

THE RIGHT TO WORK IN A SAFE WORKPLACE OF WORKERS IN VIETNAM

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Abstract

The need for workers to be respected and ensure their right to work in a safe environment is always an objective necessity of any production. Because, labor relations are relationships associated with the identity of the employee (employee), that is, associated with the health, life, honor, and dignity of the employee. The right of workers to work in a safe environment is an important condition for maintaining labor relations in the employing unit, thereby improving productivity, labor quality, increasing competitiveness and creating gain a strong position for employers in the market. Researching theoretical issues and assessing the current state of promulgation and implementation of laws on workers' right to work in a safe environment is always necessary. Therefore, the writer researches and wishes to comprehensively evaluate the provisions of labor law on this issue.

Keyword: labor safety; labor hygiene; working hours; relax time

1. Introduction

Around the world, the issue of ensuring a safe working environment for workers is always focused on by the laws of most countries. With increasingly reasonable legal regulations combined with the cognitive development of employees as well as employers, it has contributed to minimizing factors that are harmful to mental health and safety. physical condition in the employee's working environment.

In Vietnam, regulations related to workers' right to work in a safe environment have been issued since our country gained independence in 1945. Through many amendments and supplements, the right to work in a safe environment for workers is increasingly improving and is clearly expressed in the Labor Code passed by the 14th National Assembly at its 6th session on November 20, 2019, taking effect from January 1, 2021. Accordingly, the right of workers to work in a safe environment is concretized with rights such as the right to be guaranteed to work in a democratic, fair, and civilized labor management environment; the right to be guaranteed reasonable working hours and rest time; the right to receive reasonable salaries, allowances and compensation to compensate for labor waste; the right to ensure labor safety and occupational hygiene. These rights are of great significance in determining the success of the employer's production and business activities.

In practice, ensuring workers' right to work in a safe environment has achieved significant results. However, due to many different reasons such as social awareness of workers' right to work in a safe

environment is not yet complete, the organization of implementation still has many shortcomings... thus ensuring workers' right to work in a safe environment has not yet achieved the desired results.

2. Methodology

Specific research methods used include retrospective methods of documents, analysis, proof, comparison, synthesis, and scientific prediction. Specifically:

- The retrospective method of documents is used to gather domestic and foreign documents and research works based on timelines, fields of law as well as legal systems to select and collect. Relatively complete documents related to the topic from different sources.

- Analytical methods are used in all contents of the research to analyze and understand theoretical issues, legal regulations as well as practical implementation, and requirements for completion. provisions of law as well as proposals to amend and supplement a number of provisions of law on the right of workers to work in a safe environment according to the purposes and tasks set out in the topic.

- The comparative method is used in most content to compare different views among scientists in research projects; between the provisions of current labor law and the provisions of labor law in previous periods; between the provisions of current labor law and other laws related to workers' right to work in a safe environment; between the provisions of Vietnamese labor law and the provisions of the ILO and labor laws of countries around the world.

- The scientific forecasting method is used throughout the process of researching the topic and is mainly used in the process of analyzing reasonable points as well as inadequacies in regulations and practical implementation of the law on the right to work in a safe environment for workers, in proposing recommendations to improve the law on the right of workers to work in a safe environment.

3. Research results

3.1. Current legal status of workers' right to work in a safe environment

The employee's right to work in a safe environment is the employee's right to be provided with a working environment in which the employee's honor and dignity are guaranteed; ensure standards of occupational safety and hygiene; reasonable working hours and rest times; be assigned appropriate work to protect the health of employees as well as improve productivity, quality, and labor efficiency.

The content of the employee's right to work in a safe environment includes the following:

- The right to ensure labor safety and labor hygiene;
- The right to be assigned suitable work;
- The right to ensure reasonable working hours and rest time;
- The right to ensure the honor and dignity of workers

Firstly, regarding the right to ensure labor safety and occupational hygiene: state agencies have issued more than 200 types of occupational safety and hygiene standards for application in many different economic and technical sectors. Employers are required to strictly comply with these regulations (cannot be changed or agreed to change) to avoid the risks of labor accidents and prevent occupational diseases for employees. The system of standards, regulations, processes and regulations on occupational safety and health includes two types: national standards applicable to all types of businesses at the national level and industry-level standards applicable within the country. Employers in the process of production, investment in equipment, machinery and industry must ensure strict requirements for factories, machinery, equipment... to create a safe and secure working space. In addition, employees are also given the right by law to be equipped with protective equipment as well as enjoy incentives to limit the effects of harmful working conditions. Currently, the issue of personal protective equipment is regulated in the 2015 Law on Occupational Safety and Hygiene. According to this document, personal protective equipment are necessary tools and means that workers must

be equipped to use while working or performing tasks to protect their bodies from the effects of dangerous and toxic factors arising during the working process, when technological solutions are used, equipment, safety techniques, and occupational hygiene at the workplace cannot be completely eliminated. Personal protective equipment that employers are obliged to provide to employees usually includes one or several types such as: helmets to prevent traumatic brain injury, gas masks, boots, shoes, gloves... are means of directly protecting the lives and health of workers, so the law prohibits employers from allocating money instead of allocating personal protective equipment or giving money to employees to buy on their own. Not only is it responsible for equipping employees with personal protective equipment working in dangerous and toxic working conditions, employers are also responsible for instructing the use of such equipment and periodically inspecting it. during operation. In principle, employers must implement technical measures to eliminate or minimize the harmful effects of dangerous and toxic factors and protect employees personally.

Second, about the right to be assigned appropriate work: the right to be assigned appropriate work is also one of the very important rights of employees. Workers are attached and exposed to the work environment for at least 8 hours a day, so the working environment has a direct and long-term impact on workers' health. Each toxic element that exists in the working environment can have a negative impact on the body's normal functions and activities. Therefore, arranging work appropriately for employees is extremely important for the health of employees. When selecting workers, during the working process, when transferring workers to other jobs... Employers must base on the standards and health status of workers to decide on job assignments suitable to the worker's health. Clause 3, Article 21 of the Law on Occupational Safety and Hygiene stipulates: "Employers shall organize health examinations for employees before being assigned to work and before moving to more harmful or dangerous jobs, or after having a work accident or occupational disease, workers have recovered health and continue to return to work, unless the Medical Council has examined and assessed the level of working capacity decline". Labor law not only ensures the compatibility between employee health and work at the stage of contract conclusion but also at the stage of terminating the labor contract. The labor law ensures the right to unilaterally terminate the labor contract for employees in cases where the employee is sick, pregnant, or whose health is no longer suitable for the current job. In addition, the labor law stipulates a list of heavy and hazardous jobs that do not use child labor or pregnant women, but in reality, this regulation is violated by many businesses and agencies. According to the 2018 National Survey on Child Labor conducted by the Ministry of Labor, War Invalids and Social Affairs in coordination with the General Statistics Office and ILO, in 2018 there were a total of 520,000 child laborers working in various occupations. at risk of falling into the list of prohibited employment of minors. Through the survey's statistics, it shows that a large number of child laborers are being abused to do heavy and hazardous work at a very young age. Some of them are even under 10 years old, which is too young to work, let alone do heavy, hazardous work. The use of child labor in such occupations by employers not only seriously violates children's rights and violates labor law regulations, but also seriously affects physical and mental health as well as their future.

Third, about the right to ensure reasonable working hours and rest times: like most countries, Vietnam regulates maximum working hours, and specific working hours will be determined by both parties but not exceeding the legal time limit. Labor laws set limits by standardizing working hours. Standardization of working hours is the regulation of the number of working hours in a day or week; number of working days in a month and in a year. In essence, standardizing working hours is regulating the length of the working day or week for employees. For normal working days, it is stipulated that no more than 8 hours a day are generally applied to normal work as prescribed in Clause 1, Article 105 of the Labor Code. In other cases, due to the nature of production, work, weather conditions, seasonality or production in shifts or crews, the number of working hours per day, week or month must be re-allocated appropriately. The employer must agree with the local trade union on the basis of signing a collective labor agreement and the general principle that the

average working time does not exceed 8 hours/day or 48 hours/week. For shortened working days, to better protect the health of people who work in heavy, toxic, dangerous jobs or people who have unique physiological or functional characteristics such as labor. For pregnant women approaching childbirth, underage workers, disabled workers, and the elderly, the law stipulates that working hours should be shortened to shorter than the working hours of a normal working day while still maintaining full salary. Working days can be shortened by 1-2 hours/day depending on the subject. This is a very humane regulation that also aims to ensure human rights for employees, built on human physiological and psychological needs. People who do heavy and hazardous work, pregnant women, minor workers, and elderly workers are subjects with a higher need for rest than normal people, so shortening the time is an inevitable need to protect their physiological and psychological health. In addition, in order to limit employers' organization of overtime, the labor law regulates cases of overtime mobilization, overtime conditions, overtime hours... Limiting overtime is not only aims to limit unemployment (because businesses will mobilize overtime and limit recruitment of additional workers) but also contributes to reducing accidents and other incidents in the workforce, to ensure better health of employees. Employers and employees can agree to work overtime and must meet the conditions specified in Article 107 of the 2019 Labor Code. Along with regulations on maximum working hours, the law also has regulations on minimum rest periods for employees and there are rest periods during which workers are still paid. The employee's right to rest is a constitutional right recognized in Article 35 of the 2013 Constitution. The Labor Code specifically stipulates that employees are entitled to paid leave in the following cases: breaks between hours (Article 109 of the Labor Code), Weekly leave (Article 111 of the Labor Code), annual leave (Article 113 of the Labor Code), public holidays (Article 112 of the Labor Code), personal leave (Article 115 of the Labor Code).

Fourth, about the right to ensure the honor and dignity of workers: The right to protect honor and dignity is recognized in the Constitution and specified in specialized laws. Clause 1, Article 20 of the 2013 Constitution stipulates: "Everyone has the right to physical inviolability, and is protected by law in terms of health, honor and dignity; not be subject to torture, violence, coercion, corporal punishment or any other form of treatment that violates the body, health, honor or dignity". Before being a worker, they are a human being, so they must be protected by law against any infringement of honor, dignity and reputation in labor relations. Protecting the honor and dignity of employees is not regulated as a separate chapter in the Labor Code, but is only stipulated sporadically in a number of articles in the Labor Code and a number of other labor legal documents. However, through the provisions of labor law, labor law also exudes the spirit of respect for the honor and dignity of employees as a principle of labor law. The Labor Code prohibits discrimination based on gender, ethnicity, skin color, social class, marital status, belief, religion, HIV infection, disability or reasons for establishment, Join and operate trade unions (Article 8 of the 2019 Labor Code). The regulations on this issue come from the philosophy of equal rights of every human being at birth. Therefore, in labor relations, workers need to be treated equally regardless of skin color, gender, ethnicity, or religion simply because that is their natural right. Protecting honor and dignity is given special attention to female workers because they are vulnerable and vulnerable to bullying and abuse in labor relations. The labor law has introduced many regulations to protect female workers from actual discrimination in the labor market against female workers. One of the obligations of employers towards female employees according to Clause 1, Article 135 of the Labor Code is: "Ensure implementation of gender equality and measures to promote gender equality in recruitment, employment, training, working hours, rest hours, salaries and other regimes". In addition, for employees who are domestic workers, the Labor Code also clearly stipulates the employer's obligation to: "Respect the honor and dignity of domestic workers" according to Clause 3, Article 181. To protect workers in cases where workers are vulnerable to discrimination, pressure or retaliation. The law has provided protection for workers in a number of cases. For those who establish, join or operate trade unions, the law stipulates: Trade union freedom is one of the basic rights of workers recognized in international legal documents. In our country, the right to freedom

of trade unions is a constitutional right recognized in Article 10 of the 2013 Constitution. On that basis, the State has concretized in laws and sub-law documents to ensure this right for workers. workers in reality, typically the 2012 Trade Union Law and the Labor Code. Accordingly, Clause 1, Article 5 of the 2012 Trade Union Law directly stipulates the freedom of trade unions of workers as follows: "Employees are Vietnamese working in agencies, organizations, and enterprises with the right to establish, join and operate trade unions" or according to point c, clause 1, Article 5 of the Labor Code, employees have the right to "establish, join and operate trade unions, professional organizations and other organizations according to provisions of the law". In the case of employees participating in strikes, the law prohibits the act of "retaliating and retaliating against workers participating in strikes and strike leaders" according to Clause 5, Article 219 of the 2012 Labor Code to avoid situations where Employers violate the honor, dignity, and health of employees. Participating in a strike is considered a right of employees, but strikes also directly affect the rights of employees, so this regulation is intended to prevent cases where employers threaten or commit acts of retaliation or unfair treatment. When an employee violates labor discipline, the law still prohibits all acts of violating the employee's body and dignity when disciplinary action is taken according to Clause 1, Article 128 of the Labor Code. This regulation demonstrates a very profound humanistic spirit. This means that no matter what the employee does wrong, no matter how serious the employee violates the law or internal regulations, the employer is not allowed to violate the human rights of the employee.

3.2. Some recommendations to improve the effectiveness of implementation of the Vietnam Labor Code on workers' right to work in a safe environment

Although the legal provisions are very strict, without an effective implementation mechanism, the moral rights of workers cannot be guaranteed in practice. Therefore, organizational measures are no less important than perfecting legal regulations. To improve the effectiveness of the Labor Code's enforcement of workers' right to work in a safe environment, we need to focus on the following measures:

Firstly, it is necessary to strengthen propaganda and dissemination of the law to both employers and employees so that all parties are clearly aware of their rights and obligations. This means that the understanding and respect when individuals are clearly aware of human rights will bring strength and connection so that human rights, including human rights in the field of labor, are increasingly better guaranteed.

Second, it is necessary to improve the operational efficiency of trade unions. Trade unions are the representative organizations of workers. Trade unions are given the function of protecting workers, but in reality this institution has not worked effectively. There needs to be many specialized trade union officials who are well-trained in expertise and legal knowledge. In addition, it is necessary to establish full trade unions in establishments that do not yet have trade unions.

Third, the inspection and sanctioning of violations by employers in the field of protecting employees' right to work in a safe environment needs to be carried out more effectively. First of all, it is necessary to build a team of labor inspectors with sufficient numbers and strong professional knowledge. In localities with many labor employers such as Hanoi and Ho Chi Minh City, it is necessary to have a specialized labor inspection apparatus at the district level so that this level can have a closer grasp of the grassroots situation and cases. Violations of employees' personal rights can be quickly detected, minimizing damage to employees' health as well as honor and dignity.

4. Conclusion

This study analyzed and commented on the provisions of the Labor Code on employees' right to work in a safe environment, thereby evaluating the compatibility of Vietnam's labor law regulations compared with the current reality law and international law. Based on the assessment of the advantages and limitations, the study makes a number of proposals to improve the Labor Code and improve its enforcement of the employee's right to work in a safe environment.

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References

- Ministry of Labor, War Invalids and Social Affairs (2019), Announcement on the situation of occupational accidents in 2019.
- Ministry of Labor, War Invalids and Social Affairs, General Statistics Office and ILO (2020), National survey on child labor 2018.
- Nguyen Dang Dung, Vu Cong Giao and La Khanh Tung (2009), Theory and law textbook on human rights, Hanoi National University Publishing House, Hanoi.
- Le Thi Hoai Thu (2001), " Need to improve regulations for female workers in Vietnam's labor law ", Journal of State and Law, No. 3, p. 13
- Hanoi Law University (1999), Dictionary explaining legal terms, Hanoi.
- Vo Khanh Vinh (2011), Human Rights, Social Sciences Publishing House, Hanoi.