

**SUMMARY OF DIALOGUE BETWEEN  
THE MINISTRY OF LABOR-INVALIDS-SOCIAL AFFAIRS  
AND OTHER RELEVANT AGENCIES AND VBF**

*14:00 – 17:00, Aug. 24, 2016*

*MPI Premises, 6B Hoang Dieu Street, Hanoi*

*List of Participants: Appendix 1*

## **1. MINIMUM WAGE**

### **Mr. Colin Blackwell, Head of VBF Human Resources Working Group**

This year has been doing well. And investors want to know more about how the minimum wage increase plan will pan out in the following years.

VBF proposed raising the minimum wage on an annual basis at a medium rate for the following reasons:

- Foreign investment in manufacturing is very competitive in the region. And to remain competitive in global markets, the pay rise rate should not be set relative to worker's productivity.
- A significant pay rise may trigger higher inflation.

How the trend of the total labor cost unravels should be considered when modifying the provisions of labor laws, including minimum wage increase.

According to the World Trade Organization, unequal pay rise in the private sector may be detrimental to the public sector.

We found the most recent increase of 7.3% is very reasonable and we thank the government for their excellent organisation.

### **Response by Ms. Nguyen Thi Khuong, Labor and Salary Department, MOLISA**

Regional minimum wage is adjusted based on:

- Specific socioeconomic status
- Consumer price index
- Mean salary in the market
- Worker's need for living standard improvement.

Estimated minimum wage increase in 2017: 7.3%; or an increase of VND180,000-250,000 in monetary term by different parts of the country. Justification:

- Sufficient to cover the 2016 price escalations of 4.5 – 5%
- Catching up with the productivity improvement of 2 – 2.5%
- The next step in the minimum wage change pathway, moving toward to assuring workers' minimum needs of living: 1 – 1.5%

The above mentioned plan has factored in employment, unemployment and productivity at a time when businesses are facing tough challenges, especially in labor intensive industries (textile, footwear, fishery and others), and in accordance with applicable rules for insurance premium as a percentage of salary and salary-like compensation for 2016-2017, and is expected to help bolster business activities.

MOLISA intends to submit a proposal to the government for release of a Decree on regional minimum wage in October to guide through application by businesses as soon as possible. The estimated minimum wage increase will be lower than previous years, ranging between 5%-8%.

## 2. OVERTIME WORK

### **Mr. Colin Blackwell, Head of VBF Human Resources Working Group**

Vietnam is one of the countries that have the most restrictive cap for overtime work in the world, at about 200-300 hours per year. Most other countries in ASEAN allow a much higher overtime limit, often at around 1,000-2,000 hours a year.

VBF hereby presents recommendations from the Japan Business Association in Vietnam: Article 36, Japan Labor Code, which has been in effect for the last 50 years, rules that if an agreement on overtime work has been subscribed between workers, relevant authorities and the trade union, inspection on such matter at businesses will be ruled out. Japan can provide technical assistance on how to run the system for Vietnam.

### **Ms. Ngo Thu Ngan, Legal Counsel, Toyota Vietnam**

The automotive industry often sees highly fluctuating market demand overtime, which typically soars in the last months in a year. While Toyota employees are willing to work extra hours to help meet the demand, the company is having a hard time dealing with the government's restrictive rules in place. As part of a solution to that, Toyota suggests that the government allows a more flexible overtime work management plan, with for example:

- Removal of the monthly overtime hour restriction
- Raising the allowed annual overtime hours to the level of some other countries in the region (China: 600 hours per year; Japan: 720 hours a year; or as agreed between the trade union and company on the maximum allowed overtime hours).

### **Response by Mr. Bui Duc Nhuong, Vice Director, Work Safety Administration, MOLISA**

When giving reference to the cases of other Asian countries, VBF needs to take into account the broader picture.

- Some other countries in Asia (Malaysia, Hong Kong and others) may allow more overtime hours than Vietnam, but fix the weekly working time at 40 hours. Hence, their overtime hours may be longer but the total working time is still lower than Vietnam.
- Data from ILO (International Labor Organization) indicate that while China limits overtime work at 30-36 hours a month and Japan has no restriction to overtime work, they set the maximum amount of overtime work at 360 hours a year.

The overtime work plan introduced by the Ministry based on the need to facilitate the country's economic integration while safeguarding the well-being of Vietnamese workers.

Having in place a more flexible working time plan is what the Ministry has been working on in its law making agenda, as it intends to integrate it in Article 117 – Unique lines of business in terms of working/rest time.

Regarding seasonal working time, the Ministry has released Circular 54, which sets forth how overtime/off-time can be regulated a specific periods of time on a seasonal basis.

### **Mr. Nguyen Huy Trung, Head of Administration Department, Honda Vietnam**

So how do we count overtime? For example, according to the Labor Code, Honda can apply a 6 workdays per week scheme. But in fact, their employees have a day off every two weeks, as the official working time per week is 44 hours. Overtime however sets in from the 45<sup>th</sup> hour. In line with regulations of the Labor Department, how much overtime is allowed depends on the specific timetable a company has. So when a company wants to cut down on its official working

hours and tries to make up for that with overtime, the official working hours are then counted as overtime.

**Response by Mr. Bui Duc Nhuong, Vice Director, Work Safety Administration, MOLISA**

As for this technical matter, the Ministry suggests more technical conversations take place later on. They would like to hear more on the Japanese Article 36.

In legal principle, overtime work is off hour working through mutual negotiation, and not working extra hours after the official amount of working hours.

### **3. TPP-RELATED ISSUES**

**Mr. Colin Blackwell, Head of VBF Human Resources Working Group**

TPP has to do with the Vietnam – USA bilateral political relationship and may give rise to a few concerns about increasing employment disputes. As complicated as it may be, VBF believes that this is not a business related issue and therefore, VBF does not take a position on a non-business issue.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

MOLISA welcomes VBF's comment. As TPP is a sensitive and complex issue that may involve multiple areas of concern, a separate and more in-depth discussion may be needed.

### **4. WORK PERMIT**

**Mr. Laurent Quistrebart, Member of Human Resources & Training Sector Committee, European Chamber of Commerce in Vietnam**

Granting a work permit for skilled non-national workers still takes time. A company must authenticate such an employee's job position before it can apply for a work permit. It will take more than a month to get this authentication.

The concepts for non-national staff/management levels have been redefined. It now turns out that most management staff, who are not a company's registered agents, including division heads, direct supervisors and project managers will not be considered in Decree 11, and instead only specialists/professionals will. As a result, these people have to provide further credentials as proof of their track records and academic degrees, which is a major challenge for non-nationals who are already on Vietnam soil when they apply for a work permit.

Renewal of a work permit also requires further documentation which was not previously the case.

We suggest that MOLISA considers accepting that a non-national worker having had a work permit may use that very work permit as a credential of his/her expertise when trying to renew the permit.

Requirements on professional skills now seem more demanding for technicians, which is contrary to the intent of the Vietnamese government's Resolution 47 of 2014, as both academic degrees and track record credentials are now required.

Track record references from different companies are not accepted. When the authority requires a 5-year work experience credential, two references showing 3-year and 4-year work experience with two different companies are not accepted.

The Labor Departments of some provinces still require non-national workers on short working term in Vietnam to present criminal record check certification from the Justice Department. It is unreasonable to demand a non-national worker who only stays in Vietnam for a few days to obtain a lack of criminal record certificate.

**Mr. Pham Tri Trung, Lawyer, Baker & McKenzie**

In respect of work permit, more general concepts should apply rather than being limited to WTO commitments. WTO commitments are the minimum requirements to be met in national laws, and can be opened up to cover more ground and help the local business community. For example, many companies are now in a hard spot with the requirement that non-national workers entering Vietnam to offer some services must have at least two years working for a foreign company. In the current open economy, it is common that a transnational firm mobilizes employees to and from different places.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

Vietnam will only accept technical professionals, managers and executives, especially in technology-intensive job positions that Vietnam currently is not yet able to produce. If Vietnam has a home-grown workforce for those positions, it will not allow foreign workers in.

Decree 11 has numerous changes in terms of applied administrative procedures and who may receive the permit. People who come to work in Vietnam for less than 30 consecutive days and no longer than an accumulated 90 days a year do not need a work permit.

The turnaround time for a work permit, under Decree 11, has been cut short from 10 days to seven days. Any work permit granting process longer than one month or seven days should be reported by businesses to MOLISA. In many places now, you can get a work permit in as short as 2-3 days. If other procedures required as preconditions for a work permit, such as criminal record check, health check, or expertise credentials are needed, the turnaround time may be longer.

Definition of professionals:

- Under Decree 11, an individual who is confirmed by a foreign company or organization as a professional will be deemed a professional.
- He or she will be required to present a Bachelor's degree or equivalent or higher and 3-year track record in what he/she does. If the person can meet only one of the two aforementioned preconditions, but can prove that he/she is a special case, the Prime Minister will have the decision making authority based on recommendations from MOLISA.

Work permit maturity: The 2-year term set by Article 173, Labor Code, is reasonable and much longer than many other countries in the region.

MOLISA has not released an implementing Circular for Decree 11 because it has not gathered all the information/inputs it needs from foreign business associations. We have only received feedbacks from the Japan Business Association. Moreover, MOLISA needs more time to take care of a few emerging practical issues. The Circular will come out shortly though.

We need VBF to get more involved in providing inputs on the draft Labor Code in the immediate future.

**Representative of Ernst & Young Vietnam Co. Ltd.**

Internal relocation is being interpreted very narrowly by local labor authorities. When working on a project in Vietnam, workers from different subsidiaries of a company may be sent to Vietnam to work. However, work permit exemption for internally relocating professionals is only available for the project owner, meaning the investor from the parent company. This has been a problem for all multinational corporations doing business in Vietnam, since most of these multinational companies more or less operate in a similar way.

The definition of a manager in Decree 11 says that it is the head or a deputy right below the head of an entity/organization. But a company with thousands of employees will need more specifically-ranked positions at lower management levels (human resources manager, finance manager, technical manager and so on). These are not people who stand right next in line with the head of the entity. The current rules are therefore a stumbling block for businesses when they apply for a work permit for division heads, especially hi-tech professionals that Vietnamese substitutes are unavailable.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

Regarding internal relocation as mentioned by VBF, MOLISA will try to make updates and additions as far as it could.

As for the definition of managers, Article 14.8, Enterprise Law, has been very clear on who managers may be. To ensure consistency across the current array of normative regulations, MOLISA cannot bring in rules that deviate from the Enterprise Law. Managers do not encompass team leaders or group leaders as previously the case.

In respect of division head, Article 3.4.b, Decree 11, states that executives are entity heads who directly run the entities, which are a part of the subject organization or company. This means that focal persons reporting directly to the managing director, including human resources manager, finance manager and others, will be considered as executives.

**Mr. Pham Tri Trung, Lawyer, Baker & McKenzie**

We propose that MOLISA releases a written clarification on the definition of executives to give VBF a firm ground when applying for a work permit from here on, as well as integrate such guidelines into the implementing Circular to provide more policy transparency.

Regarding confirmation by the host entity/organization for professionals, in reality, very few DOLISAs have simply accepted a company's attestation of professionals without any explanations as to why the persons are called professionals.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

MOLISA will provide VBF with a copy of the Official letter it released to municipalities.

Attestation of professionals: companies, entities or organizations in another country, and not in Vietnam, will give such attestation for professionals. After completion of consular legalization, all DOLISAs should recognize the legitimacy of the attestation and grant work permits accordingly. Failure to do so should be reported by VBF to MOLISA. In the near future, as the draft Circular comes out, MOLISA will give detailed requirements on attesting professionals.

## 5. SOCIAL SECURITY

### 5.1. Mr. Colin Blackwell, Head of VBF Human Resources Working Group

The general approach of the government appears to be following the best international practice. We understand there have been some communication issues with the business community about the changes. VBF offers to assist with communication where it is able to.

### 5.2. Mr. Pham Tri Trung, Lawyer, Baker & McKenzie

For people who are not subject to compulsory social security (SS) contributions, their employers have to pay such regulatory SS contributions as part of such people's salary. This means that employers will not pay severance allowances.

But there is no specific guideline for non-national employees or work contracts of less than one or three months. Will there be any form of specific guideline in the near future on this to allow consistent application by businesses?

### Response by Mr. Nguyen Duy Cuong, Deputy Director, Department of Social Insurance, MoLISA

#### *Mandatory SS contributions for non-national workers in Vietnam:*

The SS Law of 2014, in effect from Jan. 1, 2016, added regulations on a new group of individuals subject to SS contributions who are non-national workers with a work permit in Vietnam, and only mentions that they "are subject to these contributions, and the government shall provide detailed regulations". But this new rule does not apply immediately when the law comes into effect, and instead will be in force from Jan. 1, 2018.

According to the government's plan, within 2017, MOLISA will submit an implementing Decree to the government. VBF recommends that individuals who are paying this insurance in their home countries will not be required to pay the contributions in Vietnam, or any periods of time where they pay SS contributions in Vietnam will be recognized in the home countries, with similar treatment applying to Vietnamese guest workers in other countries. This issue is associated with bilateral agreements on SS with other countries and will be addressed in the Decree.

Going forward, MOLISA hopes to receive VBF's further constructive contributions on the draft Decree.

#### *Establishing the responsibilities of SS authorities in reimbursing in time eligible compensation and allowances for workers:*

The SS Law of 2014, in the chapter on Procedures and formalities for SS application, has specified very clearly the responsibilities and time line both for the applicants, employers and SS authorities involved.

#### *Allowing businesses to use in-house monthly working day standard in the calculation of payable SS contributions:*

This matter has been discussed by the National Assembly as the SS Law was being developed. Applying this rule, however, will not guarantee equality. Historically, MOLISA used a 26-working day norm. But in view of different feedbacks from businesses, MOLISA has decided to use a new 24-working day month in the new law.

*Accepting scanned documents sent by emails:*

SS authorities have now started to use electronic transactions in participant book recall and issuance. The government has authorized MOLISA, in cooperation with SS authorities, to draft a Decree on electronic transactions in all related areas of interest and submit it to the government within October.

*Article 186.3, Labor Code: For people who are not subject to regulatory SS contribution, the employers will have to pay the SS contribution as part of the employees' salary. There is no clear explanation on this rule.*

Employers will need to pay SS contributions as part of the salary for people who are not subject to regulatory SS contribution, including non-national workers.

*For elderly workers who are not subject to SS contribution and are under pension schemes, or in other words, beneficiaries of SS compensation, do the employers have to pay an amount equivalent to the otherwise required SS contribution?*

People on pension pay are not subject to regulatory SS contribution. Under Circular 59-MOLISA, when a work contract is signed with someone who is not subject to regulatory SS contribution, employers will have to pay part of the required SS contribution to such person.

### **5.3.Regulations on pension pay for elderly employees:**

The Labor Code requires that the employer or employee presents a SS book, and not examination of the SS contribution payment process. But in practice, SS authorities often require employees to submit written proof of the entire time their SS contributions are paid in both former and current work places. This is a daunting task, since employees are required, after decades of their working life, to present documents that they actually submitted to SS authorities before. Is review of information the responsibility of employees, employers or SS authorities?

### **Response by Ms. Dinh Thi Thu Hien, Vice Chair, Social Welfare Policy Committee, Vietnam Social Security**

Vietnam SS does not require any documents other than those specified by law. Probably in the early stages of SS book issuance, some employees' dossiers were not fully prepared, and SS authorities need to require corrections. Any concerns for which provincial level SS authorities do not have the jurisdiction over can be reported to higher levels for consideration.

**5.4.**Current laws are not clear about whether employees must pay SS contributions for the full employment term required to be entitled to pension payment, or whether an employer can unilaterally terminate a work contract with an employee who is of retirement age but has not paid SS contributions for the full required employment term.

### **Response by Ms. Dao Thi Huyen, Labor and Salary Department, MOLISA**

Existing laws have no ruling on how work contracts with employees of retirement age who has not paid SS contributions for the full required employment term should be terminated because there may be risks of conflicting with Article 36.4, Labor Code. As a work around, businesses may revise the work contracts, or continue to keep the existing work contracts in force in line with Articles 166-167.

### **Response by Mr. Nguyen Duy Cuong, Deputy Director, Department of Social Insurance, MoLISA**

Businesses can reference Decree 05, which rules that when an employee has come to the retirement age but falls short of SS contribution term, the employer may switch to some other

form of employment engagement with the elderly employee, in the condition that 1) the employee is sufficiently healthy and wants the job; and 2) the employer wants to hire the employee. The law (Article 36.4) and Decree are currently conflicting with each other. MOLISA appreciates VBF's contribution and will make adjustments where needed.

**5.5.** The new SS Law rules that: People with an employment contract of 1-3 month duration will be subject to SS contribution from Jan. 1, 2018. This rule will be a problem for companies with a large staff and high turnover. Currently with short-term work contracts, employers are already paying 22% of the employee's salary as SS contribution. We propose revising this rule to: Employees and employers may reach an agreement, in which the employer will pay the SS contribution if the employee wishes to do so, or otherwise pay the amount in equivalent wage.

**Response by Mr. Nguyen Duy Cuong, Deputy Director, Department of Social Insurance, MoLISA**

This regulation was introduced for the following purposes:

- To ensure the employee's interests (short-term allowances, pension etc.)
- To help expedite the government's policy of widening SS coverage
- To crack down on the practice of employers re-signing work contracts every three months so they do not have to pay SS contribution for employees, given the fact that former laws require work contracts with a 3-month term or longer are subject to SS contribution.

This rule will apply from 2018 as:

- There is a need to prepare employees and employers in advance
- SS authorities need time to apply the IT infrastructure needed to execute electronic transactions.

The Government is asking Vietnam SS to adopt electronic transactions and switch to SS cards by 2020.

**6. MECHANISMS FOR DIALOGUE BETWEEN THE BUSINESS COMMUNITY AND REGULATORY AGENCIES**

**6.1. Mr. Colin Blackwell, Head of VBF Human Resources Working Group**

Discussions like this are very good opportunities for dialogue between the business community and government. There are however a large amount of pending comments and inputs from different commercial associations. Is there a more effective mechanism for dialogue to facilitate more open discussions?

We hope that MOLISA can provide a specific focal contact from the MOLISA side to allow more convenient communication and exchange.

**Mr. Pham Tri Trung, Lawyer, Baker & McKenzie**

The Prime Minister/government has ruled that: VCCI, representing the business community, will gather feedbacks from businesses on a quarterly basis and disseminate them among relevant ministries and line agencies; The PM will be monitoring follow-ups by the ministries/line agencies;

VCCI has a function representing employers. Legally speaking, VCCI is not an official representative of employers on the national level, but it has been actively engaged in various labor issues.



According to the Law on release of normative regulations, regulatory agencies must inform affected parties of existing draft Circulars/Decrees/Laws and allow them to share their opinions on them. But there are still employment-related Circulars/Decrees/Laws that only came to businesses' knowledge after they have been enacted. We suggest that MOLISA comes up with some form of coordinating scheme with VCCI/VBF to avoid such unwanted surprise for businesses in relation to the introduction of new regulatory instruments.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

Any emerging issues and concerns may be taken directly to MOLISA where needed for solutions. It is difficult to discuss in details a large number of issues in a single meeting.

MOLISA wants businesses to help the ministry in developing normative regulations at the outset, and not after the regulations have come out. That will help us make the laws more relevant to what is actually going on with businesses. This can be done through meetings, co-organized workshops, or sharing information through documentary routes.

Any concerns that need to be discussed from businesses can be sent through official correspondence to MOLISA, which will then assign specific functions to see to them.

**Response by Mr. Nguyen Noi, Vice Director, Foreign Investment Administration, MPI**

When asking for dialogues, VBF needs to spell out the issues of concern so that the Ministry can invite the right respondents.

With the upcoming Circulars and Decrees, we suggest that MOLISA sends them directly to VBF rather than via MPI to help VBF hold necessary consultation rounds.

VBF can have direct dialogues with MOLISA or through MPI as a focal agency.

**Response by Mr. Le Quang Trung, Vice Director, Employment Administration, MOLISA**

A mechanism for interface between the business community and regulatory agencies has been in place when it comes to law making. Urgent matters, however, need to be resolved in a flexible and meaningful way to save time.

VBF can send its queries and concerns to MOLISA, which will be responsible to pass them on to relevant agencies to give answers to.

## **6.2. VBF members**

The Ministry's direct responses at dialogue meetings should be documented and disseminated to all relevant departmental functions and make it easy for businesses to follow.

Yamaha has tried to communicate with the Ministry through official correspondence routes four times on related labor issues, without hearing back even though receipt of the correspondence was signed off by the Ministry. We therefore suggest that the Ministry of Construction sets up a single-window mechanism at the Ministry office or municipalities – a unit that deals with the public, similar to a company's customer service function, that receives information from all concerned businesses and gives out common answers. The Q&A process will then go on more smoothly.

**Response by MOLISA**

Businesses need to understand well how correspondence/queries are filed with the Ministry. Questions pertaining to how laws, policies or Decrees should be interpreted or construed will be

the Ministry's jurisdiction. Questions pertaining to how a specific case should be handled are under the attribution of local agencies.

**Response by Mr. Nguyen Noi, Vice Director, Foreign Investment Administration, MPI**

We suggest that VBF acts as a focal agency for consolidating two areas of concern: 1) comments related to law enforcement on the ground; and 2) comments and concerns about policies, laws, regulations, decrees, circulars and others, and tries to straighten out the questions where needed to make them more clearly comprehensible. MOLISA will have different respondents for the questions, since a single agency cannot possibly answer all the questions.

Recorded minutes of the dialogues do not have legal guideline values. Nevertheless, written responses from MOLISA can be used and shared by businesses.

Comments sent to MOLISA can be simultaneously forwarded to MPI for follow-ups.

**6.3.Mr. Colin Blackwell, Head of VBF Human Resources Working Group**

VBF wants to support MOLISA in revising the Labor Code. As discussed, the National Assembly is the entity that passes laws. So does VBF directly contact the National Assembly or through the Ministry?

**Response by Mr. Nguyen Noi, Vice Director, Foreign Investment Administration, MPI**

Laws are passed by the National Assembly, but the actual laws for specific sectors are written by the relevant ministries or line agencies. The Labor Code was drafted by MOLISA. Comments and concerns therefore should be addressed to MOLISA.

**7. Issues related to the Labor Code**

*Article 22 on non-permanent employment contracts: after two non-permanent work contracts, the contract should switch to permanent.*

**VBF members**

In case a company changes its ownership through merger and acquisition, some employees with permanent work contracts may become no longer relevant for the mission of the post-M&A company. If these employees work in key functions, there will be no legitimate justification to terminate their employment contracts. That leaves the company the only choices of unilaterally terminating, thus breaching, the contracts, or continuing to maintain the permanent work contracts with such employees. Is it possible to modify this rule?

Why must there be two non-permanent contracts before switching to a permanent contract? Are the employee's benefits better with a permanent employment contract? If a company cannot afford permanent employment contracts due to unfavorable business outcomes, strikes may happen and unsettle the company.

**Response by MOLISA**

This regulation is a heritage from the former Labor Code and stemmed from attempts to follow a convention of the International Labor Organization, which aims at protecting workers and avoiding the use of too many contracts that may give employees a sense of uncertainty.

The Ministry appreciates VBF's input and will look for ways to revise this provision in the upcoming review process. We do hope to receive more VBF's comments on how to best revise this rule.

*Article 53.2, Labor Code: Labor sublease is a conditional line of business and only allowed for specific jobs.*

### **VBF members**

Decree 55, released in 2013 by the government, listed 17 jobs where labor subleasing is allowed, none of which has anything to do with the tasks of hands-on workers. Labor subleasing companies have readily available manpower to supply manufacturing firms. But with this regulation in effect, manufacturing companies will have to recruit employees themselves, which will be a burden for them in terms of time and cost to do so.

How employees are recruited depends on a company's outputs and business performance. The current rule requires that after two consecutive non-permanent employment contracts, a permanent contract must be in place. It means that even when a company's output declines and it cannot pay its employees' salary, but it cannot terminate some work contracts either. As such, companies may not want to recruit their own employees, but instead switch to hired labor.

We suggest that the Ministry: 1) has in place a set of criteria to define a list of jobs for which labor sublease is allowed; 2) widens the list of jobs where labor sublease is permitted, including hands-on manufacturing work that does not require skilled labor; or 3) loosens the preconditions for signing a non-permanent employment contract.

### **Response by Ms. Nguyen Thi Khuong, Labor and Salary Department, MOLISA**

Labor sublease was a new matter that was incorporated in the 2012 Labor Code. When adding it to the law, MOLISA simply introduced a list of jobs that it believed labor subleasing was necessary. After a while the rule is in effect, the Ministry will take a review to update the list and make it more realistic.

About concerns that a company may not be able to anticipate how its output will turn out so it knows how many more employees it may need to recruit: Very open and flexible regulations have been available in the Labor Code regarding economic reasons or the need for staff enlargement or downsizing. Employees will feel more secure about their jobs if they have a work contract directly entered into with the employer.

### **VBF members**

Recruiting front-line workers in peak seasons: Workers may quit their jobs after just 1-2 weeks if they find that the jobs are not right for them. Employers will then need anywhere from a few days to a few weeks to find replacements, whereas a labor subleasing firm can supply new workers to fill in the positions right in the next day, thus helping their clients to maintain uninterrupted business operation.

Protecting workers' interest does not depend on how long a work contract may be, but for instance, on the need to safeguard a higher wage for short-term, seasonal workers than that of permanent employees. Employers thus will have to do their math on whether to choose a long-term or short-term contract.

### **Response by Ms. Nguyen Thi Khuong, Labor and Salary Department, MOLISA**

All other countries around the world have a list of jobs where labor sublease is allowed, with specific term for such subleasing. Evidence shows that the interests of sublet workers are often not as secure as those of a company's own employees.

*Employment contract*

Specific sections of the employment contract, including SS contribution rate, wage level, bonus, allowances: Labor inspection agencies do not agree with the term "... according to the law/company's policy", and instead require specific data. This is unnecessary because such rates may change or be revised in adaptation with changing socioeconomic developments.

A non-permanent employment contract may have its term of contract revised once, but cannot change the term for the specified type of contract, except for contracts with elderly workers. Can employers extend a second non-permanent employment contract without switching immediately to a permanent contract?

**Response by Ms. Nguyen Thi Khuong, Labor and Salary Department, MOLISA**

Circular 05 provides detailed guidance on how to fill in the blanks in an employment contract. Some of the details might be a problem with companies that have a large workforce. The whole process, however, can be done by machines to save time.

Circular 05 also rules that changes to the term of contract can be done only once for non-permanent work contracts (12-month or 36-month contracts). A 12-month contract for example can take changes to its term by adding another six months, as it is still well within the 12-36 month cap. As such, the contract designation does not change, and the contract remains a non-permanent one.

*OTHER COMMENTS***VBF members**

In-kind compensation (sugar, milk etc.): this kind of compensation is no longer relevant, and sometimes may even be harmful to workers' health (they may cause diabetes!).

- Accordingly, there should be rules that better fit this type of compensation, as objective determinants point out its irrelevance.

Overtime work: Do employers have to pay overtime wage for key position holders such as business executives or managers?

- There should be a more flexible scheme for paying the salary for these employees.

Leave policies as specified in Article 111, Labor Code: Employees are entitled to a 12-day leave in normal working conditions, and 14 days of leave in harsher working conditions, after they have worked in one place for 12 months. But Article 114.2 on salary payment for unused leave days rules that if a person has not worked for a full 12 months in a job, his/her eligible leave days will be determined on a proportionate basis. It means there may be two ways to interpret this: 1) only after having worked for 12 months in a job, an employee may start to take leave. If the employee quits his/her job, unused leave days will be converted to monetary term; 2) the length of the leave is determined based on the length of service rendered, and not necessarily equal or longer than 12 months.

- Amendments are recommended to make this rule more clearly spelled out.

If an employee does not use his/her leave within the specific period, will that leave be deemed lost?

Building pay grades: Does the making of pay grades necessarily involve an establishment-based employees' representative organization and be publicly announced prior to application? Foreign firms often need to keep these pay grades confidential.

**Response by MOLISA**

Annual leave: Existing rules do seem to be conflicting. In the meantime, a work contract of less than 12 months offers as many leave days as some other lengths of service as defined in Decree 45-CP of 2013. In the upcoming law review process, MOLISA will consider merging the two clauses to avoid confusing interpretations.

In principle, employers may determine a specific period where the leave should take place. In case employees do not use their leaves, the salary can be calculated in line with guidelines released by the Labor-Salary Department.

As for the comment arguing that since an official list of business lines is not in place, SS book recording does not correctly reflect the business lines specified in Circular 36 or other relevant decisions, we suggest that written petitions are sent to MOLISA or through the local Departments for review.

Regarding annual leave, employers may set a specific leave timetable. Whether to take the leave or not is the right of the employees. But employees may not take their leaves outside of the set timetable.

**Appendix 1: LIST OF PARTICIPANTS**

No.	Name	Title	Company
<b>MPI, MoLISA, Vietnam Social Insurance, and relevant agencies</b>			
1.	Mr. Nguyen Noi	Deputy Director	Foreign Investment Agency, MPI
2.	Ms. Tran Thao Hanh	Head of Policy Division	Foreign Investment Agency, MPI
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