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Get to know your new Labour Code 2019

# Discrimination and sexual harassment at work

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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.

The new Labour Code clarifies and strengthens protections and duties addressing discrimination and sexual harassment at work. This information sheet is an introduction to these provisions.

## What is discrimination at work?

Discrimination occurs when someone 'draws any distinction, preference or exclusion' – treats a person less favourably – because of one or more of the following attributes of the person:

- Sex
- Colour
- Religion
- Belief
- Ethnic group
- Race
- Social origin
- Gender
- National extraction
- Disability
- Real or perceived HIV status
- Participation in trade union activities
- Race
- Pregnancy
- Marital status
- Age
- Family responsibilities
- Political opinion.

## What acts constitute discrimination?

The Labour Code refers in article 3(8) to '**any distinction, exclusion or preference**' based on one of the above attributes. The types of acts that can constitute discrimination are not listed in the Labour Code but it makes clear that this covers all acts that affect equality of opportunity or treatment in employment or occupation. Such acts will include unfavourable treatment affecting:

- Recruitment
- Wages
- Working conditions
- Promotion
- Transfer
- Labour discipline
- Termination of employment.

For example, if someone is denied promotion because of their race or gender (or for any other of the above attributes) this is likely to constitute discrimination.



The Labour Code also provides protections to workers in special situations, including relating to pregnancy and family responsibilities. In particular, it prohibits an employer from dismissing a female employee due to the employee's marriage, pregnancy, maternity leave or because she is nursing a child under 12 months of age. The Labour Code also contains provisions on equal pay for work of equal value (**see Information Sheet: Wages**).

## What is not considered discrimination?

Treating someone differently is not necessarily unlawful discrimination. There are three important points to note here. Firstly, it is only discriminatory if the difference in treatment is based on one or more of the named attributes (race, sex, age, disability etc.) It is **not** discriminatory if the difference in treatment is for other reasons. For example, it is not discriminatory to pay one worker a higher wage than another because that worker has higher qualifications that are useful in the job.

Secondly, it is not unlawful discrimination for a person (usually an employer) to treat someone differently based on the requirements of the job. For example, an employer is unlikely to be engaging in unlawful discrimination if they refuse to employ a young person as a bus driver because they do not have a driver's license. Thirdly, steps can be lawfully taken to protect groups that face disadvantage in employment. For example, the employer may offer special parking places for workers with disabilities to make it easier for them to take a job.

## Who is protected from discrimination at work?

All workers covered by the Labour Code are protected from discrimination at work. This includes:

- Anyone who is working for an employer under an agreement, as an employee. The agreement may be written or verbal, and for a definite or indefinite term.
- Workers without employment relations.

## Discrimination against workers or a group of workers who participate in trade union activity

The Labour Code strictly prohibits employers from discriminating against workers, groups of workers, and officials of workers' representative organizations at grassroots level (WROs) because they establish, join or participate in a trade union/WRO. It is also prohibited to discriminate between WROs.

In particular, an employer must not:

- Request that a worker join, not join or leave a WRO as a requirement of recruitment or extension of their employment contract;

- Dismiss, discipline, or transfer workers due to their actions relating to the formation, joining or participation in WRO activities;
- Unilaterally terminate, or refuse to extend, workers' employment contracts due to their actions relating to the formation, joining or participation in WRO activities;
- Discriminate in wages, working hours and other rights and obligations against workers or officials of WROs;
- Create obstacles and difficulties relating to the employment of workers and officials of WROs in order to undermine the activities of a WRO.

### What is sexual harassment at workplace?

Sexual harassment at workplace was already a prohibited act under the Labour Code of 2012. The new law strengthens this prohibition by introducing a clear definition of sexual harassment and setting out other related rights.

Sexual harassment occurs when someone engages in conduct of a sexual nature towards another person (or persons) at a workplace and where that behaviour is 'unwelcome or unaccepted' by the recipient(s). A workplace is defined as any place that a worker works by way of agreement or assignment by the employer.

The Labour Code does not detail different types of sexual harassment, but they are commonly known to include direct and physical harassment (e.g. sexual touching) or written or verbal acts, such as making suggestive remarks or sending sexualized pictures by email. The acts can be repeated or one-off events and both men and women can be perpetrators and targets of sexual harassment.

Under the new Labour Code, employers have an obligation to develop and implement solutions to prevent sexual harassment at their workplaces. Internal work regulations must address sexual harassment at the workplace, and outline procedures and processes for dealing with sexual harassment complaints. An employee who engages in sexual harassment (as defined in internal work regulations) may be dismissed by their employer.

Collective bargaining may address issues of discrimination and sexual harassment and lead to agreement on measures to prevent these types of conduct.

### What should a worker do if they think they have been discriminated against or sexually harassed at work?

Equality of opportunity is a right under in the Constitution of Viet Nam that everyone is entitled to, and this right is reinforced in the workplace through the provisions of the Labour Code as well as through other policy and legal approaches. Together, these have helped ensure that the women of Viet Nam work in jobs and businesses in greater numbers than many high-performing western economies. In 2018, according to the Global Gender Gap Report, Viet Nam was ranked 33rd out of 149 countries globally in ECONOMIC PARTICIPATION AND OPPORTUNITY dimension.

Through the new Labour Code, Viet Nam aims to address some of the remaining barriers that hold back growth, by improving the incentives and opportunities for women to stay in the workforce and contribute fully to the productivity of enterprises in Viet Nam. It is estimated that Viet Nam could add up to 10 per cent to its GDP by 2025, simply by speeding up the implementation of parity measures. However, achieving this depends on businesses having access to all the talent, skill and innovations of Viet Nam's population – both women and men. The new Labour Code was drafted to ensure that discrimination does not hold back individuals, businesses or the country at large from reaching this goal.

A worker who believes they have been discriminated against or sexually harassed at work should be able to use file a complaint to the employer. The worker also has the right to file a report with the Head Labour Inspector of the Department of Labour, Invalids and Social Affairs (DoLISA) of the province.

A worker, or a group of workers or officials of WROs, who believe they have been discriminated against because of their WRO membership or activities can also file a labour dispute under the Labour Code.

The Labour Code also recognizes the right of an employee who experiences sexual harassment to unilaterally terminate their employment contract without notice [Article 35(2)(d)].

### What are the remedies and penalties for discrimination and sexual harassment?

An employer who engages in discrimination at work may be subject to administrative and/or criminal penalties. These penalties are set out in other related regulations.

### For more information

This leaflet describes the basic rights and duties provided under the new Labour Code 2019. More details all of the above matters, are set out in the following provisions in the Labour Code 2021: Chapter I: General Provisions; Chapter VIII: Labour Disciplinary Regulations and Responsibilities Regarding Equipment; Chapter X: Seperate Provisions Concerning Female Workers and Ensuring Gender Equality; Chapter XI: Seperate Provisions concernign Minor Workers and Other Certain Types of Workers; Chapter XIII: Workers Representative Organisation(s) at the Grassroots Level; and Chapter XIV: Resolution of Labour Disputes.



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