

NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Law: 35-2002-QH10

NATIONAL ASSEMBLY
SOCIALIST REPUBLIC OF VIETNAM
Legislature X, 11th session
(From 15 March to 2 April 2002)

**LAW ON AMENDMENTS OF AND ADDITIONS TO
A NUMBER ARTICLES OF THE LABOUR CODE**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and added to in accordance with Resolution 51-2001-QH10 dated 25 December 2001 of the 10th session of Legislature X of the National Assembly; This Law makes amendments of and additions to a number of articles of the Labour Code passed by the 5th session of Legislature IX of the National Assembly on 23 June 1994.

Article 1

To make amendments of and additions to the Preamble and a number of articles of the Labour Code:

1. *To make amendments of and additions to the last clause of the Preamble as follows:*

"The Labour Code protects the right to work, benefits and other rights of employees and at the same time protects the legal rights and benefits of employers, creating conditions for harmonious and stable labour relations, contributing to the development of the creativity and talents of intellectual and manual workers, and of labour managers in order to achieve [high] productivity, quality and social advancement in labour, production, and services; effective utilization and management of labour; and contributing to industrialization and modernization of the country for a wealthy and strong country, and a fair and civilized society."

2. *To make amendments of and additions to article 18 as follows:*

"Article 18

1. An employment service agency shall have a duty to provide consultancy services, to introduce employment to employees, to supply and recruit labour at the request of employers, and to collect and provide information on the labour market, and other duties as provided by law.

The Government shall provide for the conditions and procedures for establishment and operation of employment service agencies.

2. An employment service agency shall be permitted to collect fees, be considered for tax reduction or exemption by the State, and organize trade training in accordance with the provisions of Chapter III of this Code.
3. The Ministry of Labour, War Invalids and Social Affairs shall carry out State administration of employment service agencies."

3. *To make amendments of and additions to article 27 as follows:*

"Article 27

1. A labour contract shall be entered into in one of the following forms:

(a) An indefinite term labour contract.

An indefinite term labour contract is a contract in which the two parties do not determine the term and the time for termination of the validity of the contract;

(b) A definite term labour contract:

A definite term labour contract is a contract in which the two parties determine the term and the time for termination of the validity of the contract within a period from full 12 months to 36 months;

(c) A labour contract for a specific or seasonal job with a duration of less than twelve (12) months.

2. Where a labour contract stipulated in sub-clauses b and c of clause 1 of this article expires and the employee continues to work, within a period of thirty (30) days from the date of expiry of the contract, the two parties shall enter into a new labour contract; if no new labour contract is entered into, the signed contract shall become an indefinite term labour contract. Where the two parties enter into a new labour contract which has a definite term, they may only do so for one additional term; if the employee continues to work after that, an indefinite term labour contract must be entered into.

3. Parties are prohibited from signing specific or seasonal job labour contracts for a term of under twelve (12) months in respect of a job which is regular and has a duration of twelve (12) months or over, except in the case of the temporary replacement of an employee who has taken leave of absence because of military obligation, pregnancy, or other temporary reasons."

4. *To make amendments of and additions to clause 3 of article 29 as follows:*

"3. Where a labour inspector discovers a contract with provisions as referred to in clause 2 of this article, he shall provide guidelines for parties to amend or add to the contract accordingly. Where the parties refuse to amend or add to [*the contract*], the labour inspector shall have the right to compel the deletion of such provisions; the rights, obligations and interests of the parties shall be dealt with in accordance with law."

5. *To make amendments of and additions to article 31 as follows:*

"Article 31

In cases where an enterprise merges, consolidates, divides, separates, or transfers the ownership, management right, or right to use the assets of the enterprise, the succeeding employer shall be responsible to continue performance of the labour contract of the employee. In the case all the employees available cannot be used, there must be a plan for labour usage in accordance with law.

An employee whose labour contract is terminated in accordance with the provisions of this article shall be entitled to a loss of work allowance in accordance with clause 1 of article 17 of this Code."

6. *To make amendments of and additions to article 33 as follows:*

"Article 33

1. A labour contract shall become effective from the date of signing or a date agreed by the two parties or the date on which the employee commences to work.
2. During the performance of a labour contract, a party requests the amendment to the content of the contract must give at least three days notice to the other party. Any amendment to the content of a labour contract may take place by way of amending or adding to the signed labour contract or by entering into a new labour contract. Where the two parties fail to agree on the amendment of or additions to [a signed contract] or on entering into a new labour contract, the signed labour contract shall continue to be performed or shall be terminated in accordance with clause 3 of article 36 of this Code."

7. *To make amendments of and additions to article 37 as follows:*

"Article 37

1. An employee working under a definite term labour contract with a duration of a full twelve (12) months to thirty six (36) months or a labour contract for a seasonal or specific job which has a duration of under twelve (12) months shall have the right to terminate unilaterally the contract before the expiry of such duration in the following cases:
 - (a) The employee is not assigned to the right job or work place or is not ensured the work conditions agreed to in the contract;
 - (b) The employee is not paid in full or not paid in time the wages due as agreed on in the contract;
 - (c) The employee is maltreated or is forced to work;
 - (d) For real personal or family difficulties the employee is unable to continue performing the contract;
 - (dd) The employee is elected to a full time position¹ in a public² office or is appointed to a position in a State body;
 - (e) A female employee is pregnant and has to stop working as advised by a doctor;
 - (g) Where an employee suffers illness or injury and remains unable to work after having received treatment for a period of three consecutive months in respect of a definite term labour contract which has a duration of full twelve (12) months to thirty six (36) months, or a quarter of the duration of the contract in respect of a labour contract for a specific or seasonal job which has a duration of under twelve (12) months.
2. Upon unilateral termination of a labour contract in accordance with the provisions of clause 1 of this article, the employee must give the employer:
 - (a) In respect of the cases stipulated in sub-clauses a, b, c and g: at least three days notice;

¹ The literal translation is "to do full time duties".

² The literal translation is "people-elected".

- (b) In respect of the cases stipulated in sub-clauses d and dd: at least thirty (30) days in respect of a definite term labour contract with a duration of a full twelve (12) months to thirty six (36) months; at least three days in respect of a labour contract for a seasonal or specific job which has a duration of under twelve (12) months;
- (c) In respect of the cases stipulated in sub-clause e: notice in accordance with the time limit stipulated in article 112 of this Code."

3. An employee who is a party to an indefinite term labour contract has the right to terminate the contract unilaterally provided that he gives the employer at least forty five (45) days notice; an employee who suffers illness or injury and has received treatment for a period of six consecutive months shall give at least three days notice."

8. *To make amendments of and additions to article 38 as follows:*

"Article 38

1. An employer has the right to terminate a labour contract unilaterally in the following circumstances:
 - (a) The employee repeatedly fails to perform the work in accordance with the terms of the contract;
 - (b) An employee is disciplined in the form of dismissal in accordance with the provisions of article 85 of this Code;
 - (c) Where an employee suffers illness and remains unable to work after having received treatment for a period of twelve (12) consecutive months in respect of an indefinite term labour contract, or six consecutive months in respect of a definite term contract with a duration of full twelve (12) months to thirty six (36) months, or more than half the duration of the contract in respect of a contract for a specific or seasonal job. Upon the recovery of the employee, the employer shall consider the continuation of the labour contract;
 - (d) The employer is forced to reduce production and employment after trying all measures to recover from a natural disaster, a fire, or others event of force majeure as stipulated by the Government;
 - (dd) The enterprise, body, or organization ceases operation.
2. Prior to the unilateral termination of a labour contract in accordance with sub-clauses (a), (b) and (c) of clause 1 of this article, the employer must discuss and reach an agreement with the executive committee of the trade union of the enterprise. Where there is a disagreement, the two parties must submit a report to the competent body or organization. After a period of thirty (30) days as from the date the local body in charge of State administration of labour is notified, the employer shall have the right to make a decision and be responsible for such decision. Where disagreeing with the decision of the employer, the executive committee of the trade union of the enterprise and the employee shall have the right to request the resolution of a labour dispute in accordance with a procedure stipulated by the law.
3. Upon unilateral termination of a labour contract, except for the cases stipulated in sub-clause b of clause 1 of this article, the employer must give notice to the employee:
 - (a) At least forty five (45) days in respect of an indefinite term labour contract;

- (b) At least thirty (30) days in respect of a definite term contract with duration of full twelve (12) months to thirty six (36) months;
- (c) At least three days in respect of a contract for a specific or seasonal job with a duration of less than twelve (12) months."

9. *To make amendments of and additions to article 41 as follows:*

"Article 41

1. Where an employer unlawfully unilaterally terminates a labour contract, he must re-employ the employee for the position stipulated under the signed contract and pay compensation equal to the amount of wages and wage allowances³ (if any) for the period the employee is not allowed to work plus at least two months of wages and wage allowances (if any).

Where the employee does not wish to return to work, the employee shall be paid the compensation referred to in clause 1 of this article plus an allowance stipulated in article 42 of this Code.

Where the employer does not wish to re-employ the employee and the employee so agrees, in additions to the compensation stipulated in sub-clause 1 of this clause and the allowance stipulated in article 42 of this Code, the two parties shall agree on an additional amount of compensation for the employee for the purpose of termination of the labour contract.

2. Where an employee unlawfully unilaterally terminates the labour contract, he shall not be entitled to any retrenchment allowance and must pay the employer compensation equal to half of a month of wages and wage allowances (if any).
3. Where an employee unilaterally terminates the labour contract, he shall be liable for payment of compensation for costs of training (if any) in accordance with the provisions of the Government.
4. Where a labour contract is unilaterally terminated in breach of the provisions on giving advance notice, the party in breach shall pay compensation to the other party in a sum equal to the wages which would otherwise have been paid to the employee for those days not notified."

10. *To make amendments of and additions to clause 1 of article 45 as follows:*

1. The negotiating representatives of the two parties to the collective agreement shall be:
 - (a) The representative of the labour collective shall be the executive committee of the trade union of the enterprise or a temporary trade union organization;
 - (b) The representatives of the employer shall be the director of the enterprise, or a person authorized in accordance with the charter of the enterprise or authorized in writing by the director of the enterprise.

The number of representatives of the parties in the negotiation of a collective agreement shall be agreed by both parties."

³ This is the literal translation - maybe the intention is to refer to allowances which are of a regular nature like the wages, such as responsibility allowance.

11. To make amendments of and additions to article 47 as follows:

"Article 47

1. The signed collective agreement must be made in four copies, of which:
 - (a) one to be retained by the employer;
 - (b) one to be retained by the executive committee of the trade union of the enterprise;
 - (c) one to be submitted to a higher trade union body by the executive committee of the trade union of the enterprise;
 - (d) one to be submitted by the employer to the body in charge of State administration of labour of the province or city under central authority where the head office of the enterprise is located for registration no later than ten (10) days from the date of signing.
2. The collective agreement shall become effective as from the date agreed by both parties as recorded in the agreement, in the absence of such agreement [*on the effective date*], the collective agreement shall become effective from the date of signing."

12. To make amendments of and additions to article 48 as follows:

"Article 48

1. The collective agreement shall be deemed partially invalid if one or a number of provisions in the agreement are contrary to provisions of the law.
2. The collective agreement shall be deemed wholly invalid in one of the following circumstances:
 - (a) the whole contents of the agreement are contrary to the law;
 - (b) the person signing the agreement was not fully authorized;
 - (c) the signing procedure was not strictly followed.
3. The body in charge of State administration of labour of a province or city under central authority shall have the power to declare a collective agreement to be partially or wholly invalid in accordance with clauses 1 and 2 of this article. In respect of collective agreements in the cases stipulated in sub-clauses (b) and (c) of clause 2 of this article, and where the signed terms of the agreement are beneficial to the employees, the body in charge of State administration of labour of a province or city under central authority shall instruct the parties to re-draft the agreement in accordance with the provisions of the law within ten (10) days from the date of receipt of such instructions, or declare the agreement void if the parties fail to re-draft it. The rights, obligations and interests of the parties recorded in an agreement which is declared invalid shall be dealt with in accordance with law."

13. To make amendments of and additions to clause 1 of article 52 as follows:

- "1. In cases where an enterprise merges, 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 shall, based on the labour usage plan, consider the continuance of

performance of, amendment of or additions to [*the existing collective agreement*], or entering into a new collective agreement."

14. *To make amendments of and additions to article 57 as follows:*

"Article 57

Subject to consultation with the Vietnam General Confederation of Labour and representatives of employers, the Government shall stipulate the principles for formation of wage scales, wage tables and labour rates for the employer to formulate and apply [*wage scales, wage tables and labour rates*] in accordance with the production and business conditions of the enterprise; and shall stipulate a wage scale and a wage table for State owned enterprises.

Upon formulation of a wage scale, wage table and labour rates, the employer must consult the executive committee of the trade union of the enterprise; the wage scale and wage table must be registered with the body in charge of State administration of labour of the province or city under central authority where the head office of the enterprise is located and be publicized in the enterprise."

15. *To make amendments of and additions to article 61 as follows:*

"Article 61

1. An employee who works overtime shall be paid according to the wage unit price or the wage of his current work as follows:
 - (a) On normal days, [*at a rate of*] at least one hundred and fifty (150) per cent;
 - (b) On weekly days off, [*at a rate of*] at least two hundred (200) per cent;
 - (c) On holidays and paid leave days, [*at a rate of*] at least three hundred (300) per cent.

Where [*an employee*] works overtime at night, he shall also be paid an additional amount in accordance with the provisions of clause 2 of this article.

Where an employee is allowed time off for the additional hours worked, the employer shall only be required to pay the difference [*between the overtime rate and*] the wage calculated according to the wage unit price or the wage of the current work of normal working days.

2. An employee who works at night as referred to in article 70 of this Code shall be paid an additional amount of at least thirty (30) per cent of the wage calculated according to the wage unit price or the day shift wage of the current work."

16. *To make amendments of and additions to article 64 as follows:*

"Article 64

Based on the annual production and business results of an enterprise and the degree of performance⁴ of employees, the employer shall pay bonuses to employees working for the enterprise.

⁴ The literal translation is "completion of work".

The regulations on bonuses shall be decided by the employer after consulting the executive committee of the trade union of the enterprise."

17. *To make amendments of and additions to article 66 as follows:*

"Article 66

In cases where an enterprise merges, consolidates, divides, separates, or transfers the ownership, management right, or right to use the assets of the enterprise, the succeeding employer shall be responsible to pay wages and other benefits to the employees transferred⁵ from the previous enterprise(s). Where an enterprise becomes bankrupt, wages, retrenchment allowances, social insurance and other benefits of employees under the signed labour contracts and collective agreement shall be the first liability in the payment priority order."

18. *To make amendments of and additions to article 69 as follows:*

"Article 69

An employer and an employee may agree on additional working hours provided that the number of additional hours worked is no more than four hours a day or two hundred (200) hours annually, except for a number of special cases where the number of additional hours worked is no more than three hundred (300) hours annually as stipulated by the Government after consulting the Vietnam General Confederation of Labour and representatives of employers."

19. *To make amendments of and additions to clause 1 of article 84 as follows:*

"1. A person who breaches labour rules shall, depending on the seriousness of the breach, be dealt with in one of the following manners:

- (a) Reprimand;
- (b) Extension of the period for [*the next*] wage increase to no more than six months or transfer to another position with a lower wage for a maximum period of six months, or removal from office;
- (c) Dismissal."

20. *To make amendments of and additions to article 85 as follows:*

"Article 85

1. Dismissal shall only be applied as a means of penalty in the following circumstances:

- (a) Where an employee commits an act of theft, embezzlement, disclosure of business or technology secrets, or other conduct which is seriously detrimental to the assets or well-being of the enterprise;
- (b) Where an employee who is disciplined by extension of the period for [*the next*] wage increase or assignment to another job re-commits an offence during the period when he is on trial or re-commits an offence after he is disciplined in the form of removal from office;

⁵ This is the literal translation.

(c) Where an employee takes an aggregate of five (5) days off in one month or an aggregate of twenty (20) days off in one year on his own will without proper reasons.

2. After dismissing an employee, the employer must notify the body in charge of State administration of labour of the province or city under central authority."

21. *To make amendments of and additions to article 88 as follows:*

"Article 88

1. An employee who is reprimanded and an employee who has been disciplined by extension of the period for [the next] wage increase or assignment to another job shall, after three and six months respectively as from the date the breach is dealt with, be automatically cleared of all charges if no further offence is committed.

2. An employee who was disciplined by extension of the period for [the next] wage increase or assignment to other work and who has observed half of the term of the discipline shall be considered by the employer for a reduction of such term provided that he shows improvement."

22. *To make amendments of and additions to clause 2 of article 96 as follows:*

"2. The production, usage, storage, or transportation of machinery, equipment, materials, energy, electricity, chemicals, vegetation protection substances, and the change of technology or import of new technology must be carried out in accordance with occupational safety and hygiene standards. Machinery, equipment, materials, and items which have strict requirements for occupational safety and hygiene must be registered and verified in accordance with regulations of the Government."

23. *To make amendments of and additions to clause 3 of article 107 as follows:*

"3. An employer shall be responsible for payment of compensation equal to at least thirty (30) months salary and wage allowances (if any) for an employee whose ability to work has been reduced by eighty one (81) per cent or more, or for the relatives of an employee who has died as a result of a work-related accident or occupational disease which is not caused by the fault of the employee. Where the employee is at fault, [he or his relative] shall still be entitled to payment of compensation at least equal to twelve (12) months salary and wage allowances (if any).

The Government shall provide for the responsibility of employers and the rate of compensation for work-related accidents or occupational diseases for employees whose ability to work has been reduced by five per cent to under eighty one (81) per cent."

24. *To make amendments of and additions to clause 3 of article 111 as follows:*

"3. An employer shall be prohibited from dismissing a female employee or unilaterally terminating the labour contract of a female employee for reason of marriage, pregnancy, taking maternity leave, or raising a child under twelve (12) months old, except where the enterprise ceases its operation.

During pregnancy, maternity leave, or raising a child under twelve (12) months old, a female employee shall be 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 its operation."

25. *To make amendments of and additions to article 121 as follows:*

"Article 121

An employer shall only be permitted to employ a junior worker in jobs which are suitable to the health of the junior worker to ensure the development and growth of the worker's body, mind, and personality. An employer shall have the responsibility of looking after the interests of the junior worker in respect of labour, wages, health, and training during the working process.

[An employer] shall be prohibited from employing junior workers in heavy, dangerous, or works requiring contacts with toxic substance or in works or workplaces which have bad effects on their personality stated in a list issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health."

26. *To make amendments of and additions to clause 2 of article 129 as follows:*

"2. An employee shall enjoy rights and have obligations in relation to any inventions, utility solutions, industrial models or other subjects of industrial property created or jointly created by him in the process of implementation of his labour contract in accordance with the laws on industrial property and the signed contract."

27. *To make amendments of and additions to article 132 as follows:*

"Article 132

1. Foreign invested enterprises may directly recruit Vietnamese employees or do so through an employment service agency and must notify the list of recruited employees to the local body in charge of State administration of labour.

Where a Vietnamese cannot satisfy the requirements for works which require highly technical or management skills, an enterprise shall be permitted to employ a percentage of foreign employees for a certain period provided that training plans and programmes are established in order to enable Vietnamese workers to do such works in a short period of time and to replace foreign employees as stipulated by the Government.

2. International or foreign bodies and organizations and foreign individuals in Vietnam may recruit Vietnamese and foreign employees in accordance with regulations of the Government.
3. The minimum wage which applies to a Vietnamese worker in cases stipulated in article 131 of this Code shall be determined and declared by the Government after consultation with the Vietnam General Confederation of Labour and the representative of the employer.
4. Working hours, rest breaks, occupational safety and hygiene measures, social insurance [*contributions*], and labour dispute resolution in the case of an enterprise or organization and other cases stipulated in article 131 shall be in accordance with the provisions of this Code and other relevant legal instruments."

28. *To make amendments of and additions to clause 1 of article 133 as follows:*

"1. A foreigner who works for an enterprise, organization, or individual in Vietnam for a full three months or more must obtain a working permit issued by the body in charge of State administration of labour of a province or city under central authority; the duration of the labour permit shall be in accordance with the term of the labour contract but shall not exceed thirty six (36) months and may be extended at the request of the employer."

29. *To make amendments of and additions to article 134 as follows:*

"Article 134

1. The State encourages enterprises, bodies, organizations and individuals to search and expand the labour market in order to create employment in foreign countries for Vietnamese employees in accordance with the law of Vietnam, the law of the foreign country and international treaties to which Vietnam is a signatory or participant.
2. Vietnamese citizens who are eighteen (18) years of age in full* or over, who have the ability to work, who are voluntary 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 country."

30. *Article 134a shall be added as follows:*

"Article 134a

The forms of sending Vietnamese employees to work abroad shall include:

1. Supplying labour in accordance with contracts signed with foreign parties;
2. Sending employees to work under contracts for tender or specific projects abroad;
3. Sending employees to work under investment projects abroad;
4. Other forms as stipulated by law."

31. *To make amendments of and additions to article 135 as follows:*

"Article 135

1. An enterprise operating in labour export must have a permit from the competent body in charge of State administration of labour.
2. An enterprise operating in labour export shall have the following rights and obligations:
 - (a) To register labour export contracts with the competent body in charge of State administration of labour;
 - (b) To exploit the market and enter into contracts with foreign parties;
 - (c) To publicize the criteria and conditions for recruitment, and the interests and obligations of labourers;
 - (d) To recruit labourers directly and not to collect recruitment fees from labourers;
 - (dd) To organize training and orientation education for labourers before they go to work abroad in accordance with law;

- (e) To enter into contracts with labourers for working abroad; to organize for labourers to go abroad and return to Vietnam in accordance with the signed contracts and provisions of the law;
 - (g) To collect fees for labour export directly and to make payment to the labour export assistance fund as stipulated by the Government.
 - (h) To manage and protect the interests of labourers during the period of working abroad under their contracts in accordance with the law of Vietnam and the law of the foreign country;
 - (i) To pay compensation for damage to the labourer caused by the breach of the contract by the enterprise;
 - (k) To initiate action to claim compensation for damage caused by the breach of the contract by the labourer;
 - (l) To complain to the authorized State body against breaches of the laws in the field of labour export.
3. An enterprise sending Vietnamese labourers to work overseas for implementation of tender contracts, contracts for specific works or investment projects overseas must register contracts with the competent body in charge of State administration and implement the provisions in sub-clauses c, d, dd, e, h, i, k and l of clause 2 of this article.
4. The Government shall make detailed provisions on labourers working overseas under a contract not via an enterprise."

32. *Article 135a shall be added as follows:*

"Article 135a

1. A labourer working overseas shall have the following rights and obligations:
- (a) To be provided with information relating to labour policies and laws, conditions for recruitment, rights and obligations of labourers working overseas;
 - (b) To be provided with training and orientation education before going to work overseas;
 - (c) To enter into and perform the contract correctly;
 - (d) To be ensured the interests under the signed contract in accordance with the law of Vietnam and the law of the foreign country;
 - (dd) To comply with the law of Vietnam and the law of the foreign country, and to respect the customs and traditions of the foreign country;
 - (e) To enjoy consulate and judicial protection;
 - (g) To pay fees for labour export;
 - (h) To complain, denounce or initiate an action to the authorized body of the State of Vietnam or of the foreign country against breaches of the labour export enterprise and the foreign employer;

- (i) To pay compensation for damage caused by breaches of the contract;
- (k) To receive compensation for damage caused by breaches of the contract by the enterprise.

2. Labourers working overseas in the cases stipulated in clause 3 of article 135 shall have the rights and obligations stipulated in sub-clauses a, b, c, d, dd, e, h, i, and k of clause 1 of this article."

33. *Article 135b shall be added as follows:*

"Article 135b

The Government shall make detailed provisions on training of labourers for export; organization and management of labourers overseas and on the establishment, management and use of the labour export assistance fund."

34. *Article 135c shall be added as follows:*

"Article 135c

- 1. Illegal recruitment and sending labourers to work overseas shall be strictly prohibited.
- 2. Enterprises, organizations or individuals abusing labour export to recruit, train and organize sending labourers to work overseas illegally shall be dealt with in accordance with provisions of the law and shall pay compensation to labourers if they cause damage.
- 3. Labourers abusing the opportunity to work overseas for other purposes shall be dealt with in accordance with provisions of the law and shall pay compensation if they cause damage."

35. *To make amendments of and additions to clause 1 of article 140 as follows:*

- "1. The State shall stipulate policies on social insurance in order to expand and improve gradually the material security of an employee, to take care of and recover the health, and to stabilize the life of an employee and his family when the employee falls ill, becomes pregnant, reaches the retirement age⁶, dies, becomes injured in a work-related accident, contracts an occupational disease, becomes unemployed, suffers from misfortunes, or suffers from other problems.

The Government shall make detailed provisions on re-training of unemployed labourers, rates of unemployment insurance premium and the conditions for and amounts of unemployment allowances; and the establishment, management and use of the unemployment insurance fund."

36. *To make amendments of and additions to article 141 as follows:*

"Article 141

- 1. Compulsory forms of social insurance shall apply to enterprises, bodies and organizations which employ employees under definite term labour contracts with a duration of a full three months or over and under indefinite term labour contracts. In these enterprises, bodies and organizations, the employer and the employees must make contributions in social insurance funds in accordance with the provisions of article 149 of this Code and the employees shall be entitled to social insurance benefits and allowances in the event of illness, work-related accidents and occupational disease, pregnancy, retirement, and death..

⁶ The literal translation is "comes to the end of their working age".

2. In respect of an employee who works under definite term labour contracts with a duration of less than three months, in seasonal jobs, social insurance contributions shall be included in the wage paid by the employer in accordance with regulations of the Government to enable the employee to participate in social insurance on a voluntary or self-funding basis. Where the employee continues to work or enter into a new labour contract upon the expiry of the duration of a labour contract, compulsory social insurance shall apply in accordance with the provisions of clause 1 of this article."

37. *To make amendments of and additions to article 144 as follows:*

"Article 144

1. During maternity leave stipulated in article 114 of this Code, a female employee who has paid social insurance contributions shall be entitled to a social insurance allowance equal to one hundred (100) per cent of her wage and an additional allowance of one month's wage.
2. Other regimes which apply to female employees shall be governed by the provisions of article 117 of this Code."

38. *Clause 1a shall be added to article 145 as follows:*

- 1a. Female employees who are fifty five (55) years of age in full and who have paid social insurance contributions for a full twenty five (25) years, and male employees who are sixty (60) years of age in full and who have paid social insurance contributions for a full thirty (30) years shall be entitled to the same maximum rate of monthly pension as stipulated by the Government."

39. *To make amendments of and additions to article 148 as follows:*

"Article 148

Enterprises in agricultural, forestry, fishing, and salt-making industries shall have the responsibility to participate in the forms of social insurance which are suitable to the production characteristics and labour usage of their industry in accordance with regulations of the Government."

40. *To make amendments of and additions to article 149 as follows:*

"Article 149

1. Social insurance funds shall be established from the following sources:
 - (a) The employer shall contribute a sum equivalent to fifteen (15) per cent of the total balance of the salary fund;
 - (b) Each employee shall contribute five per cent of his wage;
 - (c) The State shall contribute and assist with additional funds to ensure the implementation of social insurance regimes for employees;
 - (d) Profits generated from the fund;
 - (dd) Other sources.

2. Social insurance funds shall be uniformly, democratically and publicly managed in accordance with State financial regimes and on the basis of independent accounting, and be protected by the State. Social insurance funds shall be entitled to carry out measures for value retention and growth in accordance with the provisions of the Government."

41. *To make amendments of and additions to clause 2 of article 151 as follows:*

"2. Disputes on social insurance:

- (a) A dispute between an employee and an employer shall be resolved in accordance with the provisions of Chapter XIV of this Code;
- (b) A dispute between an employee who has retired⁷ in accordance with stipulated regimes and an employer or a social insurance body, or between an employer and a social insurance body, shall be settled⁸ between the two parties; failing an agreement, it shall be resolved by a people's court."

42. *To make amendments of and additions to article 153 as follows:*

"Article 153

1. For enterprises which are currently operating without a trade union organization, no later than six months from the date on which the Law on Amendments of and Additions to a Number of Articles of the Labour Code becomes effective, and for newly established enterprises, within⁹ six months from the date of commencement of operation, the local trade union and industry trade union shall be responsible for establishing trade union organizations at such enterprises to represent and protect the lawful rights and interests of the employees and the labour collective.

The employer shall be responsible for facilitating the early establishment of trade union organizations. Pending establishment, the local trade union or industry trade union shall appoint a provisional executive committee of the trade union to represent and protect the lawful rights and interests of the employees and the labour collective.

Any act which obstructs the establishment and activities of trade union at an enterprise shall be strictly prohibited.

2. The Government shall provide guidelines for the implementation of clause 1 of this article after agreement with the Vietnam General Confederation of Labour."

43. *To make amendments of and additions to article 163 as follows:*

"Article 163

1. A labour conciliatory council of an enterprise shall be established in enterprises which have their trade unions or a provisional executive committee of trade union and shall consist of an equal number of representatives of the employees and the employer. The number of members in the council shall be agreed by the two parties.

⁷ The literal translation is "has stopped working".

⁸ The literal translation is "shall be agreed".

⁹ The literal translation is "after six months"

2. The term of office of the labour conciliatory council of an enterprise shall be two years. The representatives of each party shall alternate between the positions of chairman and secretary of the council. The labour conciliatory council in an enterprise shall carry out its duty in accordance with the principles of agreement and unanimous approval.
3. The employer shall ensure the necessary conditions for the labour conciliatory council of an enterprise to carry out its activities."

44. *To make amendments of and additions to clause 3 of article 164 as follows:*

- "3. In the event that the conciliation fails or a disputing party is not present for the second time when a proper summon has been sent without a justified reason, a non-settlement statement shall be prepared by the labour conciliatory council of the enterprise. Copies of the statement must be forwarded to the two disputing parties within a period of three days from the date the conciliation is unsuccessful. Each party to the dispute has the right to request the people's court to hear the dispute. The file submitted to the people's court must be accompanied by the non-settlement statement."

45. *To make amendments of and additions to clause 1 of article 165 as follows:*

- "1. A labour conciliator shall, in accordance with the procedure stipulated in article 164 of this Code, resolve an individual labour dispute at an enterprise where no labour conciliatory council of the enterprise has been established, and a dispute relating to the performance of an apprenticeship contract or training fees."

46. *To make amendments of and additions to article 166 as follows:*

"Article 166

1. The people's court shall resolve an individual labour dispute which fails to be resolved by the labour conciliatory council of an enterprise or a labour conciliator or which fails to be resolved by the labour conciliatory council of an enterprise or a labour conciliator within the stipulated time limit.
2. The following individual labour disputes may be resolved directly by a people's court without having to be referred first to a conciliation body at the enterprise:
 - (a) Disputes relating to dismissal in respect of a breach of labour rules or disputes which arise from the unilateral termination of a labour contract;
 - (b) Disputes relating to payment of compensation or allowances upon termination of a labour contract;
 - (c) Disputes between a domestic servant and the employer;
 - (d) Disputes relating to social insurance as stipulated in sub-clause b of clause 2 of article 151 of this Code;
 - (dd) Disputes relating to payment of compensation between an employee with a labour exporting enterprise.
3. An employee shall be exempted from payment of court fees in all litigation matters involving claims for wages, loss of work allowance, retrenchment allowance, social insurance, compensation for work-related

accidents or occupational disease, compensation for damages, or for¹⁰ wrongful dismissal or unlawful termination of a labour contract.

4. Where, upon hearing, the people's court finds out that a labour contract is contrary to a collective agreement or the laws on labour; or that a collective agreement is contrary to the laws on labour, it shall declare the labour contract or collective agreement to be partially or wholly invalid.

The rights, obligations and interests of the parties recorded in a labour contract or a collective agreement which is declared invalid shall be dealt with in accordance with law.

5. The Government shall make detailed provisions for dealing with the consequences of the cases where a labour contract or a collective agreement is declared invalid as stipulated in clause 3 of article 29, clause 3 of article 48 and clause 4 of this article."

47. *To make amendments of and additions to article 167 as follows:*

"Article 167

1. The time limitations for requesting resolution of an individual labour dispute calculated from the date on which each disputing party claims that its rights and benefits have been violated shall be stipulated as follows:
 - (a) One year in respect of labour disputes stipulated in sub-clauses a, b and c of clause 2 of article 166;
 - (b) One year in respect of disputes stipulated in sub-clause d of clause 2 of article 166;
 - (c) Three years in respect of disputes stipulated in sub-clause dd of clause 2 of article 166;
 - (d) Six months in respect of other labour disputes.
2. The time limitation for resolution of collective labour disputes shall be one year calculated from the date on which each party claims that its rights and benefits have been violated."

48. *To make amendments of and additions to article 181 as follows:*

"Article 181

1. The Government shall uniformly carry out State administration of labour within the country.

The Ministry of Labour, War Invalids and Social Affairs shall be responsible before the Government for implementation of State administration of labour.

Ministries and ministerial equivalent bodies shall be responsible for coordinating with the Ministry of Labour, War Invalids and Social Affairs for uniform implementation of State administration of labour.

2. People's committees at all levels shall carry out State administration of labour within their own localities. The local body in charge of State administration of labour shall assist the people's committee of the same

¹⁰ It's not clear in the Vietnamese version whether these litigation matters involve the acts of wrongful dismissal or unlawful termination themselves or just claims for compensation for such acts

level to carry out State administration of labour in accordance with the delegated authority of the Ministry of Labour, War Invalids and Social Affairs.

3. The Vietnam General Confederation of Labour and trade unions at all levels shall participate in the supervision of State administration of labour in accordance with the provisions of the law.
4. Representatives of employers and employees shall put forward their views to State bodies in respect of policies, laws and other issues relating to labour relations as stipulated by the Government."

49. *To make amendments of and additions to article 182 as follows:*

"Article 182

Within thirty (30) days from the date on which an enterprise commences its operation, the employer must declare the labour usage and, during the period of operation, submit to the local body in charge of State administration of labour reports on any changes relating to labour in accordance with the provisions of the Ministry of Labour, War Invalids and Social Affairs. Within thirty (30) days from the date on which the enterprise ceases its operation, the employer must submit a report to the local body in charge of State administration of labour on the termination of labour usage.

The employer must establish labour books, wage books and social insurance books."

50. *To make amendments of and additions to article 183 as follows:*

"Article 183

An employee shall be issued with a labour book and a social insurance book in accordance with the provisions of the law."

51. *To make amendments of and additions to article 184 as follows:*

"Article 184

1. The Ministry of Labour, War Invalids and Social Affairs shall uniformly carry out State administration of labour export.
2. People's committees of provinces and cities under central authority shall carry out State administration of labour export within their own localities.
3. The body in charge of State administration of labour of a province or city under central authority shall issue working permits to foreigners who enter Vietnam as stipulated in clause 1 of article 133 of this Code."

52. *To make amendments of and additions to article 185 as follows:*

"Article 185

State labour inspectors shall have the function of inspection of labour policies, occupational safety, and occupational hygiene¹¹.

¹¹ The literal translation is "labour hygiene".

The Ministry of Labour, War Invalids and Social Affairs and the local body in charge of State administration of labour shall carry out State inspection of labour."

53. *To make amendments of and additions to article 186 as follows:*

"Article 186

State labour inspectors shall have the following main duties:

1. To inspect compliance with provisions on labour, occupational safety, and occupational hygiene;
2. To investigate work-related accidents and other violations of occupational hygiene standards;
3. To participate in the establishment and guidance for application of the systems of standards, procedures and measures for occupational safety and occupational hygiene;
4. To resolve any complaints or claims in respect of labour in accordance with the provisions of the law;
5. To deal with in accordance with the delegated authority and make recommendations to other competent bodies to deal with breaches of labour laws."

54. *To make amendments of and additions to clause 2 of article 191 as follows:*

"2. The Ministry of Labour, War Invalids and Social Affairs shall be responsible for the establishment of a State labour inspection organization system; for establishing criteria for recruitment, appointment, transfer, discharge, and dismissal of labour inspectors, for issuing inspector identity cards, and for issuing provisions on regular and irregular reports, and other necessary procedures or formalities."

55. *Section Va shall be added to Chapter XI:*

"Vietnamese labourers working overseas" shall include articles 134, 134a, 135, 135a, 135b and 135c.

56. *To make amendments of and additions to the wording in a number of articles as follows:*

- (a) The term "employment services" in articles 10, 15 and 16 shall be amended to be "employment introduction".
- (b) The term "one or more year" in articles 17 and 42 shall be amended to be "twelve full months or more";
- (c) The term "fees of the apprenticeship" in clause 3 of article 24 shall be amended to be "costs of the apprenticeship";
- (d) Section V of Chapter XI shall be renamed as "Labour for foreign organizations and individuals in Vietnam, foreign employees working in Vietnam";
- (dd) The term "clauses 1, 2 and 3 of this article" in clause 4 of article 145 shall be amended to be "clauses 1, 1a, 2 and 3 of this article";
- (e) The terms "local labour office" and "provincial labour office" in articles 17, 82, 162 and 169 shall be amended to be "local body in charge of State administration of labour" and "body in charge of State administration of labour of a province or city under central authority".

Article 2

This Law shall come into effect from 1 January 2003.

Article 3

The Government shall make detailed provisions for the implementation of this Law.

This Law was passed by Legislature X of the National Assembly of the Socialist Republic of Vietnam at its 11th session on 2 April 2002.

Chairman of the National Assembly

NGUYEN VAN AN