

However, while Vietnam's GDP growth is impressive and participation rates in its labor markets is high, there are a number of inherent problems and limitations in its labor force, particularly with skills shortages and unbalanced wage premiums in certain sectors. These must be fully understood by foreign companies looking to hire in the country. In particular, firms have to be aware of how contracts work in Vietnam, and the legal obligations that they have to their employees.

## Economic trends

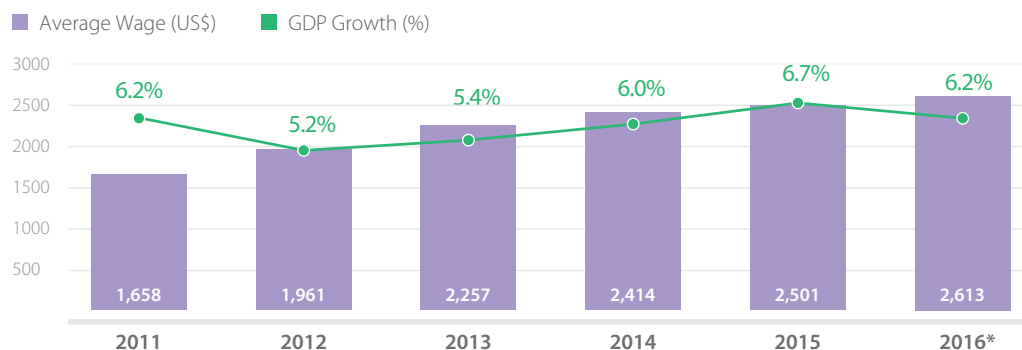
### GDP growth

Despite ongoing uncertainty in the global economy, Vietnam has continued to perform well. In 2015, Vietnam continued its streak of fast growth, reaching 6.7 percent, and is forecasted to achieve 6.2 percent growth in 2016. Conditions are expected to slightly improve year-on-year in 2017, with a projected GDP growth rate of 6.3 percent.

### Wage growth

Alongside Vietnam's impressive economic growth, average and minimum wages have risen to keep up with the consumer price index. Between 2005 and 2015, average annual income of employed workers across major sectors grew almost 75 percent. Average income increased from just US\$1,658 in 2011 to US\$2,613 in 2015, including 3.63 percent growth from 2014 to 2015.

Vietnamese GDP vs Wage Growth (2011-2016)



\*Estimate

Source: World Bank & General Department of Statistics Vietnam

Minimum wages are also on the rise. Just this past fall, Vietnam's National Wage Council decided to increase monthly minimum wages by 7.3 percent on average in 2017. Depending on the zone of work, monthly minimum wages range from VND 2.58 million (in Zone 4) to VND 3.75 million (in Zone 1). Over the past decade, the average annual increase in minimum wage was 15 percent. This latest increase is one of the lowest increases in years, as the country attempts to maintain its cost advantages in the face of growing competition from regional rivals.

## Growing number of skilled workers

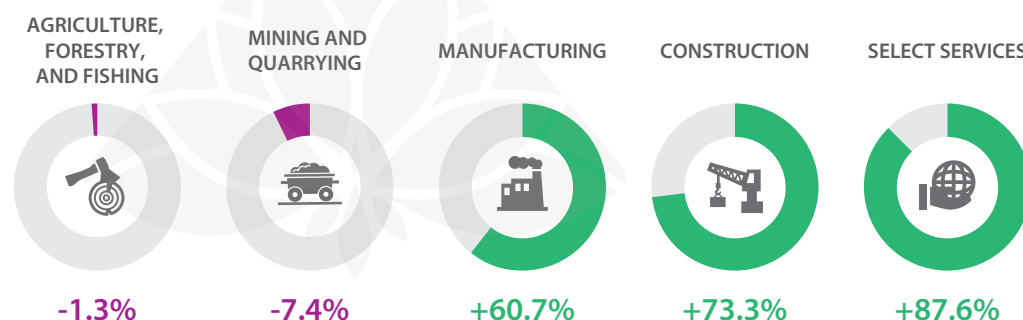
After decades of solid growth, Vietnam is now in the midst of shifting its economy into more advanced terrain. There is a market transition occurring from a rural, agrarian, and informal set of conditions

to an urban, manufacturing, and services-based formal economy. A skilled workforce is central to this transition.

Within the past two decades, Vietnam has invested in education and now boasts a literacy rate of 95 percent. However, a shortage of workers equipped with in-demand skills persists, particularly for skilled blue-collar and management positions. This shortage is especially acute in four major job categories – laborers, managers, engineers, and skilled manual tradespeople. Employers in the following fields also reported having difficulty in filling positions: mining and construction, manufacturing, transportation and utilities, wholesale and retail trade, services, finance, insurance, and real estate.

However, Vietnam has made efforts to decrease the skills gap and attract foreign direct investment (FDI). In Q1 2016, the total number of skilled

### Change in Vietnamese Employment\* by Sector (2005-2015)



\*Note: Growth based on quantity of workers (aged 15+) in given sector  
Source: General Department of Statistics Vietnam

### Skilled Workers in Vietnam by Level of Education (2016)

Education Level	Workers (millions)	Percentage of Vietnamese workforce*
Primary vocational	1.7	3.1
Secondary vocational	0.8	1.4
Prof-secondary school	2.1	3.7
Vocational college	0.2	0.3
Professional college	1.5	2.7
University and higher	4.9	9.1
<b>Total</b>	<b>11.2</b>	<b>20.3</b>

\*Defined as those between 15 and 65 years of age  
Source: General Department of Statistics Vietnam

workers (including those with vocational degrees that require more than three months of study) over the age of 15 was 11 million, or 20.3 percent of the total labor force. This represents an increase of 2.22 percent compared to Q4 2015. In urban areas, the rate was even higher, with skilled workers making up 36.88 percent of the labor force.

## Staffing challenges in Vietnam

### *Labor market supply and demand challenges*

Currently, there is a labor market mismatch between the supply and demand for certain positions. The jobs for which there are frequent openings do not find enough applicants, while the jobs for which openings are rare find too many.

In Q1 2016, recruitment demand was the highest for manual/unskilled jobs, which sought 29,400 employees, and textile garment and garment technology jobs, which sought 20,600 employees. However, finance and accounting had the highest number of job seekers with 79,500 people, an increase of 12.8 percent compared to Q4 2015. Human resource management followed with 22,700 job seekers, a decrease of 6.6 percent compared to Q4 2015. People with secondary vocational training were most often looking for jobs, totaling 69,100 in Q1 2016.

### *Shortages in industry- and enterprise-specific skills*

For employers in manufacturing, the lack of trained applicants can make hiring difficult. Sometimes, foreign companies plan to use certain technologies in their production lines in Vietnam, but have issues finding workers with the knowledge and expertise to properly utilize them. Other common obstacles include a lack of knowledge about standard safety procedures, and an inability to adapt to new technologies. As a result, foreign firms are forced to incur extra costs and either find a foreign applicant for the position (who are often unfamiliar with the culture and language), or find resources to train the local hire.

Employers looking for management-level hires have the most difficulties in finding employees with motivational skills, the capability to develop and dispatch resources, and the ability to delegate responsibilities among a team. Another common complaint is a lack of foreign language skills.

Due to these shortages, workers that do have the necessary technical and management skills find themselves in high demand. There is competition between firms to hire them, giving these workers the ability to negotiate for significantly higher wages. Foreign firms should be prepared to pay a wage premium for these applicants, or risk losing them.

Moreover, the labor turnover rate is quite high in Vietnam. According to the findings of a 2015 survey, the voluntary turnover rate in 2014 for multinational companies (MNCs) was 12.7 percent, while it was 17.2 percent for local companies. In the first half of 2015 alone, this number was 6.2 percent for MNCs and 8.4 percent for local companies.

In general, skilled workers tend to be the most difficult to recruit and retain. Sales managers, senior sales professionals, and marketing managers were the three most difficult positions to recruit for. Experienced sales professionals, sales managers, and senior marketing professionals were the three most difficult positions to retain.

### *Cost advantages*

While the skills gap indicate that employers in Vietnam will need to spend more time and money on training up and/or retaining their hires, labor in Vietnam still remains relatively inexpensive in comparison to its neighbors in the region. A number of foreign MNCs, across services and manufacturing, have moved operations from China to Vietnam in search of cost advantages, as well as for its increasingly favorable business climate. According to a recent survey, about 70 percent of employers who participated said that they would recommend Vietnam as a business location, while about 75 percent said that they would re-establish their businesses in the country.

In light of these realities, it is important that employers understand how contracts work in Vietnam, and employer obligations to workers if they leave. 🌸



Professional Services

*Dezan Shira & Associates can help companies understand, adapt, and maximize profitability within Vietnam's vibrant and constantly evolving labor market. To arrange a free consultation, please contact us at [vietnam@dezshira.com](mailto:vietnam@dezshira.com)*

EXPLORE MORE

# Permitted Contract Structures Under Vietnamese Labor Code

By Dezan Shira & Associates, Ho Chi Minh City  
 Editor: Maxfield Vandel Brown

All foreign enterprises seeking to staff operations in Vietnam will find the process regulated by the Vietnamese Labor Code of 2012 (Law No. 10/2012/QH13) and guided by several circulars which have clarified aspects of this legislation. Covering hiring, probationary periods, termination of contracts, and post-employment benefits, the nature of contracts should be studied closely to ascertain the most effective means of onboarding workers as well as ensuring the compliance requirements associated with these contracts.

As per Chapter 3, Article 15 of the Vietnamese Labor Code, the following contract structures are permitted and thus should form the basis for cost and compliance comparisons:

- Seasonal or work-specific contracts;
- Indefinite-term contracts;
- Definite-term contracts; and,
- Probationary contracts.

## Vietnamese Labor Contract Requirements by Contract Structure

Document	Contract Structure	
	Indefinite / Definite / Seasonal	Probationary
Name and address of the employer or the lawful representative of the employer	√	√
Full name, date of birth, gender, residence address, identity card number, or other lawful documents of the employee	√	√
Job and workplace	√	√
Term of the labor contract	√	√
Wage, form of wage payment, deadline for wage payment, wage-based allowances, and other additional payments	√	√
Regimes for promotion and wage raise	√	
Working time, rest time	√	√
Labor protection equipment for the employee	√	√
Social insurance and health insurance	√	
Training, retraining, and occupational skill improvement	√	

Source: Requirements as prescribed under Law No. 10/2012/QH13  
 Note: For additional clarification please refer to Circular No. 05/2015/NĐ-CP

## Requisite documentation

Labor contracts are required to outline the following information concerning various aspects of the planned employment. While indefinite, definite, and seasonal labor contracts are required to include all the information outlined above, probationary employment contracts are subject to a reduced list of requirements.

## Selecting optimal contract terms

Ranging from under a year to indefinite in length, labor contracts in Vietnam can give employers significant room to maneuver in terms of reduced demand, sudden receipt of large orders, or, as will be discussed further, instances where severance becomes an issue.

### *Under one year (seasonal contracting)*

Contracts under a year in length are reserved for seasonal or task specific employment. While the relatively short periods of time under these contracts can afford a significant degree of maneuverability, there are several limitations that should be noted. First, and foremost, probationary periods – outlined in greater detail below – are currently not permitted for contracts falling under the year mark.

In addition, seasonal contracting is currently restricted for any work that is normally completed under definite or indefinite employment contracts. Exceptions to this include workers filling in for employees contracted under longer labor contracts are indisposed due to pregnancy, military service, sickness, or other temporary leaves of absence.

In the event that the end of a seasonal contract is reached and the employee continues to work for more than 30 days without the introduction of a new labor contract, the worker will be automatically transitioned to a 12 month definite contract.

### *12 to 36 months (definite term contracting)*

Any employer in need of workers for more than a year but on temporary basis, or unsure of their long term needs, will likely find definite term contracts to be an attractive option. Ranging from one to three years, these contracts permit the use of probationary periods but come at the cost of

increased contract specificity. For most employers, particularly those hiring skilled workers, definite term contracts are the most effective contract structure that is available in Vietnam.

Similar to seasonal contracts, and in the event that a new contract is not signed within 30 days of the expiry of a definite term contract, the contract of an employee will be automatically upgraded to a definite term employment contract.

It should also be noted that employers may only renew a definite term contract for a particular employee once. Following this renewal, the employee must be hired via an indefinite labor contract as outlined below. The maximum length of time that employers are currently allowed to retain employees on definite term contract is six years.

### *Indefinite contract terms*

As the name suggests, indefinite term employment contracts are effective until the employee or employer decides to terminate the contract. As it becomes more difficult to terminate an underperforming employee on an indefinite term contract, it is generally advisable that employers engage employees on a definite term contract for the first six years and then transition their employees to an indefinite structure following the expiry of the second, and final, definite term contract.

## Utilizing probationary periods

Prior to the formal onboarding process, probationary periods provide both employers and potential employees the opportunity to assess their relationship. With reduced contract compliance and compensation requirements on the part of employers, and fewer restrictions surrounding termination of these contracts, the use of probationary periods can be an effective tool to safeguard operations and reduce costs in an environment characterized by an increasingly mobile skilled workforce.

Companies that will primarily benefit from probationary periods are those seeking to employ workers in high-skilled positions. Not only are the skills required for these jobs more subjective and difficult to assess within an interview, the nature of probationary periods permitted for skilled positions have been expanded relative to unskilled positions under current laws.



All employers should note probationary periods and compensation stipulations before utilizing these contracts, as detailed below.

### Drafting probation contracts

Under the prevailing labor code of 2012 and subsequent circulars, probationary contracts are subject to a reduced list of information and documentation requirements. The specifics of these requirements can be found above in the chart outlining contract requirements.

### Structuring of probation contracts

Probationary periods for a given position are proportional to the education required for the position and range from six to 60 days. These contracts are limited to a one time usage and must be converted to a standard contract of one year or more if both parties wish to continue the relationship beyond the period specified in the probation contract. Existing probationary contract lengths specified under Vietnamese employment law include:

- **60 days:** probationary periods of up to 60 sixty days are reserved for positions that require professional or technical skills that demand a collegiate education or higher.
- **30 days:** probationary periods of up to 30 days may be applied for jobs that require a professional skillset and/or technical qualifications, some of which may require some degree of education to obtain.
- **Six days:** for all other types of employment in Vietnam, including most manual labor and manufacturing, probation is limited to six days.

The distinction between the 30 and 60 day probationary periods is subject to clarification at the circular level and should be monitored closely when drafting contracts. As a matter of compliance, pursuant to Circular No. 05/2015/NĐ-CP, companies will be required to notify those undergoing 30 and 60 day probationary periods of their results three days prior to the conclusion of the probation contract.

### Compensation

Compensation for probationary employment is subject to the agreement set out by the parties involved and must be stipulated in the agreement negotiated by the employer and employee. While there is considerable latitude with regard to the amount of compensation that is to be provided for probationary employment, employers are obligated to provide compensation no lower than 85 percent of the going wage applied to the position for which the probation is in preparation. 🌸

### Hiring through recruiting services

Foreign employers can also use recruiting services to hire Vietnamese workers through reputable sources, but this is pursuant to several qualifications. First of all, only the following foreign offices may be eligible:

- Foreign diplomatic missions, consular offices, representative offices of international organizations of the United Nations system, intergovernmental organizations of regions and sub-regions;
- Representative offices of foreign news agencies and foreign broadcasting and television organizations;
- International, intergovernmental, and foreign governmental organizations;
- Permitted foreign non-governmental organizations; and,
- Foreign non-profit representative offices of organizations.

These foreign offices are then only allowed to use recruitment agencies approved by the following government bodies:

- Ministry of Foreign Affairs (has the ability to appoint or authorize an organization to recruit);
- Ministry of Labor, War Invalids and Social Affairs (can establish employment service center); and,
- Chairman of a provincial People's Committee (can establish employment service center).



#### Professional Services

*Dezan Shira & Associates is well versed in structuring contracts to meet the needs of foreign enterprises establishing in Vietnam. For assistance or clarification in these matters, please contact us at [vietnam@dezshira.com](mailto:vietnam@dezshira.com)*

EXPLORE MORE

# Contract Termination and Severance Obligations

By Dezan Shira & Associates, Ho Chi Minh City  
 Editor: Maxfield Vandel Brown

For employers in Vietnam, blossoming foreign investment and emerging opportunities throughout cities such as Ho Chi Minh City and Hanoi often provide existing staff with a variety of alternative work destinations. At the same time, the increasingly educated pools of labor within these cities and across Vietnam provide ever increasing levels of talent from which to staff operations. To mitigate the risks associated with labor retention and to maximize flexibility in hiring, it is of great importance for employers in Vietnam to understand the circumstances under which termination of contracts can be achieved as well as the financial obligation that may arise in these situations.

## Contract termination

Following the establishment of a labor contract between an employer and an employee, there are a number of events which can trigger, or be used to trigger, the contract's termination. The following are some of the most widely seen contract termination triggers currently outlined in Vietnam's labor code:

- The labor contract expires;
- The work stated in the contract has been completed;
- Both parties agree to terminate the labor contract;

### Grounds for the Unilateral Termination of Contracts in Vietnam

Employee	Employer
<ol style="list-style-type: none"> <li>1. Employee is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract*.</li> <li>2. Employee is not paid in full or on time as agreed in the labor contract.</li> <li>3. Employee is maltreated, sexually harassed, or is subject to forced labor.</li> <li>4. Employee is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus.</li> <li>5. A female employee who is pregnant and must take leave as prescribed by a competent health establishment.</li> <li>6. If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.</li> </ol>	<ol style="list-style-type: none"> <li>1. The employee often fails to perform his/her job stated in the labor contract.</li> <li>2. The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months, in case he/she works under an indefinite-term labor contract, or for 6 consecutive months, in case he/she works under a definite-term labor contract, or more than half the term of the labor contract, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.</li> <li>3. If, as a result of natural disaster, fire or another force majeure event as prescribed by law, the employer, though having applied every remedial measure, has to scale down production and cut jobs.</li> <li>4. The employee is absent from the workplace after the time limit specified in Article 33* of this Code.</li> </ol>

Source: Limitations as prescribed under Law No. 10/2012/QH13

\*Article 33 allows for a 15 day grace period for all employees returning to work following a temporary suspension of their contracts.

- The employee reaches the legal age of retirement;
- The employee is sentenced to prison;
- The employee dies;
- The employee is ruled to have lost the capacity to act in a civil capacity;
- Layoffs related to economic conditions or structural changes to the company including merger, acquisition, consolidation, or division;
- Unilateral termination on the part of the employee; or
- Unilateral termination on the part of the employer.

### Grounds for unilateral termination

Of all the categories of termination that are listed above, unilateral termination of contracts should be watched closely. Primarily to protect operations from turnover, but also to maximize staffing opportunities, it is important for employers to understand the circumstances under which unilateral termination of work contracts – both from an employer and employee perspective – may occur.

### Notice

Both employers and employees are required to give notice to their counterparty if they wish to terminate a labor contract pursuant to one or more reasons listed above. The length of the notice period differs slightly between employers and employees and is dependent on the type of contract that both parties are signatories.

## Post-employment financial obligations

In the event that a labor contract is terminated, employers may be liable for severance payment to the employee in question. The nature of severance payment is dependent on the salary of a given

employee, the amount of time that the employee in question has been working in their current position, and the amount of time the employee has been covered under social insurance.

### Termination compliance for employers

When terminating employees, employers will be required to notify the employee in question in accordance with the schedule that is outlined above. As indicated, at least 15 days' notice must also be given to workers whose services will no longer be engaged following the expiry of a definite term labor contract.

Following the last day of an employee's work at the company in question, the employer will have seven days to make any and all payments pursuant to severance or job loss benefits outlined below.

### Severance

#### Triggering severance

Eligibility for severance payments is open to all employees who have been working for a company for 12 months or longer. Severance payments will be required in instances where an employer or employee can prove that one or more general termination triggers or unilateral termination provisions have occurred during employment.


#### Severance payments

Under the Vietnamese Labor Code, severance compensation shall amount to half a month's wages for every year that the employee has been working. For example, an employee that had been with a company for three years would be eligible for one and a half months' pay.

### Calculating wages

The level of pay that is to be paid to the employee will be calculated by looking at the payments during the preceding six months that are outlined in the labor contract.

### Social insurance deductions

It should be noted that employers may be eligible to deduct social insurance payments from the total severance payout. To ascertain the conditions and specifics surrounding these deductions, it is recommended that officials and seasoned investment professionals be consulted for information on the latest official guidance on the matter. 

### Statutory Periods of Termination Notice under Vietnamese Labor Law

Contract Structure	Employer	Employee
Seasonal	3 working days	3 working days
Definite term	30 days*	30 days
Indefinite term	45 days	45 days

\*Note: the employer must provide the exact date and time from which a contract will no longer be valid 15 days in advance of a definite term contract which will be allowed to expire.



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