



越南劳工和就业法律更新-
可能会影响到企业的关键拟议法律草案

**Vietnam Labor Law Updates, With Special Focus On Proposed Draft
Laws That May Impact Your Business**

**Baker
McKenzie.**



PRIVATE AND CONFIDENTIAL

关键变化 Key Changes

议程agenda



1. 劳动力成本的增加
Increase of Labor Costs

2. 入境相关程序的变化
Changes in Immigration
related procedures

3. 员工股票期权制
ESOP (Employee Stock
Option)

4. 提出修改有关劳动法方案
Proposed Labor Code
Revision



问与答
Q&A

A close-up photograph of a person's hands. The left hand is resting on a laptop keyboard, with fingers slightly spread. The right hand is holding a dark-colored credit card, showing the top edge with a white stripe. The background is blurred, showing a desk and some papers. The lighting is warm and soft, coming from the upper left.

1

劳动力成本的增加 Increase of Labor Costs

为在越南工作的外籍雇员制定强制社会保险条例草案

Draft Decree on Compulsory Social Insurance Applicable to Foreign Employees Working in Vietnam

- **从2018年1月1日开始:** 在越南工作的外国雇员必须接受强制性社会保险。
From 1 January 2018: Foreign employees working in Vietnam are subject to compulsory social insurance.
- **适用主体: 外籍雇员-**
Subject of application: Foreign employees who:
 - 根据劳动合同(固定期限, 季节性或特定工作)在越南工作超过1个月;
are working in Vietnam under labor contracts, either of definite-term or seasonal or specific job ones with durations of more than one (1) full month; and
 - 已被授予(i) 工作许可证, (ii) 执业证书 或 (iii) 执业许可证
have been granted with either (i) a work permit, (ii) practicing certificate, or (iii) practicing license.

提高一般最低工资标准

Increase of General Minimum Wage ("GMW")

根据政府最近颁布的法令，从2017年7月1日起，一般最低工资标准从目前的121万越盾 (53美元) 提高到130万越盾 (57美元)，官方增长7%。

- GMW officially increased by 7% from 1 July 2017.
VND1.21 million (USD53) → VND1.3 million (USD57)

在2018年提高地区最低工资标准 Regional Minimum Wage to Increase in 2018

地区 Region	2017地区最低工资标准 RMW in 2017		2018地区最低工资标准 RMW in 2018		增长百分率 Percentage increased
	越盾 (百万) VND(million)	美元 USD	越盾 (百万) VND(million)	美元 USD	
地区 I Region I	3,75	165	3,98	175	6.1%
地区 II Region II	3,32	146	3,53	155	6.3%
地区 III Region III	2,9	127	3,09	136	6.5%
地区 IV Region IV	2,58	113	2,76	121	7%



2

入境相关程序的变化 Changes in Immigration Related Procedures

工作许可证

Work Permit

2.1. 关于在越南工作的外国雇员的详细指导 Detailed guidelines on foreign employees working in Vietnam

- Circular No. 40: 从2006年12月12日起生效 takes effect as of 12 December 2016.

a. 请注意: 工作许可证赞助方 Note for the sponsoring party of a work permit

- 外国雇员进入越南: Where a foreign employee enters Vietnam to:

- (i) 履行合同 perform a contract, or
- (ii) 根据合同提供服务 provide services under a contract

→ 赞助方是该履行合同的外国雇员在越南的合作伙伴。

The sponsoring party is the **partner in Vietnam for whom such foreign employee executes the contract.**

- 外国雇员进入越南:

Where a foreign employee enters to Vietnam to:

- (i) 提供服务 offer services, or
- (ii) 建立商业据点 establish a commercial presence

→ 个别赞助方。

The sponsoring party is **herself/himself.**

工作许可证

Work Permit (cont.)

b. 工作许可证管理能力的分割

Split of competency in work permit administration

- 旧有法律: **Department of Labour, Invalids and Social Affairs (Vietnam) (“DOLISA”)**有能力签发、重新发放和吊销外籍员工的工作许可证。
- **Old legislation:** DOLISA has the competence to issue, re-issue and revoke work permits for foreign employees.

工作许可证

Work Permit (cont.)

- **Circular No. 40: The Ministry of Labour, Invalids and Social Affairs ('MOLISA')** 有能力为下列员工签发工作许可证:
Circular No. 40: MOLISA has the competence to issue work permits for foreign employees who work for the following employers:
 - (i) 中央机关(即政治组织的中央机构，社会政治组织);
Central state agencies (i.e. central agencies of political organizations, social-political organizations);
 - (ii) 在越非政府国际组织;
Foreign non-governmental organizations, international organizations in Vietnam;
 - (iii) 由政府部门、部级机构和机构管理的公共非经营性单位;
Public non-business units under the management of ministries, ministry-level agencies.
 - (iv) 在越国际组织或外国项目的办事处;
Offices of international organizations or foreign projects in Vietnam;
 - (v) 依法成立的商业协会
Business associations established in accordance with the law.

工作许可证

Work Permit (cont.)

2.2. 申请表件的变化

Procedural changes in determining work permit exempted intra-company transferees:

1. 证明外国雇员在法律上是专业或技术人员的相关文件
Documents proving that the foreign employee is a specialist or a technical worker by law.
2. 必须更明确地指出个人职位、头衔和工作时间。
Must indicate more specifically on the person's position, title and working time.
3. 认可证明外国企业在越南的商业业务涉及11个符合条件的服务行业文件如下：
Evidence proving that the commercial presence in Vietnam of the foreign enterprise engages in the 11 eligible service sectors can be found in the following documents:
 - 企业注册证明或同等法律效力文件 Enterprise Registration Certificate or papers of equivalent legal validity;
 - 设立代表处许可证 License for Establishment of a Representative Office; or
 - 设立分支机构许可证 License for Establishment of a Branch.

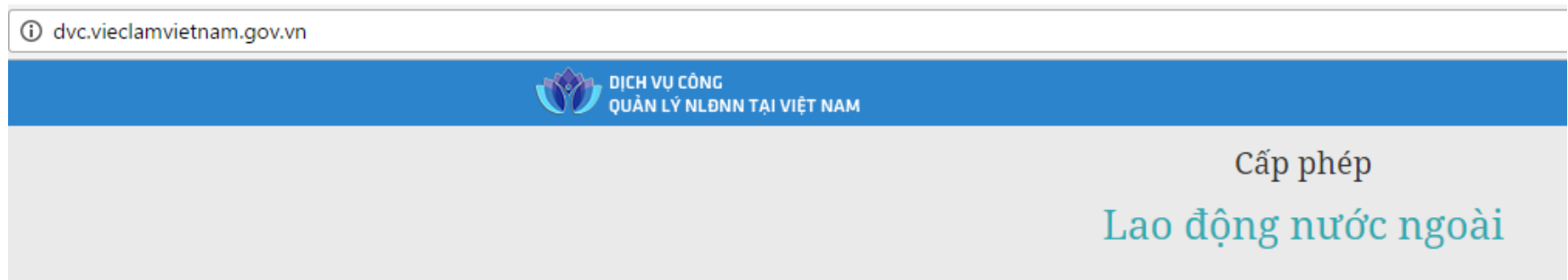
工作许可证

Work Permit (cont.)

2.3. 工作许可证的在线程序

Online Procedures of Work Permit Application

- 由雇主在网站上注册帐户进行:<http://dvc.vieclamvietnam.gov.vn>
be carried out with an account registered by the employer at the website:



- 所有的书面文件必须转换成电子形式。如果书面文件在法律上无效，相应的电子表格在法律上也是无效的。
All written documents must be converted into electronic form. If the written documents are legally invalid, the respective electronic forms are legally invalid.
- 与现有的程序相比，工作许可申请的在线程序花费更少时间。
The online procedures of work permit application take less time in comparison with the existing paper-based procedures.

电子签证

E-visa


详细说明外国护照持有人在线申请越南签证

Detailed Processes and Procedures for Pilot Issuance of Electronic Visa to Foreigners Entering Vietnam

- 07/2017/NĐ-CP号有效期为2017年2月1日至2019年2月1日。
Decree 07/2017/ND-CP is valid from 1 February 2017 to 1 February 2019.
- 可在越南28个口岸入境与出境。
Accepted at 28 border gates of Vietnam.
- 在这条法令中列出的40个国家的外国护照持有人可以申请。
Visitors from the 40 countries listed in this Decree can apply.
- 在线申请越南签证。
Online application.
- 由越南公安部出入境管理局在提交申请后的3天内办理完毕。
Processed by the immigration authority within 3 working days.
- 经批准后，使用网站提供的识别号码打印电子签证。
Print e-visa using an ID provided by the website after approval

电子签证 E-visa (cont.)


<https://visa.mofa.gov.vn/Homepage.aspx>



Ministry of Foreign Affairs of Vietnam
VIETNAM VISA APPLICATION

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Mù Cang Chải
Le Phuong photo

INFORMATION

VIET NAM INFORMATION

- » Landscape
- » Culture and traditions
- » Weather

VIET NAM VISA INFORMATION

- » Legal documents
- » General provisions
- » Visa categories and descriptions
- » Visa application dossier
- » Processing time
- » Loose-leaf visa eligibility



3

员工股票期权 ESOP (EMPLOYEE STOCK OPTION)

员工股票期权 ESOP (Employee Stock Option)

允许实施股票奖励计划的关键条件 (Circular No. 10/2016/TT-NHNN)

Key conditions to allow the implementation of Share Award Plans (“SAP”)

只能通过越南雇佣实体来完成。

Can only be done via Vietnamese employing entities.

外资企业

Rights of Foreign Companies

- Grant share awards and/or awards with rights to buy shares with preferential conditions to employees.



员工股票期权 ESOP (Employee Stock Option) (cont.)

- 越南员工有以下权利
Rights of Vietnamese Employees:
 - (i) 在国外接受、持有和出售股份;
receive, own and sell shares abroad;
 - (ii) 接受、行使和出售购买股票的权利;
receive, exercise and sell the rights to buy shares; and
 - (iii) 获得股息和其他合法收入
receive dividends and other lawful income

*股份奖励计划需要在越南国家银行注册。

*SPA -Registered with the State Bank of Vietnam.



4

提出修改有关劳动法方案 Proposed Labor Code Revision

概要

Overview

第2号草案包含了关于各种重要问题的修正:

Key amendments under Draft No. 2:

1. 劳动合同 Labor contracts
2. 员工终止合同 Contract termination by employees
3. 雇主终止合同 Contract termination by employers
4. 员工代表 Employee Representative
5. 工作场所双边合作委员会 Bilateral Board for Co-operation at Workplaces
6. 加班时间 Overtime Hours
7. 个别劳资纠纷 Individual Labor Dispute Resolution
8. 退休年龄 Retirement age
9. 反歧视，多元化和性骚扰 Anti-discrimination, diversity and sexual harassment

1. 劳动合同

Labor Contracts

- 固定期限和季节性合同自动更新的新规定
New regulations on automatic renewal of definite-term and seasonal contracts.

劳动法2012 Labor Code of 2012	提出的修订建议 Proposed Amendments
如果员工于合同期满后，在没有签订新合同继续工作： Once the contract expires, if an employee continues working without entering into a new contract	
<ul style="list-style-type: none">• 特定期限合同→无限期合同 Definite-term contract → Indefinite-term contract• 季节性或个别合同→24个月特定期限合同 Seasonal or work-specific contract →24 month definite-term contract	合同将自动更新为无限期。 The contract will automatically be renewed with an indefinite term (Art. 20.2.b)

2.员工终止合同

Contract Termination by Employees

- 雇员可以单方面终止劳动合同
Employees can unilaterally terminate labor contracts when

劳动法2012 Labor Code of 2012	提出的修订建议 Proposed Amendments (2 options)
I. 事先通知, 和 II. 在某些情况下, 有被法律认可的辞职理由 (i) serve a prior notice, <u>and</u> (ii) have a legally recognized reason for the resignation in some circumstances	选项1:保持当前法律; 或 选项2: 事先通知(至少在5、30或45天之前) Option 1: keep as current; OR Option 2: they serve a prior notice (at least before 5, 30 or 45 days) 在某些情况下, 员工不需要事先通知: <ul style="list-style-type: none">未被适当分配到工作岗位或工作地点;未全额或立即支付;被性骚扰或被迫工作; 或医疗中心规定的辞职——适用于怀孕员工 (No prior notice is required in certain cases where employees <ul style="list-style-type: none">are not properly assigned to the job or the working location;not being fully or promptly paid;are sexually harrassed or forced to work; orhave to resign as prescribed by medical centers – applicable to pregnant employees)

3. 雇主终止合同 Contract Termination by Employers

- 雇主可以单方面终止雇员:

劳动法2012 Labor Code of 2012	提出的修订建议 Proposed Amendments
<p>... 员工employees</p> <p>(i) 达到退休年龄, 及 reach retirement age, <u>and</u></p> <p>(ii) 支付至少有20年的社会保险 have contributed to social insurance for at least 20 years</p> <p>(Art. 36.4)</p>	<p>... 员工达到退休年龄 employees reach retirement age</p> <p>(Art. 36.1.dd)</p>
<p>不适用 N/A</p>	<p>... 因员工提供虚假信息而影响招聘结果 employees provide falsified information which affects recruitment results (Art. 38.1.e)</p>
<p>解雇依据 a ground for dismissal</p> <p>(Art. 126.3)</p>	<p>...员工在未经允许的情况下, 非连续性在1个月内 共5天或一年中20天没有任何合理原因缺勤 employees has been absent from work without permission for a total of 5 working days within 1 month or 20 days within 1 year without valid reasons. (Art. 36.1.g)</p>

4.员工代表:工会

Employee Representatives

- 员工代表的定义改变
Change on definition of Employee Representatives (Art. 149.2)
- 除了Trade Union外, Labor union (“*nghiệp đoàn*”) 允许经国家有关机关依法登记后代表雇员。
Labor unions (“*nghiệp đoàn*”) permitted to represent employees in addition to trade unions after being legally registered with relevant State authorities (Art. 150.2)

劳动法2012 Labor Code of 2012	提出的修订建议 Proposed Amendments
员工代表 Employee Representatives <ul style="list-style-type: none">- Corporate trade unions; OR- Immediate upper level trade unions (在越南劳工联合会的领导下活动 operating under the Vietnam General Confederation of Labor)	员工代表 Employee Representatives <ul style="list-style-type: none">- Corporate trade unions; OR- Labor unions (不在越南劳工联合会的领导下活动 NOT under the Vietnam General Confederation of Labor)

5. 工作场所双边合作委员会

Bilatural Board for Co-operation at Workplaces

- “雇主-员工合作委员会”:

Introduction of the new “Bilatural Board for Employer – Employees Co-operation at Workplaces

- 拥有超过50名员工:强制性。

Compulsory for organizations having more than 50 employees

- 拥有少于50名员工:鼓励性。

Encouraging for organizations having less than 50 employees (Art. 164.1)

- 由雇主和雇员的代表组成。

Consisting of both employer's and employees' representatives (Art. 164.2)

- 雇主需要就劳务问题与董事会讨论,如: 劳动力使用计划、工资、劳动条件、奖金政策、内部劳动法规等。

Employers are required to discuss with the Board regarding employment issues, e.g. labor use plan, salary, labor terms, bonus policy, internal labor rules, etc.

6. 加班时间 Overtime Hours

■ 增加加班时间Increase of overtime hours

劳动法2012 Labor Code 2012	修订建议Proposed Amendments
<p>加班时间不得超过 Overtime hours shall not exceed</p> <ul style="list-style-type: none">• 每天正常工作时间的50%• 每月30小时• <u>每年200小时</u> <ul style="list-style-type: none">• 50% of normal working hours per day;• 30 hours per month, and• <u>200 hours</u> per year <p>除某些特殊情况，加班时间不得超过每年300小时外。 except some special cases in which overtime hours must not exceed 300 hours per year (Art. 106.2.a)</p>	<p>总工时(包括标准时间和加班时间) 每天不得超过12小时，每年400小时。</p> <p>Total working hours (including standard and overtime hours) shall not exceed 12 hours per day and <u>400 hours</u> per year.</p> <p>(Art. 82.2.b)</p>

7.个别劳资纠纷 Individual Labor Dispute Resolution

■ 仲裁法庭介入解决个别劳资纠纷

Involvement of arbitral tribunals in resolving individual labor disputes

劳动法2012 Labor Code of 2012

修订建议Proposed Amendments

合格的争议解决论坛包括:

Competent dispute resolution forums include:

- 劳动调解员
(在大多数情况下，除特殊情况外，
强制作为第一种解决方案)
Labor Reconcilers
(*compulsory as the first solution
in majority of the cases, except
for special cases*)
- 劳动法院
Labor Courts
(Art. 201.4)

- 劳动调解员
(在大多数情况下，除特殊情况外，
强制作为第一种解决方案)
Labor Reconcilers
- (compulsory as the first solution in
majority of the cases, except for
special cases)
- 劳动仲裁法庭或劳动法庭
Choice of Labor Arbitral Tribunals,
or Labor Courts
(Art. 199.7)

8. 其他的修正案

Other Amendments

- 关于反歧视、多样性和性骚扰的更多细节
More details on anti-discrimination

现行法律: 保护员工免受歧视

Current law: protects employees against discrimination

修订建议:

Draft:

1) 采用国际劳工组织公约第111条有关歧视的定义;

Adopt the definition of “discrimination” under ILO Convention No. 111 on Discrimination (Art. 3.7)

2) 增加歧视基础，包括国家起源、怀孕、婚姻责任和参与雇员的代表组织。

Add additional discrimination bases, including national origin, pregnancy, marital responsibility and participation in the representative organizations of employees (Art. 8.1)

8. 其他的修正案

Other Amendments (cont.)

- 确定地区最低工资标准的标准

Introduction of criteria to determine Regional Minimum Wage (Art. 63)

- 退休年龄: 62岁(男性)和60岁(女性)

Increase of retirement age to 62 (for male) and 60 (for female) (Art. 148)



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