

New Penal Code Sanctions Adopted in Vietnam - For Labor Law Violations

On 27 November 2015, the National Assembly of Vietnam adopted a new Criminal Code No. 100/2015/QH13, which takes effective from 01 July 2016. This new Criminal Code will replace the old Criminal Code in 1999 and its amending / guiding documents. Notably, the new Criminal Code provides new sanctions for violations in employment sector. Details of these sanctions are set out below:

Illegal Dismissal of Employees

In particular, if a person for his/ her own sake conducts one of the following behaviours that make dismissed employees or their families fall into difficult situations or go on strike, he/ she will be subject to monetary fine of VND10 million - VND100 million, non-custodial reform of up to 1 year or IMPRISONMENT/JAIL of 3 months to 1 year:

- Illegal dismissal of employees;
- Illegal issuance of decision on dismissing public servants; or
- Forcing, threatening the employees or public servants to quit their jobs.

The violating person will be subject to VND100 million - VND 200 million monetary fine or 1-3 year IMPRISONMENT/JAIL if he / she commits the crimes in either of the following situations:

- Dismissing 2 employees and more;
- Dismissing pregnant employees;
- Dismissing mothers of less than 12-month old baby; or
- Causing the dismissed employees commit suicide.

At the same time, the violating person may also be prohibited from holding certain professional positions within 1- 5 years.

Employment of Employees Under Age 16

Anyone who employs a person under 16 to do hard or dangerous work or work that involves contact with harmful substances in any of the following cases will be subject to a fine of VND 30 million - VND 200 million or up to 03-year non-custodial reform or 06 - 36 month imprisonment:

- The offender previously incurred a civil penalty or has a previous conviction for the same offence which has not been expunged;
- The offence results in bodily harm to 01 people who suffers from 31% - 60% physical disability;
- The offence results in bodily harm to 02 people or more who suffer from a total physical disability of 31% - 60%.

A sanction of 03 - 07 year imprisonment applies in the following cases:

- The offence has been committed more than once;

- The offence involves 02 workers or more under 16;
- The offence results in the death of 01 person or bodily harm to 01 person who suffers from over 61% physical disability;
- The offence results in bodily harm to 02 people, each of whom suffers from 31% - 60% physical disability;
- The offence results in bodily harm to 03 people or more who suffer from a total physical disability of over 61%.

A sanction of 05 – 10 year imprisonment applies in the following cases:

- a) The offence results in the death of 02 people or more;
- b) The offence results in bodily harm to 02 people or more, each of whom suffers from over 61% physical disability;
- c) The offence results in bodily harm to 03 people or more who suffer from a total physical disability of over 122%.

The offender might also be subject to a monetary fine of VND 10 million to VND 50 million.

Evading Payment of Social Insurance, Health Insurance, Unemployment Insurance for Employees

A corporate legal entity who commits the following crimes is subject to monetary fine of VND 200 million to VND 500 million:

- The amount of insurance contribution evaded is VND 50 million to under VND 300 million;
- The offender fails to pay insurance for 10 - 49 employees.

A corporate legal entity who commits the following crimes is subject to monetary fine of VND 500 million to VND 1 billion:

- The offence has been committed more than once;
- The amount of insurance contribution evaded is VND 300 million to under VND 1 billion;
- The offender fails to pay insurance for 50 - 199 employees;
- The offender collects or deducts insurance contribution from the employees at the amount of VND 50 million to under VND 300 million or from 10 -49 employees but fails to pay insurance [to the authority].

A corporate legal entity who commits the following crimes is subject to monetary fine of VND 1 billion to VND 3 billion:

- The amount of insurance contribution evaded is VND 1 billion or more;
- The offender fails to pay insurance for 200 employees or more;
- The offender collects or deducts insurance contribution from the employees at the amount of VND 300 million to under VND 1 billion or from 50 - 199 employees but fails to pay insurance [to the authority].

Coercive Labour Practices

Any person that uses violence or threat of violence or other methods to force a person to work against his/her will, depending on each case, be subject to monetary fine of VND30 million – VND200 million, 06-month to 12-year imprisonment, or prohibited from holding certain positions or doing certain jobs within 01 - 05 years.

Action Plan

What we recommend to you now:

- You should update your Internal Labour Rules
- You should inform your managing team about these new rules !

We are fully qualified to assist you with this work. Kindly let us know if you require our assistance.

Please do not hesitate to contact Mr. Oliver Massmann under omassmann@duanemorris.com; if you have any questions on the above or should you request our assistance. Oliver Massmann is the General Director of Duane Morris Vietnam LLC.

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