



International  
Labour  
Organization



Get to know your new Labour Code 2019

# Labour dispute resolution

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*Viet Nam has modernized its Labour Code to better protect workers' rights, reduce bureaucracy for employers, and help support the Government's drive for international integration, economic growth and prosperity for all. The new law, which was passed by the National Assembly in November 2019, is the result of extensive consultations with experts, national and local stakeholders, and the public at large. It will come into effect in January 2021.*

June 2020

*This information sheet is an introduction to the labour dispute resolution system and processes set out in the new Labour Code.*

## What is a labour dispute?

A labour dispute is a disagreement over rights, obligations and interests that arises between parties in the process of establishing, implementing or terminating labour relations. A labour dispute may also be a disagreement among worker's representative organizations at the grassroots level ('WROs'); or a disagreement that arises from labour relations.

The Labour Code 2019 promotes the settlement of labour disputes via negotiation between the parties with mediation and arbitration. It promotes principles of lawfulness, transparency, objectivity, timeliness, and the common good and recognises the rights of parties to representation during the dispute resolution process. To this aim, it also provides that **a party cannot take unilateral action against another party during the period in which the labour dispute is being resolved by any of the competent bodies (Mediators, a Labour Arbitration Council or the People's Court).**

The Labour Code sets out different processes for different kinds of dispute. For this purpose, it categorises disputes into two main types with sub-categories for collective disputes:

1. Individual labour disputes
2. Collective labour disputes
  - a. Rights-based collective disputes
  - b. Interest-based collective disputes

Note: The Labour Code categorizes some disputes as *individual labour disputes* for the purposes of dispute resolution, even though they involve parties other than an individual worker and his or her employer. This includes, for example, a dispute between an employee and an organization that sends the employee to work overseas based on contract; or a dispute between dispatched workers and a hiring party.

## Individual labour disputes

An individual labour dispute is a dispute between:

- an employee and an employer; or
- a worker and an organization that sends the worker to work overseas based on contract; or
- a labour dispatch worker and the hiring party

Individual disputes may arise over any condition, right or action at work covered by the Labour Code, including such things as wages, working time, probation, discrimination and rights and obligations regarding social insurance, health insurance, unemployment insurance, work discipline, and material liabilities.



## Collective labour disputes

The Labour Code distinguishes two types of collective labour dispute.

**A rights-based collective labour dispute** is a dispute between one or more WROs and an employer or one or more employers' organization(s) in the following situations:

- there are differences in the interpretation or implementation of the terms and conditions in collective bargaining agreements, internal work regulations, regulations or other lawful agreements;
- there are differences in the interpretation or implementation of labour legislation;
- certain acts engaged in by an employer towards employees and/or officials of WROs. These include acts of discrimination for reasons of establishing and/or joining a WRO or performing WRO-related activities. They also include acts of intervention in, or manipulation of, WROs; or fail to comply with the obligation to negotiate in good faith.



### Box 1: Dispute resolution actors: Labour mediators and arbitrators

**Agencies responsible for labour under the People's Committee** can help the parties determine which labour dispute process applies to their dispute. They are responsible for classifying requests for dispute settlement, and providing guidance and support to the parties.

**Labour mediators** guide and support the parties to try to resolve the dispute, and may suggest ways to resolve the dispute. They cannot issue binding decisions. Labour mediators are appointed by the Chair-person of the People's Committee at the provincial level.

**Labour Arbitration Councils (LAC)** are established by the Chair-person of the provincial-level People's Committee. They comprise at least 5 members nominated by the Department of Labour Invalids and Social Affairs (including the Chair-person and the Secretary of the Council); 5 members nominated by the trade union at the provincial level; and 5 members nominated by the representative organizations of the employers at the province. Three LAC members normally sit as an arbitration panel for a dispute, in which each dispute party shall select one arbitrator and these two selected arbitrators will choose one among the LAC members to be the head of the arbitration panel.

**An interest-based collective labour dispute** is a dispute between one or more WROs and an employer or one or more employers' organization(s):

- arising during the collective bargaining process; and/or
- concerning the refusal of a party to engage in collective bargaining; and/or
- concerning the failure of a party to bargain within the time limitation stipulated in the Labour Code. For more information, see **Information Sheet: Workplace Dialogue and Collective Bargaining**.

Labour mediators, Labour Arbitration Councils and the People's Court have the power to consider individual labour disputes (see Figure 1). However, the Labour Code requires that efforts must be made to resolve individual labour disputes via mediation before making a request for arbitration or the Court, except in the case of disputes concerning:

- disciplinary action involving dismissal or unilateral termination of the employment contract;
- compensation and/or allowance(s) in a case of employment contract termination;
- the law on social insurance, health insurance and unemployment insurance and the law on employment, occupational accident and disease insurance

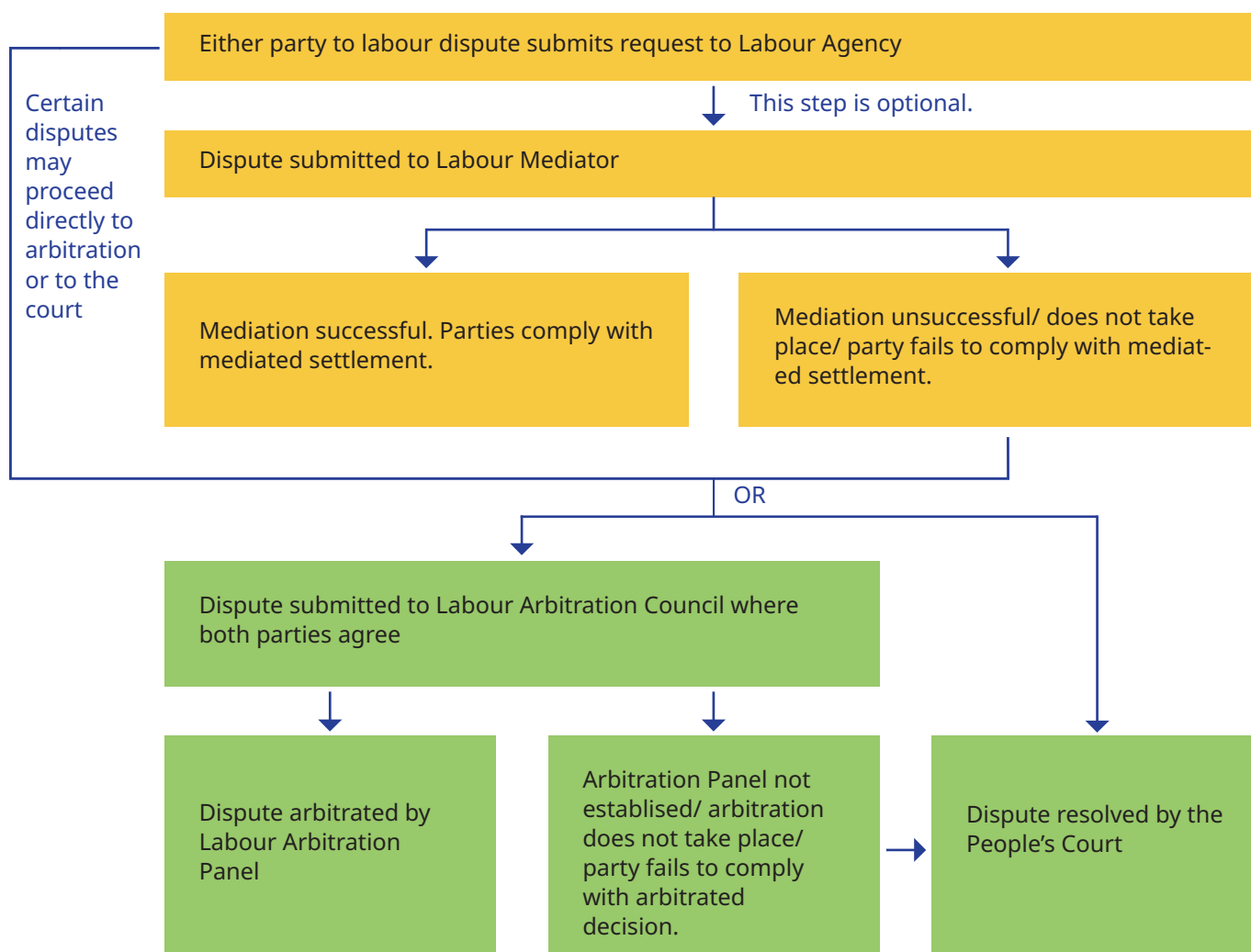
- compensation for damages between the worker and the enterprise or administrative agencies that send the workers to work overseas by employment contract.
- differences between domestic worker and employer;
- disputes between dispatched worker(s) and the hiring party (the party using dispatched workers)

In addition to the cases listed above, arbitration can be requested when:

- mediation is unsuccessful, or
- the labour mediator fails to resolve the dispute within a certain timeframe, or
- either party fails to perform as agreed in the record of successful mediation

In addition to the cases listed above, settlement of the dispute by the court can be requested when:

- mediation is unsuccessful, or
- the labour mediator fails to resolve the dispute within a certain timeframe, or
- either party fails to comply with the record of successful mediation, or
- the Labour Arbitration Panel is not established, or
- the Labour Arbitration Panel fails to resolve the dispute within a certain timeframe, or
- either party fails to comply with the Labour Arbitration Panel's decision



**Figure 1. Processes for resolving individual labour disputes**

## How to request mediation (or arbitration) for an individual dispute

Either party to the dispute may submit a request for individual dispute resolution to the Labour Mediator, Labour Arbitration Council, People's Court, or the agency specialized in labour under the People's Committee.

The Labour Code 2019 provides that either party may submit a request for labour dispute settlement to the agency specialized in labour under the People's Committee (at the district or provincial level). Submitting such a request is optional. Within 05 working days of receiving such a request, the agency must send the request to the labour mediator (where labour mediation is required under the Code), to the Labour Arbitration Council (where the parties have requested arbitration) or guiding the parties to send such request to the People's Court for settlement. See Box 2 for details on the timeframes that apply to individual disputes. Whereas either party can request mediation, both parties must agree to a request for arbitration.



## Processes for resolving collective labour disputes

The basic process and timeline for mediation and arbitration of collective rights disputes is the same as that for individual disputes (see Box 2).

All collective labour disputes must be referred for mediation as a first step.

### Rights-based collective labour disputes:

**Rights-based collective disputes must be dealt with through mediation as a first step.**

Where mediation is unsuccessful or the labour mediator fails to resolve the dispute within 5 days of receiving the request to do so, or either party fails to respect the mediated resolution, the disputing parties have the right to request dispute resolution via a **Labour Arbitration Council** (where both parties agree) or via the **People's Court**.

In addition, settlement of a dispute by the court can be requested when the Labour Arbitration Panel is not established, or the Labour Arbitration Panel fails to resolve the dispute within a certain timeframe, or either party fails to comply with the Labour Arbitration Panel's decision.

In limited circumstances where a breach of the law is identified, the Labour Mediator and/or Labour Arbitration Panel must produce a memorandum and send the case's dossier to competent authorities for processing. This applies where the collective labour dispute arises from:

- differences in the understanding or implementation of labour legislation; or
- certain acts engaged in by an employer such as acts of discrimination for reasons of establishing and/or joining a WRO or performing WRO-related activities; acts of intervention in, or manipulation of WROs; or
- failure to comply with the obligation to negotiate in good faith.

### Interest-based collective labour disputes:

Interest-based collective labour disputes, like right-based disputes, must first be referred for mediation before it can be referred for Labour Arbitration. The record of a successful collective interest-based mediation shall be considered to have the same legal value as the enterprise's collective bargaining agreement.

Where mediation is unsuccessful, the labour mediator fails to commence the mediation within the statutory time frame or either party fails to comply with the successful mediation record, the disputing parties may agree to have their dispute arbitrated by a Labour Arbitration Council. Alternatively, the WRO has the right to initiative strike procedures in accordance with the Labour Code.

### Box 2: Mediation and arbitration timelines – individual and collective disputes

#### Mediation:

- Submit request for dispute resolution to the Labour Mediator within 6 months of becoming aware of the infringement of rights or interest
- Dispute must be resolved by mediator within 5 working days of receipt
- Both parties must attend mediation and may be represented
- Copies of the record of mediation sent to the disputing parties within 1 working day from the date the record is produced
- In certain collective dispute cases, the Mediator must create a file which includes a memorandum, and send such file to competent authorities for processing (see below for details)

#### Arbitration:

- Submit request for dispute resolution to the Labour Arbitration Council within 9 months of becoming aware of the infringement of rights or interest
- Where a case is referred for arbitration, the parties cannot simultaneously request resolution of the issue by the Court
- Labour Arbitration Panel must be established within 7 working days from receipt of request by the Council
- Within 30 days from the date of establishing the Arbitration Panel, the Panel must issue a decision on the dispute and send to the disputing parties

## Strike action

A WRO may only initiate strike procedures in relation to an interest-based collective labour dispute, and only where:

- mediation of the dispute has been unsuccessful, has not taken place within the statutory timeframes, or where a party has failed to comply with a successful mediation record; or
- following the parties' agreement to submit the dispute to arbitration, a Labour Arbitration Panel has not been established or has failed to deliver a decision within the statutory timeframes, or where the employer has failed to comply with the decision issued by the Labour Arbitration Panel.

A WRO may only strike in accordance with the statutory procedures outlined in the Labour Code.

A WRO must not strike while an interest-based collective dispute is being resolved by the competent authorities.

## Court jurisdiction

- declare a collective bargaining agreement invalid
- declare a strike lawful or unlawful based on the request of one party in collective bargaining. Note that the Chairperson of provincial People's Committee is entitled to postpone or cease a strike if s/he deems that the strike is potentially hazardous for the national economy, public interest, national security and defense, health, public order (the Government provides guidance for implementation). If the strike is not following process prescribed by law, the Chairperson of district People's Committee can also be mobilized to instruct labour agency to support parties to resolve the dispute.

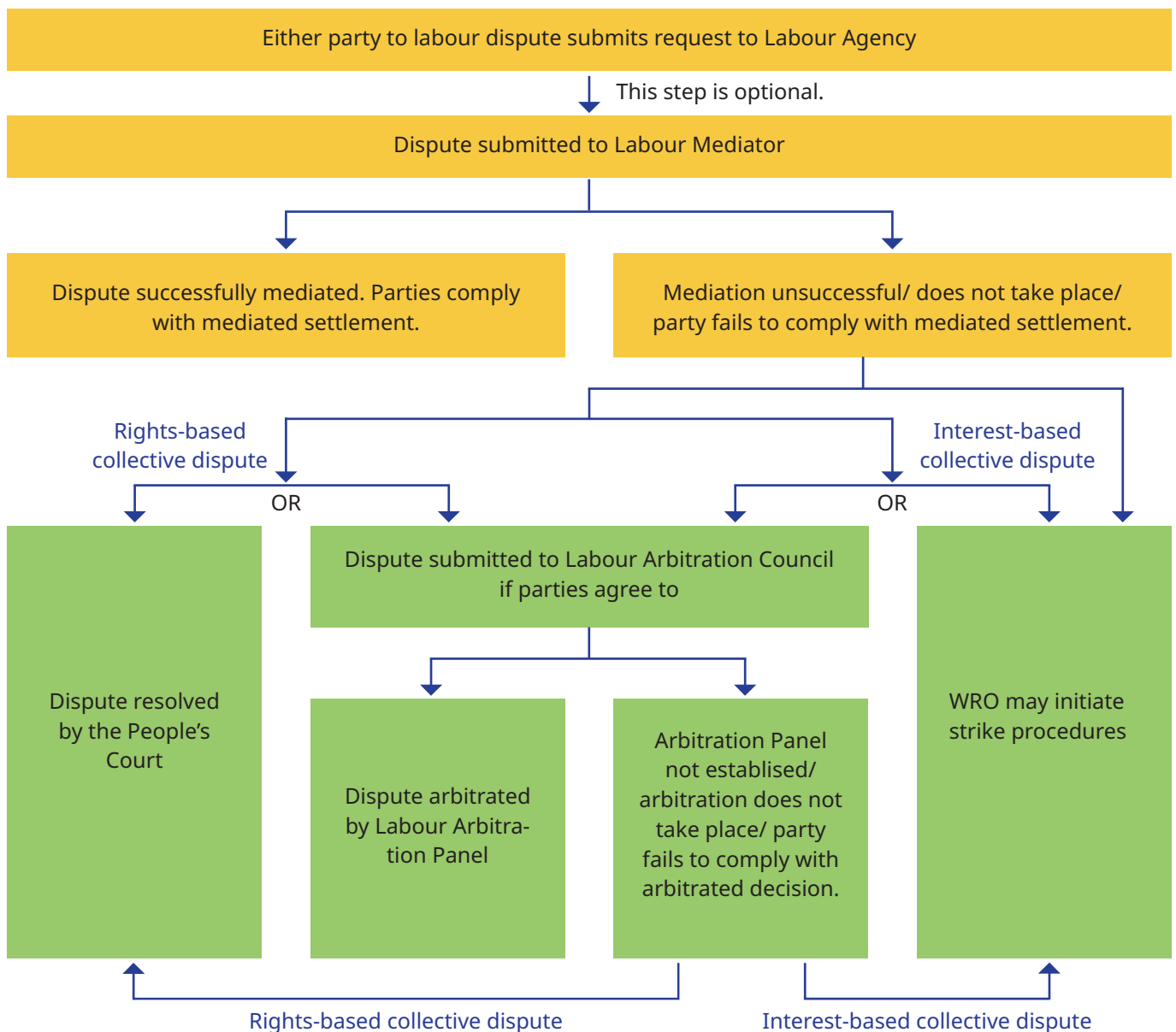


Figure 2. Collective labour dispute settlement process





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#### For more information

This leaflet describes the basic rights and duties provided under the Labour Code 2019. More details all of the above matters, are set out in the following chapters of the Code: Chapter XIII: Workers' Representative Organisation(s) at Grassroots Level; Chapter XIV: Labour Dispute Resolution

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