

PANORAMIC

**LABOUR &
EMPLOYMENT
DISPUTES**

Vietnam



LEXOLOGY

Labour & Employment Disputes

Contributing Editors

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PRE-ACTION CONSIDERATIONS

Key Requirements

Are there any pre-action requirements for employment claims? If so, what are the consequences of non-compliance?

Yes. For individual labour claims, the parties must undergo the conciliation procedure by labour conciliators before filing any lawsuit with the court or the labour arbitration council, except in the following cases, in which conciliation is not necessary: disputes regarding dismissal for disciplinary reasons or unilateral termination of employment; disputes regarding the payment of termination entitlements; disputes between a domestic worker and his/her employer; disputes related to the payment of statutory insurance or benefits in respect of an occupational accident or disease; disputes regarding Vietnamese guest workers; or disputes between an outsourced employee and a client enterprise (articles 188, 191 and 195 of the Labour Code).

Law stated - 26 June 2024

Third-party funding

Are there any rules or restrictions on third parties funding the costs of litigation or agreeing to pay adverse costs?

Vietnamese laws are silent on the funding of litigation costs by third parties. However, such funding may be allowable to the extent that it is not contrary to any principles of civil law. If such funding is allowable, the third-party funders would not be directly liable for any costs incurred by the other side under a judgment because they are not the involved parties participating in the proceedings.

Law stated - 26 June 2024

Contingency fee arrangements

Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into a contingency fee arrangement?

Vietnamese laws are unsettled on contingency fee arrangements. In particular, there are four ways to charge lawyer fees, which include hourly fees, fixed fees, retainer fees, and fees equivalent to a percentage of the claim amount/contract value (article 55.2 of the Law on Lawyers 2006). In other words, contingency fee arrangements are not clearly permitted or prohibited for a civil dispute.

The typical options for contingency fees are fixed-percentage contingency fees (ie, lawyers will receive a percentage of the award after the proceeding is completed), and staged contingency fees (ie, lawyers will receive a percentage of the award depending on the stage at which the matter is resolved).

Prior to entering into a contingency arrangement, the following aspects should be taken into consideration: the fee typically charged in the locality for a similar legal service; the amount of work involved and the results to be obtained; any time limitations imposed by either the client or circumstances; the professional relationship between the client and the lawyers; and the experience, reputation and skill of those performing the services.

Law stated - 26 June 2024

ISSUING A CLAIM

Forum

What is the appropriate forum for complaints concerning individual employment rights?

Most individual labour disputes must first be subject to the conciliation procedure by labour conciliators, unless the dispute fits into one of these exceptions: disputes regarding dismissal for disciplinary reasons or unilateral termination of employment; disputes regarding the payment of termination entitlements; disputes between a domestic worker and his/her employer; disputes related to the payment of statutory insurance or benefits in respect of an occupational accident or disease; disputes regarding Vietnamese guest workers; or disputes between an outsourced employee and a client enterprise (article 188 of the Labour Code). After this conciliation step (or immediately, if the dispute is subject to an exception), the employee may file a lawsuit in the labour court or, if both parties agree, they may submit their dispute to the labour arbitration council.

Law stated - 26 June 2024

Territorial jurisdiction

Are there any limitations on territorial jurisdiction?

There are certain limitations on territorial jurisdiction that apply to civil cases (eg, labour disputes) involving foreign elements. A civil case involving foreign elements means a civil case falling in any of the following cases under the Civil Code (article 464 of the Civil Code):

- at least one party is a foreign individual, agency, or organisation;
- all parties are Vietnamese citizens, agencies, or organisations but the relationship is established, changed, developed, or broken up in a foreign country; and
- all parties are Vietnamese citizens, agencies, or organisations but the parties of such civil relationship are overseas.

Disputes arising from a labour contract will be subject to the regulations of the governing law – either Vietnamese law or foreign law – agreed to by the parties in the labour contract (article 664 of the Civil Code), provided the application of this law is not contrary to the fundamental principles of Vietnamese law (article 670.1 of the Civil Code).

In practice, labour contracts in Vietnam are typically governed by Vietnamese law, and the court would likely find that a foreign law governing the labour relationship that varied from

Vietnamese law was contrary to the fundamental principles of Vietnamese law, so would instead apply Vietnamese law.

Vietnamese courts will have the general and exclusive dispute resolution authority in resolving a civil case involving foreign elements under the Civil Procedure Code (articles 469 and 470 of the Civil Procedure Code). If the involved parties choose Vietnamese courts to settle a labour dispute under Vietnamese law or international treaties to which Vietnam is a member, such labour dispute will be subject to the exclusive authority of Vietnamese courts.

Law stated - 26 June 2024

Standing

Who can bring a claim?

Either employees/employee representatives or employers/employer representative organisations can bring a labour claim to the competent authorities to settle such claim (article 182 of the Labour Code).

Law stated - 26 June 2024

Commencing claims

How are claims commenced?

A labour claim will commence after it is requested by a disputing party or by another competent authority or person, and is agreed to by the disputing parties (article 180 of the Labour Code).

Law stated - 26 June 2024

Fees

Are fees payable for the issuing of a claim?

Not applicable under Vietnamese law.

Law stated - 26 June 2024

Service

Is any qualifying service required?

Under article 70.9 of the Civil Procedure Code, a plaintiff is required to send other involved parties, or their lawful representatives, photocopies of the petition and materials and evidence related to their lawsuit. However, in practice, many plaintiffs fail to do so. Instead, most defendants will learn about the claim against them by receiving a notification from the court stating that it has accepted the plaintiff's case for handling, and after receiving this notice, will go to the court to obtain copies of the petition and all relevant materials.

Law stated - 26 June 2024

Defendants and legal personality

Against whom can a claim be brought? Can claims be brought against natural persons as well as corporations?

A labour claim can be brought against both natural persons and legal entities (articles 179.1 and 182 of the Labour Code).

Law stated - 26 June 2024

Types of claims

What types of claims can be brought?

There are two main types of labour claims under the Labour Code (article 179 of the Labour Code):

- individual labour disputes between an employee and an employer; between an employee and the organisation that sends the employee to work overseas; and between an outsourced worker and a client enterprise; and
- rights-based or interest-based collective labour disputes between one or more employee representative organisations and an employer or one or more employer representative organisations.

Law stated - 26 June 2024

Time limits

What are the time limits for bringing employment claims?

While Vietnamese laws do not regulate the time limits for bringing interest-based collective labour disputes, the time limits for bringing individual labour claims and right-based collective labour claims are as follows (articles 190 and 194 of Labour Code):

- labour conciliation: within six months from the date on which a party discovers the infringement of its lawful rights and interests;
- bringing labour claims to the labour arbitration council: within nine months from the date on which a party discovers the infringement of its lawful rights and interests; and
- filing a lawsuit to the competent court: within one year from the date on which a party discovers the infringement of its lawful rights and interests.

Law stated - 26 June 2024

Counterclaims

| Can any counterclaims be brought by an employer?

Counterclaims can be brought by an employer (as a defendant) if a labour claim is referred to the resolution of the competent court under the Civil Procedure Code (article 200 of the Civil Procedure Code).

Law stated - 26 June 2024

CASE MANAGEMENT

Procedure

What is the typical sequence of procedural steps in an employment dispute?

In general, most types of labour disputes (with some exceptions) must go through the labour conciliation process if required by law before they are referred to the competent court or the labour arbitration council. The labour dispute process includes the following steps:

- Conciliation by labour conciliators (for individual labour disputes, rights-based collective labour disputes and interest-based collective labour disputes, unless the labour conciliation is not required in certain cases by law) (articles 188 and 192 of the Civil Procedure Code): Within five working days from receiving the conciliation request, the labour conciliators must complete the conciliation process with the involved parties. The labour conciliators will then put forward a settlement proposal for consideration by the involved parties:
 - If the parties agree to the settlement proposal, the labour conciliator will prepare the minutes of settlement, and both parties must comply with the agreements recorded in the minutes of settlement.
 - If the parties do not agree to the settlement proposal, or if either party is not present to draw up the minutes of settlement without proper reason after being validly summoned for the second time, the labour conciliators will prepare the minutes of unsuccessful conciliation. In the event of an unsuccessful conciliation, or if either party fails to implement the minutes of settlement, or if the labour conciliators have not resolved the matter on expiry of the time limit for resolution, each party has the right to bring the dispute to the Vietnamese court (except for interest-based collective labour disputes) or the labour arbitration council.
- Dispute settlement by the labour arbitration council (for individual labour disputes, rights-based collective labour disputes and interest-based collective labour disputes) (articles 189, 193 and 197 of the Civil Procedure Code):
 - Within seven working days from the receipt of the request of the labour dispute settlement, an arbitral tribunal will be established.
 - Within 30 working days from the establishment of the arbitral tribunal, the arbitral tribunal will issue a decision on the settlement of the labour dispute and send it to the disputing parties.

With respect to interest-based collective labour disputes, the employee representative organisation that is the disputing party has the right to carry out the procedures of strike-off under the law if, within the statutory timeline, the arbitral tribunal is not established, or a decision on the settlement of the labour dispute is not issued by the arbitral tribunal, or a disputing party fails to comply with the decision of the arbitral tribunal.

- Dispute settlement by the competent court (for individual labour disputes and rights-based collective labour disputes) (articles 189 and 193 of the Civil Procedure Code): The disputing parties can bring the case to the court if, within the statutory timeline, the arbitral tribunal is not established, or a decision on the settlement of the labour dispute is not issued by the arbitral tribunal, or the employer fails to comply with the decision of the arbitral tribunal. The litigation process of the court shall follow the regulations of the Civil Procedure Code.

Law stated - 26 June 2024

Rules

What rules apply to case management?

The principles of labour dispute settlement under Vietnamese law are as follows (article 180 of the Labour Code):

- to respect the parties' autonomy through negotiation throughout the process of labour dispute settlement;
- to prioritise labour dispute settlement through mediation and arbitration on the basis of respect for the rights and interests of the involved parties, and respect for the public interest of society and conformity with the law;
- to settle the labour dispute publicly, transparently, objectively, promptly and lawfully;
- to ensure the participation of the representatives of each party in the labour dispute settlement process; and
- to initiate the labour dispute settlement by a competent authority or person after a labour claim is requested by a disputing party or by another competent authority or person and is agreed by the disputing parties.

Law stated - 26 June 2024

Amendments to claims

Under what circumstances can amendments to claims be made?

With respect to labour claims that are subject to the court's settlement, amendments to the labour claims can be approved by the competent court if such amendments do not exceed the scope of the initial claims at the first-instance trial (article 244 of the Civil Procedure Code). There is no regulation specifying the basis on which the labour claims can be amended during the process of the labour conciliation or settlement by the labour arbitration council.

Law stated - 26 June 2024

Adding parties to proceedings

Can additional parties be brought into a case after commencement?

Yes. If the labour claims are referred to the court's settlement, any third parties having interests or obligations related to a civil suit could request the court to be allowed to participate in the proceedings. Further, at the request of an involved party, or at its own discretion, the court can summons the third parties to participate in the proceedings. In principle, the participation of any third parties must be decided during the trial preparation period (article 68 of the Civil Procedure Code).

Law stated - 26 June 2024

Consolidating proceedings

Can proceedings be consolidated?

Consolidating two or more sets of proceedings is allowed under Vietnamese law if such consolidation ensures compliance with the law or if different plaintiffs sue the same defendant in separate lawsuits under Vietnamese law (article 42.1 of the Civil Procedure Code).

Law stated - 26 June 2024

Class and collective actions – special considerations

Are there any special considerations for class actions, multi-party or group litigation?

Vietnamese law is silent on class actions and multi-party or group litigation. The Civil Procedure Code only recognises the right to file a lawsuit by a representative organisation of employees to protect their lawful rights and interests (article 187 of the Civil Procedure Code).

Law stated - 26 June 2024

Evidence

How is witness, documentary and expert evidence dealt with?

Regarding witnesses, at the request of an involved party or based on the opinion of the judge, procedures to obtain witness testimony may be carried out. Witness testimony is made in writing and may be obtained at or outside the office of the court (article 99 of the Civil Procedure Code).

Concerning documentary evidence, at the request of an involved party or based on the opinion of the judge, on-site inspections/appraisals may be conducted in the presence

of representatives of the local People's Committees or police department where the objects which will be inspected/appraised are located. The on-site inspections/appraisals must be announced in advance so that the involved parties know and witness such inspections/appraisals, and must be made in writing (article 101 of the Civil Procedure Code).

Relating to expert evidence, an involved party may request the court to, or may by itself (if the court rejects its request), obtain an expert opinion/assessment. If the involved party obtains an expert opinion/assessment by itself, it may only do so before the court issues its decision on the first-instance trial. The court may also decide to obtain an expert opinion/assessment as it deems necessary (article 102 of the Civil Procedure Code).

Law stated - 26 June 2024

Witnesses

Can a witness be compelled to give evidence? Can a witness give evidence from abroad?

After being summoned by the court, a witness is required to give testimony at or outside the office of the court (article 99 of the Civil Procedure Code). Vietnamese laws are silent on whether the witness testimony can be carried out overseas.

Law stated - 26 June 2024

Witnesses

Is cross examination of a witness permitted?

A cross-examination may be conducted at the request of an involved party or if the judge finds that there are conflicts in the involved parties' or witnesses' testimony. In addition, the witnesses may be required to deliver their testimonies at the hearing (article 100 of the Civil Procedure Code).

Law stated - 26 June 2024

Tactical considerations

What steps can a party take during proceedings to achieve tactical advantage in a case?

To gain a tactical advantage, parties often assert that the nature of the dispute is not a 'labour dispute,' and/or that the parties have included an arbitration clause in their agreement, therefore the dispute should not be subject to the labour court. This often arises in cases where the contract between the parties is not clear, where the parties entered into an independent contractor agreement, but the worker was treated like an official employee, or where the parties had entered into a non-disclosure agreement, separate from the employment agreement. If the defendant can succeed in denying the existence of a labour relationship, the plaintiff must then bring a new petition at the court.

Law stated - 26 June 2024

INTERIM RELIEF

Availability

Can interim relief be sought in employment disputes? If so, in what types of claims?

Interim relief can be sought in labour disputes (for both individual labour disputes and collective labour disputes) at the request of the involved parties or under the court's decisions during the process of labour dispute settlement (article 111 of the Civil Procedure Code).

Law stated - 26 June 2024

Requirements

Are there any particular requirements relating to applications for interim relief?

A party requesting the application of interim relief must send a written request to the competent court when filing a lawsuit to the court, before the opening of the trial, or at the trial. As the interim relief request for labour claims does not require security measures by law, the presiding judge or trial panels will consider such request and issue decisions on the application of the interim relief if the request is accepted (article 133 of the Civil Procedure Code).

Law stated - 26 June 2024

TRIAL

Hearings – conduct and typical time frames

How is a final hearing conducted for common types of employment disputes? How long does a hearing typically last?

Employment disputes will need to first go through the conciliation process (except for some statutory cases where the disputes can be immediately referred to the court or labour arbitration council). After that, the parties can agree to settle the dispute at a competent court or at the labour arbitration council (article 188.1 of the Labour Code).

For the final hearing at the court, after accepting the petition from the concerned party, the court will prepare for the first-instance trial by organising meetings for checking the handover or access to and disclosure of evidence by the parties and mediation. Upon completing the preparation, the court will issue a decision to bring the case to the first instance trial, where the parties and their authorised representatives will orally argue to defend themselves.

The timeline for completing a first-instance trial from the petition of the lawsuit to the issuance of the judgment will vary, depending on each case. Normally, it may take around three to eight months for an employment dispute.

Law stated - 26 June 2024

Confidentiality and public access

How is confidentiality treated? Can all evidence be publicly accessed? How are sensitive employment issues dealt with? Is public access granted to the courts?

Agencies and persons conducting proceedings must maintain occupational secrets, trade secrets, and privacy and family secrets of the litigants upon their legitimate request (article 13.3 of the Civil Procedure Code). Evidence is normally not publicly accessible. The court may not disclose publicly the content of data and evidence relating to professional secrets, trade secrets, private secrets, or family secrets of individuals at the legitimate request of the concerned parties but must notify the concerned parties of the data and evidence which is not publicly disclosed. Based on these general rules, sensitive employment issues can be kept confidential upon legitimate requests of relevant parties.

Normally, the court will conduct open hearings. However, relevant parties may request the court to carry out closed hearings if they deem necessary to protect their occupational secrets, trade secrets, and privacy and family secrets.

Law stated - 26 June 2024

Media reporting

How is media interest dealt with? Are there any restrictions on media reporting?

The concerned parties may request the court to carry out closed hearings to protect privacy and personal information of the employees (article 15 of the Civil Procedure Code).

Law stated - 26 June 2024

Elements of successful claims and burden of proof

How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

A court decides if the claims or allegations are proven based on the evaluation of the evidence provided by concerned parties or collected by the courts. By law, evidence can be collected from various sources, including readable, audible, or visible materials, electronic data, physical evidence, testimony of concerned parties, results of examination by experts, and other sources stipulated by law (article 91 of the Civil Procedure Code). Evidence must satisfy criteria and standards applicable for each type of evidence. For instance, physical evidence must be the original object relating to the affair, or readable materials must be original copies, notarised copies or lawfully authenticated or certified or provided by the competent agency or organisation (article 95 of the Civil Procedure Code).

Specific elements required to find in favour of a party depend on each claim or allegation. These elements may include factual elements, meaning the facts of the claims or allegations that must be proven. For instance, if an employee initiates a lawsuit against his/her employer for failure to pay salary, such employee must prove that there is an actual violation by the

employer for not making salary payment. Other than factual elements, the court will also rely on specific laws and regulations to identify the violation by a party.

In most cases, the burden of proof lies with the party making the claim, that is, the plaintiff. The defendant is required to provide evidence in case of rebutting the plaintiff's claim, except for the following cases (article 91 of the Civil Procedure Code):

- if a litigant being an employee fails to provide or deliver evidence to the court because such evidence is being controlled or held by the employer, then such employer is responsible for providing or delivering such evidence to the court; and
- if an employee initiates a legal proceeding about unilateral termination of a labour contract in cases where the employer is not permitted to unilaterally terminate such labour contract or to impose disciplinary action on an employee as stipulated by the labour law, then the employer has the obligation to substantiate.

Law stated - 26 June 2024

ALTERNATIVE DISPUTE RESOLUTION

Available types

What types of alternative dispute resolution (ADR) are available for employment disputes in your jurisdiction?

The primary form of alternative dispute resolution (ADR) for employment disputes is the labour arbitration council (article 188.7 of the Labour Code). Other than that, before referring the employment dispute to the court or the labour arbitration council, the employment dispute must, except for some statutory situations, go through the labour conciliation process (article 188.1 of the Labour Code).

The labour arbitration council can resolve individual employment disputes, collective employment disputes about rights and collective employment disputes about benefits (articles 188, 191 and 195 of the Labour Code). There are no specifically non-arbitrable employment disputes.

Law stated - 26 June 2024

Requirements and expectations

Are the parties required or expected to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR?

Except for some statutory cases, employment disputes must go through the conciliation process first. On the basis of consensus, the parties have the right to request the labour arbitration council to resolve the dispute if conciliation was unsuccessful or if on expiry of the deadline for the conciliation, the conciliator has failed to carry out a conciliation or one of the parties failed to implement the agreement outlined in the minutes of the successful conciliation (articles 188.1 and 188.7 of the Labour Code).

In cases of failure to engage in ADR, the employment dispute can be referred to be resolved by the competent court.

Law stated - 26 June 2024

Enforcement

How are ADR decisions and awards enforced for employment disputes in your jurisdiction?

Generally, the enforcement mechanism applicable for ADR decisions in Vietnam is not well regulated. If a disputing party fails to comply with an arbitral award, the parties are entitled to bring the case to a competent court (article 193.6 of the Labour Code).

Law stated - 26 June 2024

COLLECTIVE EMPLOYMENT AND LABOUR RIGHTS

Enforcement of collective rights

How are collective employment rights enforced?

Collective employment rights are generally enforced through legal frameworks and the employees' representative organisations comprising grass-roots trade unions and employees' organisations. The employees' representative organisations are established by employees to protect their legitimate rights and interests in their labour relationship with the employer through collective bargaining or other methods under the applicable laws (article 3.3 of the Labour Code).

Law stated - 26 June 2024

Standing

Who can bring a claim in relation to collective employment rights?

Either the employees' representative organisations or the employer can bring a claim against matters relating to collective employment rights (article 179.1(b), article 193.1, and article 192.2 of the Labour Code).

Law stated - 26 June 2024

REMEDIES AND ENFORCEMENT

Available remedies

What remedies are available?

If the dispute resolution authority finds there has been a breach of the applicable employment regulations by the employer, the following remedies can be applied: compensation, receiving the employment back to work, contribution of mandatory

insurance, and payment of severance and other amounts subject to labour contracts and policies of the employer (article 41 of the Labour Code).

Law stated - 26 June 2024

Assessing compensation

How is any compensation assessed?

The assessment of compensation is subject to certain factors including the specific violation of the employer, the salary of the employees under the labour contract, and the work arrangement between the employee and the employer.

Law stated - 26 June 2024

Enforcement mechanisms

How can any judgment be enforced?

The laws of Vietnam encourage involved parties to voluntarily execute judgments. If any party fails to execute the judgment, the other party is entitled to request the coercive enforcement of judgments by submitting an enforcement request to the civil judgment enforcement authorities (article 9 and article 13 of the Law on Enforcement of Civil Judgments).

Law stated - 26 June 2024

APPEALS

Appeal procedure and time frames

How and when can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

Any first-instance judgments can be appealed by the relevant parties. Within 15 days from the issuance of the first-instance judgment, the parties or their authorised representatives can lodge an appeal to the competent court for rehearing the dispute (article 271 and Article 273.1 of the Civil Procedure Code).

The appellate court directly rehears the case in which the judgment or decision of the first-instance court is not yet legally enforceable and is being appealed or protested (article 270 of the Civil Procedure Code). The total timeline for resolution at the appellate court varies depending on each specific case. Normally, it will take several months from receipt of the appeal until the issuance of the appeal judgment.

Law stated - 26 June 2024

Other means of challenge

| Can a judgment be challenged other than through the appeal process?

Other than the rehearing of the dispute at appellate courts, a legally enforceable judgement can be reviewed according to (1) judicial review/cassation process or (2) retrial process. The cassation and retrial proceedings will be handled by the Judge Committee of the High Court or the Council of Justices of the Supreme Court (article 325 and article 350 of the Civil Procedure Code). These processes can be triggered if there is an error in the application of the law or if newly detected details appear that may fundamentally change the contents of the judgments or decision (article 326 and article 352 of the Civil Procedure Code).

Law stated - 26 June 2024

UPDATE AND TRENDS

Recent cases and developments

What are the key cases, decisions, judgments and policy and legislative developments of the past year?

On 4 June 2024, the People's Court of Ho Chi Minh City issued a judgment on a labour dispute case between an employee and a company in Ho Chi Minh City, awarding the employee 9.2 billion Vietnamese dong for wrongful termination. In this case, the employer terminated its financial director and chief accountant on the basis of redundancy, but immediately hired a new chief accountant to replace her. Since employers are required to offer vacant job positions to employees who would otherwise be made redundant, and the chief accountant position had previously been held by the employee, the court found that the employer had failed to comply with the legal regulations on redundancy terminations, so the termination was unlawful. This case demonstrates the risk of relying on the legal basis of redundancy to terminate an employee, while quickly hiring a new individual to fill the position. This strategy will likely result in the court finding the redundancy was not genuine, and finding in the employee's favour.

Law stated - 26 June 2024

Technology developments

What impact is technology having on employment litigation in your jurisdiction?

Electronic materials such as audible or visible materials can be considered evidence if they are presented to the court together with a document explaining their origin. Electronic data messages such as email, fax, telegraph, and other similar forms under applicable e-transactions law can also constitute evidence (article 195.2 and 195.3 of the Civil Procedure Code). However, paperless hearings are not yet common in Vietnam.

Law stated - 26 June 2024

| Other issues

Are there any other special considerations to be taken into account when defending an employment claim in your jurisdiction?

In a collective employment dispute, the employees' representative organisations can organise strikes aimed at achieving interest-related demands during the process of resolution of the dispute (article 198 of the Labour Code).

Law stated - 26 June 2024