

THE NATIONAL ASSEMBLY

Số: 35/2002/QH10

**LAW AMENDING AND SUPPLEMENTING A NUMBER OF
ARTICLES OF THE LABOR CODE**

(No. 35/2002/QH10 of April 2, 2002)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the Xth National Assembly, at its 10th session;

This Law amends and supplements a number of articles of the Labor Code which was passed on June 23, 1994 of the IXth National Assembly at its 5th session.

Article 1.- To amend and supplement the Preamble and a number of articles of the Labor Code:

1. The last paragraph of the Preamble is amended and supplemented as follows:

" The Labor Code protects the right to work, the interests and other rights of laborers, at the same time to protect the legitimate rights and interests of employers, creates conditions for the establishment of harmonious and stable labor relations, contributing to promoting the creativeness and talents of intellectual and manual laborers as well as of labor managers, in order to achieve high productivity, quality and social progress in labor, production, service, and efficient use and management of labor, thus contributing to the national industrialization and modernization, to attain the objective of a prosperous people, a strong country and an equitable, democratic and civilized society."

2. Article 18 is amended and supplemented as follows:

"Article 18.-

1. The job-recommending organizations shall have the tasks of providing advice and recommending jobs to laborers; supplying and recruiting labor at the employers' requests; gathering and providing information on the labor market; and other tasks as prescribed by law.

The Government shall stipulate the conditions and procedures for the establishment and operation of job-recommending organizations.

2. Job-recommending organizations shall be entitled to collect charges, be considered by the State for tax reduction or exemption, and be entitled to organize job training according to the provisions in Chapter III of this Code.

3. The Ministry of Labor, War Invalids and Social Affairs shall perform the State management over the job-recommending organizations."

3. Article 27 is amended and supplemented as follows:

"Article 27.-

1. Labor contracts must be made in one of the following forms:

a/ Labor contracts with indefinite terms.

A labor contract with an indefinite term is a contract whereby the two parties do not determine the contract's term and the time for its termination;

b/ Labor contracts with definite terms.

A labor contract with a definite term is a contract whereby the two parties determine the contract's term and the time for its termination within the duration of between full 12 months and 36 months;

c/ Labor contracts for seasonal jobs or specific jobs with a term of under 12 months.

2. When labor contracts stipulated at Points b and c, Clause 1 of this Article expire but the laborers still continue working, within 30 days after their

expiry, the two parties must sign new contracts; if new labor contracts are not signed, the old contracts shall become labor contracts with indefinite terms. Where the two parties sign new labor contracts which have a definite term, such labor contracts shall last for only one more term, then if the laborers continue working, the two parties must sign labor contracts with indefinite terms.

3. Labor contracts for seasonal jobs or specific jobs for terms of under 12 months must not be signed for regular jobs lasting for 12 months or more, except for the cases of temporary substitution of the laborers who are called up for military service, take maternity leave or other temporary leaves."

4. Clause 3 of Article 29 is amended and supplemented as follows:

"3. In cases where labor contracts are detected with the contents prescribed in Clause 2 of this Article, the labor inspectors shall guide and request the involved parties to revise and/or supplement them appropriately. If they fail to do so, the labor inspectors shall be entitled to force them to cancel such contents; the rights, obligations and interests of the involved parties shall be dealt with according to the provisions of law."

5. Article 31 is amended and supplemented as follows:

"Article 31.- In cases of enterprise merger, consolidation, separation or splitting, transfer of the right to own, manage or use assets, of enterprises, the succeeding employers must continue performing the labor contracts with the laborers. Where they cannot employ all the existing number of laborers, they must work out employment plans as prescribed by law.

Those laborers who are subject to the labor contract termination under the provisions of this Article shall be provided with job-loss allowances as prescribed in Clause 1, Article 17 of this Code."

6. Article 33 is amended and supplemented as follows:

"Article 33.-

1. Labor contracts shall take effect as from the date of signing or as from the date agreed upon by the two involved parties or from the date the laborers start working.

2. In the course of performing the labor contracts, if either party requests alterations of the contractual contents, it must inform the other party thereof at least three days in advance. Alterations of the labor contract contents shall be effected by amending and/or supplementing the concluded labor contracts or by concluding new ones. Where the two involved parties fail to reach agreement on amendments and/or supplements to their labor contracts or on the conclusion of new ones, they shall continue performing the already concluded labor contracts or terminate such contracts according to the provisions in Clause 3, Article 36 of this Code."

7. Article 37 is amended and supplemented as follows:

"Article 37.-

1. The laborers working under labor contracts with definite terms of between full 12 months and 36 months or under labor contracts for seasonal or specific jobs for definite terms of under 12 months shall be entitled to unilaterally terminate the contracts ahead of time in the following cases:

a/ They are not assigned the right jobs, not arranged to work in the right working places, or not provided with working conditions as agreed upon in the contracts;

b/ They are not fully paid or are paid not according to the time limits agreed upon in the contracts;

c/ They are ill-treated; are forced to work;

d/ They themselves or their families actually meet with difficulties so that they cannot continue performing the contracts;

e/ They are elected to full-time positions at people-elected agencies or appointed to posts in the State apparatus;

f/ Pregnant female laborers must take leave according to physicians' prescriptions;

g/ The laborers got sick or accidents and have been undergone medical treatment for three consecutive months, for those who work under labor contracts with definite terms of between full 12 months and 36 months, or for one-quarter of the contractual term, for those who work under under-12 month labor contracts for seasonal or specific jobs, but their labor capacity has not yet been recovered.

2. When unilaterally terminating their labor contracts under the provisions in Clause 1 of this Article, the laborers must inform their employers thereof in advance:

a/ For cases specified at Points a, b, c and g, at least three days;

b/ For cases specified at Points d and e, at least 30 days if the contracts have a definite term of between full 12 months and 36 months; at least three days if the contracts are for seasonal or specific jobs and have a term of less than 12 months;

c/ For the case specified at Point f, according to the time limit prescribed in Article 112 of this Code.

3. The laborers who work under labor contracts with indefinite terms shall be entitled to unilaterally terminate their labor contracts but must inform their employers thereof at least 45 days in advance; the laborers who got sick or accidents and have undergone medical treatment for six consecutive months, must inform their employers thereof at least three days in advance."

8. Article 38 is amended and supplemented as follows:

"Article 38.-

1. The employers shall be entitled to unilaterally terminate the labor contracts in the following cases:

a/ The laborers regularly fail to finish the contractual jobs;

b/ The laborers are disciplinarily dismissed under the provisions in Article 85 of this Code;

c/ The laborers working under labor contracts with indefinite terms got sick and have undergone medical treatment for 12 consecutive months, the laborers working under labor contracts with definite terms of between full 12 months and 36 months got sick and have undergone medical treatment for six consecutive months, and laborers working under under-12 month labor contracts for seasonal or specific jobs got sick and have undergone medical treatment for over half of their labor contracts? term, but their labor capacity has not yet been recovered. When the laborers? health has fully recovered, they shall be considered for the conclusion of new labor contracts.

d/ If due to natural calamities, fires or other force majeure reasons as stipulated by the Government and the employers have applied every measure to overcome their consequences but they are still forced to downscale production and cut jobs;

e/ The enterprises, agencies or organizations terminate their operation.

2. Before unilaterally terminating the labor contracts according to Points a, b and c, Clause 1 of this Article, the employers must exchange opinions and reach agreements with the grassroots trade unions? executive committees. If failing to reach any agreements, they must report such to competent agencies or organizations. Only 30 days after informing the local agencies in charge of the State management over labor shall the employers be entitled to make decisions and must be answerable for their decisions. If disagreeing with the employers? decisions, the grassroots trade unions? executive committees and the laborers may request the settlement of labor disputes according to the procedures prescribed by law.

3. When unilaterally terminating the labor contracts, except for cases prescribed at Point b, Clause 1 of this Article, the employers must inform such to the laborers in advance:

a/ At least 45 days, for labor contracts with indefinite terms;

b/ At least 30 days, for labor contracts with definite terms of between full 12 months and 36 months;

c/ At least three days, for under-12 month labor contracts for seasonal or specific jobs."

9. Article 41 is amended and supplemented as follows:

"Article 41.-

1. Where the employers unilaterally terminate labor contracts in contravention of law, they must reinstate the laborers under the signed contracts and pay compensations equal to the salaries and allowances (if any) for the days the laborers were not allowed to work plus at least two months' salary and salary allowances (if any).

Where the laborers do not want to return to work, apart from receiving the compensation amounts prescribed in paragraph 1 of this Clause, they shall also be entitled to allowances as prescribed in Article 42 of this Code.

Where the employers do not want to reinstate the laborers and the laborers so agree, apart from the compensation amounts prescribed in paragraph 1 of this Clause and allowances prescribed in Article 42 of this Code, the two parties shall agree on additional amounts of compensation for the laborers to terminate the contracts.

2. Where the laborers unilaterally terminate labor contracts in contravention of law, they shall not be provided with severance allowances and must compensate the employers half a month's salary and salary allowances (if any).

3. Where the laborers unilaterally terminate labor contracts, they must reimburse the training costs (if any) according to the Government's regulations.

4. In cases of unilateral termination of labor contracts, if breaching the provisions on advance notice, the breaching party must compensate the other party a money amount equal to the salaries the laborers should have earned in the days required for advance notice."

10.- Clause 1 of Article 45 is amended and supplemented as follows:

"1. The two parties' representatives in negotiating the collective agreements include:

a/ The grassroots trade unions? executive committees or the provisional trade union organizations, for the labor collectives? side;

b/ The enterprise directors or the persons who are authorized under the enterprises? organizational charters or have a proxy of the enterprise directors, for the employers? side.

The numbers of the parties? representatives in negotiating the collective agreements shall be agreed upon by the two parties."

11. Article 47 is amended and supplemented as follows:

"Article 47.-

1. The signed collective agreements must be made in four copies, of which:

a/ One copy to be kept by the employer;

b/ One copy to be kept by the grassroots trade union?s executive committee;

c/ One copy to be sent by the grassroots trade union?s executive committee to the superior trade union;

d/ One copy to be sent by the employer within 10 days after its signing for registration at the agency performing the State management over labor of the province or centrally-run cities where the enterprise is headquartered.

2. Collective agreements shall come into force as from the date agreed upon by the two parties and inscribed therein; where the two parties have no agreement thereon, the collective agreements shall come into force as from the date of signing."

12. Article 48 is amended and supplemented as follows:

"Article 48.-

1. Collective agreements shall be deemed partially invalid when one or a number of articles thereof contravene the provisions of law.

2. The agreements shall be deemed wholly invalid in one of the following cases:

a/ All contents of the agreements contravene law;

b/ The signers of the agreements are not duly authorized;

c/ The signing procedures have not yet been fully complied with.

3. The provincial/municipal agencies in charge of the State management over labor shall be entitled to declare collective agreements partially or wholly invalid under the provisions in Clauses 1 and 2 of this Article. For collective agreements in the cases specified at Points b and c, Clause 2 of this Article, if the signed contents are in favor of the laborers, the provincial/municipal agencies in charge of the State management over labor shall guide the involved parties to make them comply with regulations within 10 days after receiving such guidance; if they fail to do so, the collective agreements shall be declared invalid. The rights, obligations and interests of the involved parties inscribed in such invalid agreements shall be dealt with according to the provisions of law."

13. Clause 1, Article 52 is amended and supplemented as follows:

"1. In cases of enterprise merger, consolidation, separation or splitting, transfer of the right to own, manage, or the right use assets of, enterprises, the employers and the grassroots trade unions? executive committees shall base themselves on the employment plans to consider the continued implementation, revision, supplementation of the collective agreements or signing new ones."

14. Article 57 is amended and supplemented as follows:

"Article 57.- After consulting with Vietnam Confederation of Labor and the employers? representatives, the Government shall prescribe the principles for formulating the salary levels and scales as well as labor norms so that the employers can formulate and apply them in a way suitable to their enterprises? production and business conditions; and prescribe the salary levels and tables for State enterprises.

When formulating salary levels and scales as well as labor norms, the employers must consult with the grassroots trade unions? executive committees; the salary levels and scales must be registered with the agencies in charge of the State management over labor in the provinces or centrally-run cities where the employers? head offices are based, and be publicized within the enterprises."

15. Article 61 is amended and supplemented as follows:

"Article 61.-

1. The laborers working overtime shall be paid according to the unit salary or salaries of the jobs they are doing as follows:

a/ On weekdays, an amount at least equal to 150%;

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

c/ On paid public holidays, an amount at least equal to 300%.

If overtime work is performed at night, an additional amount shall be paid as prescribed in Clause 2 of this Article.

If the laborers are granted compensatory days-off for the hours they worked overtime, the employers shall only have to pay the amounts in excess of the salaries calculated according to the unit salary or the remuneration of the jobs being done on weekdays.

2. The laborers working at night as prescribed in Article 70 of this Code shall be paid an additional amount at least equal to 30% of the salaries calculated according to the unit salary or the salaries of the jobs being done at daytime."

16. Article 64 is amended and supplemented as follows:

"Article 64.- On the basis of the annual production and business results of the enterprises and the laborers? work performance levels, the employers shall give rewards to the laborers working at their enterprises.

The reward regulations shall be decided by the employers after consulting with the grassroots trade unions' executive committees."

17. Article 66 is amended and supplemented as follows:

"Article 66.- In cases of enterprise merger, consolidation, separation or splitting, transfer of the right to own, manage, or the right to use assets of, enterprises, the succeeding employers must be responsible for paying salaries and other interests to the laborers transferred from the old enterprises. Where the enterprises go bankrupt, the salaries, severance allowances, social insurance premiums and other interests of the laborers under the signed collective agreements and labor contracts shall be the debts payable first in the payment priority order."

18. Article 69 is amended and supplemented as follows:

"Article 69.- The employers and laborers may agree on the latter's overtime which must not exceed four hours a day, 200 hours a year, except for a number of special cases where the overtime can reach 300 hours a year, which shall be prescribed by the Government after consulting with Vietnam Confederation of Labor and the employers' representatives."

19. Clause 1 of Article 84 is amended and supplemented as follows:

"1. Those who breach labor disciplines shall, depending on the seriousness of their breaches, be handled in one of the following forms:

a/ Reprimand;

b/ Prolongation of the salary-raise time limit for up to six months or transfer to lower paid jobs for a period of up to six months, or demotion;

c/ Dismissal."

20. Article 85 is amended and supplemented as follows:

"Article 85.-

1. Dismissal shall be applied as a disciplinary measure only in one of the following cases:

a/ The laborers commit acts of theft, embezzlement, disclosure of technological and business secrets or other acts causing severe losses to the enterprises' assets and/or benefits;

b/ The laborers who have been disciplined with the prolongation of salary-raise time limit or the transfer to other jobs relapse into the previous violations while their disciplinary records have not yet been wiped off, or who have been subject to demotion relapse into the previous violations;

c/ The laborers abandon their jobs at their own will for an aggregate number of five days in a month or an aggregate number of 20 days in a year without plausible reasons.

2. After dismissing the laborers, the employers must inform such to the provincial/municipal agencies in charge of the State management over labor."

21. Article 88 is amended and supplemented as follows:

"Article 88.-

1. Those who have been reprimanded or have been disciplined with the prolongation of salary-raise time limit or the transfer to other jobs shall automatically have their disciplinary records wiped off if they do not relapse into the previous violations after three months or six months from the date of being reprimanded or disciplined.

2. Those who have been disciplined with the prolongation of salary-raise time limit or the transfer to other jobs shall be considered by the employers for reduction of their disciplinary duration if they have served the imposed disciplines for half of such duration and showed rectification and progress."

22. Clause 2 of Article 96 is amended and supplemented as follows:

"2. The production, use, preservation and transportation of assorted machinery, equipment, supplies, energies, electricity, chemicals, plant protection drugs, and the technological changes or importation of new technologies must be

effected according to the labor safety and hygiene criteria. All types of machinery, equipment, supplies or substances with strict labor safety and/or hygiene requirements must be registered and inspected according to the Government's regulations."

23. Clause 3 of Article 107 is amended and supplemented as follows:

"3. The employers shall have to pay compensations at least equal to 30 months' salary and salary allowances (if any) to the laborers who suffer a reduction of 81% or more of their working capacity or to the relatives of the laborers who die as a result of labor accidents or occupational diseases and are not at fault. Where the laborers are at fault, they shall still be paid an amount at least equal to 12 months' salary and salary allowances (if any).

The Government shall prescribe the responsibility of the employers and the levels of compensation for labor accidents or occupational diseases to the laborers who suffer from a reduction of between 5% and under 81% of their working capacity."

24. Clause 3 of Article 111 is amended and supplemented as follows:

"3. The employers must not dismiss or unilaterally terminate the labor contracts with female laborers for reasons of marriage, pregnancy, maternity leave or nursing of their children of under 12 months, except where the enterprises terminate their operation.

During the time of pregnancy, maternity leave or nursing of their under 12-month children, the female laborers may postpone the unilateral termination of their labor contracts or prolong the statute of limitations for examination and handling of breaches of labor disciplines, except where the enterprises terminate their operation."

25. Article 121 is amended and supplemented as follows:

"Article 121.- The employers may employ minor laborers only for jobs suitable to their health so as to ensure their physical, intellectual and personality development and shall have the responsibility to render due attention and care for minor laborers in terms of labor, salary, health and study in the course of their labor.

It is forbidden to employ minor laborers for heavy or hazardous jobs or jobs requiring exposure to noxious substances or in working places or jobs badly affecting their personality, which are on the lists promulgated by the Ministry of Labor, War Invalids and Social Affairs and the Ministry of Health."

26. Clause 2 of Article 129 is amended and supplemented as follows:

"2. The laborers shall be entitled to the interests and obligations related to inventions, utility solutions, industrial designs and other industrial property objects created either by themselves or jointly in the course of performing their labor contracts according to the industrial property legislation as well as the signed contracts."

27. Article 132 is amended and supplemented as follows:

"Article 132.-

1. Foreign-invested enterprises may directly recruit Vietnamese laborers or through job-recommending organizations and must notify the lists of recruited laborers to the local agencies in charge of the State management over labor.

For jobs requiring high techniques or managerial jobs for which Vietnamese laborers have not yet been qualified, the enterprises may recruit a proportion of foreign laborers for a certain period but must work out programs and plans to train Vietnamese laborers so that they can take over such jobs from the foreign laborers according to the Government's regulations.

2. International or foreign agencies and organizations, foreign individuals in Vietnam may recruit Vietnamese and foreign laborers according to the Government's regulations.

3. The minimum salary payable to Vietnamese laborers working in the cases specified in Article 131 of this Code shall be prescribed and announced by the Government after consulting with Vietnam Confederation of Labor and the employers' representatives.

4. The work time, rest time, labor safety, labor hygiene, social insurance, settlement of labor disputes in enterprises and organizations and other cases

specified in Article 131 shall comply with the provisions of this Code and of other relevant legal documents."

28. Clause 1 of Article 133 is amended and supplemented as follows:

"1. Foreigners working for three months or more for enterprises, organizations or for individuals in Vietnam must have work permits granted by the provincial/municipal agencies in charge of the State management over labor; such work permits shall be valid for a period of time corresponding to the labor contract's term but for no more than 36 months and may be extended upon the employers' requests."

29. Article 134 is amended and supplemented as follows:

"Article 134.-

1. The State encourages enterprises, agencies, organizations and individuals to seek and expand labor markets in order to generate jobs in foreign countries for Vietnamese laborers according to the provisions of Vietnamese laws, the laws of the host countries and international agreements which Vietnam has signed or acceded to.

2. Vietnamese citizens who are aged full 18 years or older, able to work, volunteer, and meet all other criteria and conditions prescribed by the laws of Vietnam, the laws and requirements of foreign employers may go to work abroad."

30. The following Article 134a is added:

"Article 134a.-

The forms of sending Vietnamese laborers to work abroad include:

1. Supply of labor under contracts signed with foreign parties;
2. Sending of laborers to work at contracted projects abroad.
3. Sending of laborers to work at projects of investment overseas;

4. Other forms as prescribed by law."

31. Article 135 is amended and supplemented as follows:

"Article 135.-

1. Enterprises engaged in labor export must have licenses granted by competent agencies in charge of State management over labor.

2. Enterprises engaged in labor export have the following rights and obligations:

a/ To register labor export contracts with the competent agencies in charge of the State management over labor;

b/ To exploit markets and sign contracts with foreign parties;

c/ To publicize the recruitment criteria and conditions, interests and obligations of laborers;

d/ To directly recruit laborers without collecting any recruitment charge;

e/ To organize orientation training and education for laborers before they go to work abroad according to the provisions of law;

f/ To sign contracts for going to work abroad with laborers; to organize the laborers' outbound and homebound trips strictly according to the signed contracts and the provisions of law;

g/ To directly collect labor export charges, to make contributions to the labor export support fund according to the Government's regulations;

h/ To manage, and protect the interests of, the laborers working abroad under contracts according to the laws of Vietnam and the host countries;

i/ To pay compensations to laborers for losses caused by the enterprises' breaches of contracts;

j/ To initiate lawsuits to claim compensations for losses caused by the laborers? breaches of contracts;

k/ To complain with competent State agencies about law-breaking acts in the domain of labor export.

3. The enterprises sending Vietnamese laborers to work abroad for the performance of contracts on investment projects abroad or projects invested abroad must register the contracts with the competent agencies in charge of the State management over labor and implement the provisions at Points c, d, e, f, h, i, j and k, Clause 2 of this Article.

4. The Government shall promulgate concrete provisions regarding laborers going to work abroad under contracts not through enterprises."

32. The following Article 135a is added:

"Article 135a.-

1. The laborers working abroad shall have the following rights and obligations:

a/ To be provided with information relating to the policies and laws on labor, recruitment conditions, interests and obligations of laborers working abroad;

b/ To be provided with orientation training and education before going to work abroad;

c/ To sign and strictly perform the contracts;

d/ To be assured to enjoy their interests under the signed contracts according to the provisions of the laws of Vietnam and the host countries;

e/ To observe the laws of Vietnam and the host countries, and respect the customs and practices of the host countries;

f/ To be protected consularly and judicially;

g/ To pay labor export charges;

h/ To complain, denounce to or initiate lawsuits at competent agencies of the State of Vietnam or of the host countries against violations committed by labor export enterprises and/or foreign employers;

i/ To compensate losses caused by their breaches of contracts;

j/ To be compensated for losses caused by the enterprises' breaches of contracts.

2. The laborers working abroad falling under the cases specified in Clause 3 of Article 135 shall have the rights and obligations prescribed at Points a, b, c, d, e, f, h, i and j, Clause 1 of this Article."

33. The following Article 135b is added:

"Article 135b.- The Government shall promulgate concrete provisions on the export labor training; organization and management of laborers working abroad; and the setting up, management and use of the labor export support fund."

34. The following Article 135c is added:

"Article 135c.-

1. It is strictly forbidden to illegally recruit and send laborers to work abroad.

2. Enterprises, organizations or individuals that capitalize on labor export to recruit, train laborers and organize the sending of laborers to work abroad in contravention of law shall be handled according to the provisions of law; if causing any damage, they shall have to pay compensation therefor to the laborers.

3. Laborers who capitalize on working abroad for other purposes shall be handled according to the provisions of law; if causing damage, they must pay compensation therefor."

35. Clause 1 of Article 140 is amended and supplemented as follows:

"1. The State shall prescribe social insurance policies to step by step expand and raise the quality of the material life, health care and recovery, contributing to stabilize the lives of laborers and their families in cases where the laborers get sick, pregnant, pass the working age, die, get labor accidents, suffer from occupational diseases, are unemployed or hit by risks or other difficulties.

The Government shall promulgate concrete provisions on the re-training of unemployed laborers, the percentage of unemployment insurance premiums, conditions for and levels of unemployment allowances, the setting up, management and use of the unemployment insurance fund."

36. Article 141 is amended and supplemented as follows:

"Article 141.-

1. The compulsory social insurance form shall apply to enterprises, agencies and organizations employing laborers under labor contracts with definite terms of full three months or more and labor contracts with indefinite terms. At these enterprises, agencies and organizations, the employers and laborers must pay social insurance premiums according to the provisions in Article 149 of this Code and the laborers shall enjoy the social insurance allowances when they get sick, suffer from labor accidents or occupational diseases, get pregnant, retire or die.

2. For laborers working under labor contracts with terms of under three months, social insurance premiums shall be included in the salaries paid by the employers according to the Government's regulations so that the laborers can participate in voluntary social insurance and care for their own insurance. Upon the expiry of the labor contracts if the laborers continue working or sign new contracts, the compulsory social insurance regime shall apply according to the provisions in Clause 1 of this Article."

37. Article 144 is amended and supplemented as follows:

"Article 144.-

1. During their maternity leave as prescribed in Article 114 of this Code, the female laborers who have paid social insurance premiums shall be granted a social insurance allowance equal to 100% of their salary and an additional allowance equal to one month's salary.

2. Other regimes for female laborers shall comply with the provisions in Article 117 of this Code."

38. The following Clause 1a is added to Article 145:

"1a. Female laborers who reach full 55 years of age and have paid social insurance premiums for full 25 years, male laborers who reach full 60 years of age and have paid social insurance premiums for full 30 years shall enjoy the same maximum pension rate stipulated by the Government."

39. Article 148 is amended and supplemented as follows:

"Article 148.- Enterprises operating in the fields of agriculture, forestry, fishery and salt production shall have to participate in various forms of social insurance, suitable to the production and employment characteristics of each branch as prescribed by the Government."

40. Article 149 is amended and supplemented as follows:

"Article 149.-

1. The social insurance fund shall be formed from the following sources:

a/ 15% of the total salary fund, contributed by the employers;

b/ 5% of salary, contributed by the laborers;

c/ Additional contributions and supports of the State to ensure the implementation of social insurance regimes towards laborers;

d/ The fund's yields;

e/ Other sources.

2. The social insurance fund shall be managed in a uniform, democratic and public manner according to the State's financial regulations, be accounted independently, and protected by the State. It may take measures to preserve its value and ensure its growth according to the Government's regulations."

41. Clause 2 of Article 151 is amended and supplemented as follows:

"2. Disputes over social insurance:

a/ Disputes between laborers and employers shall be settled according to the provisions in Chapter XIV of this Code;

b/ Disputes between laborers who have retired according to regimes and employers or social insurance agencies, between employers and social insurance agencies shall be settled according to their agreements; if the involved parties fail to reach agreements, the disputes shall be settled by the people's courts."

42. Article 153 is amended and supplemented as follows:

"Article 153.-

1. At operating enterprises where trade unions have not yet been organized, within six months after the Law Amending and Supplementing a Number of Articles of the Labor Code takes effect and at newly-founded enterprises, within six months after they commence operation, local trade unions or branch trade unions shall have to organize the trade unions therein to represent and protect the legitimate rights and interests of individuals laborers and labor collectives.

The employers shall have to create favorable conditions for the trade unions to be set up as soon as possible. Pending the setting up of the trade unions, the local or branch trade unions shall appoint the provisional trade union organizations to represent and protect the legitimate rights and interests of laborers and labor collectives.

All acts of obstructing the setting up and operation of trade unions at enterprises are strictly forbidden.

2. The Government shall guide the implementation of Clause 1 of this Article after reaching agreement thereon with Vietnam Confederation of Labor."

43. Article 163 is amended and supplemented as follows:

"Article 163.-

1. The grassroots labor reconciliation councils must be set up at enterprises where exist grassroots trade unions or provisional trade union organizations, which are composed of equal numbers of representatives of the laborers and the employees. The numbers of members of such councils shall be agreed upon by the two parties.

2. The office term of a grassroots labor reconciliation council shall be two years. The representatives of each party shall act in turn as chairman and secretary of the council. The grassroots labor reconciliation councils shall work on the principle of negotiation and consensus.

3. The employers shall ensure necessary conditions for the operation of the grassroots labor reconciliation councils."

44. Clause 3 of Article 164 is amended and supplemented as follows:

"3. Where reconciliation fails or one disputing party is absent for the second time without plausible reasons despite of valid summons, the labor reconciliation councils shall make reports on reconciliation failure. The copies of such reports must be sent to the two disputing parties within three days after the date of reconciliation failure. Each disputing party shall be entitled to request the people's courts to settle their disputes. The dossiers sent to the people's courts must be attached with the reports on reconciliation failure."

45. Clause 1 of Article 165 is amended and supplemented as follows:

"1. Labor reconciliators shall carry out reconciliation in the order prescribed in Article 164 of this Code for individual labor disputes occurring in those places where the grassroots labor reconciliation councils are not available, disputes over the performance of job-training contracts and job-training costs."

46. Article 166 is amended and supplemented as follows:

"Article 166.-

1. The people's courts shall settle individual labor disputes which the grassroots labor reconciliation councils or labor reconciliators have failed to reconcile or failed to settle them within the prescribed time limits.

2. The people's courts shall settle the following individual labor disputes which must not necessarily go through grassroots reconciliation:

a/ Disputes over the imposition of labor disciplines in the form of dismissal or cases of unilateral termination of labor contracts;

b/ Disputes over loss compensation, allowances granted upon termination of labor contracts;

c/ Disputes between house workers and their employers;

d/ Disputes over social insurance prescribed at Point b, Clause 2, Article 151 of this Code;

e/ Disputes over loss compensation between laborers and labor export enterprises.

3. The laborers shall be exempt from paying court fees in procedural activities to claim salaries, job-loss allowances, severance allowances, social insurance, compensations for labor accidents and occupational diseases, to solve loss compensation-related matters or for illegal dismissal or termination of labor contracts.

4. In the adjudicating process, if the people's courts detect that labor contracts contravene collective agreements and/or labor legislation; collective agreements contravene the labor legislation, they shall declare such labor contracts or collective agreements partially or wholly invalid.

The rights, obligations and interests of the involved parties inscribed in the labor contracts or collective agreements, which are declared partially or wholly invalid, shall be dealt with according to the provisions of law.

5. The Government shall stipulate in detail the settlement of consequences in cases where labor contracts and collective agreements are declared invalid as prescribed in Clause 3 of Article 29, Clause 3 of Article 48 and Clause 4 of this Article."

47. Article 167 is amended and supplemented as follows:

"Article 167.-

1. The statute of limitations for settling individual labor disputes, as from the date each disputing party deems that its rights and interests are infringed upon, shall be prescribed as follows:

a/ One year, for labor disputes prescribed at Points a, b and c, Clause 2 of Article 166;

b/ One year, for disputes prescribed at Point d, Clause 2 of Article 166;

c/ Three years, for disputes prescribed at Point e, Clause 2 of Article 166;

d/ Six months, for other labor disputes.

2. The statute of limitations for settling collective labor disputes shall be one year from the date each party deems that its rights and interests are infringed upon."

48. Article 181 is amended and supplemented as follows:

"Article 181.-

1. The Government performs the uniform State management over labor throughout the country.

The Ministry of Labor, War Invalids and Social Affairs shall be responsible to the Government for performing the State management over labor.

The ministries and the ministerial-level agencies shall have to coordinate with the Ministry of Labor, War Invalids and Social Affairs in performing the uniform State management over labor.

2. The People's Committees at all levels shall perform the State management over labor within their respective localities. The local agencies in charge of the State management over labor shall assist the People's Committees of the same level in performing the State management over labor according to the responsibility assignment of the Ministry of Labor, War Invalids and Social Affairs.

3. Vietnam Confederation of Labor and trade unions at all levels shall participate in supervising the State management over labor according to the provisions of law.

4. The representatives of employers and laborers shall give comments to the State agencies on policies, laws and matters related to labor relations according to the Government's regulations."

49. Article 182 is amended and supplemented as follows:

"Article 182.- Within 30 days after the enterprises commence operation, the employers must declare their labor employment and report changes in the labor forces in the course of operation to the local agencies in charge of the State management over labor according to the regulations of the Ministry of Labor, War Invalids and Social Affairs. Within 30 days after the enterprises terminate operation, the employers must report to the local agencies in charge of the State management over labor on the cessation of employment.

The employers must make labor books, salary books and social insurance books."

50. Article 183 is amended and supplemented as follows:

"Article 183.- The laborers shall be granted labor books and social insurance books according to the provisions of law."

51. Article 184 is amended and supplemented as follows:

"Article 184.-

1. The Ministry of Labor, War Invalids and Social Affairs shall perform the uniform State management over labor export.

2. The People's Committees of the provinces and centrally-run cities shall perform the State management over labor export within their respective localities.

3. The provincial/municipal agencies in charge of the State management over labor shall grant work permits to foreigners to work in Vietnam according to the provisions in Clause 1, Article 133 of this Code."

52. Article 185 is amended and supplemented as follows:

"Article 185.- The labor State inspectorate shall have the function of inspecting labor policies, labor safety and labor hygiene.

The Ministry of Labor, War Invalids and Social Affairs and the local agencies in charge of the State management over labor shall perform the State inspection of labor."

53. Article 186 is amended and supplemented as follows:

"Article 186.-

The labor State inspectorate shall have the following major tasks:

1. To inspect the observance of the regulations on labor, labor safety and labor hygiene;

2. To investigate labor accidents and violations of the labor hygiene standards;

3. To participate in formulating, and guiding the application of, the system of criteria, processes and norms on labor safety and labor hygiene;

4 To settle labor-related complaints and denunciations according to the provisions of law;

5. To handle according to its competence and propose the competent agencies to handle violations of the labor legislation."

54. Clause 2 of Article 191 is amended and supplemented as follows:

"2. The Ministry of Labor, War Invalids and Social Affairs shall have the responsibility to set up a system of the labor State inspection organizations; stipulate the criteria for recruitment, appointment, transfer, removal from office and demotion of inspectors; grant inspector's cards; prescribe the regular and irregular reporting regimes and other necessary regimes and procedures."

55. Section Va is added to Chapter XI:

"Vietnamese laborers working abroad", consisting of Articles 134, 134a, 135, 135a, 135b and 135c.

56. The following words and phrases in a number of articles are amended and supplemented as follows:

a/ The word phrase "employment service" in Articles 10, 15, 16 is changed to "job-recommending";

b/ The word phrase "one year or over" in Article 17 and Article 42 is changed to "full 12 months or over";

c/ The word phrase "job-training fee" in Clause 3 of Article 24 is changed to "job-training costs";

d/ To change the title of Section V of Chapter XI to "Labor for foreign organizations and individuals in Vietnam, foreigners working in Vietnam";

e/ The word phrase "Clause 1, Clause 2, Clause 3 of this Article" in Clause 4 of Article 145 is changed to "Clause 1, Clause 1a, Clause 2, Clause 3 of this Article";

f/ The word phrases "local labor agencies" and "provincial-level labor agencies" in Articles 17, 82, 162 and 169 are changed to "local agencies in charge of the State management over labor" and the "provincial/municipal agencies in charge of the State management over labor".

Article 2.- This Law takes effect as from January 1, 2003.

Article 3.- The Government shall detail the implementation of this Law.

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

	<p>Chairman of the National Assembly</p> <p>NGUYEN VAN AN <i>(This translation is for reference only)</i></p>
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