

VIETNAMESE REGULATIONS ON THE EMPLOYMENT OF ELDERLY EMPLOYEES

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In the midst of rapid population aging in Vietnam, Vietnam faces significant pressure regarding declining in its labor force. In response to these challenges, Vietnamese authorities strongly advocate for the continued employment of elderly employees beyond the retirement age. They also encourage employers to assign tasks that are appropriate for elderly employees, thereby upholding their right to work and ensuring efficient utilization of human resources.

This research will present the notable aspects of Vietnamese laws regarding the employment of elderly employees, focusing on their rights, protections, and the obligations of employers.

Definition

Under the Vietnam Labor Code no. 45/2019/QH14, adopted by the National Assembly on November 20, 2019 (“**Labor Code 2019**”), the retirement ages for employees working in normal conditions shall be gradually increased to 62 years for males by 2028 and 60 years for females by 2035. Starting from 2021, the retirement ages shall be set at 60 years and 03 months for males and 55 years and 04 months for females. These ages will increase incrementally by 03 months per year for males and 4 months per year for females until they reach the specified retirement ages of 62 and 60, respectively¹ (the “**Retirement Age**”).

¹ Article 169 of Labor Code 2019

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The elderly employee, in accordance with Labour Code 2019, is defined as an individual who continues working after the Retirement Age² (the “**Elderly Employee**”).

Types of labor contracts with the Elderly Employee

Similar to other employees, the employer and the Elderly Employee can enter into two types of labor contracts:

Indefinite term: A contract in which the employer and the Elderly Employee neither determine the term nor the time for its termination.

Definite term: A contract involves a specified duration not exceeding 36 months, along with a designated termination date. It is of note that, the Elderly Employee, as a distinct target group, may have the definite term labor contract renewed multiple times. In contrast, for typical employees, a definite term labor contract can only be renewed once³.

Working hours

Elderly Employee, like typical employees, is limited to a maximum of eight hours of work per day or 48 hours per week. However, Elderly Employee has the right to negotiate with their employers for reduced daily working hours or to work on a part-time basis.

The Labor Code 2019 does not contain any provisions that restrict the employment of Elderly Employee for overtime. Nonetheless, when assigning overtime work, employers must take into account the health conditions of Elderly Employees and adhere to the requirements set forth in Article 107.2 of the Labor Code 2019.

Nature of work

² Article 148.1 of Labor Code 2019

³ Article 20.2 (c), and Article 149.1 of Labor Code 2019

Employers are prohibited from assigning heavy, hazardous, or dangerous tasks and jobs that could adversely affect the Elderly Employee's health. However, if safe working conditions are ensured, employers may still utilize Elderly Employees for such tasks.

Pursuant to Article 31.2 of Decree No. 12/2022/ND-CP dated January 17, 2022, in cases where safety conditions are not met, yet Elderly Employee is still required to perform heavy, hazardous, or dangerous work, the employer shall be subject to fines ranging from VND10 million to VND15 million for individual employers, and VND20 million to VND30 million for organizational employers.

Allowances and benefits

The obligation of contributing to the compulsory social insurance fund for Elderly Employees depends on whether they are receiving a retirement pension from the social insurance system.

- (a) If the Elderly Employee has not yet received a retirement pension and is working under a labour contract for a full one month or more, both the employers and the Elderly Employee are required to pay compulsory social insurance, health insurance, and unemployment insurance. The contribution rates are as follows:
 - Employer's contribution: 21.5% of the Elderly Employee's income subject to social insurance contribution, including 17.5% for compulsory social insurance, 3% for health insurance, and 1% for unemployment insurance;
 - Elderly Employee's contribution: 10.5% of their income subject to social insurance contribution, including 8% for compulsory social insurance, 1.5% for health insurance, and 1% for unemployment insurance.
- (b) If the Elderly Employee has received a retirement pension and enters a new labour contract, they shall receive a salary and other

benefits prescribed by law and the labour contract, in addition to the benefits to which they can get under the pension scheme.

It is of note that the Elderly Employee receiving retirement pensions and social insurance benefits who are currently engaged in a labour contract is not subject to compulsory social insurance participation⁴. Instead, employers have to compensate such Elderly Employee with an amount equivalent to the contributions that the employers would have made for these types of insurance⁵.

Tax

Elderly Employee's retirement pensions are exempt from personal income tax. However, the Elderly Employee still required to pay personal income tax on any income derived from salaries and wages.

Conclusion

In short, employers and elderly employees can still enter into labour contracts, highlighting the flexibility of the Vietnamese regulations. These regulations are designed to support the continued participation of elderly employees in the workforce while safeguarding their rights and well-being, reflecting a commitment to inclusivity in the labor market.

⁴ Article 123.9 of the Law on Social Insurance 2014

⁵ Article 168.3 of the Labor Code 2019