



## LEGAL UPDATE

### DECREE 148 CLARIFIES VIETNAM'S EMPLOYMENT FRAMEWORK

Decree No. 148/2018/ND-CP (**Decree 148**) came into effect on 15 December 2018, and amends and supplements Decree No. 05/2015/ND-CP (**Decree 5**).

Decree 148 provides a much needed simplification of the current employment framework.

Below we will detail the most important points of interest.

#### 1. What Periods Count for Severance Allowance?

In regards to severance allowance in the event of unemployment, the duration of the labour agreement, or service period is utilised to calculate entitlement to severance allowance. Decree 148 details inclusions and exclusions of this period, which previously was left to the apprehension of an employer.

Probationary time along with apprenticeship periods, and temporary detention or custody in relation to a case before a state agency (and the employee is found not guilty), are now *excluded*. However, leave periods for recovery from occupational injury and disease, and paid leave periods for undertaking citizen's obligations will now be *included*.

#### 2. Settlement and Mutual Termination

Another key provision of Decree 148 encompasses the time constraints placed upon the settlement of the employer's obligations in the event of a mutual termination in case of a merger, consolidation, or division of the enterprise or cooperative; as well as transfer of the right to ownership or enjoyment of assets. In these cases, the employer can now prolong the term from 7 to 30 days.

#### 3. Illegal Unilateral Termination Payment

Decree 148 stipulates that to calculate compensation in case of illegal unilateral termination the monthly salary as stipulated in the labour contract is used as a basis.

#### 4. Labour Disciplinary Procedures

##### 4.1 Disciplinary Decision

Decree 148 also eases the burden in regards to disciplinary matters. The person who is allowed to sign the labour contract on behalf of the employer, can now also take

disciplinary decisions. Previously, only the legal representative could do this.

##### 4.2 Disciplinary Hearing

Furthermore, now only a single invitation needs to be sent to an employee detailing a disciplinary hearing. This used to be 3 times. The employee has to confirm attendance within 3 working days from the date of receipt. In case the employee cannot attend a legitimate reason has to be provided. When an employee has not confirmed attendance, and there is no legitimate reason to be absent, or attendance is confirmed but the employee does not show up, the employer can conduct the disciplinary hearing without the employee being present. However, Decree 148 omits to clarify what can be considered a legitimate reason is and how many times this can be done.

##### 4.3 Dismissal for Unauthorised Absence

Decree 148 also gives clarification in case an employee has been absent for several days without authorisation. In case of accrued 5 days absence, the employer does not have to wait until a full month has passed from the first day of absence. Nor does the employer have to wait a full year in case of 20 accrued days absence. The employer can commence the labour disciplinary procedure when the requirement of respective 5 or 20 days has been met.

#### 5. Labour Contract Contents

Finally, Decree 148 details that a labour contract no longer needs to entail provisions such as the time for salary review, social or health insurance details, working and rest time. It stipulates that reference to internal labour rules, employer policies, collective agreements and appropriate laws would be sufficient.

#### For more information, please contact:

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