

# СОЦИАЛЬНО-ЭКОНОМИЧЕСКОЕ РАЗВИТИЕ

DOI: 10.54631/V.S.2024.83-329843

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## Amendments to Vietnam Labor Law after Two Years of Implementing European-Vietnam Free Trade Agreement

**Abstract.** The article presents the labor policy commitments in the Free Trade Agreement between Vietnam and the European Union (EVFTA), analyzes the progress in amending the law related to Vietnamese labor according to the signed commitments, identify limitations and propose some solutions for effectively implementing the commitments in the EVFTA Agreement.

**Keywords:** Vietnam, EU-Vietnam Free Trade Agreement, labor policy, labor commitments.

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**For citation:** Dang Thi Phuong Hoa (2024). Amendments to Vietnam Labor Law after 2 Years of Implementing European-Vietnam Free Trade Agreement. *The Russian Journal of Vietnamese Studies*, 8 (3): 34–44.

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## Поправки к трудовому законодательству Вьетнама после двух лет реализации европейско-вьетнамского соглашения о свободной торговле

**Аннотация.** В статье представлены обязательства по трудовой политике в Соглашении о свободной торговле между Вьетнамом и Европейским союзом (EVFTA), анализируется прогресс во внесении поправок во вьетнамское трудовое законодательство в соответствии с принятыми СРВ обязательствами, определяются ограничения и предлагаются некоторые решения для эффективной реализации обязательств по соглашению EVFTA.

**Ключевые слова:** Вьетнам, Соглашение о свободной торговле между ЕС и Вьетнамом, трудовая политика, трудовые обязательства.

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**Для цитирования:** Данг Тхи Фьонг Хоа. Поправки к трудовому законодательству Вьетнама после двух лет реализации Европейско-вьетнамского соглашения о свободной торговле // Вьетнамские исследования. 2024. Т. 8. № 3. С. 34–44.

## Introduction

The EU-Vietnam Free Trade Agreement (EVFTA) is a free trade agreement (FTA) of new generation. It was signed on June 30, 2019, ratified by the European Parliament on February 12, 2020 and ratified by the National Assembly of Vietnam on June 8, 2020. EU member economies are important economic partners, large markets, and still have great potential for Vietnamese exports. Effective exploitation of these markets in the coming years will contribute to strongly promoting Vietnam's exports, adding more development momentum. EVFTA requires Vietnam to continue improving institutions and ensure serious implementing its commitments, including labor commitments.

The impact of the EVFTA on Vietnam has received much attention in the Vietnamese expert community. This concerns both general issues [Trần Tuấn Anh 2019; Nguyễn Chiến Thắng, Đinh Mạnh Tuấn 2021; An An 2023] and the impact on individual industries and areas [Nguyễn Tuấn Việt, Ngô Văn Vũ 2020; Phan Thu Trang et al. 2023]. The article by K. Marslev and K. Staritz is devoted to labor legislation issues [Marslev, Staritz 2023]. The authors examine in detail the process of introducing into the agreement the necessary changes to Vietnamese labor law.

This article is dedicated to the implementation of labor commitments in the EVFTA Agreement. This process continues to affirm Vietnam's seriousness and efforts in implementing international labor standards, contributing to process of building and perfecting labor regulations in order to create a foundation for the proper operation of the Vietnamese labor market as well as ensuring the realization of the country's socio-economic goals.

## Labor requirements in the EVFTA Agreement

In the 17 chapters of the EVFTA Agreement, the 13th chapter on “Trade and Sustainable Development”, emphasizes labor rights and sustainable environmental protection, to ensure that free trade contributes to sustainable development and support workers and businesses to achieve equal economic benefits. Article 13.4 on Multilateral Labor Standards and Agreements, states that “Each Party reaffirms its commitment, consistent with its obligations under the ILO and the ILO Declaration on Fundamental Principles and Rights in the work place and follow-up actions, adopted by the International Labor Conference at its 86th session in 1998, in particular:

(a) Freedom in association and substantive recognition of the right to collective bargaining;

(b) end all forms of forced or compulsory labor;

(c) effectively eliminate child labor; and

(d) end discrimination in employment and occupation, etc.

Each Party shall: (i) Continue and sustain efforts to ratify fundamental ILO conventions; (ii) consider the adopting other conventions classified by the ILO as appropriate for the time being, taking into account domestic conditions; (iii) exchange information with the other Party regarding the ratification referred to in subparagraphs (i) and (ii). Each Party reaffirms its commitment to the effective implementation of its domestic laws and regulations and to the ILO Conventions ratified by Viet Nam and the European Union member states.

In addition to regulations on labor standards, the EVFTA Agreement has other commitments related to labor, most of which are recommended (optional) commitments on improving labor working conditions, cooperation among member countries on the EVFTA Agreement in the field of labor. However, there are some mandatory commitments such as establishing a mechanism to implement the Labor Chapter, providing a separate process for countries to consult with each other to resolve problems related to the implementation of the Chapter on Labor.

## **Vietnam's policy adjustment according the EVFTA Agreement**

### ***Vietnam's adjustment of the legal framework on labor***

The commitments on labor and trade unions in the EVFTA Agreement have basically been finalized into Vietnam's labor legal system. New legal documents provide better protection of basic labor rights and principles, including non-discrimination and gender equality, the abolition of forced and child labor, collective bargaining and freedom of association. Specifically, the Labor Code is in line with the 8 fundamental ILO Conventions and complies with the 4 basic labor standards contained in the ILO Declaration on Fundamental Rights and Principles in the Workplace (1998). Vietnam's 2019 Labor Code comes into force from 2021, marking a new step in the process of modernizing the governance of the labor market system in Vietnam, demonstrating the Government's efforts in building a favorable legal environment for sustainable business and economic development. The 2019 Labor Code meets the requirements of the EVFTA Agreement. The revised regulations relate to three basic groups of labor standards, including freedom on association and collective bargaining; ensure equality and non-discrimination in labor; protect juvenile workers and eliminate child labor.

### ***Vietnam's policy on the right to freedom on establishment, participation in representative organizations, exercise of the right to collective bargaining***

An important commitment in the EVFTA Agreement is to comply with and ensure the implementation of international labor standards. The right to freedom of association has been noted in the Constitution of Vietnam since the founding of the country. For example, in the 2013 Constitution' in Article 25, freedom of association is also recognized as a basic right of citizens. Vietnam has almost all kinds of legal documents to implement the right to freedom of association as Laws, Ordinances, Circulars, Decrees, Regulations, Regulations, Directives and Collective Labor Agreements; correspondingly, there are regulations on the rights and responsibilities of the parties related to trade union rights.

The 2019 Labor Code has fundamentally improved a number of issues related to employees and employers, in which the employer's interference in the operation of the labor representative organization is prohibited. Besides, for the first time, Vietnam legalized the role of Vietnam Chamber of Commerce and Industry (VCCI), the Union of Vietnam Cooperative Alliance and other representative organizations of employers in representing, protecting legitimate rights and interests, and participating in building progressive, harmonious and stable labor relations; Vietnam expanded the employer's right to unilaterally terminate the labor contract; Employers are entitled to enter into multiple definite-term labor contracts for elderly employees and foreign workers.

Regarding wages, the State does not directly intervene in the salary policy of enterprises. Wages are made on the basis of negotiation and agreement between the parties. Enterprises are proactive in making salary scales, salary tables and labor norms. The Labor Code stipulates many new points on dialogue at the workplace, collective bargaining agreements related to employees, employers and representative organizations. Vietnam is committed to allowing employees the right to establish representative organizations at enterprises. This organization, after being established by itself, has two options, one is to voluntarily join the Vietnam General Confederation of Labor System, the other is to register with the Ministry of Labor, War Invalids and Social Affairs (MOLISA) to be independent.

One of the important new points in the Labor Code is allowing the establishment of workers' organizations at enterprises out of the Vietnam Trade Union in order to promote and improve the effectiveness in the employment relationship. This is also a step forward of the State in fulfilling its obligations under the ILO Convention (Convention 98)<sup>1</sup>, the Convention on Economic, Social and Cultural Rights (ICESCR, 1966) and labor commitments in the EVFTA Agreement. In fact, Vietnamese businesses are implementing commitments on labor and trade unions in the EVFTA Agreement, allowing workers to freely establish and join organizations representing workers, exercise their collective bargaining.

#### ***Vietnam's policy adjustment on the elimination of discrimination at work***

Vietnam has acceded to Convention 98 in order to demonstrate its political determination, in line with the Party's guidelines and State's policies on international integration in the fields of labor and trade unions.

The new Labor Code has expanded the scope of work for which workers allowed to strike, adding provisions on forced labor, and provisions on anti-discrimination in the workplace. This is a fundamental and comprehensive amendment and supplement, making Vietnam's labor law system more in line with the principles of the socialist-oriented market economy, adapting to the latest developments in the field of international labor standards.

So, implementing the commitments in the EVFTA Agreement and complying with the provisions of the law shows that, Vietnam is actively implementing international labor standards. Vietnamese businesses are gradually reducing discrimination in recruitment, employment and income [Trần Thị Bảo Khanh 2022].

### **Vietnam's actual implementation of labor commitments**

#### ***Building a harmonious, stable and progressive labor relationship in the working environment***

Vietnam's state management is showing special close attention to employees and trade unions. Besides many businesses are aware of their social responsibility in taking care of employees' lives. Enterprises are having better implementation of the labor law.

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<sup>1</sup> ILO Convention 98 on the prevention of discrimination, interference and manipulation of trade unions and the promotion of effective and substantive voluntary collective bargaining.

The Trade union organization is doing better and better at protecting the legitimate rights of workers at the grassroots. When employees have problems, the Trade union has researched, recorded and proposed with enterprises to solve together. At the same time, trade unions at all levels, especially the Vietnam General Confederation of Labor, held orientation conferences and training on ways to reduce work stoppages and strikes. When there are cases and pressing concerns still lurking, the trade union has coordinated with the employer to solve together and create a harmonious labor relationship. To do this, trade unions at all levels have actively increased awareness among workers, thereby helping them better understand their rights and responsibilities in labor relations. Thereby, employees can limit unnecessary conflicts in the workplace. As a result, work stoppages and strikes throughout the country tended to decrease. According to statistics of the Vietnam General Confederation of Labor, the number of strikes in Vietnam has decreased continuously in recent years, from 329 in 2017, 214 in 2018, 120 in 2019. In the first 2 months of 2022, Vietnam has about 30 strikes — less than the same period in 2021 (35 strikes) [Phan Duong, Đức Hùng 2022].

#### ***Vietnam minimizes child labor illegally***

The fact that children have to work early has been causing severe consequences, affecting their harmonious development, hindering their access to and enjoyment of appropriate education. This hinders the preparing a better future for children, loses children's rights and negatively impacts socio-economic development, especially the quality of human resources in the future.

The fact that businesses use child labor leads to the risk of orders being cut or removed from the global supply chain, increasing the cost of recruiting replacements, reducing reputation and making it difficult to attract investors.

At the international conference on international commitments related to the prevention and elimination of child labor on May 27, 2022, presentation of Deputy Minister of Labor — Invalids and Social Affairs Nguyen Thi Ha showed that, the rate of child labor in Vietnam is not high and decreases over the years. The national survey on child labor shows that the percentage of child labor in Vietnam decreased from 15.5 % (in 2012) to 9.1 % (in 2018) [Hà Quân 2022].

In general, Vietnam has relatively fully developed regulations to protect and care for children, in accordance with international law. Vietnam is the first country in Asia and the second in the world to ratify the United Nations Convention on the Rights of the Child. Viet Nam has also ratified ILO Convention No. 182 on “Prohibition and Immediate Action to Eliminate the Worst Forms of Child Labor” [Quyết định số 169/QĐ-CTN], ILO Convention No. 138 on the minimum age for work [Công ước số 138].

The solutions of the Government of Vietnam include universalization of general education, illiteracy eradication, support for ethnic minority children, children with disabilities, children in poor households and special circumstances; strengthen policies on social security and poverty reduction; minimize the negative impact of the COVID-19 epidemic. On December 1, 2021, the Ministry of Labor, War Invalids and Social Affairs of Vietnam, the International Labor Organization (ILO) and the United Nations Children's Fund (UNICEF) coordinated to organize the implementation of the Program to prevent and reduce Minimizing child labor illegally in the period 2021—

2025, with a vision to 2030. The program aims to rapidly reduce the rate of child labor in the coming time, specifically reducing the rate of child labor children aged 5–17 years old from under 4.9 % (by 2025) to 4.5 % (by 2030) [An Linh 2021].

### **Some legal provisions are not consistent with international labor standards and commitments in the EVFTA Agreement**

Regarding the concept of collective labor dispute (CLD), referencing the laws of some countries, the concept of collective labor dispute is regulated in different ways [Trần Hoàng Hải 2011]. According to the ILO [ITC 2013:18], a labor dispute over rights is a disagreement between a person or employees and their employer regarding a violation of “existing” rights prescribed by the law, the labor contract; and when the negotiation fails, the labor dispute over benefits related to the “future” rights and obligations do not reach the agreement on terms and conditions. Disputes over benefits are often collective.

Vietnam's law also has similarities and stipulates in a way that clearly distinguishes individual labor disputes, the collective labor dispute over rights, and the collective labor dispute over benefits. Article 179 of the 2019 Labor Code stipulates a fairly broad general concept of labor disputes<sup>1</sup>. The inclusion of the “Employer's Representative Organization” as a subject in one party of collective labor dispute, in line with other new points of the 2019 Labor Law, regarding the right to establish and join a representative organization of employees at the grassroots and to be compatible with provisions on Collective bargaining Agreement. However, in the concept of collective labor dispute, the 2019 Labor Law omits a subject on the employees' side which is the “labor collective”. The regulation of collective labor dispute that requires employees to have a representative institution to be able to identify the collective labor dispute is an inadequacy in policy making and law implementing<sup>2</sup>. Simply, the concept of “labor collective” is not synonymous with the concept of “employee representative organization”. According to the jurisprudence dictionary: “labor collective” is “a collection of employees who have a relationship with each other within a certain scope of employment” [Ministry of Justice 2006: 694]. This content does not imply the nature of a representative organization and in fact there is always a labor collective without a representative organization. The application of the concept of collective labor dispute that only the employee's party is the representative organization raises a number of problems as follows:

- In case there is a dispute between a group of employees without a representative organization, it will not be identified as a collective labor dispute and as such, it will have to be resolved according to individual labor dispute settlement procedures. If the number of employees is large, it will also be inadequate for the resolution of individual

<sup>1</sup> Point b, Clause 1, Article 179 of the 2019 Labor Code is: “Disputes over rights or interests between the labor collective or one or more representative organizations of employees and the employer or one or more representative organizations of the employer”.

<sup>2</sup> Clause 3, Article 3 of the 2019 Labor Code. Regulations on the concept of “Employees Representative Organization”. The content includes an explanation of “Employee Representative Organization” and “Employee Representative Organization at the grassroots”.

labor disputes. This case is also common because many enterprises do not have employee representative organizations.

— In case there is a dispute between the collective of employees who are members of the representative organization of workers at a business unit, but for some reason this organization does not represent them or has contrary point of view to the labor collective, it can only be resolved according to each individual labor dispute case.

In case there is a dispute over a labor issue of many labor collectives of many business units (for example, dispute over working conditions, disease prevention in industrial parks, export processing zones...) and are not represented by the representative organizations of workers in business units, although the dispute is large-scale, it is still not identified as a collective labor dispute. It is completely inappropriate to deal with each individual labor dispute [Nguyễn Thu Ba 2022].

The reality in Vietnam has also clearly reflected the above-mentioned shortcomings. For example, in mid-December 2021, more than 400 workers working at Asia Garment Co., Ltd. Branch, Dong Hung Thuan Ward, District 12, Ho Chi Minh City stopped working collectively to demand payment of wages and social insurance debt recovery. Without the participation of grassroots representative organizations, state agencies had to guide workers to initiate lawsuits. Dispute on December 20, 2021 of more than 200 workers of Chan Kiet Joint Stock Company, Ben Cat town, Binh Duong province about the settlement of dossiers of entitlement to epidemic support policies is also the case without the role of the grassroots representative organization, and as the result, Binh Duong Provincial Labor Confederation must coordinate with the authorities to solve this case.

### ***Inadequacies in the provisions of the law on the use of child labor in Vietnam***

*About the minimum age to join the labor force.* The minimum age is the basic standard of labor law, which has been defined in ILO Convention No. 138, a floor age of not less than 15 or not less than the age at the end of the compulsory education program (Clause 3, Article 2). The minimum age in Vietnam's 2019 Labor Law is 15 years old (Clause 1, Article 3), completely in line with international standards, however, there is no specificity for the types of jobs that are allowed to use young workers and prohibit the use of child labor according to ILO standards.

*Regarding the working time and rest time of child labor.* Regarding working hours, the Vietnam's 2019 Labor Law still maintains the regulations on the duration of no more than 04 hours/day and 20 hours/week for employees under 15 years old. Employees from 15 years old to under 18 years old are allowed to work no more than 08 hours/day and 40 hours/week (Article 146). Regarding overtime, the 2019 Labor Law stipulates that juvenile workers from 15 to 18 years old are allowed to work overtime and work at night for some jobs as prescribed by law (Clause 2, Article 146). However, ILO Recommendation No. 146 on the minimum age for employment prohibits overtime work for child labor because of the time for education, rest and other activities (Paragraph 13). Thus, Vietnam's law is not compatible with international conventions on this provision. Regarding rest time, currently there is no separate regulation for child labor.

*About the list of occupations banned from using child labor.* Circular No. 09/2020 stipulates the list of jobs that harm the physical, intellectual and personality

development of a child labor (69 jobs) in Appendix III; the list of harmful workplaces to the physical, intellectual and personality development of adolescents (06 locations) in Appendix IV. It can be seen that this Circular has added many jobs and groups of jobs that are prohibited from using child workers compared to Circular No. 10/2013/TT-BLDTBXH dated June 10, 2013 (promulgating the List of jobs and workplaces that prohibit the employment — adolescents, especially those in the heavy industry, chemicals, traditional craft villages, the private sector and the home economy where the labor status are complicated). However, Circular No. 09/2020 has not yet stipulated that a number of occupations in the fisheries and agriculture sectors are assessed as dangerous due to the use of equipment and machinery lacking occupational safety standards, including: heavy and toxic factors such as plowing, harrowing, etc. in the field of agriculture. In addition, in Section 35, Appendix III of Circular No. 09/2020 on the list of jobs that damage the physical, mental and personality development of adolescents, stipulates jobs on seagoing ships but It has not been clarified whether fishing and seafood processing are included because this is also considered a heavy and dangerous job for underage workers.

*On inspection and handling of violations in the use of child labor.* Vietnam still follows the unified labor inspection model, which means there is no specialized inspection of juvenile workers. The Inspector of Labor — Invalids and Social Affairs is in charge of all issues related to labor, including juvenile workers. Meanwhile, currently, two-thirds of the total number of children working in 21 jobs, in the fields of agriculture — fishery, services and industry, are small-scale business areas, which are less-examined. In addition, current sanctioning measures applied are mostly administrative measures, because it is very difficult to determine the cruel treatment of people. The 2015 Penal Code stipulates the examination of penal liability for those who employ people under 16 years old to do heavy, dangerous and hazardous jobs, but underage employees according to the 2019 Labor Law are under 18 years old. Thus, the criminal law has “left open” the sanctioning mechanism for employers from 16 to under 18 years old to do the above jobs. Moreover, the level of fines for violations is a small amount of money, not enough of a deterrent.

### **Some key solutions to ensure Vietnam’s implementation of labor commitments in the EVFTA Agreement**

In the coming years, the EVFTA Agreement will enter a period of deep tax reduction. Therefore, in order to make good use of the incentives to promote the export of goods to the markets of the EVFTA member countries, Vietnam needs to implement a number of key solutions to ensure the implementation of labor commitments in this agreement:

(1) *Amend and supplement inadequacies in the legal system on labor relations* in order to well implement the commitments specified in the EVFTA Agreement such as finalizing the state management institutions on Vietnam’s labor relations in general and child labor in particular; perfecting the state management of institutions representing the employees and the employers, perfecting the state management of the institutions



dealing with labor relations; regarding child labor, requiring suppliers to commit to using legally aged workers... For small business households, the authorities need to specify the level of fines and the cases of criminal penalties to change people awareness.

(2) *Focus on developing human resources and trade unions* to ensure the implementation of commitments in the EVFTA Agreement: Innovating methods of gathering workers; Expand the members; Strengthen the management, training and retraining of trade union officials in a professional manner.

(3) *Strengthening information updates for Vietnamese businesses and workers*: Disseminate information on the comprehensive and specific impacts of the implementation of labor commitments in the EVFTA Agreement; about changes in labor law policies and practices of implementing labor commitments.

(4) *Proactively respond to and resolve disputes and labor-related issues*: Consolidate arbitration and mediation organizations and improve their operational capacity.

(5) *International cooperation*: Strengthen and promote cooperation with the ILO in impact assessment and implementation of ILO Basic Conventions in Vietnam; strengthen cooperation with many countries to detect and timely intervene in manifestations of human trafficking, including child trafficking and child labor.

(6) Enterprises and employers say no to child labor and recommend that the labor recruitment process be strict, especially the verification of documents; make use of social networks to estimate human resources;

(7) For the sake of sustainable development and ensuring the quality of the future workforce, in order for the legal system on child labor to be effectively implemented through strengthening the inspection and examination system, two types of monitoring can be built are following:

— Competent state agencies: Build a team of labor inspectors with their own inspection process on types of child labor. At the same time, training to improve the professional qualifications of inspectors and expand their authority on the enforcement of sanctions such as the right to administratively fine the use of child labor in the workplace.

— Grassroots supervision mechanism: due to the fact that, in Vietnam, informal sector with a high proportion of child labor is often less controlled, it is necessary to build a monitoring team from the people themselves to promptly detect and denounce acts of using child labor. This surveillance force can be highly effective because of its timeliness and low operating costs.

## **Conclusion**

With 16 FTAs being implemented and negotiated, Vietnam has built a free trade framework with nearly 60 countries, affirming its consistent policy of continuing economic renewal, international integration and supporting trade liberalization in an open, transparent and rules-based manner. The implementation of labor commitments in the EVFTA Agreement will contribute to improving working conditions, reproducing labor power and improving the quality of Vietnamese human resources.

The revised Labor Law was approved by the National Assembly of Vietnam on November 20, 2019, playing an important role in paving the way for the implementation of Vietnam's commitments on labor while the Labor Law of 2012 has some provisions that are not compatible with the basic principles and rights in labor according to the 1998 Declaration of the International Labor Organization.

It can be said that the promulgation of the revised and supplemented Labor Law in 2019 on the one hand shows the serious attitude and effective implementation of Vietnam's commitments in the agreements, and at the same time creates an Open, transparent and close to international standards as a solid foundation for international integration.

Vietnam's implementation of labor commitments in the EVFTA Agreement will certainly be further adjusted to achieve the highest conformity with international regulations.

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Дата поступления статьи: 14.04.2024

Дата поступления в переработанном виде: 10.07.2024

Принята к печати: 18.08.2024

Received: April 14, 2024

Received in revised form: July 10, 2024

Accepted: August 18, 2024