

Wages Policy in the Current Context of Industrial Relation in Vietnam

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I. Introduction

In Vietnam, since 1989, the regulation on income distribution in the centralized economy has been gradually replaced by the wage regulation laws more consistent with a market economy. The major reform of wage regulation in the Labour Code 2012, especially the minimum wage since 2013 until now, has improved workers' living standards. However, after 6 years of implementation, the wage regulation reveals some limitations, such as the definition of wage, the minimum wage rate, and how to set the minimum wage, etc. Therefore, this article analyzes some important points of wage regulation in Labour Code 2012, then suggests a number of amendments and supplements to these regulations.

II. Wage regulation in the applicable Labour Code 2012

1. Wage structure regulation

The definition of wage according to Article 90, Labour Code 2012, is: *“Wage is a monetary amount which is paid to the employee by the employer to perform the work as agreed by the two parties. Wage includes remuneration which is based on the work or position, as well as wage allowances and other additional payments. An employee’s wage must not be lower than the minimum wage provided by the Government.”*¹

The approach to defining “wage” in the Labour Code is similar to the concept of wage in Convention C095—Protection of Wages 1949 of the International Labour Organization,² which provides that a “wage” is monetary compensation paid by an employer to an employee in exchange for work done. A wage is set by supply and demand in the labour market, but must not be lower than the minimum wage required by law. At the same time, wage is determined through the negotiation mechanism between the parties in labour relations in accordance with market’s rules but not entirely fixed by the state as in the past.

According to Vietnamese law, wage consists of: basic remuneration which is based on the work or position, wage allowances, and other additional payments. Basic remuneration is paid for the quality and quantity of the employee’s labour contribution under standard working conditions. Wage allowances can compensate for working conditions, the complexity of work, living conditions, level of labour attraction and retention, etc. that are not accounted or not fully considered in the basic remuneration.³ As such, wage allowances can be considered as supplementary for basic remuneration; they are popular and easily adjusted for the complexity of the work or difficult living conditions of the employee.

1. Labour Code 2012, <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

2. Article 1, Protection of Wages Convention 1949: “In this Convention, the term *wages* means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.” http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C095.

Wage allowances agreed between the employer and the employee must be established in the employment contract or collective bargaining agreement,⁴ or the company's internal labour rules. Currently, the concept of wage allowances is specifically guided in Circular 23/2015/TT-BLDTBXH, whereby each type of allowance will cover the corresponding elements of work such as: an allowance for heavy and hazardous work; an allowance for management and/or seniority; an allowance for working in remote or expensive areas; an allowance to encourage employees to work in new economic zones; and an allowance to encourage employees to work harder with higher productivity, with higher quality, or to meet a deadline.⁵

However, the regulation on an allowance to “*encourage employees to work harder with higher productivity and quality or to meet deadline*” leads to confuse this type of allowance with a “bonus.” According to Article 103.1, Labour Code 2012, “*A bonus is an amount paid by an employer to reward his/her employees on the basis of the annual business results of the enterprise and the level of work performance of the employees.*”⁶ So when employees try their best to meet deadline and provide better products, clearly they have a good work performance.

The additional payments in wages concept are known as “*money in addition to basic remuneration, wage allowances related to work performance or title of the employee in the employment contract.*”⁷ These are excluded from bonuses (in Article 103, Labour Code 2012) such as mid-shift meal payments, supportive payments in case that employees' close relatives⁸ die or get married, supportive payment for employees' birthdays, supportive payments for disability resulting from an occupational accident or disease, and other allowances not related to work performance or title of the employees in the employment contract. In fact, this regulation causes difficulties for enterprises in applying and defining what constitutes an additional payment. The wage term in the applicable law has led to some difficulties in applying the law, and enterprises often do not fully understand of the subtle differences between allowances, additional payments, and bonuses.⁹ And in some other cases, enterprises try to reduce their payment to the social security fund by reallocating money from basic remuneration to additional payments or bonuses.

In fact, the purpose of wage regulation is to determine a salary to serve as a basis for calculating the social insurance contribution, as well as defining any payments in case of dismissal, overtime salary, etc. However, wage regulation has not effectively restricted the social insurance fraud such as minimizing the social insurance contributions to the minimum wage. Additionally, another reason for the status of late payment or evasion of social insurance premium is that many employees work without employment contracts.¹⁰

2. Minimum wage

Minimum wage is a popular policy over the world, with 92% of ILO member states having a minimum wage policy taking the form of a country minimum wage, a regional minimum wage, or a sectoral minimum wage.¹¹

Minimum wage policy is designed to protect workers against unduly low pay at the bottom of the labour

3. Article 21.1, Decree 05/2015/ND-CP dated 12 January 2015 defining and providing guidance on the implementation of a number contents of the Labour Code, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_388371.pdf.

4. Article 102, Labour Code 2012.

5. Article 3.1.b, Circular 23/2015/TT-BLDTBXH dated 23 June 2015 guiding a number of articles on wages of the Decree No. 05/2015/ND-CP, <http://www.molisa.gov.vn/en/Pages/Detail-document.aspx?vID=642>.

6. Labour Code 2012, N1 above.

7. Article 3.1.b, N5 above.

8. Such as parents, parents in laws, wife, husband, children.

9. Ministry of Labour, Invalids and Social Affairs, Report on investigation and assessment of the implementation of the Labour Code in industrial parks, export processing zones and high-tech zones, December 2015 (not available in English)

10. VEPR and JICA, Labour productivity and wage growth in Vietnam, September 2017, http://vepr.org.vn/upload/533/fck/files/1_%20Full%20ENG_20170912_0615pm.pdf.

11. Lee Chang Hee, Challenges of wage fixing in private sector, Decent Work project, Vietnam, December 2017.

market. A minimum wage creates a legally enforceable wage floor. As such, the role of minimum wage is limited to ensuring minimum living standards at the bottom of the labour market, and it is not meant to fix the actual wages of most workers. However, in Vietnam, the salary of many textile workers is highly dependent on minimum wage.¹² Minimum wage policy is also designed to narrow the inequality of wages and to serve as a basis for collective bargaining. The minimum wage is also set to reproduce the labour force to meet the minimum biological and social needs of workers. According to Article 91 of the Labour Code 2012, “*Minimum wage is the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family.*”¹³

In principle, Article 91 also reflects the view and method of determining the minimum wage, which is guaranteed to be a living wage. It is in line with the ILO’s view, which is in determining the minimum wage, some elements should be taken into account: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment.¹⁴ The issue is that the minimum wage in Vietnam does not really meet the minimum living standard for employees and their families.

According to Article 91, the minimum wage differs by region and sector. The regional minimum wage is determined by the government and applied in some certain regional territories. The minimum wage varies by region to reflect different natural and social conditions and living standards. The government sets the regional minimum wage according to the minimum living requirements of employees and their families, socioeconomic conditions and minimum wage levels in the labour market, and based on the recommendations of the National Wage Council.

The sectoral minimum wage is determined by sectoral collective bargaining, must be recorded in the sectoral collective bargaining agreement, and must be not lower than the regional minimum wage set by the government. According to Article 91, the minimum wage is set on a monthly, daily and hourly basis. However, in practice, it is currently determined on a monthly basis only. Therefore, the lack of minimum wage on a daily and hourly basis leads to difficulties in assessing minimum wage policy compliance, especially regarding part-time workers. This also creates obstacles for both employers and employees in negotiating wages for employees doing simple jobs, especially in the agricultural and service sectors. Additionally, there is no wage policy for employees in the informal sector.

Though the nominal regional minimum wage has increased since 2013,¹⁵ whether the actual income of employees has increased correspondingly is questionable. Many employees have higher incomes than the minimum wage, so the increase of minimum wage has no positive impact on their income.¹⁶ On the other hand, increasing the minimum wage also reduces workers’ income because of increasing social insurance, health insurance, unemployment insurance, and union fees. Even more damaging, the rise in minimum wage puts too much pressure on the business, leading to employment reduction, especially unskilled labour. No matter how increasing of minimum wage affects society, the problem is that the increase minimum wage must lead to an increase in actual income of the employees. To achieve this goal, a more reasonable and scientific method of determining minimum wages is needed.

Increasing minimum wage always poses debate in the society, from the both side of the employer as well as the union. From the side of the employer, a higher minimum wage leads to higher labour costs, higher product

12. DO Quynh Chi, Minimum Wage and Wage-setting in the Global Supply Chains, Minimum Wage conference, Ton Duc Thang University, January 2018.

13. Article 91, Labour Code 2012.

14. Article 3, Convention 131 on Minimum Wage Fixing, 1970.

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C131

15. Table 1: Minimum wage in Vietnam from 2013 to 2018.

16. <http://soha.vn/tang-luong-toi-thieu-vung-muc-song-nguoi-lao-dong-co-tang-2017081310101046.htm> (not available in English).

prices, negative impacts on economic growth, and therefore decreased employment. But from the side of the union, a higher minimum wage leads to higher wage earnings for most workers, leading to higher consumption and higher demands for goods and services, positively impacting economic growth and therefore employment. In most countries, the impacts of minimum wage on wages and employment are carefully assessed based on analysis of economic and labour market data, which is relatively weak in Vietnam.¹⁷

The current way to determine minimum wage in Vietnam is based on the minimum needs of workers who do the simplest, untrained work, under normal working condition and childcare needs, including:

- (i) The demand of foods is calculated according to the value of the “basket of goods” that a person needs on a daily basis (at least 2,300 kcals/day, as recommended by the National Institute of Nutrition, Ministry of Health).
- (ii) The demand of non-foods stuffs such as the need of clothes, accommodation, transportation, education, medical treatment, culture activities, insurance contributions, etc. This proportion usually accounts for 49-54% of the fee for minimum needs, depending on the region.
- (iii) The demand of child support for an employee: assuming that each employee has to support one child, the cost of childcare accounts for about 70.0% of the employee’s (the cost of food of one 4-6 years old child is about 1,600 kcals/day).

The minimum wage in this method not only includes minimum needs of the employees, but also includes child care fees, which ensures the reproduction of labour force in the society. However, its application also exposed certain shortcomings. For example, the housing fee in the minimum living requirements at 80 thousand per person per month is inappropriate.¹⁸

In fact, according to a study on determining living a wage using the Anker method by ISEAL Alliance, the living wage for a worker in Region One like Ho Chi Minh City is 6,435,000 VND while the actual average income of such worker is 4,812,000 VND/month (including basic salary, attendance allowance, living cost allowance, Tet bonus, year-end bonus, lunch allowance 15,000 VND/day).¹⁹ This calculation method emphasizes the participation of local people and organizations to increase the credibility and acceptance of stakeholders. At the same time, the cost of housing and food in this method is in accordance with national and international standards, ensuring acceptable living standards. However, this living wage survey only covers a narrow area in some provinces, so in order to calculate a more comprehensive living wage, the National Wage Council may need to apply such method in a wider area.

The current minimum wage adjustment in Vietnam is based on recommendations of the National Wage Council, comprising three parties: the Ministry of Labour, Invalids and Social Affairs; representatives of employers’ organizations such as the Vietnam Chamber of Commerce and Industry (VCCI), Vietnam Cooperative Alliance (VCA), and the Vietnam Association of Small and Medium Enterprises (VASME); and the representative of the workers at the central level—Vietnam General Confederation of Labour (VGCL). The adjustment of minimum wages based on tripartite negotiation of the National Wage Council is a new mechanism which has been applied in Vietnam since 2013. This is the right direction in minimum wage policy reform. However, the National Wage Council includes only 15 people coming from three stakeholders, and excludes independent researchers and scholars. This is probably a limitation that needs to be changed.

III. Some evaluations regarding the wage policy in the Labour Code 2012

First, specify the concept of wages

As discussed above, with unclear provisions on wage allowances, additional payments and bonuses, the application of wage policy in enterprises is inconsistent. Some enterprises also take advantage of this unclear

17. Lee Chang Hee, N11 above.

18. VGCL, Report on the role of trade union in amending regional minimum wage policy in Vietnam, 2016.

19. ISEAL Alliance, Living Wage Report—Urban Vietnam, March 2016, https://www.isealliance.org/sites/default/files/Urban_Vietnam_Living_Wage_Benchmark_Report.pdf.

Table 1. Regional minimum wage in Vietnam from 2013 to 2018

(Unit:1,000 VND/month)

Applicable year	01/2013	01/2014	01/2015	01/2016	01/2017	01/2018
Minimum wage region I	2,350	2,700	3,100	3,500	3,750	3,980
Minimum wage region II	2,100	2,400	2,750	3,100	3,320	3,530
Minimum wage region III	1,800	2,100	2,400	2,700	2,900	3,090
Minimum wage region IV	1,650	1,900	2,150	2,400	2,580	2,760
Average regional minimum wage	1,975	2,275	2,600	2,925	3,137	3,340
Average increase percentage comparing with previous year	17.20%	15.20%	14.20%	12.40%	7.24%	6.40%
Applicable legislation	Decree 103/2012/ND-CP dated 04/12/2012	Decree 182/2013/ND-CP dated 14/11/2013	Decree 103/2014/ND-CP dated 11/11/2014	Decree 122/2015/ND-CP dated 14/11/2015	Decree 153/2016/ND-CP dated 14/11/2016	Decree 141/2017/ND-CP dated 07/12/2017

Source: Compiled by the author based on an original source.

provision to contribute to social insurance at deceitful lower level. Thus, lawmakers can consider two options which are (i) more detailed provisions on wage allowances, additional payments, and bonuses; or (ii) separating payables related to work performance from wage. In the latter option, the parties will only contribute to social insurance fund on basic salary; people who want to pay social insurance at a higher level can choose supplementary social insurance fund.

Second, improving minimum wage adjustment mechanism

The minimum wage adjustment mechanism in Vietnam mainly depends on the recommendation of the National Wage Council, which has no independent labour economists or researchers. Another limitation is that minimum wage policy has a limited role of protecting workers at the bottom of the labour market. Consistent with the practice of some other countries, a better way to fix the minimum wage is through voluntary negotiation between employers and workers represented by unions. Collective bargaining is not well developed in Vietnam, and ratification and application of the ILO Convention on Collective Bargaining is one of the key requirements of the EU-VN FTA, as it is an integral part of a market economy.²⁰

Moreover, the current minimum wage has not met the minimum living requirements of employees. The fundamental living expenses such as food, clothing, housing, and transportation are relatively higher compared with the income of most employees. To erase this gap, better reform at the macro level on the price of goods is necessary.

Last but not least, the applicable minimum wage on a monthly basis does not cover the benefits of employees who work on an hourly basis or on a daily basis. Therefore, lawmakers should consider determining

20. Lee Chang Hee, N11 above.

the minimum wage on an hourly basis, so that employees can receive full benefits in terms of salary and at the same time employers are more flexible in employment.



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