

JANUARY 2025

NEWSLETTER



LAC DUY & ASSOCIATES



DISCIPLINED AND DISMISSED WITHOUT UNEMPLOYMENT ALLOWANCE: BOTH LEGALLY AND EMOTIONALLY PROBLEMATIC



**NEW
HIGHLIGHTS OF
THE TRADE
UNION LAW 2024**

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NEWSLETTER



LAC DUY & ASSOCIATES

Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of January 2025 with some notable updates and articles as follows:

- Disciplined and dismissed without unemployment allowance: both legally and emotionally problematic.
- New highlights of the Trade Union Law 2024.
- Legal document in 01/2025





DISCIPLINED AND DISMISSED WITHOUT UNEMPLOYMENT ALLOWANCE: BOTH LEGALLY AND EMOTIONALLY PROBLEMATIC



Pham Dang Khoa, Lac Duy & Associates (LDA)

The article was published in Saigon Economic Newspaper No.52-2024 on 26/12/2024

At first glance, this seems like a reasonable proposal when considering that the employee (labourer) violated labour discipline to the extent of receiving the highest level of disciplinary action. Moreover, the Labour Code 2019 emphasizes certain “objectionable” behaviours such as theft, embezzlement, gambling, intentional injury, and drug use in the workplace by listing these at the top of the violations that can result in dismissal.

This makes it more persuasive to "penalize" these violations by denying the benefits of unemployment insurance. In other words, the unemployment insurance fund should not serve as a "reward" for individuals who violate workplace discipline so severely as to warrant dismissal.

However, considering the essence of labour law enforcement and the current implementation of unemployment insurance policies in Vietnam, denying dismissed employees access to unemployment allowance at a time when they arguably need them the most has raised numerous questions and concerns.



The drafting agency has inadvertently "administrativized" what is fundamentally a civil or labour relationship. Specifically, the rule that dismissal precludes unemployment allowance implies that based on an employer's disciplinary dismissal decision (a civil or labour act), a state administrative body would issue a decision to deny the employee unemployment allowance (an administrative act).

The greatest concern may be that this proposal inadvertently "administrativizes" what is essentially a civil or labour relationship. Specifically, the rule stipulates that dismissed employees cannot receive unemployment allowance. This implies that based on the employer's unilateral disciplinary decision to dismiss an employee (a civil or labour act), the state management agency, specifically the Department of Labour, Invalids, and Social Affairs, would decide to deny unemployment allowance (an administrative act).

Meanwhile, unless there is agreement or acceptance from the disciplined employee (which rarely occurs) or acknowledgment from a competent authority (e.g., a court), the dismissal decision is entirely a unilateral and subjective legal act by the employer. The employer often has interests that conflict with, or even strongly oppose, the rights and interests of the disciplined employee.

Additionally, the decision to impose disciplinary dismissal on a violating employee is solely at the discretion of the employer, who uses their legal rights to terminate the labour relationship and avoid certain obligations associated with termination (e.g., severance allowance, job loss allowance). This is not a mandatory legal requirement.

In such cases, to achieve the goal of terminating the employment relationship, the employer can choose a "softer" approach, such as negotiating a termination agreement with the employee (possibly with conditions like severance allowance or job loss allowance) instead of issuing a dismissal decision that compels the employee to leave.

This leads to a paradox: the same employee who loses their job, depending on the employer's choice (negotiated termination versus dismissal), could either receive unemployment allowance or not. This effectively allows the employer to determine whether the employee qualifies for unemployment allowance. Consequently, decisions by state labour authorities, specifically the director of the Department of Labour, Invalids, and Social Affairs, regarding unemployment allowance, may merely reflect the employer's prior choice. In other words, in this specific case, to some extent, the employer becomes the de facto regulator of unemployment insurance funds—a role not granted to them by law.



It seems the perception of disciplined employees as "bad people" influences the viewpoint supporting the denial of unemployment insurance for those dismissed from their jobs. However, as mentioned earlier, regardless of the severity of the employee's misconduct, disciplinary dismissal is merely a unilateral legal act chosen by the employer to protect their interests against the alleged violations.

In many cases, evaluating and handling employee violations of the law requires the involvement of competent state authorities (e.g., police, courts). Any violations, if proven, would be subject to corresponding penalties (administrative or criminal) that are objective and appropriate. Naturally, these matters no longer involve the employer.

Basing unemployment benefit eligibility on a disciplinary dismissal decision—a unilateral decision made by one party (the employer), whose interests conflict with those of the other party (the employee)—introduces significant risks of inaccuracy and unfairness. This is particularly true in Vietnam's current context. According to statistics, in the third quarter of year 2023, over 200,000 individuals received unemployment allowance, with more than 70% having only primary education or less. Breaking this down further, 90% of these individuals had no diplomas or certifications.

Looking at these figures, it is evident there is a power imbalance between "employers" and employees facing labour discipline. Unjust or unreasonable dismissals are entirely plausible. Before these unqualified or low-skilled employees can take any action to protect their legitimate rights (if they even can), the most immediate risk is that they may be denied even the modest unemployment allowance necessary for survival while seeking new jobs.



NEW HIGHLIGHTS OF THE TRADE UNION LAW 2024

The Trade Union Law 2024 was passed by the National Assembly on the morning of November 27, 2024. Accordingly, this Law was issued to overcome a number of limitations and shortcomings of the Trade Union Law 2012. The Trade Union Law 2024 has 6 Chapters, 37 Articles (an increase of 04 Articles compared to the current Law) and takes effect from July 1, 2025, with many outstanding new points presented in this article.



First of all, The Trade Union Law 2024 has expanded the right to establish, join and operate Trade Unions for workers without labour relations. According to Clause 1, Article 5, the right to establish, join and operate Trade Unions stipulates that Vietnamese workers have the right to establish, join and operate Trade Unions, including workers without labour relations in Vietnam. In addition, the provision in clause 3, Article 4 explains the term "grassroots occupational organizations" as a grassroots organization of the Vietnam Trade Union, gathering workers without labour relations, in the same industry, same profession or other specific workers. In addition, foreign workers working in Vietnam are given the additional right to join and operate Trade Unions at grassroots Trade Unions (without the right to establish and become Trade Union officials).

Secondly, this Law supplements the provisions on joining the Vietnam Trade Union by the organization of employees at enterprises as stipulated in Article 6 of the Trade Union Law 2024. Accordingly, Article 6 has stipulated strict conditions on the application for joining, the order and procedures for joining the Vietnam Trade Union; responsibilities, legal consequences when joining the Vietnam Trade Union and at the same time assigned the Vietnam General Confederation of Labour to guide the implementation to ensure flexibility. Articles 7 and 9 of the Trade Union Law 2024 also stipulate more specifically the principles of organization and operation of the Vietnam Trade Union and clarify the principles and contents of international cooperation on Trade Unions.

Thirdly, Article 16 and Article 17 of the Trade Union Law 2024 have added regulations on the rights of supervision and social criticism of Trade Unions. Accordingly, the Trade Union supervision includes activities of participating in supervision with competent state agencies and activities of



presiding over supervision. Trade Unions have the right and responsibility to contribute opinions and social criticism on draft legal documents, planning, plans, programs, projects, and proposals of state agencies directly related to the rights and interests of Trade Union members and workers.

Fourthly, in the newly passed law, ensuring the financial security of the Trade Union is an important content. Accordingly, the regulation that agencies, organizations, units, enterprises, cooperatives, and cooperative unions of all economic sectors, regardless of whether or not a Trade Union has been established, must pay Trade Union fees equal to 2% of the salary fund as the basis for compulsory social insurance for employees, remains unchanged. According to the Vietnam General Confederation of Labour, this is an important legal basis, which has been implemented stably and effectively in ensuring material conditions for Trade Union organizations to perform their functions and tasks well according to the provisions of law, and to take better care of employees, is maintained.

Fifthly, the Trade Union Law 2024 added cases of exemption, reduction, and suspension of trade union fee payment if the enterprise is facing difficulties. This is a new content added to clause 2, Article 30 of the Trade Union Law 2024. Enterprises facing difficulties due to economic reasons or force majeure will be considered for a reduction in the level of trade union fee payment from July 1, 2025. In addition, in cases where an enterprise is facing difficulties due to natural disasters, fires, or epidemics and has to temporarily suspend production and business, leading to the inability to pay trade union fees, it will be considered for a temporary suspension of trade union fee payment for a period not exceeding 12 months. This new point is important in supporting and motivating employees and enterprises to overcome difficult times, stabilize production, and maintain employment.

Sixthly, Articles 33 and 34 of the Trade Union Law 2024 have been supplemented with provisions on ensuring publicity and transparency, further strengthening the inspection, examination, auditing and supervision of competent authorities in the management and use of Trade Union assets and finances, while ensuring the principle of financial autonomy of Trade Unions. Further clarifying the content of Trade Union financial disclosure, Mr. Ngo Duy Hieu ¹said that the law has a new provision that every two years the Vietnam General Confederation of Labour must report to the National Assembly on the issue of revenue and expenditure, management and use of Trade Union finances. In addition, every two years, the State Audit will audit Trade Union finances to report to the National Assembly ².

¹Mr. Ngo Duy Hieu is currently Chairman of the Vietnam Civil Servants' Trade Union and Vice Chairman of the Executive Committee of the Vietnam General Confederation of Labour.

²Pham Dong, Obligation to pay 2% of Trade Union fees from 2025, Lao Dong Newspaper, <https://laodong.vn/thoi-su/nghia-vu-dong-2-kinh-phi-cong-doan-tu-nam-2025-1437818.ldo>, accessed January 3, 2025.



NEW LEGAL DOCUMENTS IN JANUARY 2025

NO.	EFFECTIVE DATE	NAME
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ENTERPRISE

1.	January 01, 2025	Circular 72/2024/TT-BQP prescribing and guiding the implementation of policies on management, depreciation, and amortization of fixed assets that are single-purpose property; policies for reporting fixed assets that are single-purpose property, assets serving management tasks in units under the Ministry of National Defense, and fixed assets assigned by the State to enterprises for management without being counted as state capital components in enterprises under the Ministry of National Defense of Vietnam issued by the Ministry of National Defense
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INVESTMENT

1.	December 31, 2024	Decree 182/2024/ND-CP regarding the establishment, management, and use of the Investment Support Fund issued by the Government
2.	January 01, 2025	Law 58/2024/QH15 on Public Investment issued by the National Assembly
3.	January 01, 2025	Circular 22/2024/TT-BKHDT providing guidelines for provision and publishing of information on contractor selection and forms of bidding documents on Vietnam national e-procurement system issued by the Minister of Planning and Investment
4.	January 01, 2025	Circular 58/2024/TT-BGTVT regulating the investment in parking and stopping points, as well as the location and scale of rest stops, parking, and stopping points on expressways issued by the Minister of Transport
5.	January 15, 2025	Law 57/2024/QH15 amending Planning Law, Law on Investment, Law on Investment in the Form of Public-Private Partnership and Bidding Law issued by the National Assembly



TRADING

1. January 01, 2025 Law 37/2024/QH15 amending Law on Property Auction issued by the National Assembly
2. January 01, 2025 Decree 172/2024/ND-CP detailing the implementation of certain articles of Law 01/2016/QH14 on Property Auction, which was amended by Law 37/2024/QH15 on Property Auction issued by the Government
3. January 01, 2025 Circular 23/2024/TT-BCT prescribing management and use of industrial explosive materials and explosive precursors under management of the Ministry of Industry and Trade issued by the Ministry of Industry and Trade

EXPORT - IMPORT

1. January 01, 2025 Circular 18/2024/TT-BCT promulgating the list of scraps suspended from temporary import for re-export or border-gate transfer issued by the Ministry of Industry and Trade
2. January 13, 2025 Circular 18/2024/TT-BNNPTNT regarding the list of veterinary drugs permitted for circulation in Vietnam, the list of veterinary drugs prohibited for use in Vietnam, and amendments and supplements to several articles of Circular 01/2024/TT-BNNPTNT, which promulgates the HS code for the list of goods under the state management authority of the Ministry of Agriculture and Rural Development and the list of goods for import and export that requires specialized inspection in the field of agriculture and rural development issued by the Minister of Agriculture and Rural Development

CURRENCY - BANKING

1. January 01, 2025 Circular 15/2023/TT-NHNN regulating credit information-related activities of State Bank of Vietnam issued by the State Bank of Vietnam
2. January 01, 2025 Circular 50/2024/TT-NHNN providing for security and confidentiality during provision of online banking services issued by the State Bank of Vietnam
3. January 05, 2025 Decree 146/2024/ND-CP amending and abrogating of some articles of Government's Decree No.102/2022/ND-CP dated December 12, 2022 defining functions, tasks, powers and organizational structure of State Bank of Vietnam and Government's Decree No.26/2014/ND-CP dated April 07, 2014 prescribing organization and operation of banking inspection and supervision authorities, as amended in Government's Decree No. 43/2019/ND-CP dated May 17, 2019 issued by the Government



LABOUR - WAGES

1. January 01, 2025 Decree 143/2024/ND-CP regulating occupational accident insurance in the form of voluntary participation for workers without employment contracts issued by the Government
2. January 01, 2025 Decree 178/2024/ND-CP concerning policies for officials and public employees, employees, and armed forces in the implementation of organizational restructuring of the political system issued by the Government

ADMINISTRATIVE VIOLATIONS

1. January 01, 2025 Decree 168/2024/ND-CP stipulating the administrative penalties for violations concerning road traffic safety and order; point deduction, and point restoration of Driving Licenses issued by the Government
2. January 01, 2025 Decree 176/2024/ND-CP regulating the management and use of funds collected from administrative penalties related to road traffic order and safety violations and auction of vehicle license plates after being paid into the state budget issued by the Government

PROCEDURAL LAW

1. January 01, 2025 Decree 142/2024/ND-CP regulating the management of material-evidence storehouses issued by the Government
2. January 01, 2025 Decree 152/2024/ND-CP amending some articles of Decree No.62/2015/ND-CP dated July 18, 2015 on elaboration and guidance on implementation of some articles of Law on Civil Judgment Enforcement amended by Government’s Decree No.33/2020/ND-CP dated March 17, 2020, which issued by the Government

CIVIL RIGHTS

1. January 01, 2025 Circular 59/2024/TT-BCA amending certain articles of Circular No.74/2020/TT-BCA dated July 01, 2020 of the Ministry of Public Security on immigration control of Vietnamese citizens at border checkpoints issued by the Ministry of Public Security
2. January 08, 2025 Decree 06/2025/ND-CP amending and supplementing several articles of Decrees of adoption issued by the Government



3. January 09, 2025 Decree 07/2025/ND-CP amending and supplementing several articles of Decrees in the fields of civil status, nationality and authentication issued by the Government
4. January 10, 2025 Decree 154/2024/ND-CP elaborating some articles and guiding for the implementation of the Law on Residence issued by the Government