



Research Article

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Some Issues on the Protection of Employee Rights and Interests in Vietnamese Enterprises Today

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Abstract

Protecting employee rights and interests is the issue attracted attention of related parties in Vietnam. It includes a lot of contents. The article deals with some basic contents such as salary, working time and labor safety and hygiene. In the past years, besides the achievements, the protection of employee rights and interests in Vietnamese enterprises has some limitations. In some enterprises, the minimum wage has not met the demand, the real income of employees is low while working time is relatively high and labor safety and hygiene are not ensured. This is due to many reasons, such as: firstly, most Vietnamese enterprises are small and medium ones, their economic potential is not strong enough to be able to good equipment for employees; secondly, the employees themselves are not aware of their rights and interests as well as are also under pressure to survive; thirdly, it is the problem of profit. Therefore, it is necessary to adjust both the awareness and policies to make sure the harmony between employees, enterprises and society.

Keywords: Vietnam, minimum wage, labor safety, working time

1. Introduction

Since the renovation “Doi moi” (1986) until now, especially since the first Enterprise Law (2005), Vietnamese enterprises have been relatively strongly developed and attracted many laborers. As of 31/12/2015, Vietnam had 442,485 operating enterprises, attracting nearly 13 million laborers (GSO, 2015) and by 31/12/2017, it was estimated that 561,064 enterprises (GSO, 2018). Basically, Vietnamese enterprises are mainly small and medium enterprises (about 90%) (GSO, 2015).

Protecting employee rights and interest is the issue attracted attention of related parties in Vietnam. First of all, this is reflected in the legal documents of the State such as the Constitution of 2013, thereafter, it is regulated by specialized laws, such as the 2012 Labor Code, the Vocational Education Law 2014, the Employment Law 2013, the Law on Social Insurance 2014, the Law on Occupational Safety and Health 2015, etc... Basically, the Vietnamese law system on the protection of employee rights and benefits is in line with the Convention of the International Labor Organization which Vietnam has ratified¹. This law system is also relatively comprehensive

¹ Up to the present time, Vietnam has ratified five of the core ILO conventions on labor rights and principles, such as the 29th, 138th, 182th, 100th and 111th conventions. According to Vietnam's development path, in May 2019, the Government will submit and consult with the National Assembly on the revised Labor Code, which will then be adopted at the October 2019 meeting. Also in 2019, the President will submit to the National Assembly for ratification of Convention No. 98. By 2020, it will be the Convention 105 and before 2023 will be the 87th Convention. See: Hong Van, 2018.

covering all aspects related to the protection of workers' rights and interests, such as anti-discrimination, protection of women and children, protection of the disabled, ... On the basis of such laws, technical regulations have been developed. All these issues, especially technical regulations and standards are gradually approaching the world. What we're talking about here is "approaching gradually"

because Vietnam is still a developing country. Therefore, to some extent, the technical standards in Vietnam's social life are basic, in accordance with their socio-economic and cultural conditions.

The issue of protecting employee rights and benefits is expressed in many different aspects (See: Jacoby, 1997; EBRI, 2008). Faulkner 1960; Gijsbert 1989; OECD, 1996). Within the scope of this article, we cover some basic issues such as salary, working time, occupational safety and health.

2. The Contents of Protecting Employee Rights and Interests in Vietnamese Enterprises Today

2.1 In term of salary

According to the minimum wage fixing Convention (No. 131), the factors considered for determining the minimum wage as defined in Article 3 include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment (ILO, 1970).

The Convention also determines that the minimum wage is considered to be the minimum wages shall have the force of law and shall not be subject to abatement (Article 2) (ILO, 1970).

The minimum wage in Viet Nam is divided by region, depending on the socio-economic conditions of each region². The Vietnamese Labor Code of 2012 also covers the minimum wage in Article 91 as follows: 1. The minimum wage is the lowest rate paid to the employee who performs the most simple job in normal working conditions and it must meet the minimum living needs of workers and their families. The minimum wage is determined monthly, daily and hourly and is established by region and sector. 2. Based on the minimum living needs of workers and their families, socio-economic conditions and wages in the labor market, the Government announced a regional minimum wage on the basis of recommendations of the National Salary Board. 3. The sectoral minimum wages are determined through collective bargaining of the sector, as stated in the sectoral collective bargaining agreement but it should not be lower than the regional minimum wage announced by the government (Socialist Republic of Vietnam, 2012).

Thus, the minimum wage is applied in Vietnam and also stated in the legal documents which are compulsory for the employer and in accordance with international practice.

In general, in the world, the determination of minimum wages is usually based on per capita GDP. As in France, 51% (15,500 USD / year), Australia - 51% (19,000 USD / year), England - 61% (more than 22,000 USD / year), Belgium - 52%, Holland - 47% - 42%, Canada - 41%, Switzerland and Spain - 37%, Austria - 35%. This rate is in Korea, Taiwan and the Philippines is also higher than 32% (Ho Anh Hai, 2012).

Vietnam has started to set minimum wages for businesses since 2008. From year to year, based on economic growth and other factors, the minimum wage has increased each year. Since 2008, the regional minimum wage has ranged from 540,000 VND to 620,000 VND. In 2009 it was 650,000 VND to 800,000 VND. In 2010 it was from 730,000 VND to 980,000 VND. In 2011 it was from 830,000 VND to 1,350,000 VND. In the year of 2012 it was from 1400.000 VND to 2000.000 VND. In 2013 it was from 1,650,000 vnd to 2,350,000 vnd. In 2014 it was from 1900,000 vnd to

² The distribution of wages in regions I, II, III, IV is based on the socio-economic development of the regions in Vietnam. Region I is the region with more economic development and region IV is the area of socio-economic development less than the rest.

2700,000 VND. In 2015 it was from 2150,000 VND to 3100,000 VND. In 2016 it was from 2400.000VND to 3500VND. In 2017 it was from 2580.000 VND to 3750.000 VND. According to the Decree No. 141/2017 / NĐ-CP, since January 1st, 2018, the regional minimum wage has stipulated as follows: Region I: 3,980,000 VND / month; Region II: 3,530,000 VND / month; Region III: 3,090,000 VND / month; Region IV: 2,760,000 VND / month (Primer Minister 2017) (Primer Minnister 2017). Meanwhile, per capita income in Vietnam in 2008 was about VND 17 million (equivalent to USD 1024 at that time) and the average income per capita in Vietnam in 2017 was 53.5 million VND (equivalent to 2385 USD) (GSO, 2017).

With such wages, for a long period of time, the minimum wage / GDP per capita in Vietnam has always been lower than the minimum wage/GDP per capita in many other countries in the world.

Thus, it can be seen that, despite the adjustment of the minimum wage, the minimum wage of Vietnam is still much lower. In practice, the real income of workers is higher than the minimum wage set by the government, but still relatively low.

According to the survey of the first 5 months of 2018 of the Institute of Workers and Trade unions (The Vietnam General Confederation of Labor), the basic monthly salary of the employee (full time work) on average is VND 4,670 thousand. In which, the basic average salary of the the direct production employee is VND 4.23 million / month (Region I: VND 4.76 million, Region II: VND 4.57 million, Region III: VND 4.14 million, IV: VND 3.32 million); that of the indirect employee and the officer is 6.52 million / month; that of the Vietnamese manager is VND 9.5 million; that of foreign manager and employee is 30.3 million VND / month.

Comparisons of wages by type of enterprise, region and occupation are as follows:

Table 1: Table of average wages of employees by type of enterprise (owned capital), region and occupation. (Unit: 1,000 VND.)

No	* By type of enterprise	Wage		* By occupation	Wage
1	SOEs, equitized enterprises	5.295	1	Construction, transportation	4.949
2	FDI enterprises	4.229	2	Mechanics, metal fabrication	4.895
3	Private enterprise, others	4.664	3	Agro-forestry-fishery processing	4.871
*	By region		4	Trade and services	4.813
1	Region I	5.438	5	Leather shoes	4.280
2	Region II	4.515	6	Electricity. electronic	4.253
3	Region III	4.305	7	Textile	4.225
4	Region IV	3.995	***	Total	4.670

The survey also shows that there is still a propotion of workers receiving basic salary close to the regional minimum wage. Accordingly, 5.1% of people receive wages under 3 million, especially in Region IV this proportion accounted for 16.7%. Even in Region I, 3.5% of employees have salary below 4.0 million. In particular, there is still a part of employees who receives basic salary below the regional minimum wage, specifically in Region I: 2.35%; Region II: 10.87%; Region III: 3.34% and Region 4: 4.45% (Institute of Workers and Trade Union, 2018).

What do these numbers mean?

The minimum wage in Vietnam is relatively low in comparison with the region and the world. In Vietnam, it is clear that both on a legal and practical level, such minimum wages are not enough to cover the minimum expenditure for employees. Thus, the determination of low minimum wage leads to income outside salary which is sometimes higher than the main income - the extra that the enterprise will not pay for workers' insurance.

In our point of view, setting minimum wages is in line with international practice. But setting minimum wages lower than minimum living standards will cause enterprise to shirk their obligations

- such as paying social insurance premiums to employees³. In terms of low wages, many people argue that this is a way to attract foreign investment by cheap labor. However, this story has become a thing of the past. Some researches in the world has proven that labor costs are not the leading factor in today's investment strategy. Market size and new growth potential are the main reasons leading to inflows of capital (Trung Ha, 2007).

Low minimum wage, low real income in Vietnam today is one of the reasons causing employees to work overtime affecting their health; causing strikes, delays⁴ ...; On the other hand, it will also make employees become poor after retirement. This could cause the effect of backing up the burden on the state because the state has to pay social allowance for these people⁵. This is a matter for the Vietnamese government to consider.

2.2 In term of working time

In 1919, the International Labor Organization (ILO) adopted the Convention No.1 on Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week (Entry into force: 13 Jun 1921). In 1935, the ILO adopted Convention No. 47 on the Forty-Hour Week (Entry into force: 23 Jun 1957). In 1962, the ILO issued the Reduction of Hours of Work Recommendation, 1962 (No. 116). There are some countries that have applied 36, 39 or 40-hours working with and 5 or 4 working days per week.

The working time of Vietnamese employees in the current legal documents is not more than 8 hours per day and not more than 48 hours per week (Article 104, Labor Code 2013). In addition to working time as prescribed, the enterprises must pay overtime payment for employees. Laborers in Vietnam are also entitled to public holidays, Tet holidays, maternity leave and sick leave. Regarding the overtime payment, Vietnam has provisions on overtime payment in accordance with international practice. Accordingly, wages will be 1.5, 2 or 3 times more depending on working overtime on weekdays or holidays. The working time is also specified in Decree 45/2013 / NĐ-CP of the Government. Accordingly, from 1st July 2013, workers have been allowed to work no more than 12 hours per day on public holidays, Tet holidays and weekends; the number of overtime hours shall not exceed 50% of normal working hours in a day. Agencies that are allowed to organize working overtime more than 200 hours to 300 hours are agencies in the fields of production, electricity supply, telecommunications, oil refining, water supply and drainage. After each consecutive seven-day overtime in the month, workers must be provided with time off work (Prime Minister, 2013).

According to the survey of the Institute of Workers and Trade Union, 44.0% of the employees interviewed said they worked overtime and received money from overtime, of which the direct laborers in enterprises accounted for 68.1%; the indirect laborers and officers accounted for only 27.0%. The average number of overtime hours is 28.5 hours (maximum 50 hours) and the received average amount was 832 thousand VND / person / month.

³ According to the Vietnam General Confederation of Labor, the proportion of enterprises not participating in social insurance is still very high. The fact is that there are only over 235,000 enterprises paying social insurance, reaching about 47%. The proportion of people participating in social insurance compared to the labor force is low (24.09%). Source: Minh Thu, 2018.

⁴ According to the Vietnam General Confederation of Labor, in the first month of 2018, Vietnam has 131 strikes, of which 103 strikes are in FDI enterprises, accounting for 78.6%; that in textile and garment sector accounted for 36.6%; in leather shoes enterprises it has 27, accounting for 20.6%; 20 strikes in the field of electronic accounting for 15.3%. Source: Due to low payment from enterprises, the employees have to work overtime [Online] Available: <https://vov.vn/xa-hoi/doanh-nghiep-tra-luong-thap-nguoi-lao-dong-buoc-phai-lam-them-gio-786681.vov> (Accessed Fri, 06:46, 13/07/2018).

⁵ Currently, in Vietnam, there are those who receive pensions at low levels, so the state must compensate.

Table 2: Proportion, time and level of overtime income of employees by occupation

Occupation	Textile	Leather shoes	Electricity Electronic	Mechanical, metal fabrication	Agro-forestry-fishery processing	Transportation, construction	Service, trade
Proportion of laborers working overtime (%)	67,0	85,1	69,5	63,6	31,2	13,9	16,8
Number of overtime hours (hours)	25,9	40,8	27,0	32,0	25,4	18,2	21,1
Amount received (VND1,000 / m))	551	1.213	783	1.144	742	733	515

Some occupations and sectors have high proportion of overtime workers, such as in the footwear industry, the proportion of overtime workers accounts for 85.0% with the number of hours is up to 40.8 hours / month; in the textile sector that is 74.2%, with an average number of hours is 25.9 hours per month; in the mechanical, metal fabrication is 63.3%, with an average number of hours is 32.0 hours; in the field of electricity, electronics that of proportion is 68.0%, with the number of hours is 27.0 hours. This proportion is 62.0% for FDI enterprises with an average number of hours is 27.8 hours per month (Institute of Workers and Trade Union, 2018).

It can be seen that overtime working is as a consequence of low minimum wages, low basic earnings for regulated working hours, so that living standards can be only guaranteed by overtime working. This may cause conflicts between employers and workers whose manifestations are strikes, delays, etc occurred in Vietnam recently. It is also one of the causes of overstay, sickness and frustration for workers⁶. Moreover, this makes the workers not only poor in material life but also poor in spiritual life when they spend too much time making a living (See also: Cerioli and Zan, 1990; Alkire, 2002).

2.3 In term of labor safety and hygiene

In Vietnam, the issue of labor safety and hygiene is specified in the Laws of Labor 2012; Law on labor safety and hygiene 2016 and other decrees and circulars of relevant authorities. According to these documents, employers have the responsibility to equip employees with labor protection equipment, ensure labor safety and hygiene and improve working conditions for laborers; to ensure that the workplace meets the standards of space, airiness, brightness and hygiene. Employees who work under labor contracts have the right to be guaranteed fair working conditions, labor safety and hygiene; to be provided full information on risk factors, harmful factors in the workplace and preventive measures; to be trained on labor safety and hygiene; to be applied the regime of labor protection, health care, examination and detection of occupational diseases; to be paid on labor accident or occupational disease insurance by the employers, to be entitled to refuse to work under unsafe conditions...

Although the legal regulations are strict, in reality, only a few enterprises implement monitoring labor environment. In 2016, according to the report of the Ministry of Health, there are 6,293 production agencies implementing labor environment monitoring. That is a small number compared with tens of thousands of business and production agencies in Vietnam. In particular, the total number of labor environment monitoring samples which do not meet hygiene standards account for 8.3%.

⁶ According to the survey, 32.5% of the workers regularly have frustrations related to the workplace; particularly in electrical and electronic enterprises (41%); in manufacturing and processing (38.8%)... The urgent issues focused on the problems such as working too tired, tension, entangled interests are not solved, lack of safety assurance labor hygiene while the wages and salaries are low. The strict working time regulations makes up 40.4%; manage and control strictly during working time (39.1%); strict sick leave regulations (28.9%); strict management of personal hygiene, drinking water (22.1%). Source: Tat Thao, Nguyen Nga (2017). Workers are being eroded. [Online] Available: <https://mld.com.vn/cong-doan/nguoi-lao-dong-dang-bi-bao-mon -suc-khoe-20170729082817481.htm> (Accessed 29/07/2017 08:54).

Some samples have not met the standard including: light (15.9%); noise (14.7%); micro climate (6.58%); radioactivity, electromagnetic field (6.17%); shaking career (5.45%); toxic gases (5.13%); dust (2.3%).

According to a report from the Health Environmental Management Agency (VIHEMA) (Ministry of Health), among the 1,538,056 people who received periodic health examinations, only 22.96% got Type I health; the number of people got type II health accounted for 39.59%; that of type III health accounted for 23.67%; that of type IV, type V health accounted for 13.8% increasing 1.43% compared to 2015. The common diseases of workers such as respiratory disease accounted for 25.6%, gastrointestinal disease accounted for 16%; eye disease accounted for 6.7%; 8.3% for osteoarthritis; ear disease accounted for 2.23%; skin disease accounted for 3.45%; cardiovascular disease accounted for 4.23%. The report also pointed out that only 8,578 out of 49,592 organizations set up labor hygiene records; there were only 4,732 out of 22,857 working places which had dangerous and harmful factors set up labor records (VIHEMA, 2017).

In addition to these issues, occupational accidents are also significant in protecting the employee rights and benefits in enterprises. According to the report of the Ministry of Labor, Invalids and Social Affairs, in 2017, 8,956 occupational accidents occurred in the whole country, causing 9,173 victims (including those with labor contracts and those without labor contract). There were 898 accidents causing deaths; the number of occupational accidents which has two victims were 101 cases; the death toll was 928; the number of seriously injured people was 1,915; the number of female victims is 2,727. In particular, construction accidents accounted for 20.8% of total accidents and 19.7% of total deaths. Accidents in the field of construction accounted for 9.2% of total cases and 8.8% of total deaths; Accidents in mechanical, metallurgy accounted for 6.9% of total cases and 8.02% of total deaths; accidents in agriculture and forestry account for 3.8% of total cases and 3.6% of total deaths; accidents in services accounted for 1.53% of total cases and 1.45% of total deaths (MOLISA, 2018).

The above figures show that labor accidents mainly occur in some manual and high-risk occupations if they are not adequately protected, such as in the construction industry. On the other hand, it also shows that ensuring labor safety has not been paid much attention by both the enterprises and the employees. For enterprises, there is a few enterprises focusing on ensuring labor safety and hygiene for workers; for workers, it can be seen that, due to the pressure of living conditions and economic needs, they have also ignored some of the regulations necessary to protect their rights and benefits in labor. For instance, in the interview, Nguyen Van Nam, a worker of Thang Long Cement Joint Stock Company 2 (Hoanh Bo district), said that "for workers like us, knowledge and understanding about laws related to our rights, especially overtime work, rest, working conditions ... are still poor. Take overtime work as an example, if the company asks us working overtime, we would be happy to work overtime, but do not know how to work overtime in a reasonable and legal manner as well as resting after overtime work. If this lasts long, it can affect our physical and mental health. Therefore, we need to update our knowledge on labor law, better understand the regulations in this activity, so that we can protect ourselves and protect our health". Ms. Tran Thi Lan, a worker of Everbest Vietnam (Cam Pha Branch), said that "many workers like us have needs and are willing to work overtime if the company requests. Even knowing that doing this is violation of labor regulations, accidentally ignored the regulations in protecting our rights. But because of the need for life, because of the need for money, because of a little more income, we still accept to do so" (Lead by: Thanh Hang, 2013). Those are the opinions of employees from the time of 2013, but in our opinion, it still remains the same value today.

3. Conclusions and Policy Implications

The above mentioned shows that, on the legal level, the basic contents of protection of the employees rights and interests in Vietnamese enterprises have been institutionalized into concrete, detailed contents and in line with international convention as well as economic, cultural and social conditions of Vietnam.

But in fact, Vietnam has to face with the unserious implementation of this by some enterprises and even employees. Some people argue that this is because the majority of Vietnamese

enterprises are small and medium ones; their economic potential and their perception are not good so the issues of paying employees, overtime, ensuring production safety for employees are not paid attention. This is also considered as a means to reduce the input of the production process in order to lower the cost of production, to compete with the same products on the market. However, this point of view needs to be reviewed, especially in the context of Vietnam's integration into the world economy, of the aims of the export economy, of the demand for corporate social responsibility and of the social rigidity of the product's origins.

It can be seen that in order to protect the employee legitimate rights and interests in enterprises, there should be participation of stakeholders, including employees, enterprises and the society. There is also an adjustment in terms of both policy and awareness. Accordingly, in addition to checking, monitoring and having more stringent sanctions to manage the operations of enterprises, the role of both employees and trade unions should be respected. Employees need to improve their legal awareness, labor skills, productivity and their ability to sign collective bargaining agreements. In particular, trade unions should further demonstrate their role in protecting the rights and interests of unionists. In this regard, we will discuss in our next studies.

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