

## Phillips Fox Review of Labour Code (As Amended)

Following is a detailed review of the main amendments to the Labour Code pursuant to Law 35-2002-QH10 on Amendment of and Addition to a Number of Articles of the Labour Code passed by Legislature X of the National Assembly at its 11<sup>th</sup> Session on 2 April 2002, effective as of 1 January 2003.

	<b>Current</b> <b>(Effective until 31 December 2002)</b>	<b>As Amended</b> <b>(Effective as of 1 January 2003)</b>
<b>Article 18</b>	<p>Article 18.1 stipulates the duties of employment service agencies;</p> <p>Requires permit to be issued by competent body prior to Vietnamese employees being sent overseas.</p>	<p>Article 18.1 now includes provision for the Government to issue regulations on the conditions and procedures for establishment and operation of employment service agencies;</p> <p>Reference to permits for Vietnamese employees sent overseas is deleted (now dealt with in amended article 135, see below).</p>
<b>Article 27</b>	<p>Article 27.1 stipulates forms of labour contract.</p>	<p>Article 27.1 now includes definitions of forms of labour contract;</p> <p>New article 27.2 provides for re-signing of definite term labour contracts, specific purpose contracts and seasonal contracts within 30 days of expiry, failing which such contracts convert into indefinite term labour contracts;</p> <p>New article 27.2 restricts re-signing of definite term contracts to one additional term, after which indefinite term contract must be signed;</p> <p>(Current article 27.2 has become new article 27.3).</p>
<b>Article 31</b>	<p>Provides that, in cases of merger, division or assignment of a business, the new entity remains responsible as the employer to continue all labour contracts until there is an agreement to amend or terminate existing contracts or sign new contracts.</p>	<p>No longer any requirement for agreement to amend or terminate existing contracts;</p> <p>Now, provided that there is a "plan for labour usage in accordance with law", the new entity is not responsible to continue to employ all employees of the former employer;</p> <p>However, any employee whose labour contract is terminated due to merger, division or assignment is now expressly entitled to a retrenchment allowance under article 17 of the Labour Code.</p>

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<b>Article 33</b>	<p>Stipulates that a labour contract becomes binding when it is signed or when both parties reach an agreement;</p> <p>Provides for a party to a labour contract to notify the other party of the need for any change to the content of the contract at least 3 days in advance;</p> <p>Does not provide any mechanism for resolution of refusal of one party to agree to the change proposed by the other party.</p>	<p>New article 33.1 stipulates that a labour contract becomes effective from the date of signing, or a date agreed by the two parties, or the date on which the employee commences work (but, <i>note</i>, does not clarify which date will prevail in the event of a dispute);</p> <p>New article 33.2 now provides that, where a party refuses to agree to amendment of a signed labour contract as proposed by the other party, the labour contract as signed will continue to be performed, unless the parties mutually agree to terminate the contract.</p>
<b>Article 37</b>	<p>Article 37.1 provides grounds for unilateral termination by an employee of definite term labour contracts from 1-3 years and specific purpose or seasonal labour contracts up to 1 year;</p> <p>Article 37.3 provides for unilateral termination of indefinite term contracts upon 45 days notice.</p>	<p>New Article 37.1(g) provides for unilateral termination in the case where an employee "suffers illness or injury and remains unable to work having received treatment for a period of 3 consecutive months in case of definite term contracts, or for a quarter of the duration of a specific purpose or seasonal labour contract;</p> <p>Article 37.3 now also provides for unilateral termination of indefinite term contracts upon 3 days notice in cases where the employee "suffers illness or injury and has received treatment for a period of 6 consecutive months".</p>
<b>Article 41</b>	<p>Article 41.1 requires an employer which unlawfully terminates a labour contract to allow the employee to return to work and to compensate him/her for the days during which he/she was not permitted to work;</p> <p>Article 41.2 stipulates that an employee who unlawfully terminates a labour contract is not entitled to any severance allowance.</p>	<p>Article 41.1 now provides:</p> <ul style="list-style-type: none"> <li>- In addition to allowing the employee to return to work and compensating him/her for any missed wages and wage allowances, the employer is required to pay the employee at least 2 months' wages and any wage allowances;</li> <li>- If the employee does not wish to return to work for the employer, the employer must still pay compensation for missed wages and wage allowances, plus a severance allowance of ½ month's wages and wage allowances for each year of employment;</li> </ul>

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		<p>- Where the employer does not wish to re-employ the employee and the employee so agrees, in addition to compensation for missed wages and wage allowances plus a severance allowance of ½ month's wages and wage allowances for each year of employment, an additional amount of compensation for the employee will be subject to agreement by the parties;</p> <p>Article 41.2 still disentitles any employee who unlawfully terminates a labour contract from a severance allowance but now obliges the employee to pay the employer compensation equal to ½ month's wages and any wage allowance.</p>
<b>Article 45</b>	Article 45.1 provides for the representatives of parties in the negotiation of a collective agreement to be agreed by such parties and be in equal numbers.	Article 45.1 no longer requires that the representatives of the parties be in equal numbers.
<b>Article 47</b>	Article 47.2 provides for a collective labour agreement to become effective as of the date of signing.	Article 47.2 now provides for a collective labour agreement to become effective as of the date of signing or the date agreed by the parties and stated in the agreement.
<b>Article 48</b>	Deals with invalidity of collective labour agreements, including provision that a collective labour agreement is wholly invalid if not registered with the provincial labour office (article 48.2) and provision for the provincial labour office to require amendment of a collective labour agreement (article 48.3).	<p>Article 48.2 no longer includes lack of registration of a collective labour agreement with the provincial labour office as a ground for the agreement being wholly invalid;</p> <p>Article 48.3 now includes a time-limit of 10 days for the parties to amend a collective labour agreement as instructed by the provincial labour office;</p> <p>Article 48.3 also now provides that "The rights, obligations and interests of the parties recorded in an agreement which is declared invalid shall be dealt with in accordance with law."</p>

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<b>Article 52</b>	Article 52.1 provides for the Government to determine the performance of the collective labour agreement in cases where an enterprise merges.	Article 52.1 now provides that, in cases of merger (as in cases where an enterprise consolidates, divides, separates, or transfers the ownership, management right, or right to use the assets of the enterprise), the employer and the executive committee of the trade union of the enterprise must, based on the labour usage plan, consider the continuance of performance of, amendment of or addition to the existing collective agreement, or must enter into a new collective agreement.
<b>Article 57</b>	Provides for the Government to promulgate a wage scale and wage table for calculation of social insurance contributions, health insurance, overtime rates, nightshift rates, retrenchment allowances, annual leave payments, etc.	<p>Now provides for the Government to promulgate the wage scale and wage table for State owned enterprises only;</p> <p>Now the Government will stipulate the "principles" only for formulation by other employers of their wage scales and wage tables;</p> <p>However, now, the employer must consult with the executive committee of the trade union of the enterprise when formulating the wage scale and wage table; and the wage scale and wage table must be registered with the provincial labour office, as well as publicized within the enterprise.</p>
<b>Article 61</b>	Stipulates overtime rates payable on normal days (at least 150%) and days off or holidays (at least 200%).	Increases overtime rates as follows: On weekly days off, overtime rate payable is 200%, on holidays and paid leave days, overtime rate payable is at least 300%.
<b>Article 64</b>	Provides for compulsory allocation of portion of annual profits into fund for bonuses to employees who have worked at businesses for one year or more.	Now provides for employers to decide on "the regulations on bonuses" after consulting with the executive committee of the trade union of the enterprise.

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<b>Article 69</b>	Limits the maximum no. of additional hours which may be worked by an employee to 4 hours a day or 200 hours annually.	Provides for an exception in special cases where the maximum no. of additional hours worked may be up to 300 hours annually, subject to stipulation by the Government after consulting the Vietnam General Confederation of Labour and representatives of employers.
<b>Article 84</b>	Article 84.1 lists the disciplinary action available to an employer in the event an employee breaching the labour rules as follows: (a) the employee shall be held accountable for the breach; (b) the employee shall be transferred to another position with a lower wage for a maximum period of 6 months; (c) the employee shall be dismissed.	Article 84.1 now clarifies and adds to the employer's options. Disciplinary action now includes: (a) reprimand; (b) deferral of wage increase for up to 6 months, or removal from office; (c) dismissal.
<b>Article 85</b>	<p>Article 85.1 stipulates the grounds for dismissal:</p> <p>(a) Where an employee commits an act of theft, bribery, disclosure of business or technology secrets, or other conduct which is detrimental to the assets or well being of the enterprise;</p> <p>(b) Where an employee who is disciplined and assigned to another job commits other offences during the period when he is on trial;</p> <p>(c) Where an employee takes 7 days off in one month or 20 days off in one year without proper reasons.</p>	<p>Article 85.1(b) is now expanded to include cases where an employee who is disciplined by way of deferral of wage increase or assignment to another job re-commits an offence during the period when he/she is on trial;</p> <p>In Article 85.1(c), the aggregate no. of days off without leave in a month has been reduced from 7 to 5.</p>
<b>Article 96</b>	Article 96.2 requires issuance of a permit for use of machinery and other items with high occupational safety requirements.	Article 96.2 no longer requires issuance of a permit for use, only registration and verification of such machinery and other items in accordance with Government regulations.
<b>Article 107</b>	Article 107.3 provides for compensation for loss of working capacity (81% or more) as a result of work-related accidents and diseases.	Article 107.3 now provides for issuance by the Government of regulations on compensation for loss of working capacity between 5-81%.

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<b>Article 111</b>	Article 111.3 prohibits an employer from unilaterally terminating the labour contract of a female employee for reason of marriage, pregnancy, taking maternity leave, or raising a child under 12 months old.	Article 111.3 now also stipulates that, during pregnancy, maternity leave, or raising a child under 12 months old, a female employee is entitled to postponement of unilateral termination of her labour contract or to extension of the period of consideration for labour discipline, except where the enterprise ceases operation.
<b>Section V of Chapter XI</b>	Currently titled "Labour for foreign organizations or individuals operating in Vietnam, foreigners working in Vietnam, and Vietnamese citizens working overseas"	Re-titled "Labour for foreign organizations and individuals in Vietnam; foreign employees working in Vietnam"
<b>Article 132</b>	Article 132.1 requires foreign invested enterprises, enterprises in export processing zones, foreign or international bodies and organizations operating in Vietnam and foreigners individuals in Vietnam to recruit Vietnamese employees through employment service agencies.	Article 132.1 now entitles foreign invested enterprises to recruit directly Vietnamese employees, or to do so through an employment service agency, subject to notification of the list of recruited employees to the local labour office;  New Article 132.2 provides that recruitment of Vietnamese and foreign employees by international or foreign bodies and organizations and foreign individuals in Vietnam must be "in accordance with regulations of the Government".
<b>Article 133</b>	Article 133.1 requires work permits for foreigners working "regularly" for Vietnamese organizations and individuals and foreign invested enterprises in Vietnam.	Article 133.1 now specifies that work permits are required by foreigners working for a full 3 months or more;  Specifies that the maximum duration of a work permit is 3 years, but it may be extended at the request of the employer.
<b>Section Va of Chapter XI</b>	-	New Section VA inserted; entitled "Vietnamese working abroad"; includes amended articles 134 and 135 and new articles 134a, 135a, 135b and 135c.

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<b>Article 134</b>	Deals with compliance with the law by Vietnamese citizens permitted to work overseas for foreign employers and by those permitted to work overseas for Vietnamese employers.	Now more general statement of necessary compliance with the law of Vietnam, the law of the foreign country and international treaties to which Vietnam is a signatory or participant;  Now includes express stipulation that only Vietnamese citizens who are 18 years of age or older, who have the ability to work, who wish to work and satisfy all other standards and conditions in accordance with Vietnamese laws and the laws and requirements of the foreign party may work in a foreign county.
<b>Article 134a</b>	-	New Article 134a lists the forms of sending Vietnamese employees to work abroad.
<b>Article 135</b>	Article 135 stipulates rights and obligations of Vietnamese employees assigned to work overseas.	Article 135.1 now stipulates the requirement for permit for sending Vietnamese to work abroad, to be obtained by the enterprise operating in labour export from the competent labour office (formerly stipulated in article 18.1 of the Labour Code); Articles 135.2 and 135.3 now stipulate the rights and obligations of enterprises operating in labour export and enterprises sending Vietnamese employees to work abroad for implementation of tender contracts, contracts for specific works or investment projects abroad; Article 135.4 provides for the Government to issue detailed guidelines on Vietnamese working abroad on a contractual basis.
<b>Article 135a</b>	-	New Article 135a stipulates in more detail the rights and obligations of a Vietnamese working abroad (formerly stipulated in article 135).
<b>Article 135b</b>	-	New Article 135b provides for the Government to issue detailed guidelines on training of labourers for export; organization and management of labourers abroad and on establishment, management and use of a labour export assistance fund.

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<b>Article 135c</b>	-	New Article 135c strictly prohibits the illegal recruitment and sending abroad of labourers to work; imposes liability for compensation for damage to labourers; prohibits labourers abusing labour export system and imposes liability for compensation for damage from abuse of system.
<b>Article 140</b>	Article 140.1 outlines State policy on social insurance.	Article 140.1 now also provides for the Government to issue detailed guidelines on re-training of unemployed labourers, rates of unemployment insurance premium, conditions for and amounts of unemployment allowances, and establishment, management and use of unemployment insurance fund.
<b>Article 141</b>	Article 141 imposes social insurance obligations only on businesses employing 10 employees or more.	Article 141.1 now imposes social insurance obligations on any business employing workers under definite term labour contracts for 3 months or more or under indefinite term labour contracts, irrespective of the no. of employees;  Article 142.2 now requires that compulsory social insurance obligations apply upon extension/re-signing of a definite term labour contract for less than 3 months or of a seasonal labour contract (upon expiry of its initial term).
<b>Article 144</b>	Article 144.1 stipulates that, during maternity leave, a female employee who has paid social insurance contributions is entitled to social insurance allowance equal to 100% of her wages, plus an additional allowance of 1 month's wage if it is her first or second child.	Article 144.1 now stipulates that the additional allowance of 1 month's wage is payable on each occasion of maternity leave (not just for first or second child).
<b>Article 145</b>	Article 145 deals with pension benefits.	New Article 145.1a has been inserted, stipulating that female employees who are 55 years of age and who have paid social insurance contributions for a full 25 years, and male employees who are 60 years of age and who have paid social insurance contributions for a full 30 years, are entitled to the same maximum rate of monthly pension as



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		stipulated by the Government.
<b>Article 149</b>	Lists the sources of funding for the social insurance fund.	Expands the list to include expressly "profits generated from the fund".
<b>Article 151</b>	Deals with resolution of disputes relating to social insurance issues.	New article 151.2(b) provides that any dispute between a retired employee and an employer/social insurance fund, or between an employer and a social insurance fund, which cannot be settled between the two parties, will be subject to resolution by a people's court.
<b>Article 153</b>	Deals with establishment of trade unions at enterprises.	Amends responsibility to establish trade unions;  Strictly prohibits any act which obstructs the establishment and activities of trade unions.
<b>Article 163</b>	Provides for establishment of a labour conciliatory council in any enterprise employing 10 or more people.	Now provides for establishment of a labour conciliatory council only in any enterprise having a trade union (no longer limited to enterprises employing 10 or more people).
<b>Article 164</b>	Article 164.3 details the procedure for issuance of a non-settlement statement in cases where the conciliation of an individual labour dispute before the conciliatory council fails.	Article 164.3 has been expanded to incorporate situations where a party does not attend conciliation.
<b>Article 166</b>	Deals with dispute resolution at the people's court and liability for payment of court fees.	Expanded list of labour disputes which may be resolved at first instance by the people's court are stipulated in Article 166.2;  Expanded grounds for exemption of an employee from payment of court fees are stipulated in article 166.3;  New Article 166.4 deals with declaration of invalidity of labour contracts and collective labour agreements.
<b>Article 167</b>	Stipulates the time-limits for requesting resolution of labour disputes.	Amends time-limits, including time-limit on request for resolution of disputes between domestic servants and the employer is now 12 months, and disputes relating to payment of compensation between an employee and

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		a labour export enterprise is now 3 years.
<b>Article 181</b>	Deals with State administration of labour.	New Article 181.4 entitles representatives of employers as well as employers to put forward their views to State bodies in respect of policies, laws and other issues relating to labour relations as stipulated by the Government.
<b>Article 182</b>	Deals with reporting obligations of employers; requires enterprises employing more than 10 employees to keep labour books, wage books and social insurance books.	Reference to wage books is deleted.
<b>Article 183</b>	Provides for each employee to be issued with a labour book, a wage book, and a social insurance book.	Reference to wage book is deleted.
<b>Article 184</b>	Deals with issuance of permits to Vietnamese sent to work overseas and to foreigners working in Vietnam	Provision on permits for Vietnamese sent to work overseas is deleted (now article 135, see above);  Now deals with State administration of labour export;  Now provides for permits for foreigners working in Vietnam to be issued by the provincial labour office.
<b>Articles 185, 186 and 191</b>	Deal with State inspection of labour	Article 185 no longer provides for the Ministry of Health and local Health Departments to be responsible for State inspection of occupational hygiene;  Article 186 simplifies the duties of State labour inspectors, in particular with respect to occupational safety and hygiene;  Article 191.2 no longer provides for the participation of the Ministry of Health in establishment of the State labour inspection system.