



LAC DUY & ASSOCIATES

# NEWSLETTER

## 09/2021

### **“STRONG” LABOUR REDUCTION SOLUTIONS THAT HELP ENTERPRISES OVERCOME COVID-19 PANDEMIC**

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Dear Clients,

**Lac Duy & Associates would like to send you the newsletter of September, 2021 with some outstanding new point and article as:**

- “Strong” labour reduction solutions that help enterprises overcome Covid-19 Pandemic
  - Solution 1: Unilaterally terminate the labour contract with the employee due to the pandemic
  - Solution 2: Terminate the labour contract with the employee in case of changes in structure and technology
  - Solution 3: Terminate the labour contract with the employee due to economic reasons
- Legal Documents 09/2021



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### **“STRONG” LABOUR REDUCTION SOLUTIONS THAT HELP ENTERPRISES OVERCOME COVID- 19 PANDEMIC**



To view a summary of "strong" labour reduction solutions to help enterprises overcome the impact of declining revenue from the Covid-19 pandemic, please visit the following link: [\[“STRONG” LABOUR REDUCTION SOLUTIONS THAT HELP ENTERPRISES OVERCOME COVID-19 PANDEMIC\]](#)

Faced with the current difficult situation, enterprises as employers are forced to downsize production and lay off employees to maintain the existence of their enterprises. Understanding this, the following “strong” labour reduction solutions will help enterprises to cope with the impact of reducing revenue from Covid-19 such as: (i) Unilaterally terminate the labour contract due to the pandemic (Article 36.1.c Labour Code 2019); (ii) Terminate the labour contract in case of changes in structure and technology (Article 42.1 of the Labour Code 2019); (iii) Terminate the labour contract due to economic reasons (Article 42.2 of the Labour Code 2019). Accordingly, for each reduction solution, enterprises need to pay special attention to legal procedures to terminate labour contracts in accordance with the law, in order to minimize the legal risks that enterprises may face due to a lack of understanding of current labour law provisions.

#### **Solution 1: Unilaterally terminate the labour contract with the employee due to the pandemic**

##### ***1. Legal basis:***

According to point c, clause 1, Article 36 of the Labour Code 2019, one of the cases that the employer is entitled to unilaterally terminate the labour contract is “*In the event of a natural disaster, fire, major epidemic, hostility, relocation or downsizing requested by a competent authority; the employer has to lay*



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*off employees after all possibilities have been exhausted”.*

On 1st April 2020, Prime Minister Nguyen Xuan Phuc signed Decision No. 447/QĐ-TTg on announcing the Covid-19 pandemic in Vietnam with the location and scale nationwide. The nature and danger of the disease belongs to a group A infectious disease, the risk is at the level of a global pandemic. Thus, the Covid-19 pandemic can be considered a “major epidemic”, so the employer is entitled to unilaterally terminate the labour contract with the employee if the condition “*after all possibilities have been exhausted, the employer has to lay off employees*”. This means that enterprises wanting to lay off employees due to the pandemic must prove that they have taken all measures to overcome the consequences caused by the Covid-19 pandemic but are still forced to downsize production and lay off employees because of reduced revenue due to the pandemic.



### 2. Legal procedures:

When unilaterally terminate the labour contract due to a pandemic, the employer must ensure that the following legal procedural steps are followed:

#### **Step 1:** Inform the employee in advance:

- (i) At least 45 days in case of an indefinite-term employment contract;
- (ii) At least 30 days in case of an employment contract with a fixed term of 12 – 36 months.

#### **Step 2:** Issue a Decision to terminate the labour contract for each employee.

#### **Step 3:** Fully perform the obligations when terminating the labour contract, including<sup>1</sup> :

- (i) Pay in full all amounts related to employee’s interests;
- (ii) Complete the procedures to confirm the time of payment of social insurance and unemployment insurance and return them together with the originals of other papers if kept by the employer to the employee;
- (iii) Provide copies of the documents relevant to employee’s working process if requested by the employee.

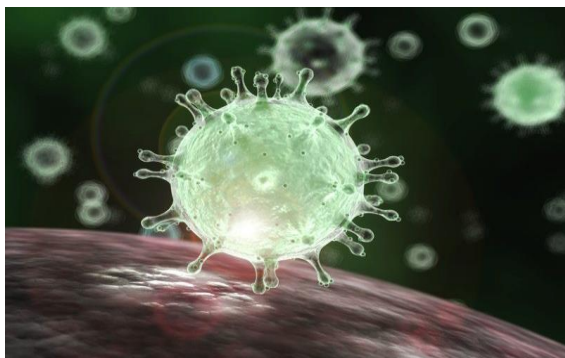
### 3. Legal risks:

From the provisions at point c, clause 1, Article 36 of the Labour Code 2019, it can be seen that, in



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order to unilaterally terminate the labour contract due to the Covid-19 pandemic, there must be evidence to prove that the employer has taken all measures to overcome the consequences caused by Covid-19 but are still forced to downsize production and lay off employees. However, the current labour law of our country does not have specific provisions to explain “after all possibilities have been exhausted, the employer has to lay off their employees”. This leads to many different interpretations, so the actual application may not be uniform and there will be some potential risks. If applied incorrectly, enterprises may be determined by the Court as having illegal unilaterally terminate the labour contract when the parties arise disputes. The employee has the right to file a lawsuit to the Court where the enterprise's head office is located to claim compensation for damage caused by the illegal unilaterally terminate the labour contract.



### **Solution 2: Terminate the labour contract with the employee in case of changes in structure and technology**

#### ***1. Legal basis:***

According to Article 42.1 of the Labour Code 2019, the basis for the employer to have the right to unilaterally terminate the labour contract with the employee is when the employer has a change of structure and technology. Structural and technological changes include the following cases:

- (i) Change the organizational structure, reorganize labour;
- (ii) Change processes, technologies, machinery, production and business equipment associated with the industry, production and business lines of employers;
- (iii) Change the product or the product's structure.

In the situation that the Covid -19 epidemic is extremely complicated, many localities across the country have to implement long-term social distancing, businesses are facing financial difficulties. But changing processes, technologies, machinery, production and business equipment has to invest a lot of money. So the business will not want to do this. In addition, instead of making changes to products or products' structure, enterprises often focus on producing previous items of enterprises during the epidemic. Therefore, the reason for changing the organizational structure, reorganizing labour is the reason that businesses are often preferred to choose.



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### 2. *Legal procedures:*

**Step 1:** Discuss with the representative organization of employees at the grassroots where the employee is a member of such representative organization of employees at the grassroots, usually the Executive Committee of the Grassroots Trade Union or the Executive Board of the representative organization of the employees at the enterprise.

**Step 2:** Notify 30 days in advance to the Provincial People's Committee and to the employees.

In case of affecting the employment of many employees, the employer has to consult with the Executive Committee of the Grassroots Trade Union or the Executive Board of the representative organization of the employees at the enterprise (if any) when formulating and implementing the labour utilization plan. The labour utilization plan must be publicly notified to the employee within 15 days from the date of approval.

**Step 3:** Issue a Decision to terminate the labour contract for each employee.

**Step 4:** Fulfil the obligations upon the termination of the labour contract, similar to Step 3 of Solution 1.

### 3. *Legal risks:*

Labour law stipulates that enterprises have the right to unilaterally terminate labour contracts with employees for reasons of changing organizational structures, reorganizing labour, also known as restructuring. Accordingly, in order to be considered to have been restructured in accordance with the law, enterprises must satisfy both the necessary conditions (on the reason) and the sufficient conditions (in terms of procedures):

- (i) Regarding the necessary conditions (reasons): Firstly, there must be a real structural change that affects the employment of the employees. Secondly, there must be no new workplace to train and move such employees through to continue using them. However, because at this time, there are no specific regulations or guidelines, detailing how to change the organizational structure, reorganize labour, so when enterprises by themselves explain and define about changing the organizational structure, reorganizing labour for their enterprises, there is still the possibility of not convincing the competent dispute settlement bodies, which leads to the basis for termination of labour contracts of enterprises is illegal.
- (ii) Regarding sufficient conditions (procedures): In addition to the general responsibilities when terminating the labour contract in Article 45, Article



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48 of the Labour Code 2019, enterprises should pay attention to make the labour utilization plan in accordance with Article 44 of the Labour Code 2019, should discuss with the representatives of the Executive Committee of the Grassroots Trade Union or the Executive Committee of the organization at the enterprise and notice in 30 day in advance to the provincial-level People's Committee and to the employees.

In case the enterprise terminates the labour contract with the employee who has only met the conditions of procedures without ensuring the conditions for reasons such as analysis, evaluation and legal provisions mentioned above, the court is likely to consider that the enterprises have unilaterally terminated the labour contract against the employee, violated Article 42.1 of the Labour Code 2019.



### **Solution 3: Terminate the labour contract with the employee due to economic reasons**

#### **1. Legal basis:**

According to Article 42.2 of the Labour Code 2019, the basis for the employers to unilaterally terminate labour contracts with the employees is for economic reasons. Economic reasons include the following cases:

- (i) Economic crisis;
- (ii) Economic downturn;
- (iii) Implement state policies and laws when restructuring the economy;
- (iv) Make international commitments.

#### **2. Legal procedures:**

**Step 1:** Discuss with the representative organization of employees at the grassroots where the employee is a member of such representative organization of employees at the grassroots, usually the Executive Committee of the Grassroots Trade Union or the Executive Board of the representative organization of the employees at the enterprise.

**Step 2:** Notify 30 days in advance to the Provincial People's Committee and to the employees.



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In case of affecting the employment of many employees, the employer has to consult with the Executive Committee of the Grassroots Trade Union or the Executive Board of the representative organization of the employees at the enterprise (if any) when formulating and implementing the labour utilization plan. The labour utilization plan must be publicly notified to the employee within 15 days from the date of approval.

**Step 3:** Issue a Decision to terminate the labour contract for each employee.

**Step 4:** Fulfil the obligations upon the termination of the labour contract, similar to Step 3 of Solution 1.

### 3. *Legal risks:*

Same as analysed in the solution to terminate the labour contract in case of changes in structure and technology, legal risks that the solution to terminate the labour contract due to economic reasons is the dispute settlement bodies may have a different view from the enterprise and determine that the enterprise carried out illegal procedures to terminate the labour contract due to economic reasons.

In case of questions or need support, readers can contact Lac Duy & Associates for timely support at:

- Phone: + 84 (28) 3622 1603
- Email: [info@lacduy-associates.com](mailto:info@lacduy-associates.com) or [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

Best regards.

<sup>1</sup> Article 48 Labour Code 2019







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## LEGAL DOCUMENTS 09/2021

NO.	EFFECTIVE DATE	DOCUMENTS' NAME
<b>BUSINESS - GOVERNMENT FINANCE</b>		
1.	09/09/2021	<u>Resolution No. 105/NQ-CP dated September 09, 2021 on provision of assistance for enterprises, cooperatives, household businesses amid Covid-19 pandemic</u>
2.	17/09/2021	Decision 1547/QD-TTg in 2021 on funding for additional purchase of 19,98810 doses of Pfizer's Covid-19 vaccine BNT162 issued by the Prime Minister
<b>INFORMATION TECHNOLOGY</b>		
3.	07/09/2021	Official Dispatch 3455/BTTTT-ITCT 2021 on supporting information and communication technology enterprises during the implementation of social distancing issued by the Ministry of Information and Communications
<b>TRANSPORT</b>		
4.	09/09/2021	Official Dispatch 9396/BGTVT-VT in 2021 on developing a plan to restore transport activities to safely adapt to the situation of COVID-19 disease control issued by the Ministry of Transport
<b>TRADE</b>		
5.	10/09/2021	Official Dispatch 5522/BCT-TTTN in 2021 on petrol and oil business management issued by the Ministry of Industry and Trade
<b>CRIMINAL LIABILITY, CULTURE - SOCIETY</b>		
6.	10/09/2021	Official Dispatch 6324/VPCP-KGVX in 2021 on ensuring social security and safety for pandemic prevention and control issued by the Government Office



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<b>NATURAL RESOURCES - ENVIRONMENT</b>		
7.	16/09/2021	Official Dispatch 6553/VPCP-NN 2021 on the draft of the National Environmental Protection Strategy to 2030, with a vision to 2050 issued by the Government Office
<b>SPORT - HEALTH</b>		
8.	16/09/2021	Official Dispatch 7717/BYT-DP in 2021 on strict implementation of COVID-19 vaccination issued by the Ministry of Health
9.	15/09/2021	Official Dispatch 3084/UBND-KGVX in 2021 on adjustment of some measures to prevent COVID-19 pandemic in Hanoi City
<b>LEGAL SERVICES</b>		
10.	13/09/2021	Official Dispatch 156/TANDTC-PC in 2021 issuing judgment enforcement decisions, monitoring the execution of criminal judgments issued by the Supreme People's Court