

SEPTEMBER 2024

NEWSLETTER



LAC DUY & ASSOCIATES



CORRECTLY AND EFFECTIVELY RESPOND FOR ENTERPRISES WHEN EMPLOYEES REQUEST MEDIATION, LABOUR-RELATED COMPLAINTS

PUBLISHED BY LAC DUY & ASSOCIATES

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LAC DUY & ASSOCIATES

Dear Clients,

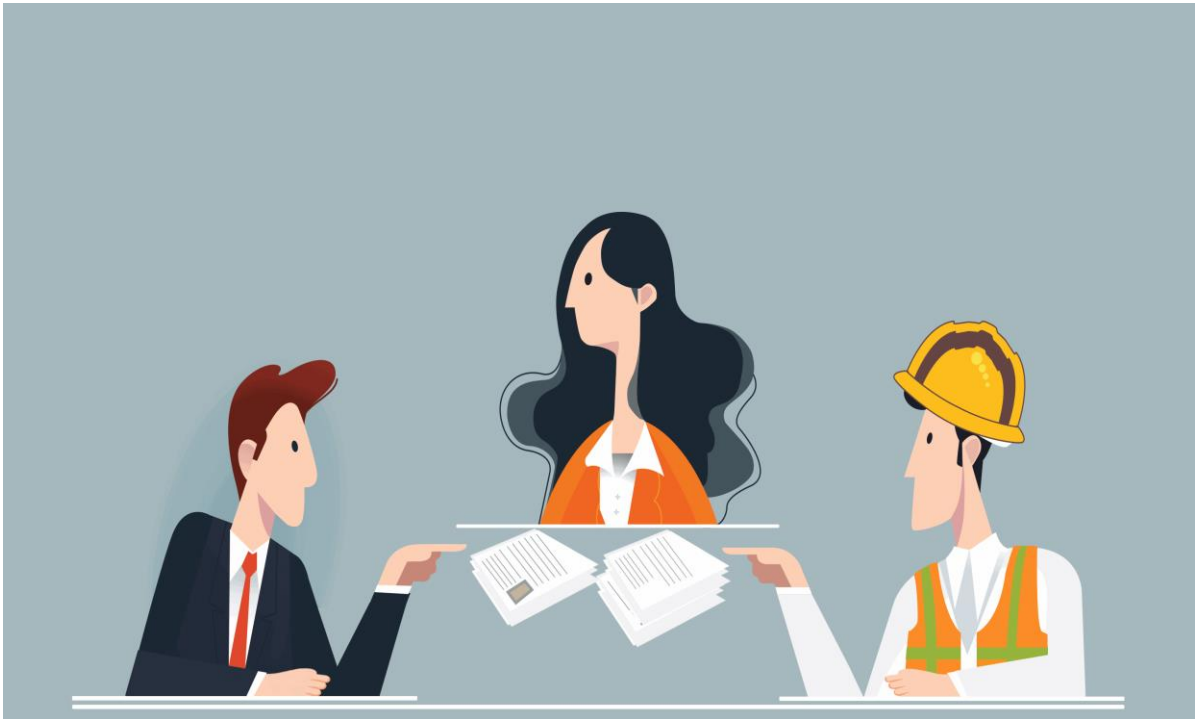
Lac Duy & Associates would like to send you the legal newsletter of September 2024 with some notable updates and articles as follows:

- Correctly and effectively respond for enterprises when employees request mediation, labour-related complaints
- Legal documents in 09/2024





CORRECTLY AND EFFECTIVELY RESPOND FOR ENTERPRISES WHEN EMPLOYEES REQUEST MEDIATION, LABOUR-RELATED COMPLAINTS



Individual Labour Disputes (“**ILDs**”) are the regular labour disputes in labour relations, including disputes between (i) an employee and an employer, (ii) an employee and an enterprise or organization sending the employee to work overseas under contract, and (iii) dispatched employee and the hiring employer.¹ In the scope of this article, LDA will focus on labour dispute mediation (“**LDM**”) and labour-related complaints (“**LRC**”), as well as some notes for enterprises in settling **ILDs** when using these two methods.

LABOUR DISPUTE MEDIATION

1. Labour Dispute Mediation methods

First, LDM through the mediation of the LM under the regulations of Labour Code 2019. This is the compulsory LDM for **ILDs**, excepting the 06 **ILDs** below²:

¹ Article 179.1(a) Labour Code 2019

² Article 188.1 Labour Code 2019

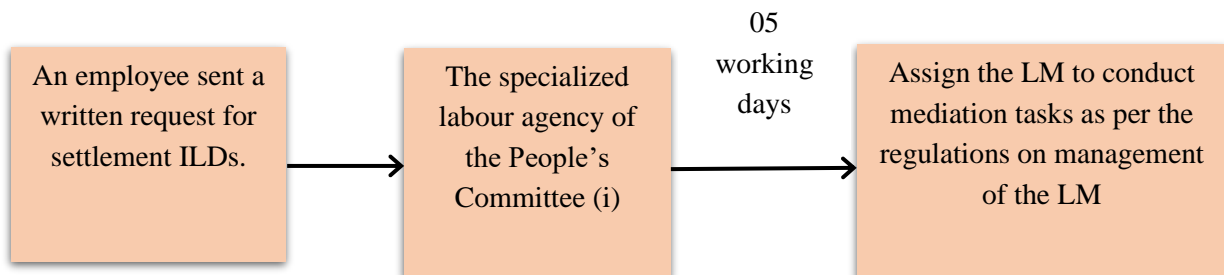


- (i) Disputes over disciplinary action in the form of dismissal or disputes over unilateral termination of a labour contract;
- (ii) Disputes over compensation for damages or allowances upon terminating a labour contract;
- (iii) Disputes between the domestic employee and the employer;
- (iv) Disputes over social insurance according to the law on social insurance, over health insurance according to the law on health insurance, over unemployment insurance according to the law on employment, or over occupational accident and disease insurance according to the law on occupational safety and health;
- (v) Disputes over compensation for damages between an employee and an enterprise or an organization sending the employee to work overseas under contract;
- (vi) Disputes between a dispatched employee and the hiring party.

According to Article 32.1 Civil Procedure Code No. 92/2015/QH13 (“**Civil Procedure Code**”), the mediation record (“**MR**”) of the LM is the basis for proving that the parties had done the LDM through the mediation of the LM if one of the parties has filed a lawsuit at the competent People’s Court.

2. Labour Dispute Mediation procedure

Phase 1: Accepting and assigning the LM to settle ILDs.

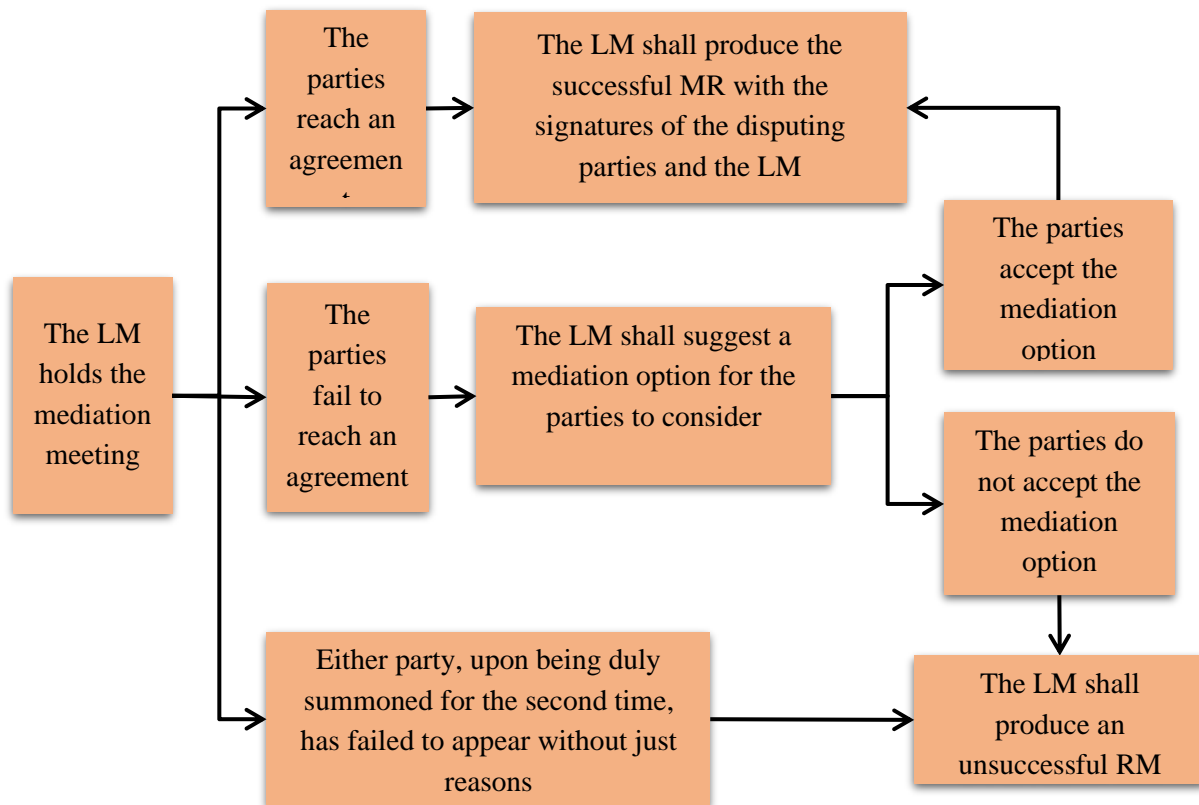


- (i) The specialized labour agency of the People’s Committee includes the provincial or district-level Departments of Labor, War Invalids and Social Affairs (“**DOLISA**”)³. Management Boards of Industrial Parks, High-tech Parks, Economic Zones and

³ Article 1.1 and Article 3.1 Circular 11/2021/TT – BLDTBXH

Management Boards with other names under the Provincial People's Committee are not specialized labour agencies.⁴

Phase 2: Conducting LDM (05 working days)⁵



Copies of the successful or unsuccessful RM must be sent to the disputing parties within 01 working day from the date producing the RM.

It is noted that the statutory limitation for requesting the LM to conduct LDM is 06 months from the date that the employee detects the action deemed to infringe on his/her lawful rights and interests. In cases where the employee can prove that, due to force majeure events, objective obstructions or other reasons under the law, the request cannot be made within the stipulated statutory limitation, the duration of such force majeure, objective obstruction or reason shall not be counted in the statutory limitation for requests the ILDs resolution⁶.

⁴ Article 1.3 Decree 24/2014/ND-CP (amended and supplemented at Decree 107/2020/ND-CP)

⁵ Clause 2, 3, 4, 5 Article 188 Labour Code 2019

⁶ Article 190.1 and Article 190.4 Labour Code 2019



LABOUR-RELATED COMPLAINTS

3. Generation of LRC

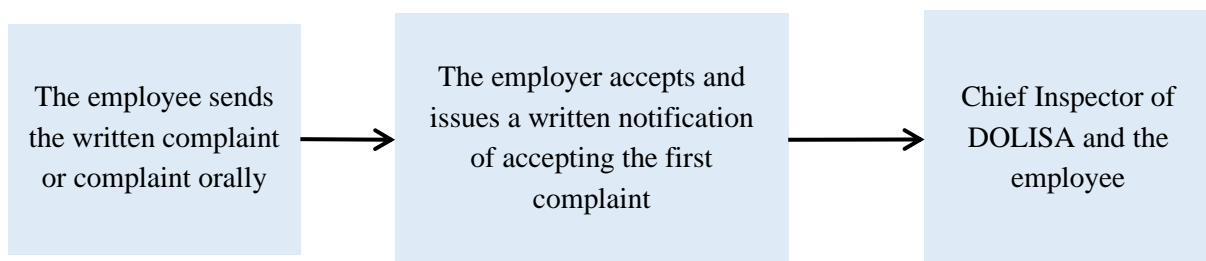
According to Article 58.4 and Article 131 Labour Code 2019, the LRC’s right of the employee is regulated in 04 cases as follows:

- (i) The hiring party violates the agreements in the labour dispatch contract;
- (ii) The decisions on execution labour disciplinary is not satisfactory;
- (iii) Temporarily suspended from work is not satisfactory;
- (iv) Being required to make compensation under the regulations on material responsibilities is not satisfactory.

According to Article 3.1 and Article 5 Decree 24/2018/ND-CP, the employee just has reason to believe that the decisions and actions of employers are illegal, directly infringing upon the employee’s legitimate rights and interests, the employees have the right to make a complaint for settlement. The statutory limitation for the first complaint is 180 days after the employee receives or learns of the decision or action of the employer that the employee deems unlawful.⁷

4. Procedure of the first complaint settlement

Phase 1: Receiving and accepting the first complaint

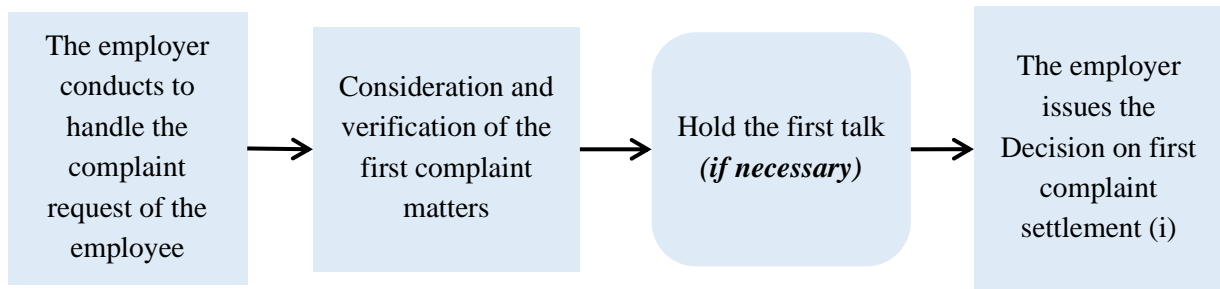


- (i) Within 07 working days from the date of receiving the complaint in the scope and authority of the employer’s settlement, the employer shall accept the complaint and

⁷ Article 7.1 Decree 24/2018/ND-CP

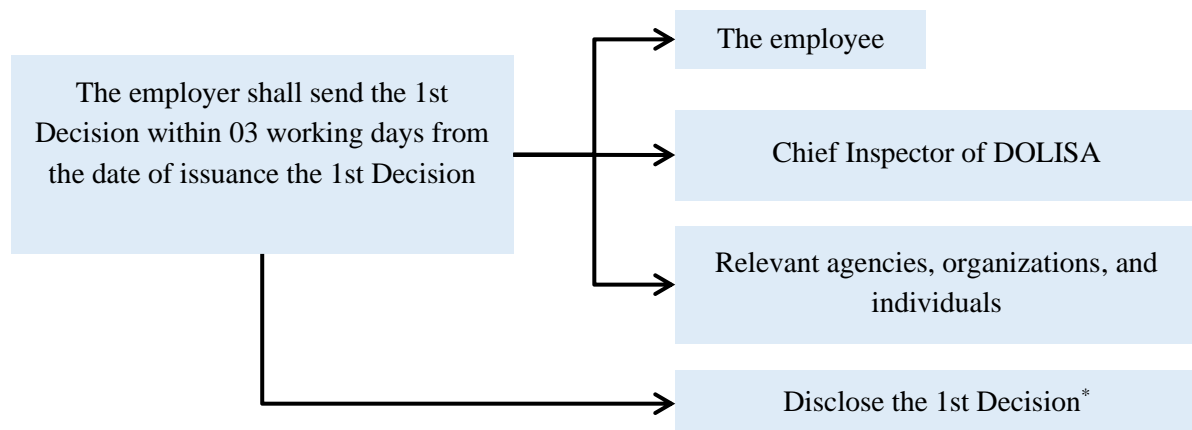
notify in written on accepting the complaint settlement to the employee and the Chief Inspector of DOLISA where the employer has its head office⁸.

Phase 2: Conducting settlement of the first complaint (30 days)⁹



- (i) The Decision on the first complaint settlement (“**1st Decision**”) has been legally effective after 30 days from the date of issuance if the employee does not make the second complaint or does not file a lawsuit at court under the regulations on civil procedure. For remote areas with difficult travel, the 1st Decision will be legally effective with no longer than 45 days from the date of issuance¹⁰.

Phase 3: Send and disclose the 1st Decision¹¹



* The employer shall disclose the 1st Decision in the form of disclosure methods specified in the internal workplace democracy regulations¹².

⁸ Article 19.1(a) Decree 24/2018/ND-CP
⁹ Article 20 Decree 24/2018/ND-CP
¹⁰ Article 34.1 Decree 24/2018/ND-CP
¹¹ Article 24.1(a) Decree 24/2018/ND-CP
¹² Article 43.1(e) Decree 145/2020/ND-CP



5. Procedure of the second complaint settlement

According to Article 15.2 Decree 24/2018/ND-CP, the Chief Inspector of DOLISA where the employer has its head office has the authority to settle the second complaint regarding labour, occupational safety and hygiene when the employee does not agree with the 1st Decision or the complaint has not been resolved after the time limit has expired under the regulations.

The procedure of the second complaint settlement. As the same as the first complaint settlement procedure, which includes these steps (i) accepting to settle the second complaint; (ii) considering and verifying the second complaint matter; (iii) holding the second talk; (iv) issuing the Decision on the second complaint settlement (“**2nd Decision**”); and (v) sending the 2nd Decision¹³. Yet, there is a difference from the first complaint settlement phase that holding the second talk to settle the second complaint is compulsory and the employer shall join for clarifying and provide evidence relating the 1st Decision¹⁴.

Regarding the employee’s right to file a lawsuit in court. The employee has the right to file a lawsuit in court under the regulations of civil procedure or administrative proceedings under Article 10.2 Decree 24/2018/ND-CP.



¹³ From Article 27 to Article 32 Decree 24/2018/ND-CP

¹⁴ Article 11.2(b) and Article 30 Decree 24/2018/ND-CP

LEGAL DOCUMENTS IN SEPTEMBER 2024

NO	EFFECTIVE DAY	NAME
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ENTERPRISE

1.	September 01, 2024	Decree 89/2024/ND-CP on converting state-owned companies established and operating under the law on state-owned enterprises into one-member limited liability companies organizing and operating under the provisions of the Law on Enterprises issued by the Prime Minister on July 16, 2024.
2.	September 01, 2024	Decree 97/2024/ND-CP on amending and supplementing several articles of Decree 10/2019/ND-CP of the Government on January 30, 2019, on the exercise of rights and performance of responsibilities of the state owner's representatives issued by the Prime Minister on July 25, 2024.

TAX, FEES AND CHARGES

1.	September 01, 2024	Decree 109/2024/ND-CP on prescribing registration fee rates applicable to domestically manufactured and assembled automobiles, trailers, or semi-trailers pulled by automobiles and vehicles similar to automobiles issued by the Prime Minister on August 29, 2024.
2.	September 01, 2024	Circular 47/2024/TT-BTC on regulating the rates, collection, payment, exemption, management, and use of fees for exploiting and using surveying, and mapping data information issued by the Minister of Finance on July 10, 2024.
3.	September 01, 2024	Circular 50/2024/TT-BTC on amending and supplementing several articles of Circular 76/2021/TT-BTC on September 15, 2021, of the Minister of Finance guiding Clause 1 and Clause 2 Article 31 Decree 20/2021/ND-CP of the Government on March 15, 2021 regulating social assistance policies for social protection subjects issued by the Minister of Finance on July 17, 2024.



4.	September 01, 2024	Circular 52/2024/TT-BTC on abolishing several Circulars of the Minister of Finance in the field of tax issued by the Minister of Finance on July 23, 2024.
5.	September 14, 2024	Circular 09/2024/TT-BCT on stipulating the calculation of the average electricity prices issued by the Minister of Industry and Trade on July 30, 2024.

LABOUR

1.	September 15, 2024	Circular 06/2024/TT-BLDTBXH on amending and supplementing several articles of Circular 26/2016/TT-BLDTBXH dated September 01, 2016, on guiding the implementation of regulations on employment, wages, remuneration, and bonuses for single-member limited liability companies, in which the State holds 100% of charter capital and Circular 27/2016/TT-BLDTBXH dated September 01, 2016, on guiding the implementation of regulations on employment, wages, remuneration and bonuses for managers of single-member limited liability companies, in which the State holds 100% of charter capital issued by the Minister of Labour, War Invalids and Social Affairs on July 30, 2024.
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BANK

1.	September 25, 2024	Circular 43/2024/TT-NHNN on amending and supplementing several articles of Circular 01/2014/TT-NHNN on December 10, 2014, of the Governor of the State Bank of Vietnam guiding the organization and implementation of state foreign exchange reserves management activities issued by the Governor of the State Bank on August 09, 2024.
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CRIMINAL RESPONSIBILITIES

1.	September 01, 2024	Decree 93/2024/ND-CP on amending and supplementing several articles of Decree 122/2013/ND-CP of the Government on October 11, 2013, prescribing the circulation suspension, blockade, sealing, temporary seizure, and handling of money and assets related to terrorism and terrorist financing; and the establishment of a list of organizations and individuals related to terrorism and terrorist funding issued by the Prime Minister on July 18, 2024.
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