

POLICIES TO SUPPORT EMPLOYMENT AND PROTECT WORKERS' RIGHTS FROM THE PERSPECTIVE OF THE LABOR CODE

POLÍTICAS PARA APOIAR O EMPREGO E PROTEGER OS DIREITOS DOS TRABALHADORES A PARTIR DA PERSPECTIVA DO CÓDIGO DO TRABALHO**

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Abstract: Labor and employment are one of the basic rights of citizens enshrined in the Constitution. In the process of development and international integration of our country, along with the completion of the socialist-oriented market economic institution, the system of policies and laws on labor has also been renewed, amended, and supplemented. supplement accordingly. The system of labor policies and laws has made an important contribution to the effective use of human resources for the development and implementation of the cause of industrialization and modernization of the country, making better use of the opportunities of the times. Golden population period for the development of the country. On the basis of an overview of the Labor Codes and new points of the Labor Code 2019 on the protection of workers' rights, this study focuses on clarifying the foundations of the principle of protecting workers according to the provisions of law. provisions of the Labor Code; comprehensively protect the rights of workers; some results have been achieved in employment policy and protection of workers' rights; At the same time, it raised a number of issues in employment policy and protection of workers' rights from the Labor Code.

Keywords: Labor law. Employment support policy. Worker protection. Worker support. Vietnam.

Resumo: Trabalho e emprego são um dos direitos básicos dos cidadãos consagrados na Constituição. No processo de desenvolvimento e integração internacional de nosso país, juntamente com a conclusão da instituição econômica de mercado orientada ao socialismo, o sistema de políticas e leis trabalhistas também foi renovado, emendado e complementado de acordo. O sistema de políticas e leis trabalhistas tem dado uma importante contribuição para o uso efetivo dos recursos humanos para o desenvolvimento e implementação da causa da industrialização e modernização do país, fazendo melhor uso das oportunidades dos tempos. Período de ouro da população para o desenvolvimento do país. Com base numa visão geral dos Códigos do Trabalho e dos novos pontos do Código do Trabalho de 2019 sobre a proteção dos direitos dos

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trabalhadores, este estudo se concentra em esclarecer os fundamentos do princípio de proteção dos trabalhadores de acordo com as disposições da lei. disposições do Código do Trabalho; proteger de forma abrangente os direitos dos trabalhadores; alguns resultados foram alcançados na política de emprego e proteção dos direitos dos trabalhadores; ao mesmo tempo, levantou uma série de questões na política de emprego e proteção dos direitos dos trabalhadores do Código do Trabalho.

Palavras-chave: Direito do trabalho. Política de apoio ao emprego. Proteção dos trabalhadores. Apoio ao trabalhador. Vietnã.

1. INTRODUCTION

In the relationship with the employer, the employee is always in a weaker position, dependent on and subject to the management and administration of the employer. Therefore, in order to create a more equal labor relationship, the labor law has provisions to protect employees, thereby limiting the abuse of power by employers.

Protecting workers is understood as preventing any possible harm to employees when participating in labor relations. With that role, "Protecting workers" is the basic and most important principle of the labor law.

The determination of this principle is first of all based on the policies of the Party and the State. Right from the early years of the development of the market economy, the Party has advocated: "To strengthen the protection of workers, the focus is on enterprises". Concretizing this policy of the Party, in the 1992 Constitution, there were provisions recognizing equality and protecting workers (Article 3, Article 56).

The Platform for building the country in the transitional period to socialism (Added and developed in 2011) has determined that the formulation and implementation of a correct and just social policy for the sake of the people is one of the major orientations, mainly on the socio-economic development of our country from now to the middle of the twenty-first century. The basic objective of social policy in this period is to ensure social stability, realize social justice and promote social progress. Social policy towards taking care of all members of society; create an environment and conditions for all members to develop their individual capacities, regardless of classes and population classes; build a civilized social community. Our Party's stance on social policy is comprehensively expressed in the Platform (2011). From the guidelines of the Party and the 1992

Constitution, the 1994 Labor Code and later the 2012 and 2019 Labor Codes all contain provisions to concretize the principles of worker protection.

In the next stage of the development of the country, the system of policies on labor, employment, and protection of workers' rights is being renewed to create a driving force to improve labor productivity and social efficiency. through a solution such as: “Reform the wage policy in the direction associated with the change of labor prices in the market, commensurate with the economic growth rate and the labor productivity growth rate, ensure the principle of distribution according to labor, etc. renewing unemployment insurance policies in the direction of increasing training and retraining for employees to participate effectively in the labor market. Restructuring labor in line with the economic structure, increasing the proportion of labor in the formal sector and focusing on creating jobs for workers in the informal sector, especially converted agricultural workers. professions” (Communist Party of Vietnam, vol 1, 2021, p. 149).

2. RESEARCH RESULTS AND DISCUSSION

Overview of Vietnam's Labor Codes and new points of the Labor Code 2019 in protecting workers' rights

The first Labor Code of Vietnam was officially born on June 26, 1994, and took effect from January 1, 1995 (Law No. 35-L/CTN). Over time, as the country gradually moves towards building a socialist rule of law state with the principle of respect for the law, the Vietnamese legal system has also been constantly supplemented and perfected to ensure the rights and interests of development relations. born in society.

Among them, social and labor relations are the most interesting. Along with that, the new Labor Code has many improvements that can benefit both employees and employers, but the improved contents will only come into practice when everyone understands. what new rights they have and actively use those rights. The following article will provide insights into the Labor Code.

What is the Labor Code?

Labor law is an independent branch of law in the Vietnamese legal system, consisting of a set of legal norms governing labor relations between salaried employees and paid employers. labor and other social relations directly related to labor relations.

Accordingly, the Labor Code stipulates labor standards; rights, obligations, and responsibilities of employees, employers, representative organizations of employees at grassroots, representative organizations of employers in labor relations and other related relations directly to labor relations; State management of labor.

Subjects of application of the Labor Code include Employees, apprentices, apprentices, and employees who do not have an employment relationship; Employers; Foreign workers working in Vietnam; Other agencies, organizations, and individuals directly related to the labor relations.

Accordingly, it can be seen that the 2012 Labor Code only regulates issues related to the labor relationship between employees and employers. Meanwhile, the Labor Code 2019 stipulates one more subject to apply, that is "people who work without labor relations". Thus, even though there is no labor relationship between the employer and the employee, if certain criteria are satisfied, it is still governed by the Labor Code 2019.

New points of the Labor Code in protecting workers' rights:

The Labor Code 2019 takes effect from January 1, 2021, and will replace the previous Labor Code 2012. Here are the most notable new points of this Code:

Increase the retirement age to 62 years for men, and 60 years for women, specifically:

Compared to the current 2012 Labor Code, the new Labor Code stipulates to increase the retirement age for employees. The Labor Code 2019 clearly states that the retirement age of an employee under normal working conditions is adjusted according to the roadmap until he reaches 62 years of age for male employees in 2028 and the full 60 years of age for male employees. women by 2035.

From 2021, the retirement age of employees in normal working conditions is 60 years and 03 months for men; full 55 years old and 04 months for females. After that, each year increases by 03 months for male employees; 04 months for female employees.

Particularly for people with reduced working capacity; working in heavy, hazardous, dangerous, or particularly heavy, hazardous or dangerous occupations or jobs or working in places with extremely difficult socio-economic conditions, they may retire before the age of 5 years.

To enter into definite-term contracts many times with the elderly, specifically as follows:

Usually, the elderly are often those who have many years of working experience with many years of experience, especially in jobs that require high qualifications. Therefore, in order to promote the value of the elderly, Article 149 of the Labor Code allows employers to agree to enter

into definite-term labor contracts with the elderly many times instead of extending the term. labor contract or enter into a new labor contract as before.

Employees are entitled to 1 extra day off on National Day (September 2 every year), specifically as follows:

The Labor Code of 2019 also adds 01 days off in the year on the day adjacent to the National Day, which can be September 1 or September 3 of the solar calendar depending on each year. In which, employees are entitled to leave and receive full salary.

Thus, the total number of annual holidays and Tet will be increased to 11 days, of which: New Year's Day: 01 days; Lunar New Year: 05 days; Victory Day (April 30, Calendar): 01 days; International Labor Day (May 1, solar calendar): 01 days; National Day (September 2): 02 days; Hung King's death anniversary (March 10 of the lunar calendar): 01 days.

The employee may unilaterally terminate the contract, specifically as follows:

The Labor Code 2019 allows the employee to unilaterally terminate the contract without reason, just ensure the notice period is 30 days for the fixed-term contract and 45 days for the contract. indefinite term.

At the same time, the employee is also entitled to request the employer to provide copies of documents related to his/her working process upon termination of the labor contract; the costs of the supply are borne by the employer, etc.

Compared with the 2012 Labor Code, the newly added Code stipulates: In case an employee cannot receive a salary directly, the employer can pay the salary to the person legally authorized by the employee.

This regulation is considered to be reasonable, especially in case the employee is sick or has an accident and cannot directly receive wages, etc.

Increase monthly overtime to 40 hours, specifically as follows:

Regarding working hours, in the immediate future, keep the normal working hours as prescribed by the current Code and have a roadmap to reduce the normal working hours at an appropriate time.

Regarding overtime, although many plans have been proposed before, however, in Article 107 of the Labor Code 2019, the National Assembly decided not to increase overtime hours in the year. "Ensure that the overtime hours of employees do not exceed 50% of the normal working hours in a day; if weekly working hours are applied, the total number of normal working hours and

overtime hours shall not exceed 12 hours/day; no more than 40 hours/month; no more than 200 hours/year, except for some special cases where overtime work is not more than 300 hours/year”.

The basis of the principle of worker protection according to the provisions of the Labor Code

First, the determination of this principle is based on the lines and policies of the Party. Our Party has realized that when participating in labor relations, employees will be the weak side, they face many risks arising from labor relations, leading to their lives and families being affected. . It is difficult for employees in the labor relationship to reach an equal agreement with the employer on their rights and obligations (Trung & Van, 2020). Because in a developing country like Vietnam, with a rapid population growth rate, jobs are not enough to meet them, and the quality of training is not high, the number of unemployed people will increase, leading to high demand (Trung & Van, 2020; Hoi, 2021). The demand for jobs is high, but the jobs are few. Such a supply-demand gap will make it possible for employers to pressure employees when entering a working agreement.

Second, the determination of principles to protect workers in order to limit the harm to their health and life. Because employees are the ones who directly perform the jobs assigned by the employer, they may have to perform their jobs in polluted, toxic, and unsafe environmental conditions, etc. These factors directly affect their health and life, so there is a need for labor laws to protect them and limit the abuse of power by employers (Hoi, 2021; Luongngoc & Vuhong, 2022).

Third, employees are always the weak side of labor relations. Employees are always dependent on the employer, managed and operated by the employer. Therefore, the employer can from his rights give birth to abuse of power, forcing the employee to do as he or she wants, and the employee then tends to accept and resign. Therefore, this is one of the bases for setting out the principles of worker protection.

Comprehensive protection of the rights of employees according to the Labor Code

The Labor Code 2012 and the latest Labor Code 2019 have regulations, to concretize the principle of worker protection, considering this as the most basic and important principle, specifically expressed as: after:

Job protection for workers:

In the provisions of the labor law, the content of the principle of worker protection is not only included in the protection of the labor force, and the rights, and interests of the employees,

but also in the labor law. expressed in many aspects: employment, profession, income, life, honor, dignity, etc.

Protecting workers is first of all to solve and protect jobs for them, to let them maintain their lives. Therefore, the labor law has basic provisions on the right to have a job for employees, according to which at Point a Clause 1, Article 5 of the Labor Code 2012 stipulates that employees have the right to freedom to choose jobs, occupations, apprenticeships, improve professional qualifications and not be discriminated against". But until the Labor Code 2019 (about 1 Article 5), there are more specific and clear regulations:

“a) Working; freedom to choose jobs, workplaces, occupations, vocational training, and professional improvement; not be subjected to discrimination, forced labor, or sexual harassment at work;

b) To receive a salary suitable to vocational qualifications and skills on the basis of an agreement with the employer; have labor protection, work in conditions that ensure occupational safety and hygiene; leave according to the regime, take annual leave with salary and enjoy collective benefits;

c) Establish, join and operate in employee representative organizations, professional organizations, and other organizations as prescribed by law; request and participate in dialogues, implement democratic regulations, bargain collectively with employers and be consulted at the workplace to protect their legitimate rights and interests; participate in management according to the rules of the employer;

d) Refuse to work if there is a clear and direct threat to life and health in the course of performing the work;

dd) Unilaterally terminate the labor contract;

e) Strike;

g) Other rights as prescribed by law".

The law also recognizes the State's responsibility for employment and job creation for employees, according to which: "The State, employers, and society have the responsibility to participate in job creation and ensure employment for employees. everyone with the ability to work has the opportunity to get a job" (Clause 2, Article 9 of the Labor Code 2019). Regarding the right to work of employees, Article 10 of the Labor Law also clearly stipulates:

"1. To be free to choose employment, to work for any employer, and in any place not prohibited by law.

2. Directly contact the employer or through an employment service organization to search for a job according to his/her aspirations, abilities, professional qualifications, and health".

In addition, the principle of job protection for employees is also reflected in the provisions: The suspension and termination of labor contracts in some cases can only be done in accordance with the provisions of law. labor law.

In the provisions of the labor law, the content of the principle of worker protection is not only included in the protection of the labor force, and the rights, and interests of the employees, but also in the labor law. expressed in many aspects: employment, profession, income, life, honor, dignity, etc.

Protecting the right to be paid according to the agreement:

Wages mean a lot to employees. Therefore, the issue of wage protection for employees is an important content in the principle of worker protection of the labor law, and to accomplish this purpose, the labor law has provisions to protect money. workers' wages.

Clause 3, Article 90 of the 2012 Labor Code stipulates: "Employers must ensure equal wages, regardless of gender, for employees doing work of equal value". In order to protect the interests of employees when their wages are not paid on time, the labor law stipulates: "In special cases where it is impossible to pay wages on time, it must not be more than 1 month late and the employer must not pay the salary on time. The employee must pay an additional amount to the employer at least equal to the deposit interest rate announced by the State Bank of Vietnam at the time of salary payment" (Article 96 of the Labor Code 2012).

In addition, to protect workers, the labor law also stipulates the level of compensation, salary, social insurance allowance, and health insurance, in cases of working due to objective risks or due to the fault of the employer such as being stopped from work, having a labor accident (Van, 2022), having an occupational disease requiring treatment, or being terminated or illegally dismissed, etc (Van, 2022). All employees are paid by the employer (Duchiep, et al., 2022).

Protection of the right to establish, join and operate a trade union:

In order to maximize the rights of employees, the law allows employees in any enterprise, whether private or state-owned, to have the right to join a trade union. at Point c, Clause 1, Article

170 of the 2019 Labor Code. Accordingly, employees have the right to: “Establish, join, operate trade unions, professional organizations, and other organizations as prescribed by law, etc.”.

When the law has recognized the right of employees to form, join and operate a trade union, the law has provisions to ensure this right of employees. Article 175 of the Labor Code 2019 stipulates: “Prohibited acts for employers related to the establishment, joining and operation of representative organizations of employees at grassroots”, specifically :

"1. Discrimination against employees and members of the management board of a representative organization of employees at the grassroots level for reasons of establishment, joining or operation of a representative worker organization, including:

a) Request to join, not join or leave the employee representative organization at the grassroots in order to recruit, enter into or renew the labor contract;

b) Fire, discipline, unilaterally terminate the labor contract, do not continue to enter into or renew the labor contract, transfer the employee to another job;

c) Discrimination on wages, working hours, other rights and obligations in the employment relationship;

d) Obstructing or causing difficulties related to work in order to weaken the operation of the employee representative organization at the grassroots level.

2. Interfering with, manipulating the process of establishment, election, formulating work plans, and organizing the implementation of activities of employee representative organizations at the grassroots level, including providing financial support or other economic measures aimed at nullifying or impairing the performance of the representative function of grassroots workers' organizations or discriminating between grassroots representative organizations".

Protection of employees' personal rights:

In the spirit of protecting workers in a comprehensive way, protecting all human rights in the labor field, the moral rights associated with the labor field are important objects that need to be respected by the labor law. guard.

The issue of protecting the life and health of workers during the working process is paid special attention to. The Labor Code also stipulates specific responsibilities for each level and sector, in order to ensure the safety of life and health of employees. Employers must fully implement the health check and toxic allowance regime for employees. The use of labor must ensure the working time, and rest time, do not exceed the level prescribed by law. Employers must shorten working

hours for the following subjects: Disabled workers, underage workers, pregnant female employees, and workers doing heavy and hazardous jobs to ensure their health. for them.

In the relationship with the employer, the employee's honor, dignity, and reputation are protected by law, and it is strictly forbidden to offend the employer in any way. It is against the law to discriminate, retaliate, or punish employees for any reason. Even if the employee violates the discipline, the employer must not insult the body, honor, and dignity of the employee.

Implementation of labor protection for employees:

The Constitution of Vietnam stipulates: “The State promulgates labor protection policies and regimes” (National Assembly of the Socialist Republic of Vietnam, 2013); At the same time, the labor law also stipulates: “The Government shall set up a national program on labor protection, occupational safety, and hygiene, and include it in the economic and social development plan and the State budget. country; invest in scientific research, support the development of facilities for the production of tools and equipment for occupational safety and health, and personal protective equipment; promulgate typical systems, processes and regulations on occupational safety and health” (National Assembly of the Socialist Republic of Vietnam, 2019).

These regulations come from the point of view and perception: people are precious capital, the main labor force of society. Therefore, the protection of general health and the protection of occupational safety and hygiene for employees in particular are indispensable tasks and responsibilities of the State and enterprises.

Legal guarantees for employees to really enjoy labor protection rights are reflected in the following points: Being guaranteed to work in occupational safety and health conditions; Enjoying a regime of equipment personal protective equipment; To enjoy health promotion regimes when doing arduous, hazardous, and dangerous jobs; To be able to arrange jobs suitable to their health, to apply shortened working hours to hazardous and arduous jobs; To be guaranteed material conditions when examining and treating occupational accidents and diseases.

Some achievements in employment policy and protection of workers' rights

Firstly, the system of policies and laws on labor has been amended and supplemented to be consistent with the Party's guidelines and guidelines on developing a socialist-oriented market economy and in accordance with the Constitution 2013; consistent with the standards of the International Labor Organization (ILO) and the country's socio-economic development process (Toan, 2022).

Secondly, the labor market continues to develop on the basis of more sustainable factors, such as abundant labor supply, and improved and gradually increased quality of labor resources to meet the requirements. The opening of integration also great pressure on the "supply" factor of the labor market to innovate and improve quality (Toan, 2022). The connection service system has diversified, the number of jobs increased, and the quality of jobs based on the criteria of stability and income growth continues to improve. Standards on working age, overtime, and minimum wages are concerned and specified. Institutions supporting stable and harmonious labor relations such as dialogue, negotiation, conciliation, and arbitration systems have been strengthened. The activities of the Labor Relations Committee and the National Wage Council initially achieved certain results. The improvement of working conditions; Ensuring a safe working environment is a concern for many businesses. Social security policies in which the focus is on insurance policies include: Compulsory social insurance, Voluntary social insurance, Supplemental pension insurance, Unemployment insurance, and Medical insurance All economic sectors are regulated in detail in the direction of expanding the participants, ensuring the sustainability of the policy, gradually implementing the principle of payment - benefit, reform, innovation, simplification of administrative procedures, apply information technology in management, improve professionalism in providing services to participants.

Thirdly, the state management of regimes and policies for employees is strengthened, especially the propaganda and dissemination of policies and laws, inspection and supervision of the implementation, through which compliance awareness of employers and employees is raised. Many businesses consider employees to be valuable resources, so they have developed a system of their own policies to apply in the enterprise: respecting the process of exchange, negotiation, implementation, democratic regulations at the workplace, and creating an enabling environment. environment, and corporate culture towards employees.

Some issues raised in employment policy and protection of workers' rights from the Labor Code

Firstly, regarding the responsibility of the State in creating jobs for workers:

First of all, although it does not directly implement measures to guarantee jobs, however, according to the 2013 Constitution, “The National Assembly is the highest representative body of the People, the highest state power agency of the country. The Socialist Republic of Vietnam. The National Assembly exercises constitutional rights, legislative powers, decides on important issues

of the country, and supremely supervises the activities of the State” (Article 69). Accordingly, the National Assembly promulgates the Labor Code, which stipulates the tasks and powers of competent agencies, the responsibilities of the employer, and measures to ensure the legitimate rights and interests of employees. In particular, the labor law stipulates that the direct responsibility belongs to the Government and State administrative agencies, and the first responsibility belongs to the National Assembly and the system of powerful agencies (People's Councils at all levels).

Therefore, the State needs to determine new employment targets in the 5-year and annual socio-economic development plans. The State shall adopt policies to provide financial support, loan capital, tax reduction, exemption, and incentive measures so that people with working capacity can find jobs by themselves, so that organizations, units, and individuals of all members can create their own jobs. The economic part develops many new jobs in order to create more jobs for workers. There should be preferential policies on job creation to attract and employ ethnic minority workers. At the same time, the State has policies to encourage and create favorable conditions for domestic and foreign individuals, including overseas Vietnamese to invest in business development in order to create more jobs for workers. Employing many Vietnamese workers is also one of the conditions for reducing corporate income tax under current law.

Secondly, On the Government side:

The Government must urgently set up a national program on employment, investment projects for socio-economic development, migration, and development of new economic zones in association with the program of job creation. Developing a system of employment service organizations: The State has the policy to establish, inspect and supervise the operation of employment service centers. According to the provisions of Article 133 of the Labor Code 2019, the Government decides on the National Program on occupational safety and health.

The employment program includes objectives, targets for creating new jobs, policies, resources, organizational systems, and measures to ensure program implementation. The Prime Minister decides on the national employment program submitted by the Ministry of Labour, Invalids, and Social Affairs. The Government decides the new job creation targets in the annual and 5-year plans, which are presided over by the Ministry of Planning and Investment and submitted to the Ministry of Labor, Invalids and Social Affairs, and related sectors. The Ministry of Labour, Invalids, and Social Affairs is responsible for guiding the inspection and reporting to the

government on the results of the implementation of new job creation targets (annual and 5-yearly) and the national employment program.

Establish a National Fund for Employment from the State budget and other sources (support from countries, international organizations, and foreign individuals; from domestic units and individuals to support job creation). The National Employment Fund is used for the following purposes: Supporting employment service organizations; Support units facing temporary difficulties to prevent workers from losing their jobs; Support for units that receive workers who have lost their jobs at the request of the local labor agency; Supporting the employment fund for disabled workers and use it to lend at low-interest rates to create jobs for some subjects of social evils.

Third, is the responsibility of the employer in solving and ensuring jobs for employees. According to the provisions of the Labor Code 2019, when there is a need for labor, the employer has the following rights and responsibilities:

The employer has the right directly or through the employment service organization to organize the recruitment of employees;

The employer must have the responsibility to create jobs for a number of specific laborers. In case many people meet the same recruitment conditions, priority must be given to recruiting wounded and sick soldiers; children of martyrs, children of wounded soldiers, children of families with meritorious services; disabled people, women, and people with a history of joining the armed forces, people participating in the youth volunteer force, people who have lost their jobs for one year or more.

Enterprises of all economic sectors and all forms of ownership must accept a proportion of disabled and female employees. Enterprises that accept the number of disabled employees to work less than the prescribed rate must pay an amount of money monthly to the employment fund for disabled people according to regulations if it is higher when doing business or doing business. facing difficulties or having production development projects will be considered for loans with low-interest rates or considered for support from the employment fund. Enterprises employing many female employees are entitled to preferential policies and support from the State.

3. CONCLUSION

Employment policy is an important policy in the system of social security policies to prevent risks for employees. Employment policies must aim at decent work and create equal opportunities for employment for everyone in society, enhance the responsibility of the state and society for employment, and improve working conditions. work, fair income, and better quality of work for workers. Developing legal policies to support job creation for workers is very necessary for the current period, strongly encouraging the participation of society in employment policy through diversification of sources force; socialization of public services; expanding the participation of the community, social organizations, and individuals in the implementation of employment policy.

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