International Labour Organization

Get to know your new Labour Code 2019

Workplace Dialogue and Collective Bargaining

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.

This information sheet introduces the rules regulated in 2019LC on workplace dialogue and collective bargaining.

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What is workplace dialogue under the Labour Code 2019?

Workplace dialogue is a process that involves employers and workers and/or workers' representative organisations (WROs) at a workplace, sharing information, consulting, discussing and exchanging opinions on matters of rights and interests or other mutual concerns of the two parties.

The objective of this dialogue is to 'strengthen understanding, cooperation and joint efforts to reach mutually beneficial solutions.' The Labour Code requires employers to organise workplace dialogues in at least three circumstances (see Box 1).

In the Labour Code, employers are encouraged to conduct dialogue on a range of issues, in addition to those that are compulsory. These may include the business and production situation of the employer; implementation of the employment contract, collective bargaining agreement, internal rules, regulations and other commitments and agreements at the workplace; working conditions; or matters concerning the relationship between WRO(s) and the employer.

What is collective bargaining?

Collective bargaining is the process of negotiating and reaching agreement between one or more workers' representative organization on one side and one or more employers or employers' representative organizations on the other side. The purpose of collective bargaining is 'to establish working conditions, regulate the relations between involved parties, and to develop advanced, harmonious and stable labour relations.' The Labour Code makes clear that collective bargaining must be carried out according to the principles of voluntariness, cooperativeness, good faith, equality, openness to the public and transparency.

The agreement reached between the parties to collective bargaining is called **a collective bargaining agreement (CBA)**. A CBA is a legally binding agreement negotiated between an employer (or a group of employers) and one or more workers' representative organisations (WROs).

The Labour Code recognises three different types of CBAs:

- Enterprise-level CBAs
- Multi-employer CBAs
- Sectoral-level CBAs.

Each of these forms of CBA are subject to different rules and processes, particularly relating to who represents the parties and who is consulted/ or has the chance to vote on proposed CBAs. This information sheet focuses mainly on the process for negotiating an enterprise-level CBA, although some information relating to CBAs at other levels is included.

Box 1: When must dialogue be organised?

In the Labour Code, employers must organise workplace dialogue in as follows:

1. Periodic dialogue (at least once a year)
2. Dialogue at the request of either or both parties
3. Dialogue on certain matters as required under the Labour Code. These include:
(i) Where the employer intends to terminate employment due to workers' poor performance,
(ii) When employer develops labour use proposal in case of changes in structure, technology or for economic reasons
(iii) In the process of developing a wage scale, wage table and labour norms
(iv) Prior to deciding on bonuses to be paid to workers
(v) Prior to issuing, amending or supplementing internal work regulations
(vi) Prior to temporarily suspending a worker for certain violations of labour discipline.

The Government will provide implementing regulations on the organization of dialogue and implementation of grassroots democracy at the workplace.

Why make a CBA and what is its status?

A CBA is a collective contract that can incorporate a range of terms that meet the parties' specific needs or objectives. For example, workers may negotiate to reduce normal hours of work (in comparison to that set in the Labour Code), or additional leave, flexible working arrangements, and extra benefits such as employer-funded lunches or special travel allowances. The employer, in contrast, may seek agreement to working a different shift pattern or a general commitment on overtime patterns.

A CBA cannot contain terms that are contrary to the law. A CBA should contain terms that are more beneficial to workers than the minimum standards prescribed in the law. Where a CBA comes into effect and sets lower normal working hours than those in the individual worker's contract or in internal regulations, the individual cntracts and regulations must be amended to align with the CBA.

The terms of a CBA are legally binding on both parties and, in the event (or belief) of non-compliance, either party can formally request the latter to fully comply with the agreement, and, in the absence of a satisfactory resolution, either party has the right to raise a collective labour dispute in accordance with the law. See further Information Sheet: Labour Dispute Resolution.

What matters may be subject to collective bargaining?

The bargaining parties may choose to enter into collective bargaining on a wide range of matters that are of concern to either party.

The Labour Code lists the following suggested issues:

- Wages, wage-based additional payments, wage increase, bonuses, meal breaks and other policies
- Work norms, working hours and rest times, overtime work, shift breaks
- Employment security
- Occupational health and safety
- Implementation of internal work regulations
- Conditions and facilities for WROs
- Relations between the employer(s) and the WRO(s)
- Mechanisms for the prevention and settlement of labour disputes
- Issues relating to the promotion of gender equality, including maternity protection, annual leave and the prevention of violence and sexual harassment at the workplace.

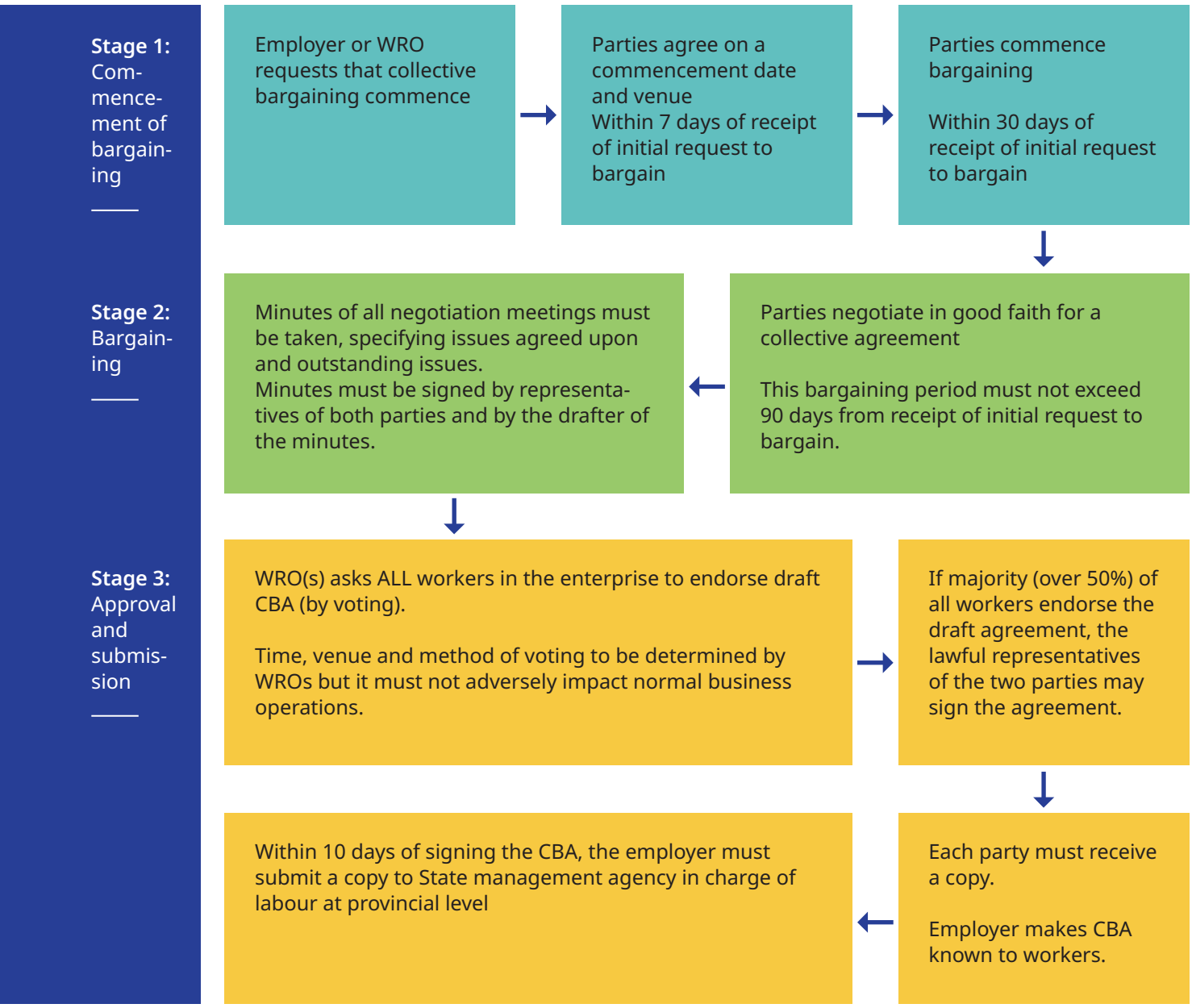
Who can represent workers in enterprise-level collective bargaining?

The employer and the WRO(s) agree on the number of participants in bargaining process. Each party (the WRO(s) and the employer) has the right to determine their own bargaining representatives.

Where there is a *most representative WRO* and one or more other WROs chose to participate in the collective bargaining, the most representative WRO retains the right to determine the number of representatives from each WRO. Where there is no *most representative WRO* and two or more WROs join together for collective bargaining, the WROs should agree upon the number of representatives from each organisation to participate in the bargaining.

If no agreement can be reached, the number of representatives is to be determined on a proportionate basis. Each party has the right to invite their higher-level organisations (if they have one) to represent them in the bargaining process.

The process for reaching an enterprise-level CBA



Multi-employer and sectoral collective bargaining

Employers and WROs may choose to collectively bargain on a multi-employer or sectoral basis. The principles applying to, and subjects for, collective bargaining at these levels are the same as at enterprise level. However, subject to their conditions, the bargaining parties may decide on the process they follow for collective bargaining. The representatives who take part in multi-enterprise collective bargaining are determined by the parties involved on a voluntary and negotiated basis. However, at a sectoral level, the sectoral trade union(s) and employers' organization(s) in the sector make that determination.

The Labour Code 2019 suggests that multi-employer collective barganing be undertaken via a Collective Bargaining Council, which may be established by the Department of Labour, Invalids and Social Affairs (DOLISA) at the provincial level upon the request of the bargaining parties (multiple employers and WROs). It is to be comprised of a Chair-person (as agreed by parties), representatives of the bargaining parties; and a DOLISA representative. A Collective Bargaining Council ceases operation following the signing of the multi-employer CBA or other agreement by the parties.

Employer obligations during collective bargaining

The Labour Code imposes important obligations on employers during the bargaining process. An employer must:

- Not refuse a WRO's request to commence bargaining
- At least 10 days before the first negotiation meeting, and on the request of the WRO(s) participating in bargaining, provide information in order to enable meaningful collective bargaining. This includes information on the business' operations and other relevant issues. The employer is not required to reveal business or technological information of a confidential nature.
- Arrange the time, venue and other necessary conditions for collective bargaining sessions. The time that workers' representatives spend in negotiation meetings should be remunerated at the worker's normal pay rate.
- Refrain from hassling, obstructing or intervening in:
  - o WRO(s) discussions and consultations with workers concerning the bargaining process
  - o the process of seeking endorsement (by voting) conducted by the WROs.
- Make the signed CBA known to all workers
- Within 10 days of signing a CBA, submit a copy to the State management agency in charge of labour at the provincial level.
- Cover all expenses relating to the organisation of negotiation meetings and the signing, amendment, supplementation, submission and announcement of a CBA.

WRO rights and obligations during collective bargaining

The Labour Code sets out important rights and obligations for WRO(s) during the bargaining process. A WRO:

- Must not refuse an employer's request to commence bargaining;
- Has the right to arrange discussions with, and seek input from, the workers concerned pertaining to matters of, approach to and expected results from collective bargaining. The time, venue and method of such discussions and consultations may be determined by the WRO(s) but must not adversely impact the firm's normal business operations;
- Must widely disseminate the minutes of collective bargaining negotiations to workers for discussion and solicitation of opinions;
- Is responsible for seeking worker endorsement of a draft CBA.

What if the parties cannot reach agreement or a dispute arises during bargaining?

The Labour Code sets out the dispute resolution procedures to be followed when issues arise during the bargaining process, for example:

- where WROs disagree as to which is the most representative;
- where an employer unlawfully intervenes in, or manipulates, the establishment or operation of a WRO; or
- where the parties fail to reach an agreement within the set time period.

The Labour Code also sets out procedures that must be followed by a WRO (or WROs) prior to the taking of strike action. See further **Information Sheet: Labour Dispute Resolution.**

Who does a CBA apply to?

Under the Labour Code 2019, once an enterprise-level CBA comes into operation, it applies to the employer and all workers of the enterprise. This includes workers that are employed by the employer after the CBA has taken effect.

Sectoral and multi-employer-level CBAs apply to all employers and workers of the enterprises covered by those agreements.

Implementation of enterprise-level CBAs

A CBA comes into effect on the date stipulated in the agreement or, where no date is stipulated, on the date the agreement is signed. A CBA may have a duration of between 1 and 3 years.

Where any terms in a CBA are more favourable to workers than those stipulated in employment contracts concluded prior to the CBA commencing operation, the terms in the CBA prevail.

Internal work regulations that are inconsistent with a CBA must be amended.

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For more information

This information sheet provides information of a general nature. All of the above matters are detailed in the Labour Code. See Chapter I: General Provisions; Chapter III: Employment Contractd; Chapter V: Workplace Dialogue, Collective Bargaining, Collective Bargaining Agreements; Chapter VIII: Labour Disciplinary Regulations and Responsibilities Regarding Equipment; and Chapter XIV: Resolution of Labour Disputes.

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