

OCTOBER 2024

# NEWSLETTER



LAC DUY & ASSOCIATES



## AVOIDING RISKS IN UNILATERAL TERMINATION OF LABOUR CONTRACTS

**A NUMBER OF  
OUTSTANDING  
CHANGES IN THE  
SANCTIONS FOR  
ADMINISTRATIVE  
VIOLATIONS IN THE  
FIELD OF LAND**



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Dear Clients,

**Lac Duy & Associates would like to send you the legal newsletter of September 2024 with some notable updates and articles as follows:**

- Avoiding risks in unilateral termination of labour contracts.
- A number of outstanding changes in the sanctions for administrative violations in the field of land.
- Legal document in 10/2024



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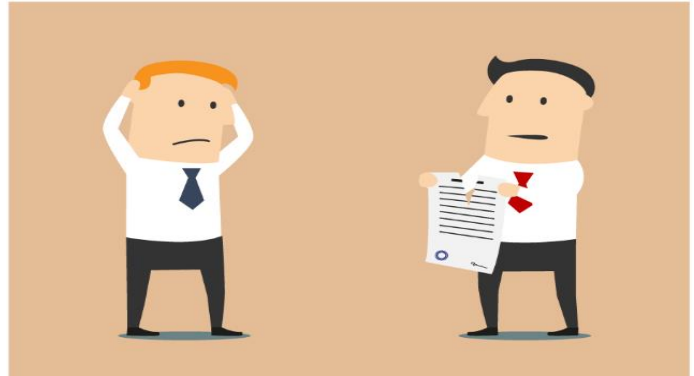


## AVOIDING RISKS IN UNILATERAL TERMINATION OF LABOUR CONTRACTS

Understanding legal regulations is the key for companies to manage risks related to the unilateral termination of labour contracts.

### **A Company Lost a Lawsuit Because of Unlawfully Terminating A Labour Contract**

In June 2024, the People’s Court of Hue City heard a case regarding “Dispute over unilateral termination of labour contract and compensation for damages upon contract termination”, involving Mr. Nguyen Minh Thanh, who was unilaterally dismissed by M Phuong Co., Ltd without a reasonable cause on January 3, 2023.



Mr. Thanh had signed a five-year labour contract with M Phuong Co., Ltd on September 20, 2022, with monthly salary of VND 40 million, which was later increased to VND 50 million. When the company terminated his labour without prior notice, Mr. Thanh filed a complaint but received no proper resolution, leading him to sue the company in court.

Mr. Thanh had signed a five-year labour contract with M Phuong Co., Ltd on September 20, 2022, with monthly salary of VND 40 million, which was later increased to VND 50 million. When the company terminated his labour without prior notice, Mr. Thanh filed a complaint but received no proper resolution, leading him to sue the company in court.

M Phuong Co., Ltd. presented that Mr. Thanh was dismissed due to his failure to meet professional requirements and concerns over food safety and hygiene. However, in court, the company’s representative changed their statement, asserting the five-year contract with Mr. Thanh was invalid and that he had provided incorrect information regarding his qualifications.

The People’s Court of Hue City, after reviewing the evidence, concluded that the company’s unilateral termination was unlawful, and ordered the company to compensate Mr. Thanh VND 148,666,000 (for unpaid wages during the period he was not allowed to work and for failing to provide prior notice).

It is evident that unlawful unilateral termination of labour contracts not only causes severe consequences for employees but also poses significant legal risks for companies. Failure to comply with legal regulations can lead to various consequences, such as being ordered to pay compensation, reinstate employees, and bear administrative penalties.

This case serves as a reminder for companies to strictly comply with legal regulations to protect their legitimate interests, avoid unnecessary legal troubles, and save time and costs for legal procedures.

To minimize legal risks and protect the rights of both companies and employees, it is necessary to have a deep understanding and strict adhere to legal regulations. Particularly, companies should pay attention





to specific circumstances in which the law permits lawful termination of labour contracts.

## **When is A Company Allowed to Unilaterally Terminate An Labour Contract?**

According to Ms. Lac Duy, the Managing Lawyer at Lac Duy & Associates, there are five cases in which companies are permitted to unilaterally terminate labour contracts without infringing upon employees' rights:

1. **Failure to Fulfill Job Duties:** This is one of the most common reasons a company can unilaterally terminate an labour contract if the employee fails to complete assigned tasks. However, for this action to have legal basis, the company must establish a clear performance evaluation policy with specific criteria for the quantity and quality of work. This policy must be communicated to the employee so they understand the requirements. Additionally, the company must have sufficient evidence proving that the employee violated the policy and is unable to improve before making the decision to terminate the contract.
2. **Incapacity Due to Illness or Injury:** If an employee is unable to recover their working capacity after a long period due to illness or injury, the company has the right to consider terminating the contract. However, termination in this case must comply with specific regulations regarding the duration of illness or injury and related legal procedures.
3. **Force Majeure Events:** In the event of natural disasters, epidemics, or other force majeure events that impact the company's production activities, leading to the inability to maintain labour for the employee, the company may unilaterally terminate the contract.
4. **Retirement Age:** When an employee reaches the statutory retirement age, the company has the right to terminate the labour contract. However, specific regulations regarding retirement benefits may apply depending on the type of labour contract and business activity.
5. **Dishonesty During Recruitment:** If an employee provided false information during recruitment, affecting the company's hiring decision, the company has the right to unilaterally terminate the contract.

## **Procedures for Valid Labour Termination**

What is the first and most important step when a company decides to terminate an labour contract? It is to notify the employee in advance. The notice period depends on the type of contract, but generally, it is within 45 days for indefinite contracts and 30 days for fixed-term contracts.

Giving advance notice is not only a legal requirement but also shows respect for the employee's rights, giving them time to prepare for upcoming changes.

To ensure the legality of the decision on termination of labour contract, companies must prepare all relevant documents, including the minute on termination of labour contract detailing the reason, date, and signatures of both parties, a copy of the labour contract, disciplinary decisions (if any), and other relevant evidence.

In addition to providing notice and preparing documents, companies must fulfill all financial obligations to the employee, including salary payments, remaining allowances, and the completion of social insurance procedures.

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Another important consideration is for companies to consult with the employees' representative organization during the termination process. This ensures objectivity and fairness, helping to avoid unnecessary disputes and create consensus within the company.

For certain specialized industries like maritime and aviation, there may be unique regulations for labour termination. Companies should thoroughly research these regulations to ensure legal compliance.



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## A NUMBER OF OUTSTANDING CHANGES IN THE SANCTIONS FOR ADMINISTRATIVE VIOLATIONS IN THE FIELD OF LAND



On October 4, 2024, the Government issued Decree No. 123/2024/ND-CP regulating penalties for administrative violations in the field of land. This Decree has replaced Decree No. 91/2019/ND-CP and takes effect from October 4, 2024, bringing a number of outstanding changes in sanctioning administrative violations for ones in the field of land to be more consistent with the implementation of the Land Law No. 31/2024/QH15, especially raising the sanctioning level for some violations.

### 1. Adjustment of fine levels for acts of failing to register land

Decree 123/2024/ND-CP has made several adjustments to the regulations on sanctioning acts of failing to register land. Specifically, for the act of failing to first-time register land, this Decree has eliminated the sanctioning form of warning or a fine of from VND 500,000 to VND 1,000,000 in Article 17.1.a of Decree 91/2019/ND-CP and stipulates the current penalty level of **VND 1,000,000 to VND 2,000,000** according to Article 16 of Decree 123/2024/ND-CP.

For the act of failing to register land-related changes, Decree 123/2024/ND-CP has adjusted the fine level – **from VND 2,000,000 to VND 3,000,000** – and added a number of violations such as: failing to register changes when there is a "change in the restrictions on the rights of land users" or when



*"selling assets, or rotation, and transfer of land use rights being public property under the law on management and use of public property".*

## 2. Adjustment of fine levels for acts of arbitrarily changing the use purpose of paddy land

For the acts of repurposing paddy land to other types of agricultural land, the maximum fine level (for individuals) has been reduced from VND 50,000,000 (when converting to land for perennial plants or forest) or VND 70,000,000 (when converting to land for aquaculture or salt production) according to Article 9.1, Article 9.2 of Decree 91/2019/ND-CP, down to **VND 30,000,000** when converting to other types of agricultural land in general according to Article 8.1 of Decree 123/2024/ND-CP.

Similarly, for the act of arbitrarily repurposing paddy land to non-agricultural land, the maximum fine level for individuals (in rural areas) according to Article 9.3 of Decree 91/2019/ND-CP is VND 250,000,000. However, the maximum fine level has been reduced to **VND 150,000,000** when an individual commits the above act for land within the administrative boundaries of the commune, according to Article 8.2 of Decree 123/2024/ND-CP. Noticeably, this Decree has issued separate regulations on sanctioning acts of repurposing paddy land to residential land, specifically **from VND 20,000,000 to VND 200,000,000** for individuals and for land within the administrative boundaries of the commune. Thus, the act of arbitrarily converting the use purpose of paddy land to residential land has been determined to be more serious than the conversion to other types of non-agricultural land.

## 3. Raising the fine level for acts of trading land use rights without the land use right certificate

The current fine level for administrative violations for acts of transferring, donating, leasing, subleasing, and contributing capital with land use rights without a land use right certificate has been raised compared to the provisions of Decree 91/2019/ND-CP. For example, according to Article 17.3.c of Decree 123/2024/ND-CP, the fine for the act of transferring land use rights or contributing land use rights as capital without a certificate is **VND 30,000,000 to VND 50,000,000** for individuals (**VND 60,000,000 to VND 100,000,000 for organizations**), much higher than the maximum fine of VND 5,000,000 for rural areas or VND 10,000,000 for urban areas as prescribed in Article 18.3.a of Decree 91/2019/ND-CP.

## 4. Adjustment of regulations on sanctioning administrative violations for acts of land encroachment and occupation

The provisions of Decree 123/2024/ND-CP have narrowed the minimum area of land encroachment and land occupation sanctioned for administrative violations, or in other words, adjusted the fine levels for some levels of land area encroached or occupied. For example, the minimum fine range for acts of encroaching or



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occupying non-agricultural land according to Article 14.4 of Decree 91/2019/ND-CP is VND 10,000,000 to 20,000,000 if the encroached or occupied area is less than 0.05 hectares. Meanwhile, Article 13.4 of Decree 123/2024/ND-CP stipulates that the fine for the above act is VND 5,000,000 to VND 10,000,000 for an area of less than 0.02 hectares, and **VND 10,000,000 to VND 30,000,000** for an area of 0.02 to 0.05 hectares, higher than as stipulated in the previous regulations.

In addition, Decree 123/2024/ND-CP supplements regulations on sanctioning administrative violations for acts of using land for which the State has made a decision on land allocation or lease but has not yet handed over land on the field in Article 13.5. The maximum fine for individuals can be up to **VND 500,000,000**.



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## LEGAL DOCUMENTS IN 10/2024

NO.	EFFECTIVE DATE	NAME
<b>COMMERCIAL</b>		
1.	October 01, 2024	Circular 14/2024/TT-BTC regulates the periodic reporting regime for industrial clusters, the national database of industrial clusters, and document templates related to the management and development of industrial clusters issued by the Minister of Industry and Trade
<b>LABOUR</b>		
1.	October 15, 2024	Circular 09/2024/TT-BLDTBXH provides guidelines on the standard number of employees in public service units within the labour, veterans, and social affairs sectors, issued by the Minister of Labor, Invalids, and Social Affairs
<b>REAL ESTATE</b>		
1.	October 15, 2024	Circular 08/2024/TT-BXD regulates the numbering and signage of houses and construction works, issued by the Minister of Construction
2.	October 15, 2024	Decree 108/2024/ND-CP regulates the management, use, and exploitation of public assets, specifically buildings and land not used for residential purposes, entrusted to organizations with functions related to local housing management and exploitation, issued by the Government
3.	October 15, 2024	Circular 09/2024/TT-BXD amending the construction norms in Circular 12/2021/TT-BXD issued by the Minister of Construction
<b>TRANSPORTATION</b>		
1.	October 01, 2024	Circular 30/2024/TT-BGTVT amends Circular 16/2021/TT-BGTVT regarding the technical safety inspection and environmental protection of road motor vehicles, as well as Circular 03/2018/TT-BGTVT, which stipulates the quality inspection for technical safety and environmental protection of imported automobiles subject to Decree 116/2017/ND-CP, issued by the Minister of Transport



2.	October 01, 2024	Decision 1117/QD-BGTVT announces new, amended, and supplementary administrative procedures in the field of vehicle registration within the management scope of the Ministry of Transport, issued by the Minister of Transport
3.	October 01, 2024	Circular 06/2024/TT-BGTVT establishes the national technical standards for expressways, issued by the Minister of Transport

## RESOURCES - ENVIRONMENT

1.	October 01, 2024	Circular 13/2024/TT-BCT regulates the classification and reporting of oil and gas resources and reserves, issued by the Minister of Industry and Trade
2.	October 07, 2024	Circular 13/2024/TT-BTNMT sets economic-technical standards for investigating and surveying hydrographic, chemical, and environmental conditions in coastal and island areas, issued by the Minister of Natural Resources and Environment
3.	October 24, 2024	Circular 11/2024/TT-BNNPTNT establishes economic-technical standards for forest inventory and monitoring forest changes, issued by the Minister of Agriculture and Rural Development