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LABOR CODE

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

The National Assembly promulgates the Labor Code.

Chapter I
GENERAL PROVISIONS

Article 1. Scope of regulation

The Labor Code provides labor standards; rights, obligations and responsibilities of employees, employers, employees' representative organizations and employers' representative organizations in industrial relations and other relations directly related to industrial relations; and state management of labor.

Article 2. Subjects of application

1. Vietnamese employees, apprentices, trainees, and other types of employee provided in this Code.
2. Employers.
3. Foreign employees who work in Vietnam.
4. Other agencies, organizations and individuals directly related to industrial relations.

Article 3. Interpretation of terms

In this Code, the terms below are construed as follows:

1. *Employee* means a person who is full 15 years or older, has the ability to work, works under a labor contract, is paid with wage and is managed and controlled by an employer.
2. *Employer* means an enterprise, an agency, an organization, a cooperative, a household or an individual that hires or employs employees under labor contracts; if the employer is an individual, he/she must have full civil act capacity.

3. *Employees' collective* means an organized group of employees working for the same employer or in the same division within the organizational apparatus of an employer.

4. *Representative organization of a grassroots-level employees' collective* means the executive committee of the grassroots-level trade union or the executive committee of the immediate higher-level trade union in a non-unionized enterprise.

5. *Employers' representative organization* means a lawfully established organization which represents and protects the employers' rights and legitimate interests in industrial relations.

6. *Industrial relation* means a social relation arising from the hiring or employment and wage payment between an employee and an employer.

7. *Labor dispute* means a dispute over rights, obligations or interests which arise between the parties in industrial relations.

Labor dispute comprises individual labor dispute between an employee and an employer, and collective labor dispute between an employees' collective and an employer.

8. *Right-based collective labor dispute* means a dispute between an employees' collective and an employer which arises from different explanations and implementations of the labor law, collective labor agreements, internal working regulations, and other regulations and lawful agreements.

9. *Interest-based collective labor dispute* means a labor dispute arising from the request of an employees' collective for the establishment of new working conditions compared to those stipulated by the labor law, collective labor agreement, internal working regulations, or other regulations and lawful agreements reached in the negotiation process between the employees' collective and the employer.

10. *Forced labor* means the use of force or threat to use force or other tricks to force a person to work against his/her will.

Article 4. State policies on labor

1. To guarantee the rights and legitimate interests of employees; to encourage agreements providing employees with conditions more favorable than those provided by the labor law; and to adopt policies which enable employees to purchase shares and make capital contributions for production and business development.

2. To guarantee the rights and legitimate interests of employers, to ensure lawful, democratic, fair and civilized labor management, and to promote their social responsibility.

3. To create favorable conditions for job creation, self-employment and vocational training and learning in order to acquire employment, and for labor-intensive production and business activities.

4. To adopt policies on the development and distribution of human resources; to provide vocational training, training, retraining and improvement of occupational knowledge and skills for employees, and give preferences for employees with high professional and technical qualifications meeting the requirements of national industrialization and modernization.

5. To adopt policies on labor market development and diversify types of linkage between labor supply and demand.

6. To guide employees and employers to hold dialogues and collective bargains to establish harmonious, stable and progressive industrial relations.

7. To ensure gender equality principles; to stipulate the labor regime and social policies to protect female employees as well as disabled, elderly and minor employees.

Article 5. Rights and obligations of employees

1. An employee has the following rights:

a/ To work, freely choose a job or occupation, to participate in vocational training and to improve occupational skills and suffer no discrimination;

b/ To receive a wage commensurate with his/her occupational knowledge and skills on the basis of an agreement reached with the employer; to receive labor protection and work in assured conditions of labor safety and labor hygiene; to take leaves according to the prescribed regime, paid annual leaves and enjoy collective welfare benefits;

c/ To form and join and participate in activities of trade unions, occupational associations and other organizations in accordance with law; to request and participate in dialogues with the employer, implement democracy regulations and be consulted at the workplace to protect his/her rights and legitimate interests; and to participate in management activities according to the employer's regulations;

d/ To unilaterally terminate the labor contract in accordance with law;

e/ To go on strike.

2. An employee has the following obligations:

a/ To perform the labor contract and collective labor agreement;

b/ To obey labor discipline and internal working regulations and follow lawful administration of the employer;

c/ To implement the laws on social insurance and health insurance.

Article 6. Rights and obligations of employers

1. An employer has the following rights:

a/ To recruit, arrange and manage employees according to the requirements of production and business; to perform commendation work and handle violations of labor discipline;

b/ To form, join and operate in occupational associations and other organizations in accordance with law;

c/ To request the employees' collective to have dialogue, negotiate and sign a collective labor agreement; to participate in the resolution of labor disputes and strikes; to exchange opinions with the trade union on issues related to industrial relations and improvement of the material and spiritual lives of employees;

d/ To temporarily close the workplace.

2. An employer has the following obligations:

a/ To perform the labor contracts, collective labor agreement and other agreements with employees, to respect the honor and dignity of employees;

b/ To establish a mechanism for and hold dialogue with the employees' collective at the enterprise and strictly implement the regulations on grassroots-level democracy;

c/ To keep a labor management book and a wage book and produce them to competent agencies upon request;

d/ To declare the use of labor within 30 days from the date of commencement of operation, and report periodically on changes in the labor in the process of operation to the local state management agency of labor;

e/ To implement other provisions of law on labor, social insurance and health insurance.

Article 7. Industrial relations

1. Industrial relations between an individual employee or the employees' collective and an employer must be established through dialogue, negotiation and agreement based on the principles of voluntariness, good faith, equality, cooperation and mutual respect for each other's rights and legitimate interests.

2. Trade unions and the employers' representative organizations shall, in collaboration with state agencies, facilitate the establishment of harmonious, stable and progressive industrial relations; supervise the implementation of the labor law; and protect the rights and legitimate interests of employees and employers.

Article 8. Prohibited acts

1. Discriminating on the basis of gender, race, skin color, social strata, marital status, belief, religion, HIV infection, disabilities or for the reason of establishing, joining trade unions and participating in trade union activities.

2. Maltreating employees and committing sexual harassment at the workplace.

3. Forcing labor.

4. Making use of apprenticeship or on-the-job training for the purpose of self-seeking and exploiting labor, or enticing or compelling apprentices or on-the-job trainees to carry out illegal activities.

5. Using employees who have no vocational training or national occupational skills certificates for the occupations or jobs which require employees who have received vocational training or national occupational skills certificates.

6. Enticing, promising or making false advertising to deceive employees or making use of employment services or the sending of labor to work abroad under contracts to commit illegal acts.

7. Illegally using minor employees.

Chapter II EMPLOYMENT

Article 9. Employment and creation of employment

1. Employment is any income-generating laboring activity that is not prohibited by law.

2. The State, employers and the society have the responsibility to create employment and guarantee that all people with working ability have access to employment opportunities.

Article 10. The right of employees to work

1. To work for any employer in any location that is not prohibited by law.

2. To directly contact an employer or through an employment service institution in order to find a job that meets his/her expectation, capacity, occupational qualification, and health.

Article 11. The right of employers to recruit labor

An employer has the right to recruit labor directly or through employment service institutions and labor leasing institutions, to increase or reduce the number of employees according to production and business requirements.

Article 12. State policies in support of employment development

1. The State shall set a target number of newly created jobs in five-year and annual socio-economic development plans.

Depending on the socio-economic conditions of each period, the Government shall submit the national target program on employment and vocational training to the National Assembly for decision.

2. To formulate the unemployment insurance policy and policies to encourage self-employment and to assist employers who employ large numbers of employees who are female, disabled and ethnic minority persons.

3. To encourage and create favorable conditions for domestic and foreign organizations and individuals to invest in production and business development for employment creation.

4. To support employers and employees to seek and expand overseas labor markets.

5. To establish a National Employment Fund to provide concessional loans for employment creation and other activities in accordance with law.

Article 13. Employment programs

1. The People's Committees of provinces and centrally run cities (below referred to as provincial-level People Committees) shall develop and submit local employment programs to the People's Councils of the same level for decision.

2. State agencies, enterprises, socio-political organizations and social organizations and employers shall, within the scope of their respective tasks and powers, participate in the implementation of employment programs.

Article 14. Employment service institutions

1. Employment service institutions have the function of providing job counseling and placement services and vocational training to employees; supplying and recruiting employees at the request of employers; collecting and providing information about the labor market; and performing other tasks in accordance with law.

2. Employment service institutions include employment service centers and employment service enterprises.

Employment service centers are established and operate under the Government's regulations.

Employment service enterprises are established and operate under the Law on Enterprises and must have a license to provide employment services granted by the provincial-level state management agency of labor.

3. Employment service institutions are entitled to collect charges and to tax reduction and exemption in accordance the laws on charges and taxes.

Chapter III LABOR CONTRACT Section 1

ENTRY INTO LABOR CONTRACTS

Article 15. Labor contract

Labor contract is an agreement between an employee and an employer on a paid job, working conditions and the rights and obligations of each party in industrial relations.

Article 16. Forms of labor contract

1. A labor contract must be established in writing and made in two copies, one to be kept by the employee and the other by the employer, except the case stated in Clause 2 of this Article.

2. For temporary jobs with a duration of under 3 months, the parties may enter into a verbal labor contract.

Article 17. Principles of entry into a labor contract

1. Voluntariness, fairness, good faith, cooperation and honesty.
2. Freedom to enter into a labor contract which is not contrary to the law, the collective labor agreement and social morality.

Article 18. Obligation to enter into a labor contract

1. A labor contract must be directly entered into between an employee and an employer before the employee is admitted.

For an employee aged between full 15 years and under 18 years, the labor contract must be entered into with the consent of his/her at-law representative.

2. For a seasonal or specific job that has a duration of under 12 months, a group of employees may authorize a member of the group to enter into a written labor contract; in this case, such labor contract is effective in the same manner as if it is entered into with each of the employees.

A labor contract which is entered into by an authorized person must be enclosed with a list clearly stating the full names, ages, gender, permanent residential addresses, occupations and signatures of all employees concerned.

Article 19. Obligation to provide information before entering into a labor contract

1. An employer shall provide an employee with information about the job, workplace, working conditions, working hours, rest time, occupational safety and hygiene, wage, forms of wage payment, social insurance, health insurance, regulations on business confidentiality, technological confidentiality, and other issues directly related to the entry into the labor contract as requested by the employee.

2. The employee shall provide the employer with information about his/her full name, age, gender, residence address, education level, occupational skills and qualification, health conditions and other issues directly related to the entry into a labor contract as requested by the employer.

Article 20. Prohibited acts of employers when entering into and performing labor contracts

1. Keeping the employees' original identity cards, diplomas and certificates.
2. Requesting employees to make a deposit in cash or property as security for the performance of labor contracts.

Article 21. Entry into labor contracts with more than one employer

An employee may enter into labor contracts with more than one employer, provided that he/she fully performs all the contents of the entered contracts.

In case an employee enters into labor contracts with more than one employer, his/her participation in social insurance and health insurance complies with the Government's regulations.

Article 22. Types of labor contract

1. A labor contract must be entered into in one of the following types:

a/ Indefinite-term labor contract;

An indefinite-term labor contract is a contract in which the two parties do not determine the duration and the time of termination of the contract.

b/ Definite-term labor contract;

A definite-term labor contract is a contract in which the two parties determine the duration and the time of termination of the contract within a period of between 12 months and 36 months.

c/ A seasonal or work-specific labor contract that has a duration of under 12 months.

2. When a labor contract stipulated at Points b and c, Clause 1 of this Article expires and the employee continues working, within thirty (30) days from the date of expiration of the contract, the two parties shall sign a new labor contract; if no new labor contract is entered into, the contract entered into under Point b, Clause 1 of this Article will become an indefinite-term labor contract and the contract entered into under Point c, Clause 1 of this Article will become a definite-term labor contract with a duration of 24 months.

In case the two parties enter into a new labor contract with a definite term, only 1 additional definite-term labor contract may be signed; after that, if the employee continues working, an indefinite-term contract must be entered into.

3. It is prohibited to enter into a seasonal or work-specific labor contract of under 12 months for a regular job which has a duration of more than 12 months, except the case of temporary replacement of an employee who has taken leave for military duty, pregnancy and maternity, sickness, labor accident or other temporary leaves.

Article 23. Contents of a labor contract

1. A labor contract must have the following principal contents:

a/ Name and address of the employer or the lawful representative of the employer;

b/ Full name, date of birth, gender, residence address, identity card number or other lawful documents of the employee;

c/ Job and workplace;

d/ Term of the labor contract;

e/ Wage, form of wage payment, deadline for wage payment, wage-based allowances and other additional payments;

f/ Regimes for promotion and wage raise;

g/ Working time, rest time;

h/ Labor protection equipment for the employee;

i/ Social insurance and health insurance;

j/ Training, retraining and occupational skill improvement.

2. When an employee performs a job which is directly related to business or technology secrets as prescribed by law, the employer may reach a written agreement with the employee on the content and duration of protection of business or technology secrets, and benefits and compensation in case of violation by the employee.

3. For employees working in agriculture, forestry, fishery or salt production, based on the type of job, both parties may skip some principal contents of the labor contract and reach additional agreements on settlement measures when the contract performance is affected by natural disaster, fire or weather.

4. The contents of a labor contract with an employee who is hired to work as director of a state-invested enterprise are stipulated by the Government.

Article 24. Annexes to a labor contract

1. An annex to a labor contract is an integral part of the labor contract and is as valid as the labor contract.

2. An annex to a labor contract details some provisions or amends or supplements the contract.

In case an annex to a labor contract details some provisions that lead to a different understanding of the labor contract, the contents of the labor contract prevail.

In case an annex amends or supplements the labor contract, it must specify the amended or supplemented provisions and the time it takes effect.

Article 25. Effectiveness of a labor contract

A labor contract takes effect on the date it is entered into by the parties, unless otherwise agreed upon by both parties or provided by law.

Article 26. Probation

1. An employer and an employee may reach agreement on the probation and the rights and obligations of the two parties during the probation period. If reaching agreement on the probation, the two parties may enter into a probation contract.

A probation contract must have the contents specified at Points a, b, c, d, e, g and h, Clause 1, Article 23 of this Code.

2. Employees working under seasonal labor contracts are not subject to probation.

Article 27. Probation period

The probation period must be based on the nature and complexity of the job but probation is applied only once for each job and assure the following conditions:

1. It does not exceed 60 days for posts which require professional and technical qualification of collegial or higher level.

2. It does not exceed 30 days for posts which require professional and technical qualifications of intermediate vocational level, professional secondary level, or for technical workers and skilled employees.

3. It does not exceed 6 working days for other types of jobs.

Article 28. Wage during the probation period

The wage for an employee during the probation period must be agreed upon by the two parties but must be at least equal to 85% of the wage for the job.

Article 29. Expiry of the probation period

1. If the probational job is satisfactory, the employer shall sign a labor contract with the employee.

2. During the probation period, each party may cancel the probation agreement without prior notice and compensation if the probational job fails to meet the requirements that have been agreed by the two parties.

Section 2

PERFORMANCE OF LABOR CONTRACTS

Article 30. Performance of jobs under a labor contract

The jobs under a labor contract must be performed by the employee who has entered into the contract. The workplace may be as indicated in the labor contract or otherwise agreed upon between the two parties.

Article 31. Assignment of employees to perform jobs which are not stated in labor contracts

1. When meeting with sudden difficulties such as natural disaster, fire or epidemic, or taking measures to prevent and deal with a working accident, an occupational disease or an electricity or water supply incident, or when due to business and production needs, the employer may temporarily assign an employee to perform a job which is not stated in the labor contract provided that the assignment does not exceed 60 accumulated workdays within one year, unless otherwise agreed by the employee.

2. When an employer temporarily assigns an employee to perform a job which is not stated the labor contract, the employer shall inform the employee at least 3 working days in advance, clearly stating the duration of temporary work and the assigned work which must be suitable to the health and gender of the employee.

3. The employee who performs the job as stipulated in Clause 1 of this Article is entitled to a wage for the new job; if the wage for the new job is lower than the previous wage, he/she is entitled to the previous wage for 30 working days. The wage for the new job must be at least 85% of the previous wage but not lower than the regional minimum wage stipulated by the Government.

Article 32. Cases of suspension of a labor contract

1. The employee is called up for military service.

2. The employee is held in custody or detention in accordance with the criminal procedure law.

3. The employee is subject to a decision on application of the measure of consignment to a reformatory, compulsory drug detoxification center or compulsory education institution.

4. The female employee is pregnant in accordance with Article 156 of this Code.

5. Other cases as agreed upon by the two parties.

Article 33. Reinstatement of employees upon expiry of the period of suspension of labor contracts

Within 15 days after the expiry of the period of suspension of a labor contract in a case specified in Article 32 of this Code, the employee shall show up at the workplace and the employer shall reinstate the employee unless otherwise agreed upon by the two parties.

Article 34. Part-time employees

1. Part-time employee is a person who works for less than the normal daily or weekly working hours as provided by the labor law, the collective labor agreement of the enterprise or the sector or the employer's regulations.

2. An employee may negotiate with the employer on work on a part-time basis when entering into a labor contract.

3. Part-time employees are entitled to a wage and have the same rights and obligations as full-time employees, and are entitled to equal opportunities and to non-discrimination and assured labor safety and hygiene.

Section 3

MODIFICATION, SUPPLEMENTATION AND TERMINATION OF LABOR CONTRACTS

Article 35. Modification and supplementation of a labor contract

1. During the performance of a labor contract, any party that requests to modify or supplement the contents of the labor contract shall notify at least 3 working days in advance to the other party of the contents to be modified or supplemented.

2. In case the two parties can reach an agreement, the modification or supplementation of the labor contract must be carried out by signing an annex to the labor contract or signing a new labor contract.

3. In case the two parties cannot reach an agreement on the modification or supplementation of the labor contract, they shall continue performing the labor contract already entered into.

Article 36. Cases of termination of a labor contract

1. The labor contract expires, except the case specified in Clause 6, Article 192 of this Code.

2. The work stated in the labor contract has been completed.

3. Both parties agree to terminate the labor contract.

4. The employee fully meets the requirements on the time of payment of social insurance premiums and the age of retirement stated in Article 187 of this Code.

5. The employee is sentenced to imprisonment or death or is prohibited from performing the job stated in the labor contract under a legally effective judgment or ruling of a court.

6. The employee dies or is declared by a court to have lost civil act capacity, be missing or dead.

7. The individual employer dies or is declared by a court to have lost civil act capacity, be missing or dead; the institutional employer terminates operation.

8. The employee is dismissed under Clause 3, Article 125 of this Code.

9. The employee unilaterally terminates the labor contract under Article 37 of this Code.

10. The employer unilaterally terminates the labor contract under Article 38 of this Code; the employer lays off the employee due to structural or technological changes or because of economic reasons, merger, consolidation or division of the enterprise or cooperative.

Article 37. The right of employees to unilaterally terminate labor contracts

1. An employee working under a definite-term labor contract, a seasonal labor contract or performing a certain job of under 12 months may unilaterally terminate the labor contract prior to its expiry in the following cases:

a/ He/she is not assigned to the job or workplace or is not given the working conditions as agreed in the labor contract;

b/ He/she is not paid in full or on time as agreed in the labor contract;

c/ He/she is maltreated, sexually harassed or is subject to forced labor;

d/ He/she is unable to continue performing the labor contract due to personal or family difficulties;

e/ He/she is elected to perform a full-time duty in a people-elected office or is appointed to hold a position in the state apparatus;

f/ A female employee who is pregnant and must take leave as prescribed by a competent health establishment;

g/ If he/she is sick or has an accident and remains unable to work after having received treatment for 90 consecutive days, in case he/she works under a definite-term labor contract, or for a quarter of the contract's term, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.

2. When unilaterally terminating the labor contract under Clause 1 of this Article, the employee shall inform such to the employer:

a/ At least 3 working days in advance, in the case specified at Point a, b, c or g, Clause 1 of this Article;

b/ At least 30 days in advance for a definite-term labor contract; at least 3 working days for a seasonal or work-specific labor or a specific job of under 12 months in the case specified at Point d or e, Clause 1 of this Article;

c/ In the case specified at Point f, Clause 1 of this Article, a prior notice should be given to the employer in accordance with Article 156 of this Code.

3. An employee working under an indefinite-term labor contract may unilaterally terminate the labor contract provided that he/she informs such to the employer at least 45 days in advance, except the case specified in Article 156 of this Code.

Article 38. The right of employers to unilaterally terminate labor contracts

1. An employer may unilaterally terminate a labor contract in the following cases:

a/ The employee often fails to perform his/her job stated in the labor contract;

b/ The employee is sick or has an accident and remains unable to work after having received treatment for 12 consecutive months, in case he/she works under an indefinite-term labor contract, or for 6 consecutive months, in case he/she works under a definite-term labor contract, or more than half the term of the labor contract, in case he/she works under a labor contract for a seasonal job or a specific job of under 12 months.

When the employee's health has recovered, he/she must be considered for continued entry into the labor contract;

c/ If, as a result of natural disaster, fire or another *force majeure* event as prescribed by law, the employer, though having applied every remedial measure, has to scale down production and cut jobs;

d/ The employee is absent from the workplace after the time limit specified in Article 33 of this Code.

2. When unilaterally terminating a labor contract, the employer shall notify the employee in advance:

a/ At least 45 days, for indefinite-term labor contracts;

b/ At least 30 days, for definite-term labor contracts;

c/ At least 3 working days, for seasonal or work-specific labor contracts of under 12 months as stipulated at Point b, Clause 1 of this Article.

Article 39. Cases in which an employer is prohibited from unilaterally terminating a labor contract

1. The employee is sick or has a work accident or occupational disease and is being treated or nursed under the decision of a competent health establishment, except the case specified at Point b, Clause 1, Article 38 of this Code.

2. The employee is on annual leave, personal leave or any other types of leave permitted by the employer.

3. The employee is a female referred to in Clause 3, Article 155 of this Code.

4. The employee is on maternity leave in accordance with the Law on Social Insurance.

Article 40. Cancellation of unilateral termination of a labor contract

Each party may cancel its unilateral termination of the labor contract at any time prior to the expiry of the time limit for prior notice by a written notification, provided that such cancellation is agreed by the other party.

Article 41. Illegal unilateral termination of a labor contract

The unilateral termination of a labor contract is illegal in the cases which do not comply with Articles 37, 38 and 39 of this Code.

Article 42. Obligations of an employer when unilaterally terminating a labor contract illegally

1. To reinstate the employee in accordance with the original labor contract; to pay the wage and social insurance and health insurance premiums for the period during which the employee was not allowed to work, plus at least 2 months' wage in accordance with the labor contract.

2. In case the employee does not wish to return to work, in addition to the compensation stipulated in Clause 1 of this Article, the employer shall pay a severance allowance in accordance with Article 48 of this Code.

3. In case the employer does not want to reinstate the employee and the employee agrees, in addition to the compensation stipulated in Clause 1 of this Article and the severance allowance stipulated in Article 48 of this Code, the two parties shall negotiate on an additional compensation which must be at least equal to 2 months' wage in accordance with the labor contract in order to terminate the labor contract.

4. In case the position or job agreed in the labor contract is no longer vacant and the employee still wishes to work, the employer shall pay the compensation stipulated in Clause 1 of this Article and both parties shall negotiate to modify and supplement the labor contract.

5. If violating the provision on the time of prior notice, the employer shall compensate the employee an amount equivalent to his/her wage for the working days without prior notice.

Article 43. Obligations of an employee when unilaterally terminating a labor contract illegally

1. Not to be entitled to a severance allowance and to compensate the employer half of a month's wage in accordance with the labor contract.

2. If violating the provision on the time of prior notice, to compensate the employer an amount equivalent to the employee's wage for working days without prior notice.

3. To reimburse training costs to the employer in accordance with Article 62 of this Code.

Article 44. Obligations of an employer in case of changing structure, technology or economic reasons

1. In case there is a change in the structure or technology that affects the employment of many employees, the employer shall elaborate and implement a labor utilization plan in accordance with Article 46 of this Code. In case new jobs are created, priority must be given to re-training these employees for continued employment.

In case the employer cannot create new jobs and have to dismiss employees, the employer shall pay job-loss allowances to the employees in accordance with Article 49 of this Code.

2. In case more than one employee face the risk of unemployment for economic reasons, the employer shall elaborate and implement a labor utilization plan in accordance with Article 46 of this Code.

In case the employer cannot employ and have to dismiss employees, the employer shall pay job-loss allowances to the employees in accordance with Article 49 of this Code.

3. The dismissal of more than one employee in accordance with this Article may be implemented only after discussion with the representative organization of the grassroots-level employees' collective and notification 30 days in advance to the provincial-level state management agency of labor.

Article 45. Obligations of an employer in case of merger, consolidation, split or separation of enterprises or cooperatives

1. In case of merging, consolidating, splitting or separating an enterprise or a cooperative, the succeeding employer shall continue employing the existing workforce and modify and supplement the labor contracts.

In case the existing workforce cannot be fully employed, the succeeding employer shall elaborate and implement a labor utilization plan in accordance with Article 46 of this Code.

2. In case of transferring asset ownership or use rights of an enterprise, the preceding employer shall elaborate a labor utilization plan in accordance with Article 46 of this Code.

3. In case of dismissing an employee in accordance with this Article, the employer shall pay a job-loss allowance to the employee in accordance with Article 49 of this Code.

Article 46. Labor utilization plan

1. A labor utilization plan must have the following principal contents:

a/ The lists and numbers of employees to be further employed and employees to be re-trained for continued employment;

b/ The list and number of employees to be retired;

c/ The lists and numbers of employees to be assigned part-time jobs and those to terminate their labor contracts;

d/ Measures and financial sources for implementing the plan.

2. The labor utilization plan must be elaborated with the participation of the representative organization of the grassroots-level employees' collective.

Article 47. Responsibilities of an employer in case of terminating labor contracts

1. At least 15 days before the date of expiry of a definite-term labor contract, the employer shall give a written notice of the time of termination of the contract to the employee concerned.

2. Within 7 working days after termination of a labor contract, the two parties shall make all payments related to the interests of each party; in special cases, this time limit may be extended but must not exceed 30 days.

3. The employer shall complete the confirmation procedure and return the social insurance book and other papers of the employee which are kept by the employer.

4. In case an enterprise or a cooperative has its operation terminated, is dissolved or goes bankrupt, the payment of wages, severance allowances, social insurance, health insurance, unemployment insurance and other benefits of its employees according to the collective labor agreement and signed labor contracts will be prioritized.

Article 48. Severance allowance

1. In case a labor contract terminates in accordance with Clause 1, 2, 3, 5, 6, 7, 9 or 10, Article 36 of this Code, the employer shall pay a severance allowance to the employee who has worked regularly for full 12 months or longer at the rate of half of a month's wage for each working year.

2. The working period used for the calculation of severance allowance is the total period during which the employee actually works for the employer minus the period during which the employee benefits from unemployment insurance in accordance with the Law on Social Insurance, and the working period for which the employee has received severance allowance from the employer.

3. The wage used for the calculation of severance allowance is the average wage in accordance with the labor contract during 6 months preceding the time the employee loses his/her work.

Article 49. Job-loss allowance

1. An employer shall pay a job-loss allowance to an employee who loses his/her job under Article 44 or 45 of this Code and has worked regularly for the employer for 12 months or longer. The job-loss allowance is equal to 1 month's wage for each working year, but must not be lower than 2 months' wage.

2. The working period used for the calculation of job-loss allowance is the total time during which the employee actually works for the employer minus the time during which the employee benefits from unemployment insurance in accordance with the Law of Social Insurance and the working period for which the employer has paid a severance allowance to the employee.

3. The wage used for the calculation of job-loss allowance is the average wage in accordance with the labor contract during 6 months preceding the time the employee loses his/her job.

Section 4

INVALID LABOR CONTRACTS

Article 50. Invalid labor contracts

1. A labor contract is wholly invalid in one of the following cases:

a/ The whole contents of the labor contract are illegal;

b/ The labor contract is signed by an incompetent person;

c/ The job agreed upon in the labor contract is prohibited by law;

d/ The contents of the labor contract limit or prevent the employee from exercising the right to establish and join trade unions and participate in trade union activities.

2. A labor contract is partially invalid when one of its contents is illegal but does not affect the remaining contents of the labor contract.

3. In case part or the whole of the labor contract provides the employee's benefits lower than those provided by the labor law, internal labor regulations and collective labor agreement that are currently effective or the contents of the labor contract limit other rights of the employee, such part or the whole of the labor contract is invalid.

Article 51. Competence to declare labor contract to be invalid

1. The labor inspectorates and people's courts are competent to declare labor contracts to be invalid.

2. The Government shall provide the order and procedures for labor inspectorates to declare labor contracts to be invalid.

Article 52. Handling of invalid labor contracts

1. A labor contract which is declared to be partially invalid will be handled as follows:

a/ The rights, obligations and benefits of the parties must be settled according to the collective labor agreements or the provisions of law;

b/ The invalid part of the labor contract must be modified and supplemented to conform with the collective labor agreement or the labor law.

2. A labor contract which is declared to be wholly invalid will be handled as follows:

a/ In case it is signed by an incompetent person as specified at Point b, Clause 1, Article 50 of this Code, the state management agency of labor shall guide the parties to re-sign it;

b/ The rights, obligations and benefits of the employee will be settled in accordance with law.

3. The Government shall detail this Article.

Section 5 LABOR LEASE

Article 53. Labor lease

1. Labor lease means that an enterprise licensed for labor lease recruits an employee to work for another employer and the employee is managed by the hiring employer while still maintaining industrial relations with the leasing enterprise.

2. Labor lease is a conditional business line applicable only to certain jobs.

Article 54. Labor leasing enterprises

1. A labor leasing enterprise shall pay a deposit and obtain a license for labor lease.

2. The duration of labor lease must not exceed 12 months.

3. The Government shall provide the licensing of labor lease, the payment of deposits and the list of jobs allowed for labor lease.

Article 55. Labor leasing contract

1. The labor leasing enterprise and the hiring party shall sign a written labor leasing contract, which is made in 2 copies, each to be kept by one party.

2. A labor leasing contract must contain the following principal contents:

a/ Location of the workplace, working position for the leased employee, detailed description of the job and specific requirements for the leased employee;

b/ Duration of the lease; the starting time of the lease;

c/ Working time, rest time, occupational safety and hygiene conditions at the workplace;

d/ Obligations of each party toward the leased employee.

3. The labor leasing contract must not contain any agreement on the rights and benefits of the employee that are less favorable than those agreed upon in the labor contract signed between the employee and the labor leasing enterprise.

Article 56. Rights and obligations of a labor leasing enterprise

1. To ensure supply of a skilled employee who meets the requirements of the hiring party and the labor contract signed with the employee.

2. To inform the leased employee of the contents of the labor leasing contract.

3. To sign a labor contract with the employee in accordance with this Code.

4. To provide the hiring party with a brief personal record of the leased employee and his/her demands.

5. To perform the obligations of an employer in accordance with this Code; to pay wage, wage for public holidays and annual leaves, wage of work suspension, severance allowance, job-loss allowance; compulsory social insurance, health insurance and unemployment insurance premiums for the employee in accordance with law.

To ensure that the wage of the leased employee is not lower than that of a normal employee of the hiring party who has the same qualification and performs the same job or job of equal value.

6. To make a dossier stating the number of leased employees, the hiring party and leasing charges, and report them to the provincial-level state management agency of labor.

7. To discipline leased employees who are returned by the hiring party for their violations of labor discipline.

Article 57. Rights and obligations of the hiring party

1. To inform and guide the leased employee to understand its internal working regulations and other regulations.

2. Not to discriminate between the leased employee and its own employees regarding working conditions.

3. To negotiate with the leased employee on working at night or overtime when such working is not included in the labor leasing contract.

4. Not to sub-lease the leased employee.

5. To negotiate with the leased employee and the labor leasing enterprise in order to officially employ this employee in case the labor contract between the leased employee and the labor leasing enterprise have not yet expired.

6. To return to the labor leasing enterprise the leased employee who fails to meet the requirements as agreed or who violates labor discipline.

7. To provide evidence of the leased employee's violation of labor discipline for the labor leasing enterprise to consider and discipline such employee.

Article 58. Rights and obligations of a leased employee

1. To perform the job under the labor contract signed with the labor leasing enterprise.
2. To comply with the internal labor regulations, labor discipline, the lawful management and the collective labor agreement of the hiring party.
3. To be paid with a wage not lower than that of employees of the hiring party who have the same qualification and perform the same job or job of equal value.
4. To lodge a complaint with the labor leasing enterprise when the hiring party violates agreements in the labor leasing contract.
5. To exercise the right to unilaterally terminate the labor contract with the labor leasing enterprise in accordance with Article 37 of this Code.
6. To negotiate to sign a labor contract with the hiring party after terminating the labor contract with the labor leasing enterprise.

Chapter IV

APPRENTICESHIP, TRAINING AND RETRAINING FOR VOCATIONAL QUALIFICATION AND SKILL IMPROVEMENT

Article 59. Apprenticeship and vocational training

1. An employee is entitled to choose an occupation and apprenticeship at a workplace which is appropriate to his/her employment demand.
2. The State encourages any eligible employer to establish a vocational training center or open vocational training classes at the workplace in order to train and retrain for improving occupational qualifications and skills for its current employees and providing vocational training for other apprentices in accordance with the law on vocational training.

Article 60. Responsibilities of an employer for training and retraining for vocational qualification and skill improvement

1. An employer shall prepare annual training plans and budgets and organize training for improving vocational qualifications and skills for his/her current employees and training for employees before switching them to perform other jobs.
2. An employer shall report on the results of vocational qualification and skill improvement training to the provincial-level state management agency of labor in its annual report on labor.

Article 61. Apprenticeship and on-the-job training to work for the employer

1. An employer that recruits apprentices or on-the-job trainees to work for the employer does not have to register such vocational training activity and may not collect tuition fees.

In this case an apprentice or on-the-job trainee must be at least full 14 years old and have appropriate health conditions required by the relevant occupation, except for some occupations specified by the Ministry of Labor, War Invalids and Social Affairs.

The two parties shall enter into a vocational training contract, which must be made in 2 copies, each to be kept by one party.

2. During the period of apprenticeship or on-the-job training, if the apprentice or the on-the-job trainee directly makes, or participates in the making of, qualified products, he/she must be paid with a wage by the employer at a level agreed by the two parties.

3. Upon the expiry of the apprenticeship or on-the-job training period, the two parties shall enter into a labor contract in accordance with this Code.

4. The employer shall create conditions for the employee to take vocational skill assessment exams in order to get a national vocational skills certificate.

Article 62. Vocational training contract between an employer and an employee and job training expenses

1. The two parties shall enter into a vocational training contract in case the employee will be trained for vocational qualification and skill improvement or re-trained at home or abroad with the employer's fund, including the fund donated by the employer's partner.

A vocational training contract must be made in 2 copies, each to be kept by one party.

2. A vocational training contract must have the following principal contents:

a/ The trained occupation;

b/ Training venue; training period;

c/ Training expenses;

d/ The period during which the employee commits to working for the employer after training;

e/ Responsibility to reimburse training expenses;

f/ Responsibilities of the employer.

3. Training expenses are those accompanied by valid documents on payment for trainers, training materials, training venues, machinery and equipment, practicing materials, support for learners and wages and social insurance and health insurance premiums paid for learners during the training. In case an employee is sent to a foreign country for training, training expenses also include travel and living expenses during the period of overseas stay.

Chapter V

DIALOGUE AT WORKPLACE, COLLECTIVE BARGAINING, COLLECTIVE LABOR AGREEMENTS

Section 1

DIALOGUE AT WORKPLACE

Article 63. Purposes and forms of dialogue at workplace

1. Dialogue at workplace aims at sharing information and strengthening understanding between employers and employees for the building of industrial relations at workplace.

2. Dialogue at workplace is conducted through direct communication between employees and employers or between the representatives of the employees' collectives and employers, ensuring the implementation of the regulations on grassroots-level democracy.

3. Employers and employees are obliged to implement the regulations on grassroots-level democracy at workplace in accordance with the Government's regulations.

Article 64. Issues of dialogue at workplace

1. Production and business situation of the employer.

2. Performance of labor contracts, collective labor agreement, internal regulations and other commitments and agreements at workplace.

3. Working conditions.

4. Requests of individual employees and the employees' collective to the employer.

5. Requests of the employer to individual employees and the employees' collective.

6. Other issues which concern the two parties.

Article 65. Conducting of dialogue at workplace

1. Dialogue at workplace must be conducted once every 3 months or at the request of either party.

2. Employers are obliged to arrange venue and other physical conditions for dialogue at workplace.

Section 2

COLLECTIVE BARGAINING

Article 66. Purposes of collective bargaining

Collective bargaining is the discussion and negotiation between the employees' collective and the employer in order to:

1. Build harmonious, stable and progressive industrial relations;

2. Establish new working conditions as a basis for the signing of the collective labor agreement;

3. Resolve problems and difficulties in the exercise of rights and performance of obligations by each party in industrial relations.

Article 67. Principles of collective bargaining

1. Collective bargaining must be carried out on the principles of good faith, equality, cooperativeness, publicity and transparency.

2. Collective bargaining must be carried out on a periodical or unexpected basis.

3. Collective bargaining must be carried out at a place agreed upon by two parties.

Article 68. The right to request collective bargaining

1. Each party may request collective bargaining and the requested party may not refuse the bargaining. Within 7 working days from the date the request is received, the parties shall agree on the time for opening a bargaining meeting.

2. In case either party cannot participate in the bargaining meeting at the time as agreed upon, it may request to postpone the bargaining for a maximum of 30 days counted from the date of receipt of the request for collective bargaining.

3. In case one party refuses the bargaining or does not conduct the bargaining within the time limit stated in this Article, the other party may carry out the procedures to request labor dispute settlement in accordance with law.

Article 69. Representatives for collective bargaining

1. Representatives for collective bargaining are provided as follows:

a/ The representative for the employees' collective in collective bargaining at the enterprise level is the representative organization of the grassroots-level employees' collective; the representative for the employees' collective in collective bargaining at sectoral level is the representative of the executive committee of the sectoral trade union;

b/ The representative of the employer in collective bargaining at the enterprise level is the employer or a representative of the employer; the representative on the employer's side in collective bargaining at the sectoral level is the representative of the sectoral employers' representative organization.

2. The number of persons of each party to attend a bargaining meeting must be agreed by the two parties.

Article 70. Issues for collective bargaining

1. Wages, bonuses, allowances and pay rise.
2. Working time, rest time, overtime work, mid-shift breaks.
3. Ensuring employment for employees.
4. Ensuring occupational safety and hygiene; implementation of the internal working regulations.
5. Other issues that concern the two parties.

Article 71. Process of collective bargaining

1. The process of preparation for collective bargaining is provided as follows:

a/ At least 10 days before a collective bargaining meeting, at the request of the employees' collective, the employer shall provide information about the

production and business situation, except business and technology secrets of the employer;

b/ Collection of comments of the employees' collective.

The bargaining representative of the employees' collective shall directly collect comments of the employees' collective or indirectly through a conference of employees' delegates on the employees' proposals to the employer and the employer's proposals to the employees' collective;

c/ Notification of issues for collective bargaining.

At least 5 working days before the commencement of the bargaining meeting, the party that requests collective bargaining shall notify the other party of the proposed issues for collective bargaining.

2. The process of conducting collective bargaining is provided as follows:

a/ Organization of a collective bargaining meeting.

The employer shall hold a collective bargaining meeting at the time and venue agreed by the two parties.

Collective bargaining meetings must be recorded in minutes which must specify issues that have been agreed upon by the two parties, the tentative time for signing an agreement on the agreed issues; and issues on which opinions remain divergent.

b/ Minutes of collective bargaining meetings must be signed by the representative of the employees' collective, the employer and the preparer of the minutes.

3. Within 15 days after the end of a collective bargaining meeting, the bargaining representative of the employees' collective shall publicly announce the minutes of the meeting to the employees' collective for information and collect votes of the employees' collective on the agreed issues.

4. In case the negotiation does not succeed, either party may continue requesting bargaining or carry out the procedures for labor dispute settlement in accordance with this Code.

Article 72. Responsibilities of the trade union, the employer's representative organization and the state management agency of labor in collective bargaining

1. To organize training in collective bargaining skills for persons to participate in collective bargaining.

2. To participate in collective bargaining meetings if requested by either party to the collective bargaining.

3. To provide and exchange information relating to the collective bargaining.

Section 3

COLLECTIVE LABOR AGREEMENTS

Article 73. Collective labor agreements

1. Collective labor agreement is a written agreement between the employees' collective and the employer on working conditions which have been agreed upon by the two sides through collective bargaining.

Collective labor agreements include enterprise-level collective labor agreement, sectoral-level collective labor agreement and other types of collective labor agreement as stipulated by the Government.

2. The content of a collective labor agreement must not be against the labor law and must be more favorable for the employees than what is provided by law.

Article 74. Signing of a collective labor agreement

1. A collective labor agreement is signed by the representative of the employees' collective and the employer or the representative of the employer.

2. A collective labor agreement may be signed only when the parties have reached the agreement at the collective bargaining meetings and:

a/ Over 50% of the members of the employees' collective vote for the issues for collective bargaining, in case of signing an enterprise-level collective labor agreement;

b/ Over 50% of the representatives of the executive committee of the grassroots-level trade union or the immediate higher-level trade union vote for the issues for collective bargaining, in case of signing a sectoral-level collective labor agreement;

c/ For other types of collective labor agreement, the Government's regulations must be complied with.

3. Once the collective labor agreement is signed, the employer shall inform it to all of his/her employees.

Article 75. Sending of the collective labor agreement to state management agencies

Within 10 working days from the date of signing, the employer or the employer's representative shall send a copy of the collective labor agreement to:

1. The provincial-level state management agency of labor, for enterprise-level collective labor agreements.
2. The Ministry of Labor, War Invalids and Social Affairs, for sectoral-level collective labor agreements and other types of collective labor agreement.

Article 76. Effective date of a collective labor agreement

The effective date of a collective labor agreement must be indicated in the agreement. In case the effective date is not indicated in the agreement, the effective date is the date of its signing.

Article 77. Modification and supplementation of a collective labor agreement

1. The parties may modify and supplement the collective labor agreement within the following time limit:

a/ After 3 months of implementation, if the collective labor agreement has an effective duration of under 1 year;

b/ After 6 months of implementation, if the collective labor agreement has an effective duration of between 1 year and 3 years.

2. In case there are changes in legal provisions that make the collective labor agreement no longer conform to the law, the two parties shall modify and supplement the collective labor agreement within 15 days after the changed legal provisions take effect.

Pending the modification and supplementation of the collective labor agreement, the rights and interests of the employees comply with the provisions of law.

3. The modification and supplementation of a collective labor agreement must be made as for the signing of a collective labor agreement.

Article 78. Invalid collective labor agreement

1. A collective labor agreement is partially invalid if one or more of its contents is/are contrary to law.

2. A collective labor agreement is wholly invalid in any of the following cases:

a/ The whole content of the agreement is contrary to law;

b/ The agreement is signed by an incompetent person;

c/ The signing of the agreement did not follow the prescribed collective bargaining process.

Article 79. Competence to declare a collective labor agreement to be invalid

People's courts have competence to declare collective labor agreements to be invalid.

Article 80. Handling of an invalid collective labor agreement

When a collective labor agreement is declared to be invalid, the rights, obligations and interests of the parties in the invalid part(s) must be addressed in accordance with law and lawful agreements in labor contracts.

Article 81. Expiry of a collective labor agreement

Within 3 months before the expiry of a collective labor agreement, the two parties may bargain an extension of the duration of the collective labor agreement or enter into a new one.

In case the collective labor agreement expires during the bargaining process, it must continue to be implemented for maximum 60 days.

Article 82. Expenses for collective bargaining and signing of collective labor agreements

All expenses for bargaining, signing, modification, supplementation, sending and announcement of a collective labor agreement must be covered by the employer.

Section 4

ENTERPRISE-LEVEL COLLECTIVE LABOR AGREEMENTS

Article 83. Signing of an enterprise-level collective labor agreement

1. Persons to sign an enterprise-level collective labor agreement are provided as follows:

a/ A representative of the grassroots-level employees' collective, for the employees' collective's side;

b/ The employer or a representative of the employer, for the employer's side.

2. An enterprise-level collective labor agreement must be made in 5 copies, of which:

a/ Two copies must be kept by the two sides;

b/ One copy must be sent to the state agency specified in Article 75 of this Code;

c/ One copy must be sent to the intermediate higher-level trade union, and one copy to the employers' representative organization in which the employer is a member.

Article 84. Implementation of an enterprise-level collective labor agreement

1. The employer and employees, including new employees who are employed after the collective labor agreement takes effect, shall fully implement the agreement.

2. In case the rights, obligations and interests of the parties stipulated in a labor contract signed before a collective labor agreement takes effect are less favorable than those provided in the collective labor agreement, the provisions of the collective labor agreement apply. Labor regulations of the employer which do not comply with the collective labor agreement must be amended to be consistent with the collective labor agreement within 15 days after the collective labor agreement takes effect.

3. In case a party considers that the other party does not perform fully or violates the collective labor agreement, the former may request full compliance with the agreement by the latter, and both parties shall jointly consider and resolve the issue. In case of failure to resolve the issue, either party may request settlement of the collective labor dispute in accordance with law.

Article 85. Validity duration of an enterprise-level collective labor agreement

An enterprise-level collective labor agreement has a validity duration of between 1 year and 3 years. For an enterprise which signs a collective labor

agreement for the first time, the validity duration of this agreement can be under 1 year.

Article 86. Implementation of a collective labor agreement in case of transfer of ownership, right of management, right of use of an enterprise, merger, consolidation, split or separation of an enterprise

1. In case of transfer of ownership, the right to manage, or the right to use an enterprise or merger, consolidation, split or separation of an enterprise, the succeeding employer and the representative of the employees' collective shall base on the labor utilization plan to consider choosing whether to continue the implementation of or modify and supplement the old collective labor agreement, or enter into a new one.

2. In case the validity of a collective labor agreement is terminated because the employer ceases its operation, the interests of employees must be settled in accordance with the labor law.

Section 5

SECTORAL-LEVEL COLLECTIVE LABOR AGREEMENTS

Article 87. Signing of a sectoral-level collective labor agreement

1. Representatives to sign a sectoral-level collective labor agreement are provided as follows:

a/ The representative of the employees' collective is the chairperson of the sectoral-level trade union;

b/ The representative of the employer is the representative of the employers' representative organization who has participated in the sectoral-level collective bargaining.

2. A sectoral-level collective labor agreement must be made in 4 copies, of which:

a/ Two copies must be kept by the two parties;

b/ One copy must be sent to the state agency specified in Article 75 of this Code;

c/ One copy must be sent to the intermediate higher-level trade union.

Article 88. Relationship between enterprise-level and sectoral-level collective labor agreements

1. In case the contents of the enterprise-level collective labor agreement or other regulations of the employer on rights, obligations and lawful interests of employees in the enterprise are less favorable than the relevant provisions of the sectoral-level collective labor agreement, the enterprise-level collective labor agreement must be modified and supplemented accordingly within 3 months after the sectoral-level collective labor agreement takes effect.

2. An enterprise subject to a sectoral-level collective labor agreement which has not yet elaborated its own collective labor agreement may elaborate its own collective labor agreement with terms more favorable for employees than those of the sectoral-level collective labor agreement.

3. Enterprises within a sector which have not acceded to the sectoral-level collective labor agreement are encouraged to implement the sectoral-level collective labor agreement.

Article 89. Validity duration of a sectoral-level collective labor agreement

A sectoral-level collective labor agreement has a validity duration of between 1 year and 3 years.

Chapter VI WAGES

Article 90. Wages

1. Wage is a monetary amount which is paid by an employer to an employee to do a job as agreed by the two parties.

Wage includes a wage amount which is based on the work or title, wage allowance(s) and other additional payments.

An employee's wage must not be lower than the minimum wage set by the Government.

2. A wage must be paid to an employee based on labor productivity and quality of the work performed.

3. An employer shall pay equal wages without gender-based discrimination to employees doing a job of equal value.

Article 91. Minimum wage

1. Minimum wage is the lowest payment for an employee who performs the simplest job in normal working conditions and must ensure the employee's minimum living needs and his/her family.

The minimum wage must be determined on a monthly, daily and hourly basis by region or sector.

2. Based on the minimum living needs of an employee and his/her family, the social and economic conditions and wage level in the labor market, the Government shall announce the regional minimum wage based on the recommendations of the National Wage Council.

3. The sectoral minimum wage must be determined through collective bargaining within the sector and recorded in the sectoral-level collective labor agreement but must not be lower than the regional minimum wage announced by the Government.

Article 92. The National Wage Council

1. The National Wage Council is an advisory body of the Government, which is composed of representatives of the Ministry of Labor, War Invalids and Social Affairs, Vietnam General Confederation of Labor and the central employers' representative organization.

2. The Government shall specify the functions, tasks and organizational structure of the National Wage Council.

Article 93. Formulation of wage scales, wage tables and determination of labor norms

1. Based on the principles of formulation of wage scales, wage tables and labor norms stipulated by the Government, an employer shall formulate the wage scale, wage table and labor norms for use as the basis to employ and use labor, to negotiate wage levels in labor contracts, and to pay wages to employees.

2. When formulating the wage scale, wage table and labor norms, an employer shall consult the representative organization of the grassroots-level employees' collective and publish this information at the workplace of the employees before implementation, and concurrently send them to the district-level state management agency of labor of the locality in which the employer's production and business establishments are located.

Article 94. Forms of wage payment

1. An employer may select the form of wage payment based on working time, products or piecework. The selected form of wage payment must be maintained for a certain period of time. Any change in the form of payment must be informed by the employer to the employee at least 10 days in advance.

2. Wage may be paid by cash or via the employee's personal account opened at a bank. In case the wage is paid into the bank account, the employer shall negotiate with the employee on any fees related to the opening and maintenance of the account.

Article 95. Wage payment period

1. Employees enjoying hourly, daily or weekly wages must be paid after the working hour, day or week or paid in a lump sum as agreed by the two parties, provided that wages are paid in a lump sum at least every 15 days.

2. Employees enjoying monthly wages must be paid once a month or once every half of the month.

3. Employees enjoying wages based on products or piecework must be paid as agreed by the two parties; if the work is to be performed in a number of months, each month, the employee must be given an advance wage according to the volume of work completed in the month.

Article 96. Principles of wage payment

An employee must be paid with a full wage in a direct and timely manner.

In special cases in which an employer cannot pay a wage on time to an employee, the employer may not postpone the payment for more than 1 month and shall pay the employee with an additional amount at least equal to the deposit interest rate announced by the State Bank of Vietnam at the time of wage payment.

Article 97. Wage for overtime work and night work

1. An employee who performs overtime work must be paid according to the wage unit or wage for his/her current job as follows:

a/ On normal days, at least equal to 150%;

b/ On weekends, at least equal to 200%;

c/ On public holidays and paid leave days, at least equal to 300%, excluding the wage for public holidays and paid leave days of employees who receive daily wages.

2. An employee who performs night work must be paid with an additional amount at least equal to 30% of the wage calculated according to the wage unit or the wage for a job performed during normal workdays.

3. An employee who performs overtime work at night must be paid under Clauses 1 and 2 of this Article. He/she must be paid with an additional amount equal to 20% of the wage calculated according to the wage unit or the wage for a job performed during daytime.

Article 98. Wage in case of work suspension

In case an employee has to suspend working, he/she shall be paid as follows:

1. If due to the fault of the employer, the employee is entitled to payment of the full wage;

2. If due to his/her fault, he/she is not entitled to payment of wage; other employees in the same unit who also have to suspend the work are entitled to the wages as agreed upon by the two parties, provided that those wages are not lower than the regional minimum wage stipulated by the Government;

3. If due to power or water incidents rather than the fault of the employer, employees or for other objective reasons such as natural calamity, fire, dangerous epidemic, enemy sabotage, relocation of the operation place upon request of a competent state agency, or for economic reasons, the wage for work suspension must be agreed by the two parties but must not be lower than the regional minimum wage stipulated by the Government.

Article 99. Payment of wage via foreman

1. In case foremen or similar intermediary persons are used, the employer who is the principal owner must have a list and addresses of these people together with a list of employees working with them, and must ensure that they comply with the law on wage payment and occupational safety and hygiene.

2. In case a foreman or similar intermediary person fails to pay wages or pays insufficient wages and fails to ensure other interests of employees, the employer who is the principal owner shall pay wages to, and to ensure such interests of, the employees.

In this case, the employer who is the principal owner may request compensation from the foreman or similar intermediary person, or request a competent state agency to resolve the dispute in accordance with law.

Article 100. Advance of wage

1. An employee may be given a wage in advance according to the conditions agreed upon by the two parties.

2. An employer shall advance a wage amount to an employee corresponding to the number of days off which the employee takes to perform citizens' obligations from 1 week to 1 month at most. The employee shall refund this advance amount, except the case that he/she performs military services.

Article 101. Deductions from wages

1. An employer may only make deductions from the wage of an employee for compensation for damage of tools and equipment of the employer in accordance with Article 130 of this Code.

2. An employee is entitled to know the reasons for his/her wage deductions.

3. Monthly deductions must not exceed 30% of the monthly wage of an employee after having paid compulsory social insurance, health insurance and unemployment insurance premiums and income tax.

Article 102. Allowances, subsidies, rank promotion and wage raise

Allowances, subsidies, rank promotion, wage raise and other incentives for employees must be agreed in the labor contracts and the collective labor agreement or stipulated in the regulations of the employer.

Article 103. Bonuses

1. Bonus is a sum of money paid by an employer to his/her employees on the basis of annual business results and the level of work performance of employees.

2. Bonus regulations must be decided and publicly announced by the employer at the workplace after consultation with the representative organization of the grassroots-level employees' collective.

Chapter VII

WORKING TIME AND REST TIME

Section 1

WORKING TIME

Article 104. Normal working time

1. Normal working time must not exceed 8 hours per day or 48 hours per week.

2. An employer may determine the working time on an hourly, daily or weekly basis; in case of working on a weekly basis, the normal working time must not exceed 10 hours per day and not exceed 48 hours per week.

The State encourages employers to apply 40 working hours per week.

3. The working time must not exceed 6 hours per day for employees who perform extremely heavy, hazardous or dangerous jobs on a list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

Article 105. Working hours at night

Working hours at night are counted from 22:00 pm on the previous day to 06:00 am on the next day.

Article 106. Overtime work

1. Overtime is time worked in addition to normal working hours prescribed in the law, collective labor agreements or internal working regulations.

2. An employer may request an employee to work overtime upon fully meeting the following conditions:

a/ Obtaining the employee's consent;

b/ Ensuring that the number of overtime working hours of the employee does not exceed 50% of the normal working hours per day; in case of applying regulations on weekly work, the total of normal working hours and overtime working hours must not exceed 12 hours per day; does not exceed 30 hours per month and the total of overtime working hours must not exceed 200 hours per year, except some special cases as stipulated by the Government in which overtime working hours must not exceed 300 hours per year;

c/ After each period with many consecutive days of working overtime within a month, the employer shall arrange compensatory days off for the employee.

Article 107. Working overtime in special cases

An employer may request an employee to work overtime in any days and the employee may not refuse in the following cases:

1. Implementing a call-up or mobilization order to ensure national defense or security in an emergency state of national defense or security as provided by law;

2. Implementing the tasks to protect human lives and assets of agencies, organizations or individuals in the prevention and remediation of consequences of a natural calamity, fire, epidemic or disaster.

Section 2 REST TIME

Article 108. Rest breaks during working hours

1. An employee who works for 8 hours consecutively or 6 hours under Article 104 of this Code is entitled to a break of at least 30 minutes in the middle of working which must be counted in the working hours.

2. An employee who works at night is entitled to a break of at least 45 minutes in the middle of working which must be counted in the working hours.

3. Besides the breaks in the middle of working prescribed in Clauses 1 and 2 of this Article, the employer shall determine other short breaks and include them in the internal working regulations.

Article 109. Breaks between shifts

Employees who work in shifts are entitled to a break of at least 12 hours before moving to another shift.

Article 110. Weekly breaks

1. Every week, an employee is entitled to a break of at least 24 consecutive hours. In case it is impossible for an employee to have a weekly break due to the cycle of work, the employer shall ensure the employee have at least 4 days off on average in a month.

2. An employer may determine and schedule weekly breaks either on Sunday or another fixed weekday and shall include them in the internal working regulations.

Article 111. Annual leave

1. An employee who has been working for an employer for full 12 months is entitled a fully paid annual leave as stated in his/her labor contract as follows:

a/ Twelve working days for an employee working in normal conditions;

b/ Fourteen working days for an employee doing a heavy, hazardous or dangerous job; or an employee working in a place with harsh living conditions on the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health, or for minor or disabled employees;

c/ Sixteen working days for an employee doing an extremely heavy, hazardous or dangerous job; an employee working in a place with extremely harsh living conditions on the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

2. An employer may decide on a timetable for annual leaves of employees after consulting employees and shall notify it in advance to them.

3. An employee may reach an agreement with the employer on taking annual leave in installments or combining annual leaves of maximum every three years.

4. When taking annual leave, if an employee travels by road, railway or waterway and the return trip takes more than 2 days, the travel days from the 3rd day onward will be added to the annual leave and this will be applied for only one annual leave in a year.

Article 112. Annual leave increased based on the length of employment

The annual leave of an employee stipulated in Clause 1, Article 111 of this Code will be increased 1 day for every 5 years' working for an employer.

Article 113. Advance payment of wage and travel expenses for annual leave

1. When taking annual leave, an employee are entitled to an advance payment at least equal to the wage to be paid for leave days.

2. Travel expenses and the wage paid for traveling days can be agreed by the two parties.

Employees who come from lowland areas and work in mountainous, deep-lying, remote, border or island areas and employees who come from mountainous, deep-lying, remote, border or island areas and work in lowland areas are entitled to travel expenses and wages for traveling days paid by their employers.

Article 114. Payment for untaken leave days

1. An employee who, due to employment termination, job loss or for other reasons, has not taken or fully not taken annual leave is entitled to a cash payment for the untaken leave days.

2. An employee who has worked for under 12 months may have annual leave days in proportion to the time of working. In case of not taking leave, he/she is entitled to a cash payment for these untaken leave days.

Section 3
PUBLIC HOLIDAYS, PERSONAL LEAVE AND UNPAID LEAVE

Article 115. Public and New Year holidays

1. An employee is entitled to fully paid days off on the following public and New Year holidays:

a/ Calendar New Year Holiday: 1 day (the first day of January of the calendar year);

b/ Lunar New Year Holidays: 5 days;

c/ Victory Day: 1 day (the thirtieth day of April of each calendar year);

d/ International Labor Day: 1 day (the first day of May of each calendar year);

e/ National Day: 1 day (the second day of September of each calendar year);

f/ Commemorative Celebration of Vietnam's Forefather - Kings Hung: 1 day (the tenth of March of the lunar year).

2. Foreign employees in Vietnam, in addition to the public holidays stipulated in Clause 1 of this Article, are entitled to 1 traditional new year holiday and 1 national day of their country.

3. In case a holiday referred to in Clause 1 of this Article falls on a weekend, employees are entitled to take the following day off as compensation.

Article 116. Personal leave, unpaid leave

1. An employee may take fully paid leave for personal reasons in the following cases:

a/ Marriage: 3 days;

b/ Marriage of his/her child: 1 day;

c/ Death of a blood parent or a parent of his/her spouse, his/her spouse or child: 3 days.

2. An employee may take 1 day off without pay and shall inform the employer when a paternal or maternal grandparent or blood sibling dies; his/her father or mother gets married; or a blood sibling gets married.

3. An employee may discuss and agree with the employer on unpaid leave in addition to the leaves specified in Clauses 1 and 2 of this Article.

Section 4

WORKING TIME AND REST TIME FOR PEOPLE DOING SPECIAL JOBS

Article 117. Working time, rest time for persons doing special jobs

For special jobs in road, railway, waterway and airway transportation, petroleum prospecting and exploitation at sea; offshore work; arts; use of radiation and nuclear techniques; application of high-frequency waves; divers' jobs, work in pit mines; seasonal production work and processing of goods under orders; and work that requires 24/24 hours on duty, specialized ministries and agencies shall specifically stipulate working time and rest time after consulting the Ministry of Labor, War Invalids and Social Affairs and ensure compliance with Article 108 of this Code.

Chapter VIII

LABOR DISCIPLINE AND MATERIAL RESPONSIBILITIES

Section 1

LABOR DISCIPLINE

Article 118. Labor discipline

Labor discipline means regulations on compliance with time requirements, technology and production and business administration as stipulated in the internal working regulations.

Article 119. Internal working regulations

1. An employer employing 10 or more employees must have internal working regulations in writing.

2. The contents of internal working regulations must not be contrary to the labor law and other relevant laws. The internal working regulations contain the following principal contents:

a/ Working time and rest time;

b/ Order at workplace;

c/ Occupational safety and hygiene at workplace;

d/ Protection of assets and technological and business secrets and intellectual property of the employer;

e/ Employees' violations of labor discipline, forms of dealing with violations of labor discipline, and material responsibilities.

3. Before the issuance of the internal working regulations, an employer shall consult the representative organization of the grassroots-level employees' collective.

4. The internal working regulations must be notified to employees and their key contents must be displayed at necessary places in the workplace.

Article 120. Registration of internal working regulations

1. An employer shall register its internal working regulations with the provincial-level state management agency of labor.

2. Within 10 days from the date of issuance of the internal working regulations, an employer shall submit a dossier for registration of the internal working regulations.

3. Within 7 working days from the date of receipt of a dossier for registration of the internal working regulations, if the internal working regulations have contents contrary to law, the provincial-level state management agency of labor shall notify and instruct the employer to make necessary amendments and supplements and the regulations must be re-submitted for registration.

Article 121. Dossier for registration of internal working regulations

A dossier for registration of the internal working regulations must comprise:

1. An application for registration of the internal working regulations;
2. Documents of the employer related to labor discipline and material responsibilities;
3. Minutes of comments of the representative organization of the grassroots-level employees' collective;
4. The internal working regulations.

Article 122. Validity of internal working regulations

The internal working regulations will be effective 15 days after the date the provincial-level state management agency of labor receives the registration dossier of the internal working regulations, except the case specified in Clause 3, Article 120 of this Code.

Article 123. Principles and order for handling violations of labor discipline

1. The handling of a violation of labor discipline is provided as follows:

a/ The employer shall prove the fault of the employee;

b/ The representative organization of the grassroots-level employees' collective must participate in the handling;

c/ The employee must be present and may defend himself/herself or ask a lawyer or another person to defend him/her; if the employee is under 18 years old, his/her parent or at-law representative must participate in the handling;

d/ The handling of the violation of labor discipline must be recorded in the minutes.

2. It is prohibited to impose more than one form of discipline for a single violation of labor discipline.

3. For an employee who simultaneously commits more than one violation of labor discipline, it is only allowed to apply the highest form of discipline corresponding to the most serious violation.

4. Labor discipline may not be imposed for violations committed by an employee who is currently:

a/ Taking sickness or convalescence leave or a leave with the employer's consent;

b/ Kept in custody or temporary detention;

c/ Waiting for results of verification and conclusion of a competent agency for acts of violation specified in Clause 1, Article 126 of this Code;

d/ A female employee and pregnant or on maternity leave; rearing a child under 12 months of age.

5. No labor discipline will be imposed on an employee who violates the internal working regulations while suffering a mental disorder or another disease which deprives him/her of the capacity to perceive or control his/her acts.

Article 124. Statute of limitations for handling violations of labor discipline

1. The statute of limitations for handling a violation of labor discipline is 6 months from the date the violation is committed. The statute of limitations for

handling a violation of labor discipline directly related to finance and assets or disclosure of technological or business secrets is 12 months.

2. Upon expiry of the period specified at Points a, b or c, Clause 4 of Article 123, if the statute of limitations for handling violations of labor discipline has not yet expired, the employer may immediately handle the case, and if the statute of limitations has expired, it may be extended but for no more than 60 days from the expiry date mentioned above.

Upon expiry of the period specified at Point d, Clause 4 of Article 123, if the statute of limitations has expired, it may be extended for no more than 60 days from the date of expiry mentioned above.

3. Decisions on handling violations of labor discipline must be issued within the time limits specified in Clauses 1 and 2 of this Article.

Article 125. Forms of handling of violations of labor discipline

1. Reprimand.

2. Prolongation of the wage rise period for no more than 6 months; removal from office.

3. Dismissal.

Article 126. Application of dismissal as a form of discipline

Dismissal may be applied by an employer as a form of discipline in the following cases:

1. An employee commits an act of theft, embezzlement, gambling, intentional infliction of injury, use of drugs inside the workplace, disclosure of technological or business secrets or infringement of intellectual property rights of the employer, or acts which cause serious damage or threaten to cause serious damage to the assets or interests of the employer;

2. An employee who has been subject to the disciplinary measure of prolonging the wage rise period commits recidivism when the disciplinary record has not yet been written off or an employee who has been subject to the disciplinary measure of removal from office commits recidivism;

Recidivism means that an employee re-commits the same violation for which he/she has been disciplined while his/her disciplinary record has not yet been written off under Article 127 of this Code.

3. An employee has been absent from work without permission for a total of 5 working days within 1 month or 20 days within 1 year without plausible reasons.

Plausible reasons include natural disaster, fire, illness of the employee or his/her next of kin with certification by a competent health establishment and other events defined in the internal working regulations.

Article 127. Writing off of disciplinary records, reduction of the duration of labor discipline

1. After 3 months for an employee who is reprimanded or after 6 months for an employee who is subject to the disciplinary measure of prolonging the wage rise period counting from the date his/her violation is handled, the employee concerned will have his/her disciplinary record be automatically written off if he/she does not commit recidivism. For an employee who is subject to the disciplinary measure of removal from office and commits another violation of labor discipline after 3 years, he/she will not be regarded as having committed recidivism.

2. An employee who is subject to the disciplinary measure of prolonging the wage rise period and has served half of the duration of the discipline showing progress may be considered by the employer for a reduction of such duration.

Article 128. Prohibited acts when handling violations of labor discipline

1. Infringing upon the body or dignity of the employee.

2. Applying a fine or wage reduction instead of a disciplinary measure.

3. Disciplining an employee who has committed a violation which is not defined in the internal working regulations.

Article 129. Work suspension

1. An employer may suspend an employee from working if the employer considers that the case of violation is complex and any continued performance of the work by the employee can cause difficulties to verification work. Work suspension may only be applied after the representative organization of the grassroots-level employees' collective has been consulted.

2. The period of work suspension must not exceed 15 days, or 90 days in special cases. During the period of work suspension, the employee is entitled to 50 per cent of the wage he/she receives prior to the suspension.

Upon the expiry of the period of work suspension, the employer must receive the employee back to his/her work.

3. In case the employee is disciplined, he/she is not required to reimburse the wage advanced to him/her.

4. In case the employee is not disciplined, the employer shall pay the full wage for the period of work suspension.

Section 2 MATERIAL RESPONSIBILITIES

Article 130. Compensation for damage

1. An employee who causes damage to tools and equipment or the assets of the employer shall pay compensation in accordance with law.

In case due to negligence an employee causes a minor damage valued at no more than 10 months' regional minimum wage announced by the Government and applied at the employee's workplace, the employee shall pay compensation of no more than 3 months' wage which shall be deducted monthly from his/her wage in accordance with Clause 3, Article 101 of this Code.

2. An employee who loses tools, equipment or assets of the employer or other assets assigned to him/her by the employer, or uses supplies in excess of the permitted norms shall compensate the whole or a part of the damage at the market price; in case a contract of responsibility has been signed, the amount of compensation must comply with such contract; in case the damage is caused by a natural disaster, fire, enemy sabotage, epidemic, calamity or another objective event which is unforeseeable and irremediable and every necessary measure has been taken to full ability, no compensation is required.

Article 131. Principles, order and procedures for compensation

1. Consideration and decision on the levels of compensation must be based on the fault, the actual level of damage, the actual family conditions, personal records and property of the employee concerned.

2. The order, procedures and statute of limitations for compensation comply with Articles 123 and 124 of this Code.

Article 132. Complaints about labor discipline and material responsibilities

An employee who is handled for violation of labor discipline, suspended from work, or required to pay compensation in accordance with the regime of

material responsibilities and is not satisfied with the handling decision, may file a complaint with the employer or a competent agency stipulated by law, or request settlement of a labor dispute according to the procedures stipulated by law.

Chapter IX
OCCUPATIONAL SAFETY AND HYGIENE

Section 1
GENERAL PROVISIONS ON OCCUPATIONAL SAFETY AND
HYGIENE

Article 133. Compliance with the law on occupational safety and hygiene

All enterprises, agencies, organizations and individuals related to labor and production shall comply with the law on occupational safety and hygiene.

Article 134. State policies on occupational safety and hygiene

1. The State shall invest in scientific research and provide assistance for establishments which manufacture occupational safety and hygiene tools and equipment and personal protection equipment.

2. To encourage development of occupational safety and hygiene services.

Article 135. Occupational safety and hygiene program

1. The Government shall decide on the national program on occupational safety and hygiene.

2. Provincial-level People's Committees shall formulate and submit local occupational safety and hygiene programs to the same-level People Councils for decision, and include them in their socio-economic development plans.

Article 136. National technical regulations on occupational safety and hygiene

1. The Ministry of Labor, War Invalids and Social Affairs shall assume the prime responsibility for, and coordinate with other ministries, sectors and localities in, elaborating, issuing, and guiding the implementation of national technical regulations on occupational safety and hygiene

2. Based on the national standards and technical regulations and local technical regulations on occupational safety and hygiene, employers shall elaborate internal working regulations and procedures for each type of machine, equipment and workplace to ensure occupational safety and hygiene.

Article 137. Assurance of occupational safety and hygiene at workplace

1. In case of new construction, expansion or innovation of buildings and facilities to manufacture, use, preserve and store machines, equipment, supplies and substances which have strict requirements on occupational safety and hygiene, investors or employers shall prepare plans on occupational safety and hygiene measures at workplace and for the environment.

2. The manufacture, use, preservation and transportation of machines, equipment, supplies, energies, electricity, chemicals, plant protection drugs as well as the change of technology and import of new technology must comply with promulgated or applied national technical regulations or standards on occupational safety and hygiene at the workplace.

Article 138. Employers' and employees' obligations for occupational safety and hygiene

1. An employer has the following obligations:

a/ To ensure that the workplace meet the requirements on space, airiness, dust, steam, toxic gas, radiation, electricity of magnetic field, heat, moisture, noise, vibration and other harmful factors as prescribed in relevant technical regulations. These factors must be checked and measured on a regular basis;

b/ To ensure safe and hygienic working conditions for machines, equipment and workshops as required by the promulgated or applied national technical regulations or standards on occupational safety and hygiene at workplace;

c/ To check and evaluate dangerous and harmful factors at the workplace in order to put forward measures to avert and minimize dangers and harms and improve working conditions and healthcare for employees;

d/ To examine and maintain machines, equipments, workshops and warehouses on a periodical basis;

e/ To display signboards of instructions for occupational safety and hygiene for machines, equipment and workplaces at easy-to-read and -see locations at the workplace;

f/ To consult the representative organization of the grassroots-level employees' collective when planning and implementing activities to ensure occupational safety and hygiene.

2. An employee has the following obligations:

a/ To observe regulations, processes and internal rules on occupational safety and hygiene which are relevant to assigned jobs;

b/ To use and maintain equipped personal protection equipment and occupational safety and hygiene tools at the workplace;

c/ To promptly report to responsible persons when discovering risks of labor accident, occupational disease, toxic or dangerous incidents; to participate in first aid and overcoming the consequences of labor accidents as requested by the employer.

Section 2

LABOR ACCIDENTS AND OCCUPATIONAL DISEASES

Article 139. Occupational safety and hygiene officers

1. An employer shall assign a person in charge of occupational safety and hygiene. For production and business establishments operating in the fields with many risks of labor accidents and occupational diseases and having 10 or more employees, their employers shall assign full-time occupational safety and hygiene officers with suitable professional qualifications.

2. Occupational safety and hygiene officers must be trained in occupational safety and hygiene.

Article 140. Handling of incidents and response to emergency cases

1. In handling incidents and responding to emergency cases, an employer shall:

a/ Develop a plan to deal with incidents and respond to emergency cases and organize periodical drills;

b/ Provide technical and medical equipment to ensure timely response and first aid when a labor incident or accident occurs;

c/ Immediately take remedies or issue orders to stop the operation of machines, equipment and workplaces which have risks of causing labor accidents or occupational diseases.

2. An employee may refuse to work or leave the workplace while still having the full wage paid and not being regarded as violating labor discipline when he/she is fully aware of the danger of labor accident or occupational diseases or serious threat to his/her life or health, and shall immediately report to the direct supervisor. The employer may not order employees to continue

performing such work or to return to such workplace if the danger has not been eliminated.

Article 141. In-kind allowances for employees working in dangerous and hazardous conditions

Employees working in dangerous and hazardous conditions are entitled to in-kind allowances provided by employers according to regulations of the Ministry of Labor, War Invalids and Social Affairs.

Article 142. Labor accidents

1. Labor accident is an accident that causes injury to any bodily part and function of an employee or causes death, and occurs during the performance of work and in connection with the performance of a job or task.

This provision also applies to apprentices, on-the-job trainees and employees on probation.

2. Victims of labor accidents must be promptly provided with first aid and adequate treatment.

3. All labor accidents, occupational diseases and serious incidents happening at workplace must be notified, investigated, documented, statistically calculated and reported on a regular basis according to the Government's regulations.

Article 143. Occupational diseases

1. Occupational disease is an illness caused by the harmful working conditions of an occupation on an employee.

The Ministry of Health shall assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, issuing a list of occupational diseases after consulting the Vietnam General Confederation of Labor and the employers' representative organization.

2. An employee suffering an occupational disease must be provided with adequate treatment and regular checks-up and have a separate medical record.

Article 144. Employers' responsibilities for labor accidents and occupational diseases of employees

1. To bear the part of the costs which must be jointly paid and costs which are not covered by health insurance for employees who have health insurance; to pay all medical expenses incurred from first aid and emergency aid until stable treatment for employees who do not have health insurance.

2. To pay full wages under labor contracts to employees who have labor accidents or suffer occupational diseases during the medical treatment period.

3. To pay compensations to employees who have labor accidents or suffer occupational diseases in accordance with Article 145 of this Code.

Article 145. Rights of employees who have labor accidents or suffer occupational diseases

1. An employee who participates in compulsory social insurance is entitled to the benefit regime for labor accidents and occupational diseases as provided by the Law on Social Insurance.

2. For an employee subject to compulsory social insurance whose employer has not paid social insurance premiums to the social insurance agency, the employer shall pay an amount of money equal to the regime for labor accidents and occupational diseases as provided by the Law on Social Insurance.

The payment may be paid in a lump sum or on a monthly basis as agreed upon by the parties.

3. An employee who has a labor accident or suffers an occupational disease not due to his/her fault and loses 5% or more of his/her working ability is entitled to compensation by his/her employer as follows:

a/ At least equal to one and half month's wage stipulated in the labor contract in case of losing between 5% and 10% of the working ability, then an additional 0.4 month's wage stipulated in the labor contract for every increase of 1% in case of losing between 11% and 80% of the working ability;

b/ At least equal to 30 months' wage stipulated in the labor contract in case of losing 81% or more of the working ability, or to family members of the employee who dies from a labor accident.

4. In case the employee is at fault, he/she is still entitled to an allowance at least equal to 40% of the rate specified in Clause 3 of this Article.

Article 146. Prohibited acts in occupational safety and hygiene

1. Making cash payments instead of providing in-kind allowances to employees.

2. Concealing or falsely declaring or reporting on labor accidents and occupational diseases.

Section 3

PREVENTION OF LABOR ACCIDENTS AND OCCUPATIONAL DISEASES

Article 147. Technical appraisal of machines, equipment and supplies subject to strict labor safety requirements

1. Machines, equipment and supplies subject to strict labor safety requirements must be appraised by a technical labor safety appraisal institution before they are put into operation and must be appraised on a periodical basis when they are in use.

2. The Ministry of Labor, War Invalids and Social Affairs shall issue a list of machines, equipment and supplies subject to strict labor safety requirements.

3. The Government shall stipulate conditions on technical labor safety appraisal service institutions.

Article 148. Occupational safety and hygiene plans

Annually, when developing business and production plans, employers shall prepare plans and measures for occupational safety and hygiene and improvement of working conditions.

Article 149. Personal protection equipment in work

1. An employee doing a dangerous or toxic job must be adequately provided with and shall use personal protection equipment in the working process according to the regulations of the Ministry of Labor, War Invalids and Social Affairs.

2. Personal protection equipment must meet applicable quality standards.

Article 150. Training in occupational safety and hygiene

1. Employers and occupational safety and hygiene officers shall participate in training courses and take examinations and tests on occupational safety and hygiene conducted by occupational safety and hygiene training service institutions, for which they will be granted certificates.

2. An employer shall organize training in occupational safety and hygiene for employees, apprentices and on-the-job trainees upon recruitment and work arrangement; and provide guidance on occupational safety and hygiene regulations for visitors to workplaces managed by the employer.

3. An employee who performs a job subject to strict occupational safety and hygiene requirements shall participate in a training course and take a test on occupational safety and hygiene in order to obtain a certificate.

4. The Ministry of Labor, War Invalids and Social Affairs shall provide conditions on occupational safety and hygiene training service institutions and develop a framework curriculum on occupational safety and hygiene training; and a list of jobs subject to strict occupational safety and hygiene requirements.

Article 151. Information on occupational safety and hygiene

Employers shall provide adequate information on the situation of labor accidents, occupational diseases and dangerous and harmful factors and measures to ensure occupational safety and hygiene for employees at workplace.

Article 152. Health care for employees

1. Based on health criteria for each type of work, an employer shall recruit and arrange work for employees.

2. Annually, an employer shall organize periodical health checks-up for employees, including apprentices and on-the-job trainees, obstetrics and gynecology checks for female employees, and health checks-up at least once every 6 months for employees doing heavy and harmful jobs and disabled, minor and elderly employees.

3. An employee who works in conditions with risks of occupational disease must have occupational disease checks according to regulations of the Ministry of Health.

4. An employee who has a labor accident or suffers an occupational disease shall undergo a medical assessment to determine his/her level of injury or disability and the level of working ability loss, and is entitled to treatment, care and working ability rehabilitation in accordance with law.

5. After having a labor accident or suffering an occupational disease, if still continuing to work, an employee shall be assigned to a work suitable to his/her health based on the conclusion of the Labor Medical Assessment Council.

6. An employer shall manage health records of employees and general observation records according to regulations of the Ministry of Health.

7. An employer shall provide employees who work at a workplace exposed to toxic and infectious factors with sterilization and disinfection measures upon completion of the working hours.

Chapter X

SEPARATE PROVISIONS FOR FEMALE EMPLOYEES

Article 153. State policies toward female employees

1. To protect the female employees' right to employment equality.
2. To encourage employers to create conditions for female employees to have regular employment, and to extensively implement systems of flexible working hours, part-time work or home-based work for female employees.
3. To introduce measures to create employment opportunities, improve working conditions, raise vocational qualifications and healthcare, and increase material and spiritual welfare for female employees in order to assist them in effectively bringing into play their vocational capacity and harmoniously combining their working lives with family lives.
4. To formulate policies on tax reductions for employers using many female employees in accordance with tax laws.
5. To develop various forms of training which are favorable for female employees to acquire standby vocational skills suitable to their physical and physiological characteristics and their motherhood function.
6. The State shall develop plans and measures to organize crèches and kindergartens in areas with large numbers of female employees.

Article 154. Obligations of employers toward female employees

1. To ensure gender equality and implement measures to promote gender equality in recruitment, employment, training, working time, rest time, wages and other policies.
2. To consult female employees or their representatives when taking decisions on issues related to the rights and interests of women.
3. To ensure sufficient bathrooms and appropriate toilets in the workplace.
4. To assist and support in building crèches and kindergartens, or cover part of childcare expenses at crèches and kindergartens incurred by female employees.

Article 155. Protection of maternity for female employees

1. An employer may not mobilize female employees to work at night, work overtime or go on a long working trip in the following cases:

a/ The employee is in her seventh month of pregnancy, or in her sixth month of pregnancy in case of working in a mountainous, remote, distant, border or island area;

b/ The employee is nursing a child under 12 months of age.

2. A female employee who performs heavy work, upon reaching her seventh month of pregnancy, is entitled to be transferred to a lighter work or have her daily working time reduced by 1 hour while still receiving her full wage.

3. An employer may neither dismiss a female employee nor unilaterally terminate the labor contract with a female employee for the reason of her marriage, pregnancy, maternity leave, or that she is nursing a child under 12 months of age, except the case in which the employer is an individual who dies, or is declared by a court to have lost his/her civil act capacity, or to be missing or dead, or the employer is an institution that ceases operation.

4. Labor disciplinary measures may not applied to a female employee during the time of pregnancy or maternity leave as provided by the law on social insurance, or nursing a child under 12 months of age.

5. A female employee in her menstruation period is entitled to a 30-minute break in every working day; a female employee nursing a child under 12 months of age is entitled to a 60-minute break in every working day with full wage as stated in the labor contract.

Article 156. Right of pregnant employees to unilaterally terminate or postpone labor contracts

In case a pregnant employee has a certificate of a competent health establishment which states that continued work will adversely affect her pregnancy, she may unilaterally terminate the labor contract or temporarily postpone the performance of the labor contract. The period for the female employee to give advance notice to the employer depends on the period determined by the competent health establishment.

Article 157. Maternity leave

1. A female employee is entitled to 6 months of prenatal and postnatal leave.

In case a female employee gives birth to twin or more babies, counting from the second child upward, for each child the mother is entitled to 1 more month off.

Prenatal leave must not exceed 2 months.

2. During the maternity leave, a female employee is entitled to maternity policies provided by the law on social insurance.

3. After the maternity leave period stipulated in Clause 1 of this Article, if a female employee wishes, she may take additional leave without pay as agreed upon with the employer.

4. Before the expiration of her maternity leave stipulated in Clause 1 of this Article, a female employee may return to work if she so wishes and the employer so agrees provided that she has a certificate from a competent health establishment that early resumption of work will not adversely affect her health and she has taken at least 4 months of maternity leave.

In this case, the female employee continues to receive the maternity allowance as provided by the law on social insurance, in addition to the wage paid by the employer for her working days.

Article 158. Guarantee of employment for female employees after maternity leave

A female employee shall be guaranteed the old employment when she returns to work after taking the maternity leave as provided in Clauses 1 and 3, Article 157 of this Code. In case the old employment is no longer available, the employer shall arrange another employment for her with a wage not lower than that paid to her before her maternity leave.

Article 159. Allowances for leave for caring a sick child, for pregnancy checks-up and for applying contraceptive measures

When taking leaves for pregnancy check-up, miscarriage, abortion, dead or diseased fetus in womb, for applying contraceptive measures, caring a sick child who is under 7 years of age or for nursing an adopted child under 6 months of age, a female employee is entitled to social insurance allowance in accordance with the law on social insurance.

Article 160. Prohibited work for female employees

1. Work that is harmful to child bearing and nursing functions as specified in the list of jobs issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

2. Work that requires the body constantly immersed in water.

3. Regular underground work in mines.

Chapter XI

SEPARATE PROVISIONS FOR MINOR EMPLOYEES AND OTHER TYPES OF EMPLOYEES

Section 1

MINOR EMPLOYEES

Article 161. Minor employees

A minor employee is an employee under 18 years of age.

Article 162. Employment of minors

1. An employer may only employ minors in work suitable to their health so as to ensure their physical, spiritual and personality development, and shall take care of minor employees regarding their work, wage, health and training in the course of their employment.

2. When employing minors, an employer shall keep a separate register fully recorded with the name, date of birth, work assigned, results of periodical medical checks of each minor employee, and shall present it at the request of a competent state agency.

Article 163. Principles of employment of minors

1. Employment of minors is prohibited in heavy, toxic and dangerous jobs or in workplaces or jobs which may adversely affect their personality, as determined in the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

2. The working time of minor employees aged from full 15 years to under 18 years must not exceed 8 hours per day and 40 hours per week.

The working time of employees aged under 15 years must not exceed 4 hours per day and 20 hours per week and the employer may not employ these minors to work overtime or at night.

3. Persons aged from full 15 to under 18 years may work overtime and at night in some occupations and jobs stipulated by the Ministry of Labor, War Invalids and Social Affairs.

4. An employer may not employ minors to manufacture and trade in alcohol, wine, beer, cigarettes, stimulants and other habit-forming substances.

5. An employer shall create opportunities for minor employees and employed persons aged under 15 years to receive general education.

Article 164. Use of employees aged under 15 years

1. An employer may only employ persons aged from full 13 to under 15 years in light jobs according to the list issued by the Ministry of Labor, War Invalids and Social Affairs.

2. When employing a person aged from full 13 to under 15 years, an employer shall comply with the following provisions:

a/ To sign the labor contract with his/her at-law representative and with the consent of the person aged from full 13 to under 15 years;

b/ To arrange working hours which do not overlap the school hours of the child;

c/ To ensure the working conditions and occupational safety and hygiene suitable to his/her age.

3. Employment of persons aged under 13 years is prohibited, except for some specific jobs stipulated by the Ministry of Labor, War Invalids and Social Affairs.

When employing persons aged under 13 years, an employer shall comply with Clause 2 of this Article.

Article 165. Prohibited jobs and workplaces for minor employees

1. Employment of minors is prohibited in the following jobs:

a/ Carrying and lifting of heavy objects which are beyond a minor's physical strength;

b/ Manufacture, use or transportation of chemicals, gas and explosives;

c/ Maintenance of equipment and machines;

d/ Demolition of construction works;

e/ Melting, blowing, casting, rolling, molding and welding of metals;

f/ Sea diving, offshore fishing;

g/ Other jobs which are harmful to the health, safety or morality of minor employees.

2. Employment of minors is prohibited in the following workplaces:

a/ Underwater, underground, in cave and in tunnel;

b/ Construction site;

c/ Slaughter house;

d/ Casino, bar, dance hall, karaoke parlor, hotel, hostel, sauna, massage room;

e/ Other workplaces which are harmful to the health, safety or morality of minor employees.

3. The Ministry of Labor, War Invalids and Social Affairs shall issue the lists referred to at Point g, Clause 1, and Point e, Clause 2, of this Article.

Section 2

ELDERLY EMPLOYEES

Article 166. Elderly employees

1. Elderly employee is a person who continues to work after the age defined in Article 187 of this Code.

2. Elderly employees are entitled to reduced daily working hours or to the regime of part-time work.

3. In the last working year before retirement, elderly employees are entitled to reduced normal working hours or to the regime of part-time work.

Article 167. Employment of elderly employees

1. When necessary, an employer may reach agreement with an elderly employee who has sufficient health conditions on the extension of the labor contract or the conclusion of a new labor contract in accordance with the provisions of Chapter III of this Code.

2. If, after retirement, an elderly employee is employed under a new labor contract, he/she still enjoys the rights and interests agreed upon in the labor contract, in addition to the rights and benefits under the retirement regime.

3. An employer may not employ elderly employees in heavy or dangerous jobs or jobs exposed to toxic substances that adversely affect their health, except in special cases as stipulated by the Government.

4. An employer is responsible for taking care of the health of elderly employees at the workplace.

Section 3

**VIETNAMESE EMPLOYEES WORKING ABROAD, EMPLOYEES OF
FOREIGN ORGANIZATIONS AND INDIVIDUALS IN VIETNAM,
FOREIGN EMPLOYEES WORKING IN VIETNAM**

Article 168. Vietnamese employees working abroad, employees of foreign organizations and individuals in Vietnam

1. The State encourages enterprises, agencies, organizations and individuals to seek and expand the labor market in order to send Vietnamese employees to work abroad.

Vietnamese employees working abroad shall comply with the laws of Vietnam and host countries, unless otherwise provided by treaties to which Vietnam is a contracting party.

2. Vietnamese citizens working in foreign enterprises in Vietnam, working in industrial parks, economic zones, export processing zones, in foreign or international agencies and organizations in Vietnam, or working for foreign citizens in Vietnam shall comply with Vietnamese laws and are protected under law.

Article 169. Conditions for foreign citizens to work in Vietnam

1. A foreign citizen wishing to work in Vietnam must fully meet the following conditions:

a/ Possessing full civil act capacity;

b/ Possessing technical and professional qualifications and skills and health appropriate to the work requirement;

c/ Not being a criminal or subject to penal liability examination according to Vietnamese and foreign laws;

d/ Possessing a work permit granted by a competent Vietnamese state agency, except the cases specified in Article 172 of this Code.

2. Foreign employees working in Vietnam shall comply with the labor law of Vietnam and treaties to which Vietnam is a contracting party which have different provisions, and are protected by Vietnamese law.

Article 170. Conditions for employment of foreign citizens

1. Domestic enterprises, agencies, organizations, individuals and contractors may only employ foreign citizens in such positions as manager, managing

director, expert and technical worker which Vietnamese employees are still unable to fill to meet production and business requirements.

2. Foreign enterprises, agencies, organizations, individuals and contractors shall, before employing foreign citizens to work in the territory of Vietnam, explain their labor demands and obtain written approval from competent state agencies.

Article 171. Work permits for foreign citizens to work in Vietnam

1. A foreign employee shall produce his/her work permit when carrying out immigration procedures and upon request of a competent state agency.

2. Any foreign citizen working in Vietnam without a work permit shall be deported from Vietnam according to the Government's regulations.

3. Any employer employing foreign citizens without work permits shall be handled in accordance with law.

Article 172. Foreign citizens working in Vietnam who are exempt from work permit

1. Capital-contributing members or owners of limited liability companies.

2. Members of the Board of Directors of joint-stock companies.

3. Chiefs of representative offices and directors of projects of international organizations or non-governmental organizations in Vietnam.

4. Those who stay in Vietnam for under 3 months to offer services for sale.

5. Those who stay in Vietnam for under 3 months to deal with complicated technical or technological problems that adversely impact or are at risk of exerting adverse impacts on production and business activities and these problems cannot be handled by Vietnamese and foreign experts who are currently in Vietnam.

6. Foreign lawyers possessing a professional practice license in Vietnam in accordance with the Law on Lawyers.

7. It is in accordance with a treaty to which Vietnam is a contracting party.

8. Those who are studying and working in Vietnam, provided that the employer shall notify their employment to the provincial-level state management agency of labor 7 days in advance.

9. Other cases as stipulated by the Government.

Article 173. Validity duration of work permits

The maximum validity duration of a work permit is 2 years.

Article 174. Cases of termination of validity of work permits

1. The work permit expires.

2. The labor contract terminates.

3. The content of the labor contract is not consistent with the content of the granted work permit.

4. The contract in the field of business, trade, finance, banking, insurance, science and technology, culture, sports, education or medicine expires or terminates.

5. There is a written notice of the foreign side of the termination of sending of foreign citizens to work in Vietnam.

6. The work permit is revoked.

7. The enterprise, organization or partner in Vietnam or the foreign non-governmental organization in Vietnam ceases operation.

8. The foreign employee is sentenced to imprisonment, dies, or is declared to be dead or missing by a court.

Article 175. Grant, re-grant and revocation of work permits

The Government shall specify conditions for the grant, re-grant and revocation of work permits for foreign citizens working in Vietnam.

Section 4

DISABLED EMPLOYEES

Article 176. State policies for disabled employees

1. The State protects the rights to work and to self-employment of disabled persons, and shall formulate policies to encourage and provide incentives for employers to create jobs for and employ disabled persons in accordance with the Law on Persons with Disabilities.

2. The Government shall stipulate the policy on providing concessional loans from the National Employment Fund for employers who employ disabled persons.

Article 177. Employment of disabled persons

1. An employer shall ensure working conditions, working tools and occupational safety and hygiene suitable to disabled employees and take regular care for their health.

2. An employer shall consult disabled employees before deciding on matters involving their rights and interests.

Article 178. Prohibited acts in employment of disabled persons

1. Employing a disabled person who has lost 51% or more of his/her working ability to work overtime and at night.

2. Employing a disabled person to perform a heavy or dangerous job or a job exposed to toxic substances on the list issued by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health.

Section 5

DOMESTIC EMPLOYEES

Article 179. Domestic employees

1. Domestic employee is a person who regularly does housework for one or more families.

Housework includes cooking, housekeeping, babysitting, caring for sick persons, caring for the elderly, driving, and gardening and other housework which is not related to commercial activities.

2. This Code does not apply to employees who do housework in the form of piecework.

Article 180. Labor contracts for domestic employees

1. An employer shall sign a written labor contract with a domestic employee.

2. The duration of a labor contract for a domestic employee may be negotiated by both parties. Either party may unilaterally terminate the labor contract with an advance notice of 15 days.

3. The two parties shall agree and clearly write in the labor contract the form and time of wage payment, daily working hours and accommodation.

Article 181. Obligations of an employer

1. To fully implement the agreements stated in the labor contract.

2. To pay to the domestic employee his/her social insurance and health insurance as provided by law to enable the latter to self-manage his/her insurance.

3. To respect the honor and dignity of the domestic employee.

4. To provide a clean and hygienic accommodation for the domestic employee, if so agreed.

5. To create opportunities for the domestic employee to receive education and vocational training.

6. To pay travel expenses for the domestic employee to return home at the end of his/her service, except the case in which the domestic employee terminates the labor contract ahead of time.

Article 182. Obligations of a domestic employee

1. To fully implement the agreements in the labor contract signed by both parties.

2. To pay compensation as agreed upon or provided by law in case of damaging or losing the property of the employer.

3. To timely notify the employer of any possibilities and risks of accident, safety, health, life and property of the employer's family and his/her own.

4. To denounce to competent agencies if the employer commits acts of mistreating, sexually harassing or forcing labor or other illegal acts.

Article 183. Prohibited acts of an employer

1. Mistreating, sexually harassing, forcing labor and using violence against the domestic employee.

2. Assigning work to the domestic employees not in accordance with the labor contract.

3. Keeping personal documents of the domestic employee.

Section 6

OTHER TYPES OF EMPLOYEES

Article 184. Persons working in the fields of arts and physical training and sports

Persons who work in the fields of arts and physical training and sports are entitled to some suitable regimes related to vocational training age, entry into

labor contracts, working time, rest time, wage, wage-related allowances, bonus and occupational safety and hygiene as stipulated by the Government.

Article 185. Employees performing home-based work

1. Employees may negotiate with employers to regularly perform home-based work.
2. This Code does not apply to employees performing home-based work in the form of processing.

**Chapter XII
SOCIAL INSURANCE**

Article 186. Participation in social insurance and health insurance

1. Employers and employees shall participate in compulsory social insurance, compulsory health insurance and unemployment insurance and are entitled to the benefits in accordance with the social insurance and health insurance laws.

Employers and employees are encouraged to participate in other different forms of social insurance for employees.

2. When an employee is absent from work and covered by social insurance, the employer is not required to pay a wage to the employee.

3. For an employee who is not covered by compulsory social insurance, compulsory health insurance and unemployment insurance, the employer shall simultaneously pay to the employee a wage and an amount which is equivalent to the level of contribution to compulsory social insurance, compulsory health insurance and unemployment insurance, and annual leave payments in accordance with regulations.

Article 187. Age of retirement

1. An employee who meets the conditions on the period of payment of social insurance stipulated by the law on social insurance is entitled to a pension when reaching full 60 years of age, for males, or full 55 years of age, for females.

2. An employee whose working ability has been declined; who performs a specially heavy, hazardous or dangerous job or a heavy, hazardous or dangerous job; works in a mountain, deep-lying, remote, border or island area in the list issued by the Government may retire before reaching the age specified in Clause 1 of this Article.

3. An employee who has high professional and technical qualifications or who performs management work and some other special cases may retire at an age not over 5 years older than the age specified in Clause 1 of this Article.

4. The Government shall detail Clauses 2 and 3 of this Article.

Chapter XIII TRADE UNIONS

Article 188. The role of trade unions in industrial relations

1. Grassroots level trade unions play the role of representing and protecting the rights and legitimate interests of trade union members and employees; participate in negotiating, signing and supervising the implementation of collective labor agreements, wage scales and wage tables, labor norms, wage payment regulations and bonus regulations, internal working regulations, democracy regulations in enterprises, agencies or organizations; participate in and assist the settlement of labor disputes; hold dialogues and cooperate with employers to build harmonious, stable and progressive industrial relations in enterprises, agencies or organizations.

2. Immediate higher-level trade unions shall assist grassroot-level trade unions in performing their functions and tasks specified in Clause 1 of this Article; and propagate, educate and improve understanding of employees on the labor law and trade union law.

3. At non-unionized workplaces, immediate higher-level trade unions shall perform the duties specified in Clause 1 of this Article.

4. Trade unions at a level shall work with state management agencies of the same level and the employers' representative organization to discuss and deal with labor-related issues.

Article 189. Establishment, joining and operation of trade unions at enterprises, agencies and organizations

1. Employees of enterprises, agencies and organizations have the right to establish, join and operate trade unions in accordance with the Law on Trade Union.

2. Immediate higher-level trade unions have the rights and responsibilities to mobilize employees to join trade unions and establish grassroots-level trade unions at enterprises, agencies or organizations; they also have the right to request employers and local labor state management agencies to create favorable conditions for and support the establishment of grassroots-level trade unions.

3. When the grassroots-level trade union is established in accordance with the Law on Trade Union, the employer shall recognize and create favorable conditions for activities of the grassroots-level trade union.

Article 190. Prohibited acts of employers related to the establishment, joining and operation of trade unions

1. Obstructing or causing difficulties to employees in the establishment, joining and operation of trade unions.

2. Coercing employees to establish, join and operate a trade union.

3. Asking employees not to join or to withdraw from a trade union.

4. Discriminating employees regarding wages, working time and other rights and obligations in industrial relations to obstruct employees in the establishment, joining and operation of trade unions.

Article 191. Rights of grassroots-level trade union representatives in industrial relations

1. To meet the employer to discuss, exchange ideas and negotiate on labor and employment issues.

2. To visit workplaces to meet employees within the scope of responsibility which they represent.

3. At non-unionized workplaces, immediate higher-level trade union representatives shall exercise the rights provided in this Article.

Article 192. Responsibilities of employers toward trade unions

1. To create favorable conditions for employees to establish, join and operate trade unions.

2. To collaborate and create favorable conditions for immediate higher-level trade unions to propagandize, mobilize and develop trade union members, establish grassroots-level trade unions and arrange full-time trade union representatives at enterprises, agencies or organizations.

3. To ensure conditions for grassroots-level trade union activities as provided in Article 193 of this Code.

4. To coordinate with grassroots-level trade unions to formulate and implement democracy regulations and coordination mechanism regulations which are suitable to the functions and tasks of each side.

5. To consult the executive committee of the grassroots-level trade union before issuing regulations related to the rights, obligations and benefits of and policies related to employees.

6. When an employee who is a part-time trade union representative is still in his/her trade union tenure while his/her labor contract expires, that labor contract must be extended until the end of the trade union tenure.

7. When an employer unilaterally terminates the labor contract of, transfers to another job or sacks an employee who is a part-time trade union representative, he/she must obtain the written agreement of the executive committee of the grassroots-level trade union or the executive committee of the immediate higher-level trade union.

If failing to reach such agreement, the two parties shall report it to a competent agency or organization. Only after 30 days after notifying the case to the local state management agency of labor, may the employer make decision and he/she shall take responsibility for his/her decision.

If disagreeing with the employer's decision, the executive committee of the grassroots-level trade union and the employee concerned may request labor dispute settlement in accordance with the procedures and order provided by law.

Article 193. Assurance of conditions for trade union activities at enterprises, agencies and organizations

1. A grassroots-level trade union shall be provided by the employer with an office and information and given necessary conditions for trade union activities.

2. A part-time trade union representative may use working time for trade union activities according to the Law on Trade Union and have his/her wage paid by the employer.

3. A full-time trade union representative at an enterprise, agency or organization has his/her wage paid by the trade union and shall be ensured by the employer with collective welfare benefits like other employees of the enterprise, agency or organization as stated in the collective labor agreement or the employer's regulations.

Chapter XIV

SETTLEMENT OF LABOR DISPUTES

Section 1

GENERAL PROVISIONS ON SETTLEMENT OF LABOR DISPUTES

Article 194. Principles of settlement of labor disputes

1. To respect and guarantee self-negotiation and self-determination by the parties in settling their labor dispute.

2. To ensure conciliation and arbitration on the basis of respect for the rights and interests of both disputing parties, and respect for the common interest of the society and non-violation of the law.

3. To guarantee publicity, transparency, objectiveness, timeliness, quickness and lawfulness.

4. To ensure participation of the representative of each party in the labor dispute settlement process.

5. To settle a labor dispute firstly through direct negotiation by the two parties in order to harmoniously resolve their interests, stabilize production and business and assure social order and safety.

6. The settlement of a labor dispute shall be conducted by a competent agency, organization or person after either party makes a written request due to the fact that the other party refuses to negotiate or the two parties do not negotiate successfully or the two parties negotiate successfully but either party does not implement the agreement.

Article 195. Responsibilities of agencies, organizations and individuals for settling labor disputes

1. The state management agency of labor shall coordinate with the trade union and the employers' representative organization in providing guidance and assistance to the parties during the labor dispute settlement.

2. The Ministry of Labor, War Invalids and Social Affairs shall organize training to raise professional capacity for labor conciliators and arbitrators in the labor dispute settlement.

3. Competent state agencies shall proactively and promptly settle right-based collective disputes.

Article 196. Rights and obligations of two parties in labor dispute settlement

1. During the labor dispute settlement, the two parties have the following rights:

a/ To participate directly or through a representative in the settlement process;

b/ To withdraw or change the content of their written request;

c/ To request change of the person in charge of settling the labor dispute if they have grounds to believe that such person may not be impartial or objective.

2. During the labor dispute settlement, the two parties have the following obligations:

a/ To promptly and fully provide all documents and evidence to prove their request;

b/ To abide by the reached agreement, the judgment or ruling which has taken legal effect.

Article 197. Powers of agencies, organizations and persons competent to settle labor disputes

Agencies, organizations and persons competent to settle labor disputes may, within the scope of their tasks and powers, request the two disputing parties and relevant agencies, organizations and persons to provide documents and evidence, solicit assessment and invite witnesses and other related people.

Article 198. Labor conciliators

1. Labor conciliators are appointed by the state management agency of labor of a district, town or provincial city to conciliate labor disputes and disputes over vocational training contracts.

2. The Government shall stipulate criteria for and competence to appoint labor conciliators.

Article 199. Labor Arbitration Council

1. The chairperson of a provincial-level People's Committee may decide to establish the Labor Arbitration Council, which consists of the chairperson who is the head of the state management agency of labor, a secretary and members who are the representatives of the provincial-level trade union and the employers' representative organization. The number of members of the Labor Arbitration Council must be an odd number and not exceed seven.

In case of necessity, the chairperson of the Labor Arbitration Council may invite representatives of relevant agencies and organizations and persons with experience in local industrial relations.

2. The Labor Arbitration Council may conciliate the following collective labor disputes:

a/ Interest-related collective labor disputes;

b/ Collective labor disputes occurring at employing units where strikes are prohibited on the list stipulated by the Government.

3. The Labor Arbitration Council shall make decision by majority of secret votes.

4. Provincial-level People's Committees shall provide necessary working conditions for the operation of the Labor Arbitration Council.

Section 2

COMPETENCE AND PROCESS FOR SETTLEMENT OF INDIVIDUAL LABOR DISPUTES

Article 200. Agencies and persons competent to settle individual labor disputes

1. Labor conciliators.

2. People's Courts.

Article 201. Order and procedures for settlement of individual labor disputes by labor conciliators

1. Individual labor disputes must go through the conciliation conducted by labor conciliators before going to a court for settlement, except the following labor disputes:

a/ Disputes over disciplinary measures of dismissal or unilateral termination of labor contract;

b/ Disputes over compensation for damage and allowance upon termination of labor contract;

c/ Disputes between a domestic employee and his/her employer;

d/ Disputes over social insurance in accordance with the law on social insurance, over health insurance in accordance with the law on health insurance;

e/ Disputes over compensation between employees and enterprises or non-business units sending employees to work abroad under contracts.

2. Within 5 working days from the date of receiving a conciliation request, the labor conciliator shall complete the conciliation.

3. Both disputing parties must be present at the conciliation meeting. The disputing parties may authorize their representatives to attend the conciliation meeting.

The labor conciliator shall instruct the parties to negotiate. In case the two parties can reach an agreement, the labor conciliator shall prepare a record of successful conciliation.

In case the two parties cannot reach any agreement, the labor conciliator shall recommend a solution to the parties for consideration. In case the two parties agree with the recommended solution, the labor conciliator shall prepare a record of successful conciliation.

In case the two parties do not agree with the recommended solution or one of the disputing parties is absent without a plausible reason after having been duly summoned for two times, the labor conciliator shall prepare a record of unsuccessful conciliation.

The record of unsuccessful conciliation must bear the signatures of the present party and the labor conciliator.

Copies of the record of successful or unsuccessful conciliation must be sent to both disputing parties within 1 working day from the date the record is prepared.

4. In case of unsuccessful conciliation or if either party does not implement the agreement written in the record of successful conciliation or the conciliation duration stipulated in Clause 2 of this Article expires but the labor conciliator fails to conduct the conciliation, each disputing party may request settlement by a court.

Article 202. Statute of limitations for requesting settlement of individual labor disputes

1. The statute of limitations for requesting a labor conciliator to settle an individual labor dispute is 6 months, counting from the date of discovering an act which is claimed by each disputing party to infringe upon its rights and legitimate interests.

2. The statute of limitations for bringing an individual labor dispute to a court is 1 year counting from the date of discovering an act which is claimed by each disputing party to infringe its rights and legitimate interests.

Section 3 COMPETENCE AND PROCESS FOR SETTLEMENT OF COLLECTIVE LABOR DISPUTES

Article 203. Agencies, organizations and persons competent to settle collective labor disputes

1. Agencies, organizations and persons competent to settle right-based collective labor disputes include:

a/ Labor conciliators;

b/ Chairpersons of People's Committees of districts, towns or provincial cities (below referred to as chairperson of district-level People's Committees);

c/ People's Courts.

2. Agencies, organizations and persons competent to settle interest-based collective labor disputes:

a/ Labor conciliators;

b/ The Labor Arbitration Council.

Article 204. Procedures for settling collective labor disputes at grassroots level

1. The conciliation procedures for collective labor disputes comply with Article 201 of this Code. A record of conciliation must clearly indicate the type of the collective labor dispute.

2. In case of unsuccessful conciliation or if either party does not implement the agreement written in the record of successful conciliation, the following provisions must be complied with:

a/ For right-based collective labor disputes, any disputing party may request settlement by the chairperson of the district-level People's Committee;

b/ For interest-based collective labor disputes, any disputing party may request settlement by the Labor Arbitration Council.

3. In case the labor conciliator fails to conduct the conciliation within the time limit specified in Clause 2 of Article 201 of this Code, any disputing party may request settlement by the chairperson of the district-level People's Committee.

Within 2 working days after receiving a request for settlement, the chairperson of the district-level People's Committee shall identify whether the dispute is right-based or interest-based.

If it is a right-based collective labor dispute, the chairperson of the district-level People's Committee shall settle it in accordance with Point a, Clause 2 of this Article and Article 205 of this Code.

If it is an interest-based collective labor dispute, the chairperson of the district-level People's Committee shall promptly guide the disputing parties to make a request for settlement in accordance with Point b, Clause 2 of this Article.

Article 205. Settlement of right-based collective labor disputes by chairpersons of district-level People's Committees

1. Within 5 working days after receiving a request for settlement of a right-based collective labor dispute, the chairperson of a district-level People's Committee shall conduct the labor dispute settlement.

2. Representatives of the two disputing parties must be present at the labor dispute settlement meeting. When finding it necessary, the chairperson of the district-level People's Committee may invite representatives of other relevant agencies and organizations to the meeting.

The chairperson of the district-level People's Committee shall base himself/herself on the labor law, collective labor agreement, registered internal working regulations and other lawful regulations and agreements to consider and settle the labor dispute.

3. In case the two parties disagree with the decision of the chairperson of the district-level People's Committee or the chairperson of the district-level People's Committee fails to settle the labor dispute within the time limit, any disputing party may request settlement by a court.

Article 206. Settlement of interest-based collective labor disputes by the Labor Arbitration Council

1. Within 7 working days from the date of receiving a request, the Labor Arbitration Council shall complete the conciliation.

2. Representatives of the two disputing parties must be present at the meeting of the Labor Arbitration Council. If finding it necessary, the Labor Arbitration Council may invite representatives of relevant agencies and organizations to the meeting.

The Labor Arbitration Council shall support both parties to self-negotiate; in case the two parties cannot reach an agreement, the Labor Arbitration Council shall recommend a solution to both disputing parties for consideration.

If the two parties can reach an agreement or agree with the recommended solution, the Labor Arbitration Council shall prepare a record of successful conciliation and concurrently issue a decision to recognize the agreement of the two parties.

In case the two parties cannot reach an agreement or either disputing party is absent without a plausible reason after having been duly summoned for two times, the Labor Arbitration Council shall make a record of unsuccessful conciliation.

The record of unsuccessful conciliation must bear the signatures of the present party and the chairperson and the secretary of the Labor Arbitration Council.

Copies of the record of successful or unsuccessful conciliation must be sent to both disputing parties within 1 working day from the date the record is prepared.

3. Five days after the Labor Arbitration Council makes the record of successful conciliation, if either party does not implement the agreement, the employees' collective may carry out procedures for going on strike.

In case the Labor Arbitration Council makes a record of unsuccessful conciliation, after 3 days, the employees' collective may carry out procedures for going on strike.

Article 207. Statute of limitations for requesting settlement of right-based collective labor disputes

The statute of limitations for requesting settlement of a right-based collective labor dispute is 1 year counting from the date of discovering an act which is claimed by either party to infringe upon its rights or legitimate interests.

Article 208. Prohibition of unilateral acts pending settlement of collective labor disputes

None of the disputing parties may take unilateral actions against the other party pending the settlement of their collective labor dispute by a competent agency, organization or person in the time limit provided by this Code.

Section 4 STRIKES AND STRIKE SETTLEMENT

Article 209. Strikes

1. Strike is a temporary, voluntary and organized work stoppage of an employees' collective in order to achieve their demands in the process of labor dispute settlement.

2. A strike can only be carried out for interest-based collective labor disputes and after the expiry of the statute of limitations specified in Clause 3, Article 206 of this Code.

Article 210. Organization and leadership of strikes

1. In a unionized place, a strike must be organized and led by the executive committee of the grassroots-level trade union.

2. In a non-unionized place, a strike must be organized and led by the higher-level trade union at the request of employees.

Article 211. Sequence of going on strike

1. Collecting opinions of the employees' collective.

2. Issuing a decision to go on strike.

3. Going on strike.

Article 212. Procedures for collecting opinions of the employees' collective

1. In unionized places, opinions of members of the executive committee of the grassroots-level trade union and heads of production teams must be collected; in non-unionized places, opinions of heads of production teams or employees must be collected.

2. Opinions may be collected by ballot or signatures.

3. Issues put up for opinions on going on a strike include:

a/ The option suggested by the executive committee of the trade union on the contents specified at Points b, c and d, Clause 2, Article 213 of this Code;

b/ The employee's agreement or disagreement to go on strike.

4. The time and method of collecting opinions on going on a strike must be determined by the executive committee of the trade union and notified to the employer at least 1 day in advance.

Article 213. Notification of the starting time of a strike

1. When over 50% of the consulted employees agree with the option suggested by the executive committee of the trade union, the executive committee of the trade union shall issue a decision to go on strike.

2. A decision to go on strike must include:

a/ The outcome of the collection of opinions on going on strike;

b/ The starting time and place for the strike;

c/ Scope of the strike;

d/ Demands of the employees' collective;

e/ Full name of the representative of the executive committee of the trade union and contact address for settlement.

3. At least 5 working days prior to the starting date of the strike, the executive committee of the trade union shall send the decision to go on strike to the employer; and simultaneously send its copies to the provincial-level state management agency of labor and the provincial-level Federation of Labor.

4. By the starting time of the strike, if the employer does not accept the demands of the employees' collective, the executive committee of the trade union may organize and lead the strike.

Article 214. Rights of the parties prior to and during a strike

1. To continue negotiating to settle the collective labor dispute or jointly request conciliation by the provincial-level state management agency of labor, trade union and employers' representative organization.

2. The executive committee of the trade union has the rights to:

a/ Withdraw the decision to go on strike if the strike has not happened yet or to stop the strike if it is happening;

b/ Request a court to declare the strike is legal.

3. The employer has the rights to:

a/ Accept the demands entirely or in parts, and send a written notice of his/her acceptance to the executive committee of the grassroots-level trade union that organizes and leads the strike;

b/ Temporarily close the workplace during the strike due to shortage of conditions to maintain normal operations or to protect the assets;

c/ Request a court to declare the strike is illegal.

Article 215. Cases in which a strike is illegal

1. A strike does not arise from an interest-based collective dispute.
2. A strike is organized for employees who are not working for the same employer.
3. A strike occurs when the dispute is being settled or has not been settled by an agency, organization or person in accordance with this Code.
4. A strike occurs in a strike-prohibited enterprise listed by the Government.
5. A strike occurs when there is a decision to postpone or stop the strike.

Article 216. Notice of the decision on temporary closure of the workplace

At least 3 working days before the date of temporary closure of the workplace, the decision on temporary closure must be publicly posted up at the workplace and notified by the employer to the following agencies and organizations:

1. The executive committee of the trade union that organizes and leads the strike.
2. The provincial-level trade union.
3. The employers' representative organization.
4. The provincial-level state management agency of labor.
5. The district-level People's Committee of the locality where the enterprise is located.

Article 217. Prohibited cases of temporary closure of the workplace

1. Twelve hours prior to the starting time of the strike notified in the decision to go on strike.
2. After the employees' collective stops striking.

Article 218. Wages and other lawful interests of employees during a strike

1. Employees who do not take part in a strike but have to stop working because of the strike shall be paid with a work suspension allowance under Clause 2, Article 98 of this Code and other benefits stipulated by the labor law.

2. Employees taking part in a strike may not be paid with wages or other benefits stipulated by law, unless otherwise agreed by both parties.

Article 219. Prohibited acts before, during and after a strike

1. Obstructing employees to exercise their right to go on strike or instigating, dragging or forcing employees to go on strike, and preventing non-strikers from going to work.

2. Using violence; sabotaging machines, equipment and assets of the employer.

3. Violating public order and security.

4. Terminating the labor contracts with, imposing labor disciplinary measures on or transferring employees and strike leaders to other jobs or other locations due to their preparation for or involvement in the strike.

5. Taking revenge actions on employees who are on strike or leaders of the strike.

6. Taking advantage of strikes to commit other illegal acts.

Article 220. Cases in which strikes are prohibited

1. Strike is prohibited in units which are essential for the national economy and in which strikes can threaten the national security, defense, health and public order as listed by the Government.

2. State management agencies shall periodically organize meetings to listen to opinions of employees' collectives and employers in order to timely provide support and respond to the legitimate demands of the employees' collectives.

Article 221. Decisions to postpone or cancel strikes

When considering that a strike may cause serious damage to the national economy and public interests, the chairperson of the provincial-level People's Committee may decide to postpone or cancel such strike and assign competent agencies and organizations to deal with such strike.

The Government shall stipulate the postponement and cancellation of strikes and settlement of interests of the employees' collectives.

Article 222. Handling of strikes that do not follow the prescribed sequence and procedures

1. The chairperson of a provincial-level People’s Committee may issue a decision declaring a strike violates the prescribed sequence and procedures and immediately notify the chairperson of the district-level People’s Committee when the organization and leadership of the strike do not comply with Articles 212 and 213 of this Code.

2. Within 12 hours from the time of receiving the notification of the chairperson of the provincial-level People’s Committee, the chairperson of the district-level People’s Committee shall assume the prime responsibility for, and coordinate with the state management agency of labor and the trade union of the same level and other relevant agencies and organizations in, holding a meeting directly with the employer and the executive committee of the grassroots-level trade union or higher-level trade union for consulting and supporting the parties to find solutions and resume normal production and business operations.

Section 5

COURTS TO CONSIDER THE LEGITIMACY OF A STRIKE

Article 223. Request for a court to consider the legitimacy of a strike

1. During a strike or within 3 months from the date a strike comes to an end, either party may submit a written request to a court for consideration of the legitimacy of the strike.

2. The written request must contain the following principal details:

- a/ Date of the request;
- b/ Name of the court to receive the request;
- c/ Name and address of the requester;
- d/ Name and address of the organization that led the strike;
- e/ Name and address of the employer of the employees’ collective on strike;
- f/ Issues brought to the court for settlement;
- g/ Other information that the requester finds necessary for the settlement.

3. The request must be enclosed with copies of the decision to go on strike, decision or conciliation record of a competent agency or organization engaged in the settlement of the collective labor dispute, documents and evidence related to the consideration of the legitimacy of the strike.

Article 224. Procedures for sending a written request to a court for consideration of the legitimacy of a strike

Procedures for sending and receiving a written request and performing the obligation to provide documents and evidences to a court for consideration of and ruling on the legitimacy of a strike are similar to those for submitting and receiving a written request and performing the obligation to provide documents and evidence at a court provided in the Civil Procedures Code.

Article 225. Jurisdiction to consider the legitimacy of a strike

1. The provincial-level People's Court of the locality in which a strike takes place has jurisdiction to consider the legitimacy of the strike.
2. The Supreme People's Court has jurisdiction to settle complaints about decisions on the legitimacy of strikes.

Article 226. Composition of the panel to consider the legitimacy of a strike

1. The panel to consider the legitimacy of a strike comprises three judges.
2. The panel to settle a complaint about a decision on the legitimacy of a strike comprises three judges appointed by the President of the Supreme People's Court.
3. The change of a judge who is a member of the panel to consider the legitimacy of a strike must comply with the Civil Procedures Code.

Article 227. Procedures for processing a written request for consideration of the legitimacy of a strike

1. Upon receipt of a written request, the president of the provincial-level People's Court shall decide to form a panel to consider the legitimacy of the strike and assign one judge to take main charge of settling the written request.
2. Within 5 working days after receiving a written request, the judge assigned to take main charge of settling such request shall issue a decision to consider the legitimacy of the strike. The decision to hold a hearing to consider the legitimacy of the strike must be immediately sent to the executive committee of the trade union, the employer and relevant agencies and organizations.
3. Within 5 working days after issuing a decision to consider the legitimacy of a strike, the panel to consider the legitimacy of the strike shall open a hearing to consider the legitimacy of the strike.

Article 228. Termination of consideration of the legitimacy of a strike

A court may terminate consideration of the legitimacy of a strike in the following cases:

1. The requester withdraws the written request;
2. The disputing parties have reached an agreement on the settlement of the strike and file a written request for the court to terminate the settlement;
3. The requester does not show up after having been duly summoned for two times.

Article 229. Participants in a hearing to consider the legitimacy of a strike

1. The panel to consider the legitimacy of a strike must be chaired by the assigned judge; the court clerk shall take the minutes of a hearing.
2. Representatives of the employees' collective and the employer.
3. Representatives of other agencies and organizations as requested by the court.

Article 230. Postponement of a hearing to consider the legitimacy of a strike

1. The judge assigned to chair the hearing to consider the legitimacy of a strike or the panel to consider the legitimacy of a strike may decide to postpone the hearing in a way similar to the postponement of a court hearing provided in the Civil Procedure Code.
2. The postponement of a hearing to consider the legitimacy of a strike must not exceed 3 working days.

Article 231. Process of a hearing to consider the legitimacy of a strike

1. The chairperson of a hearing to consider the legitimacy of a strike announces the decision to hold a hearing to consider the legitimacy of the strike and summarizes the written request.
2. The representatives of the employees' collective and the employer give their views.
3. The chairperson may request to hear opinions of representatives of other organizations and agencies attending the meeting.

4. The panel considering the legitimacy of the strike discusses and makes decision by majority vote.

Article 232. Ruling on the legitimacy of a strike

1. The ruling of a court on the legitimacy of a strike must clearly state the reason and grounds to conclude on the legitimacy of the strike.

The ruling of a court on the legitimacy of a strike must be publicly announced at the court hearing and immediately sent to the executive committee of the trade union, the employer and the people’s procuracy of the same level. The employees’ collective and the employer shall implement the ruling of the court but may also file complaints according to the procedures provided by this Code.

2. After the ruling of the court on the legitimacy of a strike is announced, if the strike is ruled to be illegal, the employees on strike shall immediately stop going on strike and return to work.

Article 233. Handling of violations

1. In case the employees still continue to go on strike and do not return to work after the strike has been ruled by the court to be illegal, depending on the seriousness of their violation, they may be subject to disciplinary measures in accordance with the labor law.

In case an illegal strike causes damage to the employer, the damage must be compensated in accordance with law by the trade union that leads the strike.

2. Those who take advantage of a strike to cause public disorder, sabotage machines and assets of the employer; those who prevent or instigate, drag or force employees to go on strike, take revenge on strikers and leaders of the strike shall, depending on the seriousness of their violations, be administratively sanctioned or examined for penal liability; and, if causing any damage, shall pay compensations in accordance with law.

Article 234. Order and procedures for settling complaints about rulings on the legitimacy of a strike

1. Within 15 days after receiving the ruling on the legitimacy of a strike, the executive committee of the trade union or the employer may lodge a written complaint with the Supreme People’s Court.

2. Upon receiving a complaint about the ruling on the legitimacy of a strike, the Supreme People’s Court shall request in writing the court that has considered

the legitimacy of the strike to forward the whole file of the case to it for consideration.

3. Within 3 working days after receiving the Supreme People's Court's written request, the court that has issued the ruling on the legitimacy of the strike shall forward the whole file of the case to the Supreme People's Court for consideration.

4. Within 5 working days after receiving the file, a panel shall settle the complaint about the ruling on the legitimacy of the strike.

The ruling of the Supreme People's Court is the final binding decision on the legitimacy of the strike.

Chapter XV STATE MANAGEMENT OF LABOR

Article 235. Contents of state management of labor

State management of labor covers the following principal contents:

1. Promulgating and implementing legal documents on labor.

2. Monitoring, making statistics and providing information on labor supply and demand and fluctuations of labor supply and demand; making decision on policies, master plans and plans on human resources, vocational training, development of vocational skills, formulation of the national vocational qualification framework and distribution and utilization of labor in the whole society. Issuing a list of jobs that require employees who have been vocationally trained or possess national vocational skills certificate;

3. Organizing and conducting scientific research on labor and statistics and information on labor and the labor market and on the living standards and income levels of employees;

4. Building mechanisms and institutions to support the development of harmonious, stable and progressive industrial relations.

5. Inspecting, examining and settling complaints and denunciations and handling violations of the labor law; and settling labor disputes in accordance with law.

6. International cooperation in the field of labor.

Article 236. Competence of state management of labor

1. The Government shall uniformly perform the state management of labor nationwide.

2. The Ministry of Labor, War Invalids and Social Affairs shall take responsibility before the Government for performing the state management of labor.

Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, perform and coordinate with the Ministry of Labor, War Invalids and Social Affairs in performing the state management of labor.

3. People's Committees at all levels shall perform the state management of labor within their respective localities.

Chapter XVI

LABOR INSPECTION, HANDLING OF VIOLATIONS OF LABOR LAW

Article 237. Responsibilities of the state inspectorates of labor

The inspectorates of the Ministry of Labor, War Invalids and Social Affairs and provincial-level Departments of Labor, War Invalids and Social Affairs have the following main responsibilities:

1. To inspect compliance with the labor law;
2. To investigate labor accidents and violations of occupational safety and hygiene;
3. To guide the application of the system of standards and technical regulations on working conditions and occupational safety and hygiene;
4. To settle labor-related complaints and denunciations in accordance with law;
5. To handle according to their competence or propose competent agencies to handle violations of labor law.

Article 238. Labor inspection

1. The inspectorates of the Ministry of Labor, War Invalids and Social Affairs and provincial-level Departments of Labor, War Invalids and Social Affairs shall perform the function of specialized inspection of labor.

2. The inspection of occupational safety and hygiene in the fields of radiation, oil and gas exploration and exploitation, means of transport by rail, waterway, road and air; and units of the armed forces must be carried out by state

management agencies in charge of these fields with the cooperation of the specialized labor inspectorates.

Article 239. Handling of violations in the field of labor

Violators of the provisions of this Code shall, depending on the seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability; and, if causing any damage, shall pay compensations in accordance with law.

Chapter XVII IMPLEMENTATION PROVISIONS

Article 240. Effect of the Labor Code

1. This Code takes effect on May 1, 2013.

The June 23, 1994 Labor Code, Law No. 35/2002/QH10 Amending and Supplementing a Number of Articles of the Labor Code No. 35/2002/QH10, Law No. 74/2006/QH11 Amending and Supplementing a Number of Articles of the Labor Code, and Law No. 84/2007/QH11 Amending and Supplementing a Number of Articles of the Labor Code cease to be effective on the date this Code takes effect.

2. From the date this Code takes effect:

a/ The signed labor contracts, collective labor agreements, and other lawful agreements and any agreements which are more favorable for employees than the provisions of this Code may continue to be performed. Any agreements which are inconsistent with the provisions of this Code must be amended and supplemented;

b/ The duration of maternity leave provided in Law No. 71/2006/QH11 on Social Insurance must be implemented in accordance with this Code.

For female employees that take maternity leave before the effective date of this Code, if until May 1, 2013, they are still on maternity leave in accordance with Law No. 71/2006/QH11 on Social Insurance, the duration of their maternity leave complies with this Code.

3. Labor policies for cadres, civil servants, public employees, members of the People's Army and People's Public Security forces and other social organizations, and members of cooperatives comply with other laws but, depending on each category, some provisions of this Code may be applied. The Government shall promulgate specific wage policies for application to cadres, civil servants, public employees and other members of the People's Army and People's Public Security forces.

Article 241. Effect with respect to employers with under 10 employees

Employers using under 10 employees shall comply with the provisions of this Code, but are entitled to a reduction of or exemption from a number of criteria and procedures as stipulated by the Government.

Article 242. Implementation detailing and guidance

The Government and competent agencies shall detail and guide articles and clauses as assigned in this Code.

This Code was passed on June 18, 2012, by the XIIIth National Assembly of the Socialist Republic of Vietnam at its 3rd session.-

Chairman of the National Assembly

(Signed)

NGUYEN SINH HUNG