

LABOR LAW 2019

PENDING QUESTIONS

AS FEATURED IN AN INTERVIEW WITH TIA SANG MAGAZINE 05.12.2019

As officially passed two weeks ago, the newly revised Labor Code is applauded for its new highlights that are closer to international labor standards required by Vietnam's entry to free trade agreements. We have interviewed Mrs Dang Thi Hai Ha, Founder of Respect Vietnam, an independent expert in labor relations & organisational development in sustainable development, with regard to the feasibility of the new Code

12/2019
English version made by Respect Vietnam

Q: After the official ratification of the new Labor Code on the 20th Nov 2019, there is a number of respondents expressing their surprises. The reason was the number of delays since the Code revision was introduced due to the increasing disagreements over several controversial issues. As a labor & manpower expert who has consulted a number of companies, international organisations, corporations & governments, what is your take on the new highlights the Code has made?

A: I think the new Labor Code finally got passed on 20 Nov 2019 after a number of delays is a good news. Before that every time a bill was issued a countless number of "heated" debates arrived, then cooled off and some time faded into silence.

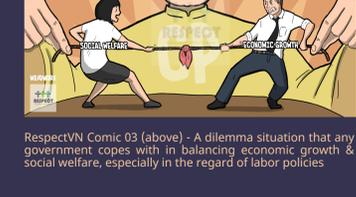
One of the most controversial item that was hardest to reach consensus was the right to form organisations of labor or employees at the workplace level which are different from unions under Vietnam General Confederation of Labor (VGCL). This is not a simple issue for any country.



RespectVN Comic 01 (above) - A worker is making a choice between Union A who demands for wage hikes, social insurances and Union B for job security, solidarity & peace

Q: The Labor Code in any nation always bear the responsibility of the two intertwined goals of contributing to "economic growth" & "social development." How are these two goals considered during the revision of the Labor Code 2019 of Vietnam?

A: There is a universally controversial debate across the globe in the past years in this regard: "Can economic & commercial growth bring in more jobs, more incomes, & social justice?"



RespectVN Comic 03 (above) - A dilemma situation that any government copes with in balancing economic growth & social welfare, especially in the regard of labor policies

To answer this question, there have been two schools of thought. One is pro free-trade, one against it. The pro-trade believes that trade growth will create more jobs, generate more income or increase the social status of the working classes. The other one does not believe in this scenarios and affirms that the fruits of trade growth only fall into employers' pockets, labor rights therefore need to be protected as employees always have the less bargaining power.

This is the very conflicting line between the unsentimental logic of economic terms & the sentimental attachment to social aspect of labor/employment policy making processes. An emphasis is needed that in many cases, any argument that earns more social sympathy will get more advantages although it might not be more persuasive.

To be fair, the Labor Code 2019 to some extent successfully made an effort to balance the expectations of both employers & employees, which is either "competitive" side or "decent" side of the coin.

However, to achieve the twin goals of contributing to the "economic growth" & "social development", the reform only in Labor Code texts is not enough. The two goals depend significantly on how the Code is enforced in practice.



RespectVN Comic 05 (above) - Labor inspectors struggling with dual-contract frauds to avoid tax & social insurance

A: Let me put it this way. Throwing back to a couple of years ago, "why were wildcat strikes where workers demand for more overtime, and why were ones where they demand for less?"

The most practical answers for this question from workers' perspectives: (i) we want more overtime as we get paid fully and timely for our overtime, together with basic pay & allowance; (ii) we want less overtime as we get paid late & in arrears many times, besides we are forced to work overtime against our will.

This means that workers' expectations & demands vary & depend a lot on the relationship with their employers. However in the Party members' debates, it was likely that led to two options "no" or "yes" which led to the debates of "increasing" or "decreasing" overtime. I think these flows of thought were not practical or comprehensive enough. When the overtime number is fixed the law enforcement will face more difficulties.

Further that more, employers brought in the data that 99% companies & their employees agreed to increase overtime (based on an ILO report). However the pro-labor side opposed to this argument, confirming that they were "suspicious & surprised" that workers all want to work overtime. In this case this debate needs to take into account the reality of complying with overtime requirements in various workplaces, as well as the reliable data such as overtime violations from government labor inspectors or the verification of these data.

Vietnam is not an exception, not to mention more complicated due to the special labor politics.

In the past years, although being one of the members of International Labor Organisation (ILO), Vietnam has not ratified one of the four ILO fundamental labor standards which is Convention No. 98 - Freedom of Association. This convention allows every blue or white-collar worker to freely choose & form the trade union of their own choice. The purpose is for their legitimate rights & economic benefits to be protected against any unfair or illegal labor behaviours made by employers or companies operating in Vietnam's soil.

In this context, the fact of the matter is that the Labor Code 2019 accepts the special role of these organisations in addition to the workplace-level trade unions should be the first step in the course of advancing Vietnam's integration into international standards that have been respected by the several Free Trade Agreements (FTA).

Although there would remain skeptics whether these regulations & their sub-laws actually improve labor rights & benefits (i.e. which government authorities and how they allow the formation of labor organisations in practice, why these organisations are not allowed to be formed outside workplaces, etc.), I am still positive this is one of the remarkable success of relevant law-makers.

RespectVN Comic 02 (on the right) - The debate between pro-labor experts & pro-trade economists who support & disapprove Minimum Wages respectively

Vietnam is not an exception. The Labor Code Reform divided the concerned into two groups - one protecting employees & the other standing by the employers' side.

For example, with regard to the overtime regulations, the employers want to increase the total number of overtime in a year from 200 to 400 (before even 600) in order to compete with Bangladesh, China (400), Korea (600), and Indonesia (700), etc. In the meantime, the employees want to keep the numbers unchanged, even reducing the normal working hours from 48 to 44 in a week to make sure the labor legislation is decent enough for workers who need time for their family & reproduction of labor power.



RespectVN Comic 04 (above) - Overtime & working hour policies have been a controversial debate in Labor Code

Q: So the ratification of Labor Code this time suggested that somehow we still need to depend on the "sentimental" aspect or the reformed contents mostly aim to "mollify" the two conflicting schools of thought?

A: That is right. Again with the overtime policy, in comparison with other previous drafts, the final debates prior to the ratification already associated with more specific, more practical data and more logical to the observers.

However the sentimental attachment still wins because the key points that make the two sides closer were not digged up yet. Specifically we have not considered throughly the enforcement of existing overtime policies. Ministry of Labor Data in 2018 shows that only 6000 out of 700000 enterprises were inspected by labor inspectors. The violations tripled (335%) VND 187.086 billions (~ USD 8 billions) as the total fines requested by government inspectors. However only VND 32.234 billions (~USD 1.2 billions) were actually collected. This means only near 20% violators got to pay for their violations.

So if all 700000 enterprises are inspected, how many violations are recorded & penalised with regard to overtime? How many employees working in offices, factories, hotels or farms are unpaid, low-paid or forced to work overtime?

The same question can go to pay, hiring, firing, etc. all in the cycle of relation between employees & employers



RespectVN Comic 07 (above) - International, regional & national laws & policies daily affect workplace relations

Q: So what do you think should be the next steps for the Code to pursue its twin goals of contributing to "economic growth" & "social development"?

I think given the introduction of fundamental issues in this Code, some consensus has arrived. Besides a number of experts, policy makers started to see the main bottlenecks in developing & implementing laws. I think what they need to be doing is to listen each other in a more focused, result-based & more tech-aligned in the efforts to guide & enforce the Code in the time to come.

Simply put it, i think both sides of employees & employers, specially government authorities (not only labor administration) should together make joint efforts in answering the more practical & cross-cutting pending questions:

- Will Labor Code 2019 enforcement create more or less labor violations, wildcat strikes, lawsuits? Will worker



RespectVN Comic 02 (on the right) - The debate between pro-labor experts & pro-trade economists who support & disapprove Minimum Wages respectively

Besides I would like to emphasise the absence of the other two controversies, namely (i) the proposal to water down minimum wages as they might harm the economy (See Comic 02); and (ii) the one to dismiss the maternity benefits that might take away female workers' job opportunities, in this Labor Code.

The absence of the two proposals in the Code 2019 has shown that the Government no longer struggles with policy options or choices of national goals which were already recognised by the international communities as well as appreciated by the majority of the public.

You can see the two important key words "competitive" & "decent" in these diverging debates.

As for the pro-business side, increasing overtime will boost business competitiveness, job security & income generation via more working hours - However, this argument implies that ALL employers comply with labor laws & share economic benefits fairly with employees.

As for the pro-labor side, increasing overtime without decreasing normal working hours will not guarantee zero labor exploitation or income generation - However, this argument implies that NO employers comply with labor laws & share economic benefits fairly with employees.

Both arguments simply equalise complying companies with violating companies who turn out to be more competitive at least in term of compliance cost compared to the law-complying companies.

Q: In reality, how do we come to agreement given those dividing or diverging arguments?

You must have remembered some previous "headlines" which made "waves" on social media such as "National Assembly member cries requesting overtime reduction for workers" - Many voices believe that thanks to these "waves", the majority of public opinions & NA members voted for the policy option of not increasing overtime up to 400 hours per year.



RespectVN Comic 06 (above) - Law violators increase minimum wages while cutting bonus, increase productivity

If these data was deployed in the mentioned debates, the pro-labor side would be able to persuade the majority without tears, and the pro-trade side must reconsider their violations & together with the State looking back to Vietnam's social & labor commitments or obligations in new-generation FTAs with many countries that Vietnam is entering.

Only reliable & persuasive numbers will make two sides closer in reviewing the big picture & together answering the same question that both must consider together

Q: However some say increasing overtime is what the majority of workers want?

- grievances, violation reports are handled, investigated in a right way to differentiate violators & non-violators?
- Will Labor Code enforcement make less complying companies to turn themselves into violators who might be more competitive in low-cost labor compliance or HR management?
- Will Labor Code make employees & employers closer or push them away?

Furthermore in negotiating/implementing new-generation FTAs, the following questions also need to be answered:

- Besides tax reduction, what actually benefit businesses if they respect human rights, labor rights or uphold sustainable development?
- Can labor compliance be less costly & positively affect business bottom lines so complying companies are more competitive than the violators?

In this regard, we already figured out that the lack of understanding & the misinterpretation of social obligations is the biggest barrier in business practices.



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