



Dispute **Employment**
Resolution

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1. Some critical issues in employment dispute resolution

1.1. Compulsory pre-litigation mediation and short statute of limitations

a. Compulsory pre-litigation mediation

Almost all claims between an employee and an employer must go through pre-litigation mediation (at the local labor authority), except for disputes relating to:



Dismissal or unilateral termination of employment



Compulsory social insurance and health insurance



Compensation and allowances for termination of employment



Compensation between the employees and the companies sending labor abroad



Domestic workers (maids, helpers)



Should consider asking the Court to dismiss the claims of the opposing party if such claims have not gone through pre-litigation mediation and do not fall within the above exceptions

1. Some critical issues in employment dispute resolution

1.1. Compulsory pre-litigation mediation and short statute of limitations

a. Compulsory pre-litigation mediation

If you are summoned by the local labor authority for a mediation meeting



SHOULD NOT make any statement or submit any document/evidence unnecessarily, the mediator does not have power to force you to do anything or make any conclusion about the case. However, anything you mention or submit during the process could later be used against you at the Court.



SHOULD make as much claims against the opposing party as possible (regardless of whether you have strong evidence or not); otherwise, your counterclaims filed at the Court in the later proceedings may be treated as “have not gone through compulsory pre-litigation mediation” and as a result, may be dismissed by the Court.

1. Some critical issues in employment dispute resolution

1.1. Compulsory pre-litigation mediation and short statute of limitations

b. Short statute of limitations

Statute of limitations for labor disputes is 01 year from the time of discovering the alleged violations, which is very short. Therefore, as a defendant in a labor dispute, you should:



Check whether the statute of limitations has expired; if it has, request the Court to dismiss the claims.



Not make any official settlement offer or any other ways of admission of liability, because any partial admission of liability could make the statute of limitations for the whole case being re-started, i.e. the 01-year period will be re-counted from your admission. Without prejudice rule does not exist under the Vietnam law.



If you plan to file any counterclaim against the opposing party, should **ensure that you file within the 01-year statute of limitations.**

1. Some critical issues in employment dispute resolution

1.2. Burden of proof and provision of documents

In case of termination of employment (by the employer) and labor discipline, the burden of proof falls on the employer.



These two cases are very disadvantageous for the employer because the employer must prove that every single step in the termination or discipline process strictly complies with the law.



Without advice and review by an experienced litigator during the termination or discipline process, the employer often loses in these types of dispute.

1. Some critical issues in employment dispute resolution

1.2. Burden of proof and provision of documents

In other cases, the burden proof will fall on the employee as the plaintiff.

➔ Should challenge the evidence of the employee and should not make any unnecessary admission of facts.



What if the Court orders the Company to disclose the internal policies (as per requested by the employee)?



No effective remedy to impose when the Company refuses to provide the information/documents.



If the Company claims that they do not have or have lost the documents, there is no method for the Court to check such claim.

1. Some critical issues in employment dispute resolution

1.3. The employee uses newspapers to commit libel during the dispute

During the dispute, the employee may use the newspapers to publish untruth and groundless accusation against the Company with the intention of pressuring the Company into settlement.

In this situation the Company should consider:



Filing a criminal denunciation against the employee.



Filing a complaint against the newspapers to the supervising government agencies (e.g. Ministry of Information and Communications).



Filing a lawsuit against both the employee and the newspapers at the Court.

When seeing the Company taking strong actions, the third parties will question the accuracy of the news articles; the employee and the newspapers will also be afraid and stop their wrongful actions.

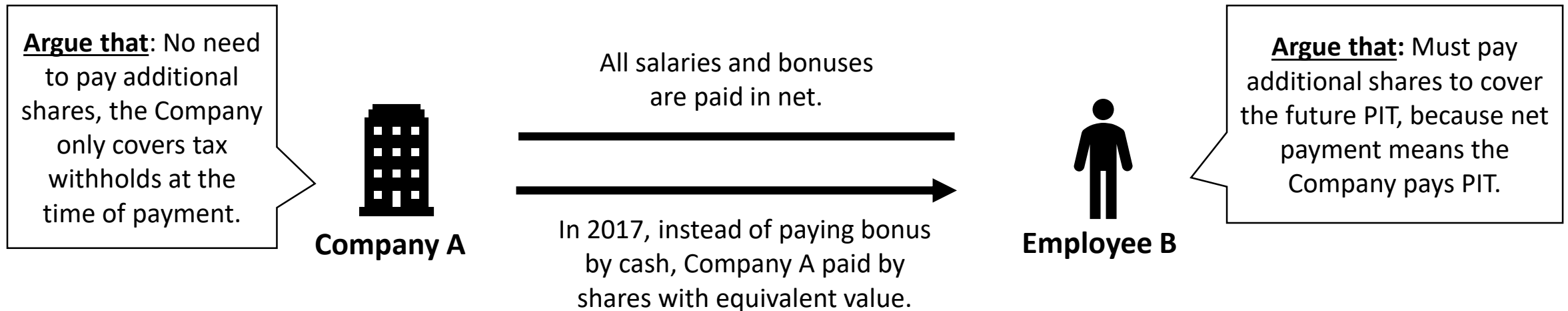
2. Disputes over salaries and bonuses

2.1. Net payments

Although net payments (salaries, bonuses, allowances) are often used, there is no definition of net payments under the Vietnam law. This lack of regulations may lead to disputes in the future. For example:



Under the tax law, for bonuses paid by shares, the PIT is not declared and paid at the time of receiving the shares; but instead, at the time of selling the shares in the future.



➔ Should have clear definition and limitation of the Company's obligations in case of using net payments.



2.2. Salary increments and bonuses

Salary increments and bonuses are not compulsory, unless the Company makes specific commitments.

While defending against claims of salary increments and bonuses, should not make any indirect admission of liability or make the burden of proof fall on you. For example:

Defense 1: The Company did not give salary increments and bonuses because the employee failed to meet the performance standards.

The Court will ask the company:

Which standards the employee failed to meet? Ordering the Company to disclose the performance evaluation documents to prove the defense.



Defense 2: The Company does not make any promise for salary increments or bonuses.

The Court will ask the employee:

Which evidence shows that the Company promise to provide salary increments or bonuses?



3. Termination of employment by the employee

3.1. Training expenses

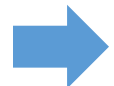
The law provides that the Company can claim back the training expenses, in case the employee terminates the employment illegally and fails to complete the promised working period after the training course.



If the labor contract is indefinite-term and the employee unilaterally resigns by sending a 45-day notice (as allowed by the law), will the employee need to reimburse the training expenses?



If during the promised working period, the Company dismisses/terminates the employment with the employee, will the employee need to reimburse the training expenses?



Should have a detailed training agreement to address these issues.

3. Termination of employment by the employee



3.2. Non-disclosure agreement and non-competition agreement

One of the issues most concerned by the Company is that their employees may disclose confidential information for competitors after resigning. Thus, many companies use non-disclosure agreement and non-competition agreement to minimize this risk.

- a. Are those agreements enforceable in Vietnam?
- b. What are the available remedies in case of breach?



3. Termination of employment by the employee

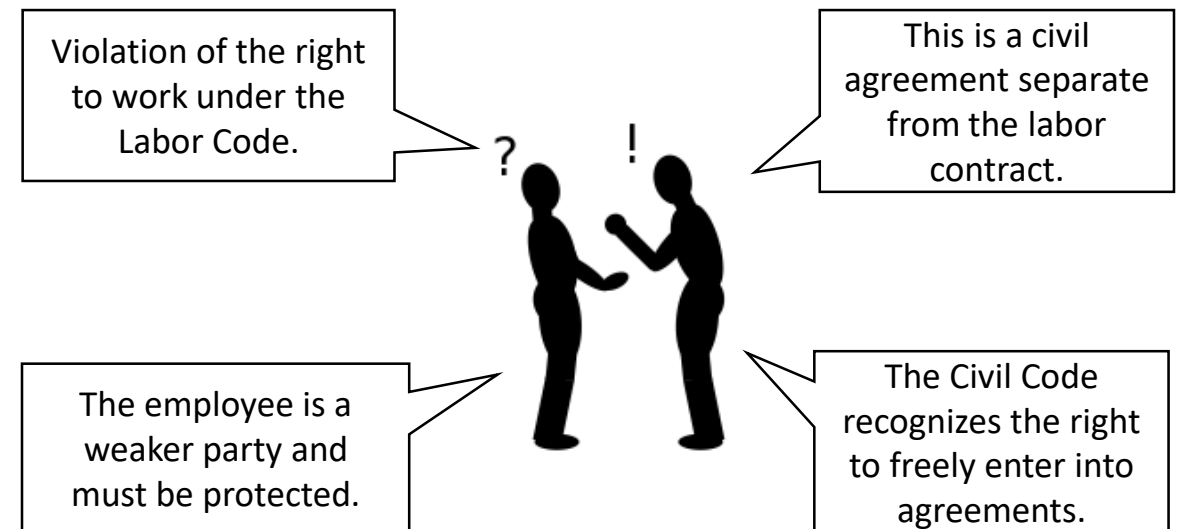


3.2. Non-disclosure agreement and non-competition agreement

a. Enforceability of the agreements

Non-disclosure agreement: It is recognized and allowed by the law.

Non-competition agreement: There is no clear regulation relating to non-competition agreement so its validity and enforceability are arguable.



3. Termination of employment by the employee



3.2. Non-disclosure agreement and non-competition agreement

a. Enforceability of the agreements

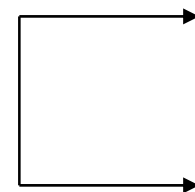
How to maximize the chance of enforceability of the non-competition agreement?



Separating the non-competition agreement from the labor contract (because the Labor Code strictly protects the employee and is very disadvantageous for the Company in this case)



Ensuring that the agreement is reasonable:



Reasonable limits of the non-competition
(applicable time period, geographical area)

What the employee will receive in return?

3. Termination of employment by the employee



3.2. Non-disclosure agreement and non-competition agreement

a. Enforceability of the agreements

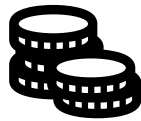
Should the non-disclosure agreement and non-competition agreement have arbitration clause, because the arbitrators may be more open-minded to accept these agreements?



3. Termination of employment by the employee

3.2. Non-disclosure agreement and non-competition agreement

b. Available remedies



Claiming damages: Vietnam only recognizes compensatory damages (damages based on actual losses) so this remedy is not reliable in most cases because the actual losses are difficult to prove.



Claiming penalty: Can be applied but must be stipulated clearly in the agreement.

3. Termination of employment by the employee



3.2. Non-disclosure agreement and non-competition agreement

b. Available remedies

Can the Company ask for injunctions such as stopping the employee from using the information or from working for the competitors?



Vietnamese judges often prefer safe, clear and common injunctions such as interim asset freezing. An injunction having a large scope is unlikely to be granted by the judge.



Even if the judge agrees, can the enforcement agency enforce such injunctions in practice?

4. Termination of employment by the employer

Employer's unilateral termination of employment is very difficult in Vietnam because:



The law only provides some limited grounds for termination, which either requires serious violations of the employee or the circumstances where the employer cannot continue the employment.



Can the parties add more grounds for termination under the labor contract, e.g. stipulating that the Company can terminate the employment if the employee fails to meet a specific sale target?

4. Termination of employment by the employer

Employer's unilateral termination of employment is very difficult in Vietnam because:

The burden of proof falls on the Company in this case. For example:



Employee A stole assets of the Company.



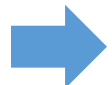
The manager caught this employee and make a record of the violation, but A refused to sign such record.



Based on such record, the Company dismissed Employee A.



The Court declared that the termination is invalid because the record is neither signed by A, nor independent witnesses.



Should have very strong evidence before terminating the employment with an employee.

4. Termination of employment by the employer

Any small miss/mistake in the termination of employment could result in heavy compensation (may reach 12 months' salary or even more).

Alternative options to minimize this risk:

Mutual termination: In some cases, instead of spending significant time and costs to fulfil the procedures for unilateral termination, it may be more efficient to pay the employee an extra supportive amount and enter into a mutual agreement.

Termination upon the expiry of the probation/employment.



If the probation/employment has expired but the Company needs the employee to hand over the work; can the parties enter into an agreement to extend for an additional few days?

THANK YOU FOR LISTENING

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