

COMPLETING THE LEGAL POLICY ON THE MINOR LABOR ACCORDING TO INTERNATIONAL CONVENTIONS IN VIETNAM

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ABSTRACT

In 2019, the National Assembly of Vietnam promulgated a new Labor Code with many amendments and supplements in line with the provisions of international conventions to which Vietnam is a member, especially the new generation free trade agreements (FTAs) such as CPTTP, EVFTA, including regulations on employment for minors. In this article, the author will analyze the employment regulations for minors in the Labor Code of Vietnam in accordance with the international law. Then, the author will recommend solutions for businesses employing minors in Vietnam.

Keywords: Legal Policy; Minors; Labor Code; International Law; Vietnam.

INTRODUCTION

Participating in the signing and joining of international treaties in general and FTAs in particular, in addition to bringing benefits to Vietnam from tariff elimination and access to competitive markets, also impact on investment flows into Vietnam. To have the benefits of member countries, Vietnam must implement commitments to the field of labor - society. These international treaties also affect national legislation because to implement them, member states must amend and supplement labor law provisions to be compatible with the commitments in the international conventions. Simultaneously, it is guiding and creating conditions for enterprises to strictly comply with standards and regulations on technical barriers of export markets; support enterprises to perfect the labor standard management system according to international standards and to adapt to the standards of the partner market; directing businesses to simultaneously apply standard systems such as ISO 9001:2000, OSHAS 18,000, SA 8000, etc.

One of the labor and employment issues affected by these international treaties is the issue of employment and the regulation of working conditions for minors, including child labor. New generation FTAs to which Vietnam is a member such as EVFTA or CPTPP have strict requirements on the use of child labor, especially workers in foreign direct investment (FDI) enterprises. and manufacturing labor for export to other member countries of the agreement.

Over the past time, Vietnam has constantly improved and changed the legal provisions on employment for minors to be in line with the provisions of international law. The most notable is the revised Labor Code 2013 and 2019. The amendments and supplements of the 2019 Labor Code of Vietnam meet the requirements of EVFTA implementation. The revised regulations relate to three basic groups of labor standards, including freedom of association and collective bargaining; ensure equality and non-discrimination in labor; protect juvenile workers and eliminate child labor.

LITERATURE REVIEW

Basic content of the 1989 United Nations Convention on the Rights of the Child

The Convention was signed on November 20, 1989, entered into force on September 2, 1990, and Vietnam ratified the Convention on February 20, 1990. The Convention consists of 3 parts with 54 articles. In which, part 1 includes 41 articles that deal with the definition of children, general principles and basic rights. Part 2 includes two articles about communication tasks and monitoring and directing systems. Section 3 consists of four articles dealing with legal issues. The content of the Convention mentions four groups of children's rights: the right to survival, the right to development, the right to protection and the right to participate.

Child means any person under the age of 18, unless the law applicable to the child provides for an earlier age of majority. Member States recognize the right of the child to be protected from economic exploitation and from undertaking any work that is dangerous or affects the child's education or is harmful to health; or the physical, intellectual, spiritual, moral or social development of the child.

Member States shall take legislative, administrative, social and educational measures to ensure this taking into account the appropriate provisions of other international instruments, States Parties shall: (1) Establish one or more minimum age for admission to employment; (2) There are appropriate regulations on the hours and working conditions of employees; (3) There are fines or other appropriate penalties to ensure this is done.

ILO Convention No. 138 on the minimum age for employment

Convention No. 138 of the International Labor Organization (ILO) on the minimum age to work, was adopted on July 6, 1973, and ratified by Vietnam on June 24, 2003 with 18 articles. The States that ratify the Convention commit themselves to “pursuing national policy, with a view to truly ensuring the abolish child labor and gradually raise the minimum age for employment or employment to the age at which young people can develop to the fullest extent physically and mentally”.

Regarding the minimum age for accepting children to work: (1) Not under the age of completion of the compulsory education program and in any case not less than 15 years old.

(2) Member States whose economies and facilities for education are not yet fully developed shall, after consultation with the relevant organizations, if any, of employers and workers may record a minimum of 14 years of age in the early stages. (3) For any type of work or employment, the nature or conditions of employment of which may be harmful to the health, safety or morals of a young person, the minimum age shall not be less than 18 years of age. (4) After consulting with the relevant organization, if any, of the employer and of the worker, allow minors to be employed or employed as early as the age of 16, provided that their safety and dignity must be adequately guaranteed, and specific and appropriate upbringing, or vocational training, shall be provided to them in the respective field of activity. (5) To the extent necessary and after consulting the relevant employers' and workers' organizations, if any, the competent authority may not apply this Convention to certain limited categories of work or employment, if the application of this Convention to such types of work or employment would cause special and significant difficulties in its implementation.

This Convention does not apply to work carried out by children or young people in institutions of general education, in vocational or technical schools or in other vocational training schools, nor does it apply to labor activities carried out by persons aged 14 years and over in establishments, if such labor is carried out in accordance with the conditions prescribed by the competent authority after consulting the relevant organizations, if any, of the employer and the worker, and if such employment is an integral part: (i) of an educational or vocational training program the primary responsibility of which lies with a school or school vocational training; (ii) or of a vocational training program, approved by the competent authority and conducted primarily or entirely within an institution; (iii) or of a vocational program intended to facilitate the choice of a profession or the choice of a particular vocational training direction.

National laws or regulations may permit the use of labor or the labor of persons aged 13 to 15 years in light work or in jobs where: (i) is not likely to be harmful to health or their development; (ii) jeopardize their studies, their participation in vocational guidance or training programs approved by the competent authority or impair their ability to receive education. Law or regulation may permit the employment or employment of persons 15 years of age or older who have not completed compulsory education, in light work or in employment without prejudice. study, their participation in vocational or vocational training programs approved by the competent authority or impair the educational attainment they have received. The

competent authority shall determine what activities in which employment or labor shall be permitted and shall prescribe the hours and conditions of such employment or labor.

Member States may still substitute the ages of 12 and 14 for the ages of 13 and 15 and the age of 14 for the age of 15 in accordance with Article 7 of the Convention. After consulting the relevant employers' and workers' organizations, if any, the competent authority may, as an exception to the employment or labor prohibition referred to in Article 2 Convention, granting permits in exceptional cases to engage in activities such as performing arts. Such permits shall limit and prescribe the conditions of authorized employment or employment. The competent authority shall take the necessary measures, including appropriate sanctions, to ensure the effective implementation of the provisions of this Convention. The law or regulation, or competent authority, must determine who is responsible for complying with the provisions for the Convention to come into force. The law or regulation, or the competent authority, must prescribe registers or other documents for which the employer must make and present such registers or documents stating the name, age or date of birth. certified, if possible, by people under the age of 18 that you use or are working for.

ILO Convention No. 182 on Prohibition and Urgent Action to Eliminate the Worst Forms of Child Labor

Convention for the Prohibition and Urgent Action for the Elimination of the Worst Forms of Child Labor, adopted on 1 June. 1999 and Vietnam ratified it on December 19, 2000 with 16 articles.

The Convention requires States parties to eliminate immediately the four worst forms of child labor, including: (i) All forms of slavery or similar slavery such as trafficking and transporting children, debt bondage and slave and forced labor including the forced recruitment of children to participate in armed conflicts; (ii) Using, luring or enticing children into prostitution, production of pornographic products or pornographic performances; (iii) Using, luring or enticing children to engage in illegal activities, especially for the purpose of producing and transporting narcotics as outlined in international agreements; (iv) Work whose nature or conditions could compromise the health, safety and morals of the child. The term "child" in the Convention applies to all persons under the age of 18 years.

Commitments on child labor in FTAs to which Vietnam is a member

The EU-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Perspective Trans-Pacific Partnership (CPTPP) are new generation Free Trade Agreements (FTAs) that Vietnam has signed. These are the FTAs with the highest level of commitment of Vietnam so far, including commitments in the labor sector.

Presenting difficulties in implementing labor standards and requirements when joining the EU-Vietnam Free Trade Agreement. Any free trade agreement will include many new challenges, in addition to development opportunities. Therefore, we need to assess the impact on labor commitments in the FTA when implementing it. When implementing labor commitments in the EVFTA, the issue that Vietnam is most likely to violate is labor standards, the most common being employees working overtime; enterprises do not properly implement on weekends, holidays, etc. Working environment, occupational hygiene and safety, most businesses do not invest and actively apply handling and preventive measures. Enterprises do not really care about the rights of employees, do not participate in social insurance, health insurance fully, do not support female workers in the workplace and raise children.

On the other hand, workers and businesses participating in integration will suffer disadvantages from the opening of the market. At that time, goods from other countries, especially a large amount of good quality consumer goods, with diverse designs will be imported into Vietnam, plus the psychology of buying foreign goods will make it more difficult for domestic enterprises to narrow down production, reducing labor although the number of jobs in some industries may increase. As for the impact on wages, some experts forecast that wages for workers are expected to increase in five industry groups between 2020-2035. In which, the highest increase is for low-skilled workers.

In addition, in the process of participating in the EVFTA, Vietnam also has to face more "pressure" to reform the education and training system, improve labor quality due to the strategy of exploiting the advantage of cheap labor cost of foreign direct investment, improving employment for vulnerable groups of workers including women and children, and underage workers.

Vietnam's participation in free trade agreements is an expression of deeper international integration. Therefore, Vietnamese businesses need to have a more modern view of human

resources and labor relations from the point of view on improving working conditions, ensuring workers' rights to comply with the requirements of integration and international labor standards. Vietnam has a policy of actively integrating into the world and perfecting the legal system in the process of integration in the labor sector. Vietnam has a relatively complete system of policies and laws on labor. There have been quite a few achievements in this field.

METHODOLOGY OF RESEARCH

To do this research, the authors use different kinds of methodology to analyze international and domestic legal documents related minor labor. Moreover, statistics and surveys are also used to finish this research. The author used the poll to survey the Vietnamese citizens including children and adult, man and woman, individual and associations to ask them questions related to the legal policy on minor labor. However, because of time and financial limitations, this research cannot cover inclusive aspects of researching issues. Thus, the author looks forward to taking the comments and opinions of readers and reviewers to do better researches in the future.

FINDINGS AND DISCUSSION

Labor Code

Vietnam's labor law stipulates that an employee is a person who is full 15 years of age or older, and a minor employee is a person under 18 years of age must not employ underage workers to do arduous, hazardous, dangerous jobs or workplaces, jobs that adversely affect their personality according to the list issued by the Ministry of Labor - Invalids and Social Affairs shall assume the prime responsibility for, and coordinate with the Ministry of Health promulgating. Only people from full 13 years old to under 15 years old can only do light jobs according to the list prescribed by the Ministry of Labor, Invalids War and Social Affairs (MOLISA). When employing a person from full 13 years old to under 15 years old, the employer must comply with the strict conditions in Clause 2, Article 164. Not to employ people under 13 years old to work except for some specific jobs prescribed by the MOLISA stipulate

and when employing people under 13 years old to work, they must comply with the provisions of Clause 2, Article 164.

Minors from full 15 years old to under 18 years old are not allowed to work more than 08 hours in a day and 40 hours in a week. Persons under 15 years old may not work more than 04 hours in a day and 20 hours in a week and may not work overtime or work at night. Persons from full 15 years old to under at the age of 18, he is entitled to work overtime, work at night in a number of occupations and jobs according to regulations of the MOLISA.

In the Labor Code amending and supplementing the concept of juvenile workers, strict principles and conditions on the employment of minors, regulate jobs and workplaces that prohibit the employment of minors in accordance with the provisions of the Convention. Regulations on working hours for people under 15 years old in general and regulations on working hours for people under 13 years old in particular; specific regulations on overtime working time of persons from full 15 years old to under 18 years old. To stipulate strict principles and conditions on the employment of minors; regulate jobs and workplaces that prohibit the employment of minors in accordance with the provisions of the Convention. Regulations on the minimum ages levels allowed to be admitted to work, conditions on working hours and working conditions, jobs prohibited from employing minors (being under 18 years of age) in accordance with the law accordance with the provisions of the Convention.

The 2019 Labor Code of Vietnam has many general provisions related to juvenile workers. Article 4 stipulates the State's policy on labor that mentions minor labor issues such as ensuring the lawful and legitimate rights and interests of employees and employees without labor relations; encourage agreements to ensure employees have more favorable conditions than those prescribed by the labor law; Ensuring gender equality; stipulate labor regimes and social policies to protect female employees, workers with disabilities, elderly workers, and underage workers. Juvenile employees, in addition to enjoying the same benefits as ordinary workers, are also entitled to special treatment. In addition, Article 8 also stipulates prohibited acts in the field of labor as follows:

- Discrimination in labor.
- Mistreatment of employees, forced labor.

- Sexual harassment in the workplace.
- Taking advantage of the name of vocational training or apprenticeship to make profit, exploit labor or entice, seduce or force apprentices or apprentices to engage in illegal activities.
- Employing untrained laborers or having no national vocational skills certificates for occupations and jobs requiring trained workers or having national certificates of vocational skills.
- Manipulating, enticing, promising, false advertising or other tricks to deceive employees or to recruit workers for the purpose of human trafficking, exploitation, forced labor or taking advantage of services employment and activities of sending workers to work abroad under contracts to commit illegal acts.
- Illegally employing underage workers.

The 2019 Labor Code dedicates Section 1, Chapter XI, specifically to juvenile employees. For example, the Article 143 regulates on the Juvenile workers details as following:

- i. *Juvenile employees are employees who are under 18 years of age.*
- ii. *Persons between full 15 years of age and under 18 years old may not do the work or work at the workplace specified in Article 147 of this Code.*
- iii. *Persons from full 13 years old to under 15 years old may only do light jobs according to the list promulgated by the Minister of Labor, War Invalids and Social Affairs.*
- iv. *Persons under the age of 13 may only do the jobs specified in Clause 3, Article 145 of this Code.*

The 2019 Labor Code also regulates the Principles of employment of minors¹ as following:

- i. *Juvenile workers may only do jobs suitable for their health to ensure their physical, intellectual and personality development.*
- ii. *Employers, when employing minors, are responsible for taking care of the employees in terms of labor, health, and learning during the working process.*
- iii. *When employing minor employees, the employer must obtain the consent of the father, mother or guardian; make a separate monitoring book, record full name,*

date of birth, work being done, results of periodical health checks and present it at the request of a competent state agency.

- iv. Employers must create opportunities for juvenile employees to study culture, vocational education, training, retraining and improve vocational skills.

Moreover, the Article 145 of the Code rules Employing people under the age of 15 to work. When employing a person under the age of 15 to work, the employer must comply with the following provisions: To enter into a written labor contract with a person under 15 years of age and his/her legal representative; Arrange working hours without affecting the study time of people under 15 years old; Having a health certificate from a competent medical examination and treatment facility certifying that the health of a person under the age of 15 is suitable for the job, and organize periodic health checks at least once in 6 months. Ensuring working conditions, occupational safety and hygiene suitable to age groups. Employers may only recruit and employ people from full 13 years old to under 15 years old to do light jobs as prescribed in Clause 3, Article 143 of this Code. User Employers are not allowed to recruit and employ people under the age of 13 to work, except for art, physical training and sports jobs that do not harm the physical, intellectual and personality development of the underage. full 13 years old and must have the consent of the specialized labor agency under the provincial People's Committee.

Working hours of minors:

Working hours of people under 15 years old must not exceed 04 hours in a day and 20 hours in a week; no overtime, work at night. The working hours of people from full 15 years old to under 18 years old must not exceed 08 hours in a day and 40 hours in a week. Persons from full 15 years old to under 18 years old may work overtime or work at night in a number of occupations and jobs according to the list promulgated by the Minister of Labor, War Invalids and Social Affairs.

Jobs and workplaces where employees from full 15 years old to under 18 years old are prohibited from being employedⁱⁱ. It is forbidden to employ workers from full 15 years old to under 18 years old to do the following jobs: Carrying, carrying or lifting heavy objects beyond the capacity of minors; Producing and trading in alcohol, wine, beer, tobacco, psychoactive substances or other addictive substances; Producing, using or transporting chemicals, gas,

explosives; Maintenance and repair of equipment and machinery; Demolition of construction works; Cooking, blowing, casting, rolling, stamping, welding of metals; Scuba diving, offshore fishing and seafood; Other jobs that harm the physical, mental and personality development of minors.

It is forbidden to employ workers from full 15 years old to under 18 years old to work in the following places: Under water, underground, in caves, in tunnels; Construction site; Cattle slaughter establishments; Casinos, bars, discos, karaoke rooms, hotels, motels, sauna facilities, massage establishments; Lottery business points, electronic game services; Other workplaces that harm the physical, intellectual and personality development of minors.

Circular No. 11/2013/TT-BLDTBXH of the Vietnam MOLISA

Regulations on the list of occupations, jobs and conditions for accepting children under the age of 15 to work. (Repeat Circular No. 21/1999/TT-BLDTBXH dated September 11, 1999 of the Ministry of Labor, War Invalids and Social Affairs providing for the list of occupations, jobs and conditions for accepting children under 15 years old).

Following this Circular, the Employers are responsible forⁱⁱⁱ:

- a) Review jobs currently employing people under the age of 15; only employ people under 15 years of age to do jobs according to the list of light jobs promulgated together with this Circular;
- b) When recruiting people under the age of 15 to work, they must have a health certificate from a competent medical examination and treatment facility certifying that their health is suitable for the job; organize periodical health checks at least once every 6 months;
- c) Comply with regulations on the use of persons under 15 years of age specified in Clause 2, Article 162; Clause 2, Clause 5, Article 163; Clause 2, Article 164 of the Labor Code;
- d) The workplace must ensure elements of occupational hygiene and environment up to the permissible standards and standards in accordance with current laws;
- dd) When recruiting people under 15 years old to work for the first time, they must notify in writing the Department of Labor - Invalids and Social Affairs of the province or city directly under the Central Government (hereinafter referred to as the Service of Labor - Invalids and Social Affairs for short). and Provincial Social Affairs) where the establishment is

headquartered within 30 days from the date of recruitment to work according to the form specified in the Appendix issued together with this Circular;

e) Annually, report the employment of people under 15 years old together with the report on occupational safety and hygiene to the Department of Labor, War Invalids and Social Affairs.

Department of Labor - Invalids and Social Affairs is responsible for coordinating with the Department of Health and the local Labor Confederation to regularly propagate, inspect and supervise the implementation of this Circular; Strengthen inspection and promptly handle cases of violations of the law on the use of persons under the age of 15; Annually, summarize and report to the Ministry of Labor, War Invalids and Social Affairs on the implementation of this Circular together with reports on occupational safety and health in the locality.

The Circular has an annex of the list of jobs used for people under 13 years old to work such as actor^{iv}; or talented athletes^v.

The Circular also enacts the list of jobs is allowed to use people from full 13 years old to under 15 years old to work, includes:

- i. Jobs that employ people under the age of 13.
- ii. Traditional occupations: dotting pottery, sawing shells, painting lacquer, making “dó”^{vi} paper, conical hats, making incense sticks, making cones, weaving mats, making drums, weaving brocade, making rice noodles, making bean sprouts, making rice paper (vermicelli).
- iii. Handicrafts: embroidery, carpentry, making horn combs, knitting hoof nets, making Dong Ho paintings, molding “to he”.
- iv. Knitting, making household items, handicrafts from natural materials such as rattan, bamboo, coconut, banana, water hyacinth.
- v. Silkworm rearing.
- vi. Coconut candy pack

CONCLUSIONS AND RECOMMENDATIONS

In summary, from the above analysis, it can be seen that basically, Vietnam has fully joined international conventions on protecting the legitimate rights and interests of child labor. At the same time, it has also partially internalized international regulations in national legal documents and actively strictly enforced international and national law provisions to best protect the rights of child labor in Vietnam.

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10. Vietnam Ministry of Labour, Invalids and Social Affairs, Circular No. 11/2013/TT-BLDTBXH on stipulating the list of occupations, jobs and conditions for accepting children under the age of 15 to work.

ENDNOTES

ⁱ Article 144

ⁱⁱ See the Article 147, The 2019 Vietnam Labor Code.

ⁱⁱⁱ See Article 2 of the Circular

^{iv} dance; sing; circus; film; theatrical plays, puppetry (except water puppetry)

^v gymnastics, swimming, athletics (except chain weights), table tennis, badminton, basketball, handball, billiards, football, martial arts, shuttlecock, badminton, chess, chess, volleyball

^{vi} a kind of traditional paper in Vietnam

