

Foreign Labor Trends

Vietnam



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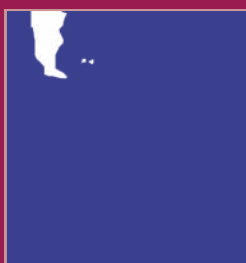
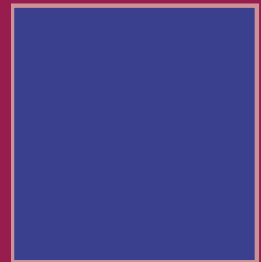
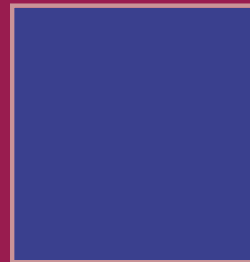
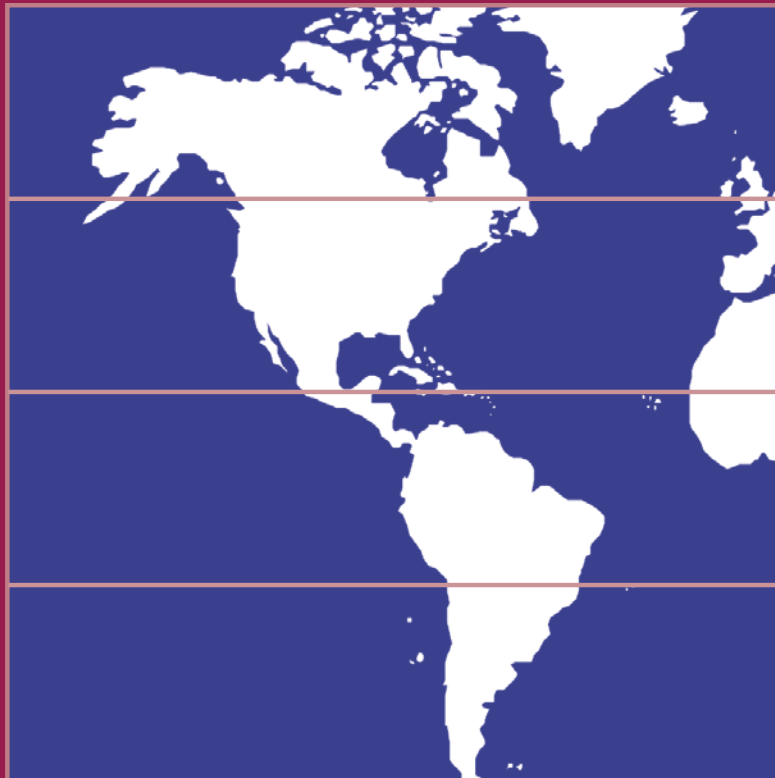


TABLE OF CONTENTS

	Page
KEY LABOR INDICATORS	1
DESCRIPTION OF LABOR SCENE	4
GOVERNMENT	4
EMPLOYERS	4
TRADE UNIONS	5
DEMOGRAPHY AND THE LABOR FORCE	5
ECONOMIC GROWTH AND EMPLOYMENT	6
INVESTMENT	6
USDOL-MOLISA MEMORANDUM OF UNDERSTANDING	7
SOCIAL SAFETY NET	7
OLD-AGE BENEFITS	8
SICKNESS AND MATERNITY BENEFITS	8
WORKER'S COMPENSATION	9
WORKER RIGHTS	9
FREEDOM OF ASSOCIATION	9
COLLECTIVE BARGAINING	10
PROHIBITION OF FORCED OR COMPULSORY LABOR	11
STATUS OF CHILD LABOR	11
NON-DISCRIMINATION	12
MINIMUM WAGE	13
HOURS OF WORK	13
OCCUPATIONAL SAFETY AND HEALTH	14
DIRECTORY OF LABOR ORGANIZATIONS	15
KEY SOURCES	16

KEY LABOR INDICATORS

Vietnam 2002

<u>INDICATOR</u>	<u>1999</u>	<u>2000</u>	<u>% CHANGE</u>
1. Per capita GDP current prices (US\$) ¹	372	400	7.5
2. —, Vietnamese Dong (VND, 000)	5,208	5,800	11.4
3. Population, total (millions) ²	76.6	77.7	1.4
4. —, Vietnamese (%)	86.2	85.9	-0.3
5. —, other ethnic groups (%) ³	13.8	14.1	2.2
6. —, in major urban areas (%)	20 ⁴	24 ⁵	20
7. Birth rate (per thousand population)	21.5 ⁶	20.9 ⁷	-2.8
8. Life expectancy at birth, total ⁸	68.9	69.3	0.6
9. —, male	66.5	66.8	0.5
10. —, female	71.5	71.9	0.6
11. Adult literacy rate (%) ⁹	93.7	93.7	0.0
12. Labor force, civilian, total (millions)	37.78	38.64	2.3
13. —, male	19.07	19.46	2.0
14. —, female	18.71	19.19	2.6

¹ Source: General Statistics Office of Vietnam.

² The figures represent the total population of Vietnam as of July 1 of the given year. See Asian Development Bank, *Key Indicators of Developing Asian and Pacific Countries* (New York: Oxford University Press, 2001) 430-431. (http://www.adb.org/Documents/Books/Key_Indicators/2001/vie.pdf).

³ Other groups are Chinese, Hmong, Thai, Khmer, Cham, and mountain groups.

⁴ "Population and Development Indicators for Asia and the Pacific, 1999" (Bangkok: United Nations Economic and Social Commission for Asia and the Pacific, 1999) (http://www.unescap.org/pop/data_sheet/1999_tab5.htm).

⁵ "Population and Development Indicators for Asia and the Pacific, 2000" (Bangkok: United Nations Economic and Social Commission for Asia and the Pacific, 1999) (http://www.unescap.org/pop/data_sheet/1999_tab4.htm).

⁶ "Population and Development Indicators for Asia and the Pacific, 1999" (http://www.unescap.org/pop/data_sheet/1999_tab5.htm).

⁷ "Population and Development Indicators for Asia and the Pacific, 2000" (http://www.unescap.org/pop/data_sheet/1999_tab5.htm).

⁸ Source: U.S. Bureau of the Census, International Data Base.

⁹ *The World Factbook 1999 and 2000* (Washington, DC: Central Intelligence Agency).

Vietnam 2002

<u>INDICATOR</u>	<u>1999</u>	<u>2000</u>	<u>% CHANGE</u>
15. Employment, civilian and government, total (millions)	35.67	36.20	1.5
16. —, in industry (millions)	4.43	4.74	7.0
17. —, in export processing and industrial zones	n/a	n/a	~
18. —, in agriculture (millions)	22.86	22.66	-0.9
19. —, in services (millions)	8.38	8.79	4.9
20. Unemployment rate (%)	6.71	6.42	-4.3
21. Underemployment rate (%)	39.6	38.8	-2.0
22. Labor productivity, manufacturing (% change)	n/a	n/a	~
23. Work-related fatalities ¹⁰	399	403	1.0
24. Work-related fatal occupational accidents	335	368	9.9
25. Days lost from industrial disputes	n/a	n/a	~
26. Minimum monthly wage rate in state sector (US\$, monthly)	n/a	11.87	~
27. —, (VND, 000)	n/a	180	~
28. Monthly minimum wage rate in foreign-invested sector (US\$)			
—, urban districts of Hanoi & Ho Chi Minh City	45	45	0.0
—, suburban districts of Hanoi & Ho Chi Minh City; Hai Phong; Bien Hoa; and Vung Tua	40	40	0.0
—, remainder of country	35	35	0.0
29. Monthly minimum wage rate in foreign-invested sector (VND, 000)			
—, urban districts of Hanoi & Ho Chi Minh City	626	626	0.0
—, suburban districts of Hanoi & Ho Chi Minh City; Hai Phong; Bien Hoa; and Vung Tua	556	556	0.0
—, remainder of country	487	487	0.0
30. Average monthly wage for the entire country (VND) ¹¹	454,556	519,462	14.3
31. Average monthly wage in the state sector (VND) ¹²	445,394	518,075	16.3
32. Average monthly wage in the foreign-invested sector (VND) ¹³	732,218	756,991	3.4
33. Average earnings by major industry (US\$)	n/a	n/a	~
34. Hourly average income per capita of production workers in manufacturing (US\$) ¹⁴	1.25	1.22	-2.4

¹⁰ Vietnam only has data on work-related accidents that involve fatalities.

¹¹ These figures likely do not include agriculture or agriculture-related employment or employment in small private businesses in the formal or informal economy.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ The figures are based on a regular work schedule of 48 hours per week (8 hours per day, 6 days per week).

Vietnam 2002

<u>INDICATOR</u>	<u>1999</u>	<u>2000</u>	<u>% CHANGE</u>
35. Hourly compensation costs for production workers in manufacturing (US\$)	n/a	n/a	~
36. —, (VND)	n/a	n/a	~
37. Hourly compensation costs for laborers (US\$)	n/a	n/a	~
38. —, clerical	n/a	n/a	~
39. —, mechanic	n/a	n/a	~
40. Supplementary benefits as % of manufacturing earnings	n/a	n/a	~
41. Average hours worked per week ¹⁵	n/a	n/a	~
42. Unionization of labor (%)	n/a	10	~
43. Average personal income per year in the state sector (US\$)	615.80	609.30	-1.1
44. Average disposable income after taxes and withholding (US\$)	n/a	n/a	~
	<u>1993</u>	<u>1998</u>	
45. Percent of population beneath poverty level ¹⁶	58	37	-36.2
	<u>1999</u>	<u>2000</u>	
46. Rate of consumer prices (%) ¹⁷	n/a	n/a	~

n/a = not available

Exchange rate: US\$1.00=14,500 Vietnamese Dong (VND) (2000); US\$1.00=14,200 VND (1999).

¹⁵ Not including overtime, average work schedule is 48 hours per week (8 hours per day, 6 days per week).

¹⁶ "Country Brief: Vietnam" (Washington, DC: The World Bank Group) ([http://www.inweb18.worldbank.org/eap/eap.nsf/Attachments/vietnam/\\$File/vietnambrief.pdf](http://www.inweb18.worldbank.org/eap/eap.nsf/Attachments/vietnam/$File/vietnambrief.pdf)).

¹⁷ Consumer prices increased by 4.1 percent in 1999, but decreased by 1.6 percent in 2000. *Vietnam Country Commercial Guide FY2002* (Washington, DC: U.S. & Foreign Commercial Service and U.S. Department of State, 2001) (<http://www.usatrade.gov>).

DESCRIPTION OF LABOR INSTITUTIONS

Government

The Ministry of Labor, Invalids and Social Affairs (MOLISA) is the lead Vietnamese government agency on labor issues, including job creation and training, labor management relations, wages and hours of work, occupational safety and health, and social insurance. The Ministry is responsible for developing national labor policy, creating labor law and regulations subject to approval by the National Assembly or Prime Minister, implementation of policy and law, and overseeing enforcement at the national level. In performing these tasks, MOLISA solicits and receives advice from a range of government agencies, the Communist Party of Vietnam, provincial Departments of Labor, Invalids and Social Affairs (DOLISAs), and relevant mass organizations, including labor and employers' organizations. The current Minister, Madame Nguyen Thi Hanh, has held her position since February 1998.

Vietnam's administrative operation is highly decentralized, with much responsibility delegated to the provinces. The provincial DOLISAs are charged with implementation and enforcement of labor policy and law at the local level. Each DOLISA falls under the direct supervision of the Provincial People's Committee in its locale, but they work in close coordination with MOLISA.

MOLISA also makes policy for and executes the Government's social welfare programs, which provide a range of benefits to the destitute elderly, persons with disabilities, and children in especially difficult circumstances, such as orphans and street children. Additionally, the Ministry administers benefits to the victims of war and is charged with the prevention of a variety of social problems, including drug use, prostitution, HIV/AIDs, and the trafficking of persons.

The International Relations Department of MOLISA manages responsibilities associated with Vietnam's participation in the International Labor Organization (ILO) and other multilateral organizations, such as the Association of the South East Asian Nations (ASEAN) and the Asia Pacific Economic Cooperation (APEC) forum on labor and social issues. The International Relations Department also is charged with the development and management of international cooperation on labor and social issues with the World Bank, UN agencies, bilateral donors such as the United States, and international non-governmental organizations (NGOs).

Employers

Two mass organizations represent Vietnam's business community with regards to labor policy and labor relations management: the Vietnam Cooperative Alliance (VCA) and the Vietnam Chamber of Commerce and Industry (VCCI). Both organizations are affiliated with the Vietnam Fatherland Front, a liaison body between the mass organizations and the Communist Party of Vietnam. The VCA is a smaller organization representing the interests of small producers, primarily those organized in cooperatives.

The VCCI is the more influential of the two employers' organizations. It was founded in 1963 as the Chamber of Commerce of the Democratic Republic of Vietnam but was renamed the Chamber of Commerce and Industry of the Socialist Republic of Vietnam in 1982 to reflect the expansion of its operations into the manufacturing sector. The VCCI represents employers and employer associations, promoting their interests in domestic and international relations. The Chamber currently has a membership of 1,842 enterprises, including state-owned enterprises, larger domestic private enterprises, and foreign businesses registered as associated members.

The VCCI's Bureau for Employers' Activities is responsible for providing services to members with regard to labor issues. The Bureau conducts training programs on labor standards, industrial relations, labor disputes, wage determination, occupational safety and health, job placement and creation, child labor, gender issues, and social security.

Both organizations liaison with the Government of Vietnam and the Vietnam General Confederation of Labor (VGCL) concerning labor management relations. They routinely convey employers' opinions to the National Assembly and to the Government in order to create a labor environment conducive for enterprise development. In addition, the organizations submit proposals to the National Assembly on legislation concerning the economy and business environment of the country.

Trade Unions

The Vietnam General Confederation of Labor (VGCL) is an affiliate of the Vietnam Fatherland Front and serves as an umbrella organization to which all unions must belong. The VGCL is comprised of 46,750 unions and has a membership of 3.7 million workers, accounting for 10 percent of the total Vietnamese labor force. Approximately 600,000 employees out of an eligible two million are unionized in the private sector, resulting in a unionization rate of 30 percent. Roughly 350,000 workers in foreign-invested firms are union members. In 2001, the VGCL claimed to represent 95 percent of public sector workers and 90 percent of workers in state-owned enterprises.

The VGCL participates in national tripartite consultations with the Government of Vietnam and the employers' organizations to promote sound labor management relations in the country. The VGCL is involved in national policy-making and is a powerful player at the provincial level. Internationally, it is affiliated with the World Federation of Trade Unions (WFTU) and has relations with 95 labor organizations in 70 countries.

DEMOGRAPHY AND THE LABOR FORCE

In mid-2001, the population of Vietnam numbered 78.7 million, making it the thirteenth most populous nation in the world. By 2025, Vietnam is expected to have a population of 104.1 million but will drop from thirteenth to fifteenth in the ranking of the world's largest countries.

The labor force in Vietnam has grown steadily from 25 million in 1984 to roughly 38 million in 1999. In 2000, the labor force numbered 38.6 million, of which 36.7 million were of legal working age (i.e, men aged 15 to 60 and women aged 15 to 55). The participation rate of the labor force within the legal working age equaled 79.4 percent.

In 2000, 8.7 million of the total labor force were from urban areas, with 8.4 million being of legal working age. Approximately 29.9 million participants in the labor force were from rural Vietnam. Of these, 28.3 million fell within the legal working age parameters. The participation rates of the labor force of legal working age were 71 percent in urban areas and 82.3 in rural areas.

In 2000, 50 percent of the labor forces were between the ages of 15 and 34. Another 43.3 percent were aged 34 to 54. Approximately 3.2 percent of the labor force fell between the ages of 55 to 59, with the remaining 3.5 percent being 60 years old and above. The labor force figures do not include working children under age 15.

ECONOMIC GROWTH AND EMPLOYMENT

From 1992 to 1997, the real gross domestic product (GDP) grew yearly between eight to nine percent but decreased to roughly four percent in 1998 due to the Asian financial crisis. In 1999, the GDP increased slightly to 4.25 percent and strengthened to 5.5 percent in 2000. The International Monetary Fund (IMF) projected a moderate growth of 4.75 percent in the 2001 GDP, noting a fall in exports due to a weaker external environment.

During the first quarter of 2001, Vietnamese industrial output grew 14.4 percent. In 2000, industrial output increased by 15.7 percent, rising from 11.5 percent in 1999. The state sector attained 5.4 percent growth in 1999 and 12.2 percent growth in 2000. The domestic private sector grew by 10.8 percent in 1999 and by 18.4 percent in 2000. The foreign-invested sector increased by 21 percent in 1999 but only obtained a growth of 18.6 percent in 2000. The strongest industrial performers in 2000 included assembled motorbikes (65.4 percent), cement (27.3 percent), ceramics (26.2 percent), electric motors (22 percent), steel (17.2 percent), textiles (17.5 percent), and garments (15.1 percent).

In 2000, the Vietnamese unemployment rate stood at 6.42 percent, with approximately 2.48 million citizens being jobless. In 1999, the unemployment rate equaled 6.71 percent. In addition, the number of underemployed workers is extremely high, reaching 39.6 percent in 1999 and 38.8 percent in 2000. The Government of Vietnam has also indicated the need to create 1.4 million jobs for new entrants into the job market each year.

INVESTMENT

The Government of Vietnam encourages foreign investment within the country and has set it as a priority in the country's long-term development plan. For 2000 to 2005, the Government has a fixed foreign direct investment (FDI) target of US\$9-10 billion. Between 1988 and May 2001, Vietnam received US\$36.9 billion in FDI commitments, of which US\$17.9 billion has been invested in more than 2,700 projects. Singaporean businesses are the largest foreign direct investors, committing US\$6.6 billion to Vietnam. U.S. companies rank thirteenth, having disbursed US\$404 million out of a total US\$943 million. Roughly 3,350 direct jobs have been created due to U.S. investment.

Ho Chi Minh City has attracted the most foreign direct investment, aided by its developed infrastructure, a welcoming investment climate, and its two export processing zones (EPZs) and 10 Industrial Zones (IZs). As of April 2000, foreign investors had committed US\$9.8 billion to projects in Ho Chi Minh City and US\$8.1 billion to ones in Hanoi. The majority of FDI projects are in general industry, in which foreign investors have committed US\$13.7 billion.

On December 10, 2001, the U.S.-Vietnam Bilateral Trade Agreement (BTA) went into effect, providing a broad range of benefits for U.S. companies doing business with Vietnam. The BTA covers six areas: market access for industrial and agricultural goods, protection of intellectual property, market access for services, investment protection, business facilitation, and transparency. Under the Agreement, the Governments of the United States and Vietnam grant one another national and most-favored-nation treatment with respect to trade and investment. The BTA reduces tariffs and quantitative restrictions on U.S. exports to Vietnam and accords Vietnam Normal Trading Rights status for exports to the United States. The Government of Vietnam will phase out trade-related investment measures inconsistent with international

standards within five years. The BTA also guarantees access to third-party investor-state dispute settlement and grants expropriation protection. The Agreement gradually phases out Vietnam's investment screening system; export requirements, minimum capital requirements, and discriminatory pricing. The BTA will further open service sectors of interest to U.S. businesses, including banking, insurance, and telecommunications. Finally, the BTA requires the Government of Vietnam to operate with transparency, providing advance notice of all laws, regulations, and administrative procedures.

Table 1: Foreign Direct Investment by Country (May 2001)

Country	Number of Projects	Licensed Capital (US\$ billion)	Invested Capital (US\$ billion)
1. Singapore	236	6.61	2.01
2. Taiwan	666	4.77	2.41
3. Japan	311	3.97	2.65
4. South Korea	288	3.19	1.91
5. Hong Kong	211	2.85	1.46
13. United States	119	0.94	0.40

Source: *Vietnam Country Commercial Guide FY2002* (Washington, DC: U.S. & Foreign Commercial Service and U.S. Department of State, 2001) (<http://www.usatrade.gov>).

USDOL-MOLISA MEMORANDUM OF UNDERSTANDING

On November 17, 2000, the U.S. Department of Labor (USDOL) and the Ministry of Labor, Invalids and Social Affairs of Vietnam (MOLISA) signed a memorandum of understanding (MOU) to establish a program of cooperation and dialogue on labor matters of mutual interest. The MOU is being implemented through a program of technical assistance, as well as through meetings between high-level USDOL and MOLISA representatives. At present, technical assistance projects have been developed in the following areas: (1) employment services; (2) social insurance and safety nets; (3) employment of people with disabilities; (4) industrial relations; and (5) prevention of child labor. A sixth project on HIV/AIDS workplace-based education and prevention is currently being designed. The first USDOL-MOLISA Labor Dialogue under the MOU was held in Washington, D.C. on March 4, 2002.

SOCIAL SAFETY NET

The social insurance system in Vietnam covers old-age benefits, sickness and maternity benefits, and worker's compensation. Participation is mandatory for state employees, as well as workers in domestic private enterprises having more than 10 employees, foreign-invested enterprises, export processing zones, industrial zones, foreign organizations, and international organizations in Vietnam.¹⁸ In 1998, there were 3.3 million contributors to the social

¹⁸ Henceforth, workers engaged in the aforementioned types of employment and whose contributions are up-to-date are defined as being under covered employment.

On April 1, 2002, the National Assembly adopted Law No. 35/2002/QH10, amending the Labor

insurance system. Employees contribute five percent of their wages towards old-age benefits. Employers are required to pay insurance premiums equal to 15 percent of payroll. Ten percent of the employer's contribution goes toward old-age benefits, with the remaining five percent being divided between sickness and maternity benefits and worker's compensation.

Old-Age Benefits

Individuals who contribute to the social insurance system for less than 20 years qualify to receive an old-age grant in a lump-sum payment at age 60 for men and age 55 for women. Pension benefits are available after 20 years of contributions at the retirement age of 60 for men and 55 for women.¹⁹ If 15 of the 20 years were served in hazardous work, the age is lowered to age 55 for men and age 50 for women. Additionally, this lower age vantage is granted to employees in designated regions as determined by the Government of Vietnam. War veterans who served 10 years in the former Republic of Vietnam and Laos before April 30, 1975 also qualify for the earlier pension, as do veterans who were engaged at least 10 years in Cambodia before August 31, 1989. (Veterans who fought for the former Republic of Vietnam are not eligible.) The formula to determine benefits consists of the wage base multiplied by a service factor of three percent for the first 15 years and then a factor of two percent thereafter. The maximum old-age pension is 75 percent of the average wage during the last 10 working years before retirement. The minimum pension must equal the minimum wage. In 1998, actual pension benefits totaled roughly US\$23.00 per month.

In practice, coverage under the Vietnamese pension system is extremely low. Coverage is best in the state sector where it is almost universal; however, less than one-third of private sector employees qualify as only enterprises with more than 10 employees are required to participate and also because many companies that should participate do not make the required contributions. In 1998, Vietnam had approximately 3.3 million contributors to the social security system, comprising only 9.1 percent of the labor force. In that year, there were roughly 1.2 million pensioners.

Sickness and Maternity Benefits

Workers in covered employment qualify for a sickness benefit to cover non-occupational accidents or illnesses. This benefit is to equal 75 percent of the worker's wages. The duration of benefits is 30 days per year if the worker has less than 15 years of covered employment, 40 days for 15-30 years, and 50 days for 30+ years. If the employee performs hazardous work, the duration is lengthened to 40, 50, and 60 days respectively. Benefits can be payable up to 180 days per year if the worker has a prolonged hospitalization due to a specified illness.

Female employees are paid 100 percent of their wages during leave for prenatal care and childbirth and also may receive an additional month's wages if it is their first or second pregnancy. Women may take one-day leave for up to three times for prenatal care. Female

Code. The new amendments go into effect on January 1, 2003. Article 141 of the Labor Code has been revised to now state that "[t]he compulsory system of social insurance shall apply to undertakings, bodies, and organizations which employ the workers under labor contract with a definite term of over three months and under labor contract with an indefinite term."

¹⁹ By Law No. 35/2002/QH10, Article 145 of the Labor Code was amended to require 25 years of contributions for female workers retiring at age 55 and 30 years of contributions for male workers retiring at age 60. This provision will come into force on January 1, 2003.

employees are entitled to four to six months maternity leave, depending on the nature of work. If it is a multiple birth, the mother is given an extra 30-day leave for each child after the second one. Maternity leave also is granted to female employees adopting a newborn until the child is 120 days old. At the employer's discretion, unpaid maternity leave may be taken for up to 180 days. Additionally, women who miscarry are allowed a 20-day leave if the miscarriage occurs during the first three months or a 30 day-leave if beyond three months.

Female workers are entitled to receive sickness benefits to take care of their first or second child. The women are to be given 75 percent of their wages for up to 20 days for a child under age three or up to 15 days for a child between the ages of three to seven. Fathers may receive these benefits under special circumstances.

In 1998, MOLISA reported that 15,710 employees received sickness and maternity benefits under the social insurance system.

Worker's Compensation

Workers in covered employment qualify for a temporary disability benefit if injured on the job. The benefit is equal to 100 percent of the worker's wages during treatment until determination of disability and is payable beginning the first day. The employee may receive inpatient and outpatient treatment, surgery, rehabilitation, and medicines. If the worker is permanently disabled up to 60 percent, he/she is given a lump-sum grant equal to between two to 12 month's wage. Those permanently disabled 61 percent and greater qualify for the following benefits to be paid monthly: 50 percent of wage (61-70 percent incapacity), 60 percent of wage (71-80 percent incapacity), 70 percent of wage (81-90 percent incapacity), and 80 percent of wage (91-100 percent incapacity). If the employee has a permanent disability above 80 percent, he/she can obtain a constant-attendance allowance.

In 1998, MOLISA reported that approximately 389,130 Vietnamese workers received benefits for work injuries.

WORKER RIGHTS

Freedom of Association

There is no true freedom of association in Vietnam. Article 1(1) of the Law on Trade Unions defines a trade union as a political and social organization of the working class that is voluntarily established under the leadership of the Communist Party of Vietnam. Thus, although Article 1(2) of the Law on Trade Unions and Section 7(2) of the Labor Code grant workers the right to establish and join trade unions, they can only participate in unions affiliated with the VGCL. There are no independent unions in Vietnam. Additionally, Section 153(1) of the Labor Code mandates that the provincial VGCL set up subsidiary unions in enterprises within six months of their operation.²⁰ For an enterprise union to be established,

²⁰ Law No. 35/2002/QH10 amended Article 153(1) of the Labor Code was revised as follows:

To represent and defend the legitimate rights and interests of the workers and their labor collectives, the local Federation of Labor and the branch trade union are responsible to set up trade union organizations in every undertaking, in six months from the day the present Law revising and amending certain articles of the Labor Code comes into force in the case of undertakings already operating but there is no trade union organization, and in six months

the business must have at least 10 employees, and the union must have five memberships. Provincial trade unions have stopped their attempts to organize facilities if there is not sufficient interest shown among employees, but the VGCL reserves the right to return and start the process over.

The majority of Vietnamese workers are employed in the agricultural sector or are engaged in small entrepreneurial activities, where unionization is not an issue. Ten percent of the labor force (3.7 million workers) in Vietnam is unionized. While the unionization rate of the public sector and state-owned enterprises is between 90 and 95 percent, only 30 percent of eligible private sector employees (600,000 out of two million) are union members. Approximately 350,000 workers in foreign-invested firms have joined a trade union.

The Labor Code grants workers the right to strike after labor and management have attempted to resolve their dispute through arbitration. Pursuant to Section 173(2) of the Labor Code, the decision to strike must be approved either by secret ballot or through a collection of signatures of the majority of workers in the union. The Prime Minister of the Government of Vietnam can suspend or stop a strike with a potential to seriously threaten the national economy or public safety. Additionally, a strike can be declared illegal if (1) it does not arise from a collective labor dispute; (2) it is beyond the scope of labor relations; (3) it is beyond the scope of the enterprise; (4) the trade union does not follow the proper procedures in declaring the strike; or (5) acts of violence and/or vandalism occur.

In 2000, the number of strikes totaled 72. The strikes occurred at foreign-invested companies, domestic private sector enterprises, and state-owned enterprises. According to the VGCL, the majority of strikers were employees of non-unionized companies. The strikes lasted only one to two days in duration and primarily concerned wage issues, such as late overtime payments and inappropriate labor discipline. While most of the strikes were illegal, they were tolerated by the Government of Vietnam, and there were no reports of retribution against the strikers. In previous years, the Government disciplined some employers for illegal practices that led to strikes.

Collective Bargaining

Collective bargaining in Vietnam is governed by the Labor Code and Decree No. 196-CP. Article 1 of Decree No. 196-CP grants the right to bargain collectively to employees in state-owned enterprises, domestic private sector businesses employing 10 or more workers, foreign-owned companies, and both foreign and international organizations with at least 10 employees. The Labor Code allows each VGCL-affiliated union to act as the workers' bargaining representative.²¹

from the date of operation in the case of newly established undertakings.

The employer shall have the responsibility to create favorable conditions for the prompt establishment of the undertakings' trade union. Until the undertaking's trade union is set up, the local trade union or the branch trade union shall appoint a provisional trade union Executive Committee for the representation and protection of the legitimate rights and interests of the workers and their labor collectives.

All acts to impede the establishment and the activities of the trade union in undertakings are strictly prohibited.

²¹ Through the adoption of Law No. 35/2002/QH10, Article 45 of the Labor Code has been revised to allow the workers of an enterprise to be represented by the enterprise trade union or a provisional trade union Executive Committee. This provision will go into effect on

Under Decree No. 38-CP, employers are to be fined 800,000 VND (US\$52.76)²² if they refuse to negotiate after a request for a collective agreement has been made.

Collective bargaining agreements have become more important in the last few years, and the number of workplace issues covered in such agreements has increased (such as no Sunday work). Pursuant to Section 46(2) of the Labor Code, collective agreements must include "commitments in respect of employment and guarantee of employment; hours of work and rest; wages, bonuses, and allowances; the number of employees; work rules; occupational safety and health; and social security for the workers." The first collective agreement within the enterprise may be concluded for a period of less than one year, but thereafter, all other collective agreements are to be for one to three years. Increasingly, multi-year contracts are becoming more common despite initial resistance by foreign-invested companies. The collective agreement takes effect upon approval by 50+ percent of union members at the company and registration with the provincial labor office. Once in force, the employer must bring the collective agreement to the notice of every worker.

Prohibition of Forced or Compulsory Labor

Section 5 of the Labor Code prohibits both the maltreatment of workers and the use of forced labor, and Article 11 of the Decree on Administrative Penalties for Labor Offences sets a fine of two million VND (US\$131.91) for violation of this prohibition.

In 1999, the Government issued an ordinance requiring adult Vietnamese citizens (aged 18 to 45 for men and 18 to 35 for women) to perform 10 days of public labor annually unless they find a substitute or pay a fee. While some have alleged that such laborers were recruited to construct the North-South Ho Chi Minh Highway in western Vietnam, the Government issued a decree in October 2000 that gave the force of law to its existing policy that all labor on the highway project must be voluntary and paid.

The trafficking of women and children is a growing problem within the country. Vietnamese women and children are trafficked both domestically and internationally, with Cambodia and China being the principal international destinations. The traffickers commonly use false advertising to lure their victims, who are usually girls between the ages of 15 and 17. Then, the women or children are forced into prostitution, marriage, or domestic work, typically through the practice of debt bondage. Vietnamese law prohibits the trafficking of women and children and prescribes harsh penalties for persons convicted of such an offense.

Status of Child Labor

Section 6 of the Labor Code sets the minimum age of employment at 15, although Section 120 allows children under age 15 to work in certain occupations specified by MOLISA, primarily for the purpose of engaging in apprenticeships and other job training activities. The Labor Code bans the exploitation of children and specifies that their hours of work for must not exceed seven hours per day or 42 hours per week. Employers may only use juvenile workers for overtime, extra work, or night work in jobs approved by MOLISA.

January 1, 2003.

²² As of May 22, 2002, US\$1.00=15,162 VND.

Children under age 18 may not be employed in hazardous work.²³ Circular No. 09/II-LD specifies the harmful working conditions where the use of young workers is prohibited: uncomfortable working conditions, lack of oxygen, contact with factors causing contagious diseases, radioactive substances, electromagnetic field beyond authorized limits, underground, and high and dangerous places. Moreover, there are 81 jobs in which it is forbidden to use child labor. These include: installation of oil rigs, diving, dredging, underground sewers, submersion in filthy or infected water, autopsy, shrouding and burial of the deceased, and direct contact with chemicals causing gene mutation, and permanent harm to the reproductive function.

The actual number of working children in Vietnam is difficult to estimate. A recent survey conducted by MOLISA found that approximately 40,000 children between the ages of eight and 14 worked part-time or full-time. However, the ILO reported that 995,564 children were economically active in Vietnam during 1998. There are many accounts of parents "contracting out" their children to employers.

The majority of working children work in the informal sector, primarily on family farms and other agricultural activities. In urban areas, children also work in small family-owned businesses or in markets as petty merchants, porters, and cart pushers. The percentage of child labor found in the manufacturing industry is negligible, although there were credible reports of employers discovering under age workers who had presented false identity cards. In the cases reported, the children's employment was terminated, but, the employers paid for schooling and continued to provide wages to the children in most of the cases. In addition, the majority of these children were promised re-employment once they reach the minimum age of employment.

The Government of Vietnam has taken some steps to counter child labor within the country. The Government has successfully prosecuted and convicted employers who have illegally engaged children in employment. In 2000, Vietnam ratified ILO Convention No. 182 on the worst forms of child labor and currently is drafting a National Plan of Action to implement the Convention. In addition, a child labor unit has been established within MOLISA. Vietnam also is participating in an ILO project on child trafficking in the Mekong region.

Non-Discrimination

The Vietnamese Constitution prohibits discrimination based on gender, ethnicity, religion, or social class and mandates equal pay for equal work. Section 5(1) of the Labor Code also provides that "[a]ll persons shall have the right to work, the right to freely choose an employment and occupation, to learn a trade, and to improve professional skills without any discrimination in respect of sex, race, social class, creed, or religion."

The Labor Code forbids employers from dismissing female workers because of marriage, pregnancy, maternity leave, or the breast-feeding of a child under one year. Employers who violate this law are subject to a fine of two million VND (US\$131.91). Female workers also are entitled to four to six months of paid maternity leave and are guaranteed employment upon returning from such leave.

²³ Under Article 121 of the Labor Code, children are prohibited from undertaking hard, dangerous work and work exposed to harmful substances. Law No. 35/2002/QH10 amends Article 121 of the Labor Code to also ban the employment of children in work and workplaces which may give bad influence to a child's personality. This provision comes into force on January 1, 2003.

In practice, Vietnamese women have unequal access to employment. Women are more likely to perform menial work for extremely low wages than are men. However, pursuant to the Labor Code, the Government of Vietnam applies some preferential policies in order to encourage the hiring of women, such as providing tax reductions to companies that employ a high number of female workers. In addition, the United Nations Development Program (UNDP) has reported that the Government of Vietnam acceptably enforces its non-discrimination laws with regard to gender, with the exception of Section 115 of the Labor Code, which calls for no overtime, no night work, and lighter work beginning in the seventh month of pregnancy.

Minimum Wage

Decree No. 10-2000-ND-CP sets the current minimum wage in state-owned and domestic private enterprises at 180,000 VND (US\$11.87) per month, although state-owned enterprises typically pay workers a monthly salary between 300,000 VND and 500,000 VND (US\$19.79 to \$32.98). The monthly minimum wage for foreign-owned businesses is established in Decision No. 708-1999-QD-BLDTBXH: 626,000 VND (US\$41.29) in the urban districts of Hanoi and Ho Chi Minh City; 556,000 VND (US\$36.67) in the suburban districts of Hanoi and Ho Chi Minh City, as well as the districts of Hai Phong, Bien Hoa, and Vung Tau; and 487,000 VND (US\$32.12) for elsewhere in the country. Pursuant to Decree No. 38-CP, employers who fail to pay at least the minimum wage are to be assessed a fine of 3 million VND (US\$197.86). However, the Government of Vietnam can reduce the minimum wage to 449,880 VND (US\$29.67) in certain joint ventures during the first months of operation or in enterprises located in extremely remote areas.

During the 1990s, violations of the Vietnamese minimum wage law were widely reported, primarily in regards to foreign-invested enterprises. However, a recent UNDP study found that most businesses are abiding by the minimum wage law, with the exception of smaller private sector companies. While the official minimum wage rates in Vietnam are considered inadequate to provide a decent standard of living, many workers receive salaries higher than the minimum wage and/or bonuses to supplement their income, and they take second jobs.

Hours of Work

The Labor Code mandates that the regular workweek not exceed eight hours per day or 48 hours per week, although in October 1999, the Government of Vietnam officially reduced the workweek to 40 hours in the Government and state-owned enterprises. Overtime may not exceed four hours in a day or 200 hours in a year, and employees must be paid 150 percent of their hourly wage for overtime on normal workdays and 200 percent for overtime on weekly rest days.²⁴ Section 71 of the Labor Code establishes that employees who work eight consecutive hours are to be given a rest period of at least 30 minutes, which must be included in the hours of work, and workers on the night shift are entitled to a break of at least 45 minutes. Under Section 72 of the Labor Code, the workers are allowed 24 consecutive hours of rest per week. Employers who violate Sections 71 and 72 are to be fined one million VND (US\$65.95).

²⁴ By Law No. 35/2002/QH10, Article 69 of the Labor Code was amended to allow for special cases stipulated by the Government in which the total overtime may not exceed 300 hours in a year. Additionally, Article 61 of the Labor Code was amended to require an overtime payment of 300 percent of a worker's normal hourly wage for overtime work performed on public holidays and holidays with pay. These provisions come into force on January 1, 2003.

During the late 1990s, there were numerous reports of violations concerning excessive overtime. In November 1999, the UNDP affirmed that a number of businesses in Vietnam required employees to work in excess of 12 hours per day without overtime payment and also reported accounts of employers refusing to calculate rest breaks as working time. According to the UNDP, such problems were found within garment, food processing, footwear, and packaging enterprises in Ho Chi Minh City and Dong Nai. However, the UNDP indicated that, in general, Vietnam's laws on hours of work were being implemented to an acceptable degree.

Occupational Safety and Health

Pursuant to Section 95(1) of the Labor Code, employers are responsible for providing adequate means of protection to their workers, ensuring occupational safety and health, and improving working conditions. Workers may remove themselves from hazardous conditions without risking loss of employment.

Both the Ministry of Health and MOLISA are charged with enforcing Vietnam's occupational safety and health laws, with safety inspections to be conducted by MOLISA and the provincial labor offices. Section 186 of the Labor Code grants labor inspectors the authority to carry out inspections of compliance with occupational safety and health statutes; to investigate occupational accidents and violations of occupational health standards; to register and issue licenses for the use of machinery, equipment and materials having strict occupational safety requirements; to handle worker grievances and complaints; and to determine sanctions for violations of the law. Under Section 187 of the Labor Code, labor inspectors are allowed to inspect workplaces without advance notice and can require the employer to supply reports and documents relevant to the inspection. Penalties for occupational safety and health violations are stipulated in Decree No. 38-CP, with fines ranging from 200,000 VND to 10 million VND (US\$13.19 to \$659.54).

In 2001, the Government reported having 25 national safety inspectors and 324 provincial labor inspectors, who cover both safety and working conditions. Safety inspections appear to be mainly complaint-driven or in response to serious accidents having occurred. Vietnamese labor inspectors are aided by the Hai Phong Export Processing and Industrial Zones Authority (HEPIZA) and the Ho Chi Minh City Export Processing and Industrial Zones Authority (HEPZA), who conduct safety assessments of firms within their zones every six months to one year. In addition, some foreign-invested companies have established independent monitoring programs in their factories.

In 1999, there were 399 work-related fatalities, of which 335 were occupational accidents. In 2000, the number of work-related deaths increased to 403, with 368 being classified as fatal occupational accidents.

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