

SOME NEW POINTS IN THE DRAFT OF LAW ON EMPLOYMENT

HUYEN THU

The Law on Employment 2013 is the first law that fully and comprehensively regulates the employment relationships and labor market in Viet Nam. However, after over nine years of implementation, the Law on Employment 2013 has shown several inadequacies that are no longer suitable for the current practice and socio-economic context. Therefore, the Ministry of Labour - Invalids and Social Affairs (**MOLISA**) is developing a Draft of Law on Employment (amended) (**Draft Law**) to implement new orientation and policies of the Party, ensure the synchronization, consistency, and suitability of the legal system and international commitments that Viet Nam participates in.

Compared to the Law on Employment 2013, the amendments and supplements in the Draft Law are various, which expands favorable conditions for all employees, including employees without labor relationships, to enjoy interests from state policies and regimes. Some major changes in the Draft Law are regulations on loan sources for job creation, borrowers to work abroad, labor market information system, labor registration, vocational skill development, unemployment insurance, training regimes for employees, etc. In this Legal Newsletter, NHQuang&Associates would like to introduce some outstanding new points of the Draft Law, focusing on the regulations related to unemployment insurance (regarding subjects of unemployment insurance engagement and payable unemployment insurance rates) and labor registration.

Expanding subjects of unemployment insurance engagement

Resolution 28-NQ/TW on social insurance policy reform issued by the Central Executive Committee in 2018 sets the objective that by 2030, "about 45% of the working-age workforce will engage in unemployment insurance". By 2023, the number of people participating in unemployment insurance only accounts for 31.5% of the working-age workforce. In addition, under the applicable Law on Employment, three groups of subjects are required to participate in



unemployment insurance, namely employees working under (i) indefinite-term labor contracts or working contracts; (ii) fixed-term labor contracts or working contracts; (iii) seasonal or work-specific labor contracts with a term of full three months to less than 12 months.

According to the MOLISA, subjects participating in unemployment insurance under the Law on Employment 2013 do not cover all subjects with labor relations. For example, under the Law on Social Insurance 2014, subjects required to participate in social insurance include "*People working under labor contracts with a term of full one month to less than three months*". However, the Law on Employment 2013 has not covered this group of people as the subjects to participate in unemployment insurance. To expand the number of people engaged in unemployment insurance, groups of people participating in unemployment insurance as proposed by the MOLISA in the Draft Law include:

- (i)** Employees working under indefinite-term labor contracts or fixed-term labor contracts with a term of one full month or more, covering cases where two parties have an agreement in other names but with such contents of paid employment, salary, management, administration, and supervision by one party;
- (ii)** Employees in item (i) working part-time, with a total monthly salary equal to or higher than the salary used as the basis for paying the lowest premium of compulsory social insurance, which must equal half of the monthly highest region-based minimum wage as announced by the Government.
- (iii)** Employees working under employment contracts;
- (iv)** Enterprise managers, controllers, representatives of the state capital, representatives of an enterprise's capital in a company and its parent company, and managers operating cooperatives, and cooperative unions with salary.

Stipulating flexible unemployment insurance contribution rates for employees and employers

Under the Law on Employment 2013, the unemployment insurance contribution rate for employees is fixed at 1% and the rate for employers is fixed at 1% of the monthly salary fund of the employees who are subject to unemployment insurance payment. According to the MOLISA, this regulation is inflexible, especially in cases of natural disasters, pandemics, and economic crises. The Draft Law has amended this rate to be more flexible, specifically: (i) Employees pay *a maximum of 1% of their monthly salary*; (ii) Employers pay *a maximum of 1% of the monthly salary fund* of the employees who are subject to unemployment insurance payment.

It can be seen that the adjustment of unemployment insurance contribution rates according to the Draft Law is more consistent with the Party's policy orientations, especially the Central Executive Committee's orientations to amend regulations on social insurance contribution rates and bases to achieve the objective of expanding social insurance coverage, supporting employees and employers in Resolution 28-NQ/TW in 2018 on social insurance policy reform and Resolution 42-NQ/TW 2023 continuing to reform and improve the quality of social policies, meeting the requirements of developing and protecting the country in the new period.

Supplementing regulations on labor registration

In the Draft Law, the MOLISA proposes to supplement a Chapter on labor registration with several regulations such as subjects for labor registration; labor registration information; labor registration procedures and documents; rights and obligations of employees; and adjustment of employment information. New regulations aim to concretize the Party's tasks set out in Resolution 42-NQ/TW in 2023 on human resource management and labor and employment database development. Also, this new point addresses the limitations of the legal system when there are no regulations on labor registration, which results in many difficulties in labor-management activities.

According to the Draft Law, subjects for labor registration include employees who are Vietnamese citizens of at least 15 years old with working ability and have a need to work, except for minor employees as prescribed by the Labor Code. Labor registration information includes basic information (for example: full name, personal identification number); employment information; professional qualification information; and information about social insurance and unemployment insurance. Employers are responsible for performing labor registration when registering their information on the national insurance database and other databases. In the case where an employee does not have any labor relationship, the employee will submit a labor registration application to the Communal People's Committee of his/her current residence.

The proposals in the Draft Law, especially the regulations on unemployment insurance and labor registration, are expected to further improve the unemployment insurance policy, ensuring further benefits for both employees and employers and improving labor and employment management in Viet Nam. Businesses should study its contents and continue to follow the Draft Law development process to promptly update amendments and supplements of this document once the Draft Law is issued and takes effect.