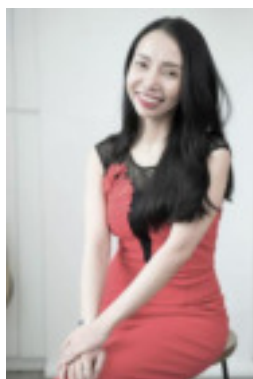


COVID-19 AND THE ISSUES ON LABOUR



DS VIETNAM

DANG Ngoc Huong,
Vietnam Country Partner

The gravity of COVID-19 has not only caused considerable needs of considering the health and economic impacts of its outbreak, but the legal implications on employment. While it may be convenient considering the COVID-19 outbreak as force majeure to offset legal liabilities in the field of labour management, it should also be noted that legal issues pertaining to the COVID-19 are still being discussed amongst the Vietnamese authorities. We recommend that companies should consult professional legal advisers before taking any decision or any action.

On February 1st, 2020, Prime Minister Nguyen Xuan Phuc of Vietnam issued Decision 173 declaring the severe acute respiratory syndrome epidemic caused by a new Corona type virus in Vietnam. However, at that moment, the COVID-19 was not officially pronounced as a nation-wide pandemic.

During the next two (2) months, the outbreak of COVID-19 in the country, together with its cone shaped spirals of impact on the economy, has raised questions to the implication on companies' business operation, including the usage of labour forces.


On April 1st, issuing Decision 447/QD-TTg in replace of Decision 173, the Prime Minister of Vietnam has officially declared the COVID-19 as a nation-wide pandemic. Since then, the question whether the COVID-19 pandemic can be referred as a cause of hardship allowing the parties to renegotiate the terms of labour contracts.

I. URGENT RESPONSES TO THE COVID-19 PANDEMIC

There were three (3) periods of COVID-19 related urgent policies in Vietnam, from April 1st, 2020 to April 22nd, 2020, from April 23rd, 2020 to May 8th, 2020 and from May 9th, 2020.

In the first two periods, the Vietnamese Government strictly requires to carry out nationwide quarantine, ensure social distancing and maintain a required distance

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between people and between communities. To prevent the COVID-19 community transmission, people should limit their movement and stay home, even working from home.

1. Sectors allowed for normal operation

1.1 Period 1: from April 1st to April 22nd

The following sectors were allowed for normal operation:

- (i) Factories, manufacturing establishments;
- (ii) Traffic/construction works;
- (iii) Business facilities providing essential goods and services (food, pharmaceuticals; gasoline, oil; electricity; water; fuels, etc.);
- (iv) Educational institutions, banks, treasuries, service-providing establishments directly related to banking activities and enterprise supporting activities (notary services, lawyer services, vehicle registration, secured transaction registration, etc.);
- (v) Securities services, postal services, telecommunications services, goods transport, import and export services, medical services, mortuary services, etc.

1.2 Period 2: from April 23rd to May 8th, 2020

Basing upon the local practice, the People's Committee of each province has been granted the right to issue the policies suiting its governance territory. In Ho Chi Minh City, there are still some sectors and activities pending for the normal operation such as:

- (i) Beauty facilities, cosmetic surgery, spa, massage, sauna; entertainment areas, theatres, wedding centres, dance halls, bars, karaoke bars, pubs, beer clubs, karaoke or singing clubs; electronic game spots (Internet, game-online).
- (ii) Reception of new guests at business accommodation establishments under the model of Homestay, AirBnB.
- (iii) Festivals, religious ceremonies, sports leagues, events with crowds of people in public places, stadiums and other unnecessary big events.
- (iv) Gathering over 30 people in public places, outside the workplace, schools, and hospitals.

1.3 Period 3: from May 9th, 2020

There are only the restrictions on Karaoke and dance halls. However, these restrictions have been removed since the 10th day of June, 2020.

As a conclusion, although several sectors have maintained their normal operation thorough these periods, the COVID-19 has caused significant challenges to companies, globally and domestically, and certainly created the legal implications on employer and employee rights. As a consequence, enterprises will be plunged in chaos even after this pandemic is controllable in many countries. Hence, it is undeniable that restructuring labour force is not also a need but a demand of any company suffering the interruption or the scale-down operation of business.

II. IMPLICATIONS ON EMPLOYERS

2.1 Is an event of force majeure relevant?


The question whether this COVID-19 pandemic can be applied as a force majeure in the event that a company or an employer is required to reduce or suspend its business operation has been raised by many employers, particularly the SMEs.

Under the set of labour rules of Vietnam, with respect to a pandemic/an epidemic, the term “reason of force majeure” is legally used instead of “an event of force majeure” and is expressly interpreted as one of the following cases:

- a) Enemy related dangers, epidemics;
- b) Relocation or narrowing of the production and business sites, at the request of competent State bodies.

Furthermore, if, as a result of a *force majeure reason* prescribed as above, an employer, though having applied necessary measures, has to scale down production, cut jobs; this employer is then allowed to unilaterally terminate labour contracts.

According to Decision 447/QĐ-TTg dated April 1st, 2020, the COVID-19 is a nation-wide pandemic/epidemic back from January 23th, 2020 which constitutes a force majeure reason under the labour laws of Vietnam. Legally speaking, since that date, the disruptions caused by the COVID-19 can have been attributed to



a basis as force majeure of the decisions relating to companies' employment if it does disrupt such companies' business activities or profitability or finance situation. In the other words, the current inability of businesses to perform their commercial activities, as opposed to the normal business operation in the previous years, can be indeed credited to major shifts in market demand which may be used to prove a consequence of the ensuing uneasiness of business caused by the spread of COVID-19.

Pursuant to the labour regulations of Vietnam, in the situation of an epidemic as a force majeure reason, an employer is entitled to the following decision-making:

- Work suspension;
- Assignment to another job;
- Termination of labour contract;
- Temporary suspension of employment performance (subject to parties' negotiation).

For the further application of the Labour Code 2012 to the work suspension related matters due to the COVID-19, in March 2020, the Ministry of Labour, War Invalids and Social Affairs of Vietnam issued the detail explanation as follows:

- (i) Salary payment during the period of work suspension shall be performed in accordance with the causes of work suspension provided by the Labour Code 2012 (as an epidemic in this case). Employers may be requested to prove those causes thereof.
- (ii) Employers who cannot provide adequate employment due to supply shortage or market reduction may temporarily assign its employees to other jobs in accordance with the Labour Code 2012;
- (iii) In case where an employer is not able to pay the relevant employees subject to prolonged work suspensions, agreements on the suspension of labour contract performance are allowed to be established by the parties;
- (iv) Employers that have to scale down shall implement the regulations of employment termination in line with the Labour Code 2012.



2.2 From when and until when enterprises may invoke the COVID-19 as a force majeure reason for their decisions?

Whilst no specific legislation under the labour laws has required any time limitation of invoking the COVID-19 as a force majeure reason, a notable point that this matter has is the ending time of this pandemic.

Pursuant to the laws of Vietnam, the Prime Minister of Vietnam is entitled to pronouncing the end of COVID-19 as a nation-wide pandemic when there will have been no new case of infection during a continuous 28-days period. At present, this day is unpredictable due to the grey area of the definition “new case”.

In the case where the end of COVID-19 pandemic is pronounced, it is worth noting that if its consequences are to escalate and plunge enterprises in economic or financial chaos, the COVID-19 may be interpreted as a force majeure reason causing the difficult situation of economy given that it probably acts as a direct hindrance to less effectively conducting business operations.

2.3 Is there any support for enterprises by the Government?

(i) Unsecured loans without interest payment

Employers who have to apply work suspension to their employees within the 3-months term, from April 2020 to June 2020, are entitled to unsecured loans granted by the Vietnam Bank of Social Policies in order to pay for the salary of work suspension of the subject employees.

An unsecured loan is granted up to 50% of the regional minimum wage applicable to each employee subject to work suspension at an interest rate of 0% and with a term of up to 12 months if the relevant enterprise can prove its financial difficulties due to the COVID-19.

(ii) Referral contribution to the trade union fund

Enterprises affected by the Covid-19 (whose more than 50% of total employees subject to payment of compulsory social insurance must temporarily stop working) are entitled to request the provincial Trade Union to approve for their referral payment to trade union fund until 30/06/2020; or until 31/12/2020 depending on the actual situation of this pandemic and its consequences.

(iii) Suspension of contribution to the pension and death fund

On May 4th, 2020, the Ministry of Labour, War Invalids and Social Affairs of Vietnam issued the rules applicable to the policy of interest-free referral payment to the fund of pension and death. Accordingly, the enterprises who would like to apply for this support must satisfy several conditions such as a 50% shortage of works provided to employees, a 50% reduction in total assets value ... Time application of referral payment is up to June 2020 or December 2020 at the latest.

(iv) Post-clearance audit

The General Department of Customs requested the local customs authorities to postpone post-clearance audits in Y2020. Nevertheless, customs authorities might consider carrying out audits in case of the legal violations by enterprises; given that the heads of such local customs authorities approved for such audit.

For any additional information, contact:



Olivier Monange
Partner
monange@dsavocats.com



DANG Ngoc Huong
Vietnam Country Partner
dangngochuong@dsavocats.com