



Human Resources

In order to fuel the continued growth of Vietnam's economy as well as to remain a highly attractive investment destination for European Companies, Vietnam's Human Resources are of paramount importance. A new draft Labour Code Draft was issued in August 2009 and is due to be valid from 1st January 2011. EuroCham has examined five key areas of this new draft Labour Law (referred to as the 'New Labour Law'.)

I. Duration of Probation Period

In the article 34 of the New Labour Law, the probation period: Shall not exceed one (1) month for contracts of less than one year, shall not exceed two (2) months for contracts of more than one year and less than three years, and shall not exceed three (3) months for contracts of more than three years or indefinite contract. EuroCham believes that this article does not define the length of probation period for contracts of exactly one year or three years: The maximum duration of the probation period has been increased to 3 months, but it's still insufficient for certain jobs requiring specific skills and some industries. Normally, enterprises in these industries need about six (6) month probation to be sure about the competence of employees.

Recommendations: EuroCham believes that that the length of the probation period should not be linked to the duration of the contract as the probation period is aimed to provide a framework for identifying and sorting out any early difficulties which may occur in the performance of the job, whatever the length of the contract is. Rather, EuroCham recommends having the probation period based on the nature, the seniority or the technical nature of the job, similar to some major countries in Europe. The standard duration of probation period should be from one (1) to three (3) months, as defined in advance in the Internal Labour Regulations and Collective Agreement of the Enterprise, in which there should also be an option to have up to six (6) months probation period for specific and management jobs.

II. Registration of Labour Contracts

In the article 34 of the New Labour Law, the probation period is seen as an integral part of the working time of the employee in respect of benefits etc. This article recommends a Labour Contract to be signed from the date of the start of the employment inclusive of the Probation Period. This helps to protect the employees from the current common practice of working with only an 'offer letter' during the probation period and without any written Labour Contract. However, signing a Labour Contract from the start of employment imposes a very large administrative burden on the companies, particularly small- and medium sized ones due to the current Labour Contracts registration and declaration deadlines with the labour authorities and statutory insurances.

Recommendation: To protect the lawful rights and interests of employees, it should be provided that the probationer is entitled to all legal rights and interests of employees during the probation period. We suggest an extended or flexible registration period of new Labour Contracts to three (3) calendar months (the probation period) from the start of employment, as to allow more time for the Enterprises to gather documentation and declare only the employees that pass the probation period.

III. Working Time

Article 120 of the New Labour Law restricts the working time to 8 hours per day. This is different to current Article 68 Labour Code, which restricts working to *either* 8 hours per day *or* 48 hours per week. EuroCham believes that this '8 or 48' gives far greater flexibility especially to those companies that require shift work. Accordingly, removing the 'or 48' hours per week will cause many issues in multiple industries especially where shift work is required.

Recommendation: We suggest that the existing 8 hours per day **or** 48 per week be retained under the New Labour Law.

IV. Overtime Hours

Article 122 of the New Labour Law increases the total overtime hours from 200 (as provided by the current Labour Law) to 300 per year subject to a maximum 20 hours per week. EuroCham notes that many employees tend to seek companies that allow overtime as the more overtime they do the more money they can earn. In principle, overtime hours are not compulsory for employees, but employees who are unable to do the volume of overtime they want with one company often chose to take up a second job with another company. Such a situation is not good for the employee or the two companies involved as far as commitment is concerned. Also in certain industries such moonlighting can cause issues with Intellectual Property and confidentiality issues. On the other hand, many companies need employees to work overtime due to operational requirements mostly driven by customer demand such as a rush order in a manufacturing Enterprise or seasonal fluctuations in hospitality and retail or in emergency situations such as hospitals and firemen. Under the current legal framework, companies are often required to overstaff in order to cater for these fluctuations and remain within the 300 hour limit.

With regards to regional competitiveness, other countries in the ASEAN area and other regions have significantly higher overtime limits (see chart where bold colour is the legal limit), with Vietnam having the lowest (annual) legal limits in the region.

Country	Legal Permissible Maximum (Hours per Week)			
	Normal	Overtime		
		Week	Month	Year
US	40	None	None	None
China	40	36	156	1,872
Thailand	48	36	156	1,872
Malaysia	48	24	104	1,248
Singapore	40-45	17	72	864

Germany	48	12	48	624
France	39	9	36	468
Vietnam	48	20	25	300

Recommendation: Flexibility over overtime hours is a necessity for companies in Vietnam to retain their competitiveness. We would therefore suggest that companies and employees be given the flexibility to exceed the 300 hours proposed under mutual agreement. Employees should be allowed to work longer than the hours stated in their Labour contract if they agree to work overtime. Any agreement to work overtime should be in writing (and signed) between both the employee and the employer in which the employee shall not claim for any further overtime hours, if any. These overtime limits should be defined clearly in the 'Internal Labour Rules / Regulations' as well as the 'Collective Agreement' of the Enterprise.

V. Resting time between shifts

Article 125 of the New Labour Law states that employees working in shifts must have a rest period of at least 12 hours before commencing the next shift. This is the same rest period as under the current Labour Law. EuroCham suggests that the rest period is modified and made more flexible for various reasons:

- Many enterprises have a need to operate multiple shifts for sound business reasons such as manufacturing lines that need to operate 24/7 or to cater for seasonal demand.
- Many industries need to operate 24/7 such as: hospitals, emergency services; public utilities; oil drilling operations; refineries and Hotels. Adhering to a strict 12 hour gap places operational strain as well as additional costs for the above industries.
- Flexibility over resting time between shifts is a necessity for companies in Vietnam to retain their competitiveness as well as for Vietnam's emergency and public services to enable their responsiveness

Recommendations: We suggest that Enterprises have greater flexibility with rest periods for shift work and shift changes. In particular, we recommend: Resting time between should be no less than 8 hours with a 'recommended rest' of 12 hours when working 8 hours/day; and the number of times an employee can have less than a 12 hour rest period between shifts is limited to a maximum 8 times per month and 2 times per week. Further, the resting time between shifts should be defined clearly in the 'Internal Labour Regulations' as well as the 'Collective Agreement' of the company provided that this resting time complies with labour provisions.