

Rights of Foreign Workers in Vietnam

Dao Xuan Hoi¹, Tran Dung Hai²

Abstract

This article provides a general overview of the rights of foreign workers, Vietnamese legal regulations on the rights of foreign workers, the current situation, and some solutions to improve the effectiveness of management and attract high-quality foreign workers.

Introduction

In the process of international integration, workers can move from one country to another for better wages, and even work in multiple countries at the same time. Foreign workers in Vietnam are one form of “migrant workers”. Migration is crucial for a market economy, especially during the period of international integration. For the present country, people from other countries who come to work in their country can be called foreign workers. Foreign workers are also granted certain rights. Therefore, it can be concluded that *the rights of foreign workers in Vietnam are the rights of workers who do not have Vietnamese nationality working in Vietnam. Characteristics of foreign workers working in Vietnam*

Foreign workers in Vietnam have several characteristics as follows:

First: They work in Vietnam but do not have Vietnamese nationality. This characteristic makes it more difficult to manage foreign workers compared to Vietnamese workers. The management of foreign workers in Vietnam is based on the legal status of foreigners, which is different from the legal status of Vietnamese citizens. Foreigners coming to Vietnam to work will have different legal rights and obligations compared to Vietnamese workers

Second: Foreign workers in Vietnam are not only related to domestic issues but also to international issues and human rights. For Vietnamese workers, they are mainly regulated with domestic law, while for foreign workers, they are also bound by international law and provisions in national law

Third: The management of foreign workers in Vietnam is a complex and diverse activity that requires the coordination of many sectors and state agencies such as labor, social security, insurance, immigration, national security, economy, environment, etc.

Legal Regulations on Foreign Workers in Vietnam

With the State's attention to migrant workers in general, foreign workers, for attracting high-quality foreign workers and managing general foreign workers, Vietnam has issued many documents, including regulations on foreign workers.

Legal Regulations on the Rights of Foreign Workers.

Currently, there is no document that specifically regulates the rights of foreign workers. In the LABOR CODE 2019, there are only provisions on the Subject of regulation, including “Foreign workers in Vietnam” in Article 2. Regulated entities and conditions for foreign citizens to work in Vietnam, or conditions for recruiting foreign workers. In addition, DECREE No. 152/2020/ND-CP “on foreign workers in vietnam and recruitment and management of vietnamese workers working for foreign employers

¹ University of Labour and Social Affairs, Email: xuanhoi.ulsaa@gmail.com, (Corresponding Author)

² Hanoi University of Culture

in Vietnam” of the Government stipulates Regulated entities in Article 2:

However, general provisions on the rights of workers also apply to foreign workers, unless there are specific provisions. Specifically stipulated in the following sections:

Legal Regulations on Type of Foreign Workers in Vietnam.

According to the provisions of the 2019 Labor Code and DECREE No. 152/2020/ND-CP, foreign workers in Vietnam include the following types:

Foreign citizens who work in Vietnam (hereinafter referred to as foreign workers) in the following forms: Performing labor contracts; Being intra-corporate transferees; Performing contracts or implementing agreements on economics, commerce, finance, banking, insurance, science and technology, culture, sports, education, vocational education, or health; Providing contractual services; Providing services; Working for foreign non-governmental organizations or international organizations in Vietnam that are licensed to operate in accordance with Vietnam’s law; Working as volunteers; Establishing commercial presence; Working as managers, executives, experts or technical workers; Participating in bidding packages and projects in Vietnam; Being relatives of staff members of Vietnam-based foreign representative missions who are licensed to work in Vietnam under treaties to which the Socialist Republic of Vietnam is a contracting party.

Foreign individuals in Vietnam who are foreigners working in organizations specified in Clause 3 of this Article or persons permitted by Vietnamese competent agencies to reside in Vietnam.

Vietnamese workers working for Vietnam-based foreign organizations or individuals.

Requirements for Foreign Workers in Vietnam

As stipulated in Article 151 of the 2019 Labor Code, a foreign worker refers to an individual who possesses a foreign nationality and meets the following criteria: is at least 18 years of age and has full legal capacity; has qualifications, occupational skills, practical experience and adequate health as prescribed by the Minister of Health; is not serving a sentence; does not have an unspent conviction; is not undergoing criminal prosecution under his/her home country’s law or Vietnam’s law; has a work permit granted by a competent authority of Vietnam, except in the cases stipulated in Article 154 of this Labor Code. The duration of a foreign employee’s employment contract must not exceed that of the work permit. When a foreign employee in Vietnam is recruited, both parties may negotiate the conclusion of multiple fixed-term labor contracts. Foreign workers in Vietnam shall comply with and shall be protected by the labor law of Vietnam, unless otherwise prescribed by treaties to which Vietnam is a signatory.

In addition, DECREE No. 152/2020/ND-CP further stipulates conditions for Vietnamese workers abroad and foreign experts engaged in science and technology activities in Vietnam to be eligible for the policies specified in this Decree if they meet one of the following criteria: Possessing a university or equivalent or higher degree and at least 3 years’ working experience in his/her trained discipline relevant to his/her expected job assignment in Vietnam; Having at least 5 years’ experience and possessing a practice certificate relevant to his/her expected job assignment in Vietnam; Special cases shall be decided by the Prime Minister at the proposal of the Ministry of Labor, Invalids and Social Affairs.

Furthermore, a Technical worker means a foreign worker who falls into one of the following categories: Having been trained in a technical or another discipline for at least 1 year and having at least 3 years’ working experience in his/her trained discipline; Having at least 5 years’ working experience relevant to his/her expected job assignment in Vietnam.

According to DECREE No. 152/2020/ND-CP and Decree 70/2023/ND-CP On Work Permits For Foreigners: The head of the branch, representative office or business location of the 2 enterprise. b) Those who lead and directly operate in at least one field of the agency, organization or enterprise and under the

direct supervision and management of the head of the agency, organization or enterprise." c/ Amendment and supplement of Point a, Clause 6, Article 3 as follows.

Work Permit

Pursuant to Article 153 of the 2019 Labor Code, foreign workers in Vietnam must hold a work permit. In the absence of a work permit, foreign workers shall be deported, and foreign employers in Vietnam shall be subject to penalties. "Foreign workers shall present their work permits whenever requested by competent authorities. Any foreign workers in Vietnam without a work permit shall be deported or forced to leave Vietnam in accordance with immigration laws. An employer who hires a foreign worker without a work permit shall be liable to penalties as regulated by the law."

For specific regulations on work permit issuance, the Government has issued DECREE No. 152/2020/ND-CP detailing the implementation of certain provisions of the Labor Code regarding foreign workers in Vietnam. Specifically, Section 3 of this Decree addresses work permit issuance, including: determining the types of work for which foreign workers can be employed, identifying foreign workers who are exempt from work permit requirements, conditions for obtaining a work permit, documents for applying for a work permit, validity period of a work permit, procedures for issuing, re-issuing, and revoking a work permit, and deportation of foreign workers, etc.

In addition, the Article 154 of 2019 Labor Code outlines the work permit exemption for foreign workers in Vietnam. A foreign worker is not required to have the work permit if he/she: Is the owner or capital contributor of a limited liability company with a capital contribution value conformable with regulations of the Government. Is the Chairperson or a member of the Board of Directors of a joint-stock company a capital contribution value conformable with regulations of the Government. Is the manager of a representative office, project or the person in charge of the operation of an international organizations or a foreign non-governmental organization in Vietnam. Enters Vietnam for a period of less than 03 months to do marketing of a service. Enters Vietnam for a period of less than 03 months to a resolve complicated technical or technological issue which (i) affects or threatens to affect business operation and (ii) cannot be resolved by Vietnamese experts or any other foreign experts currently in Vietnam. Is a foreign lawyer who has been granted a lawyer's practising certificate in Vietnam in accordance with the Law on a. In one of the cases specified in an international treaty to which the Socialist Republic of Vietnam is a signatory. Gets married with a Vietnamese citizen and wishes to reside in Vietnam. Other circumstances specified by the Government. DECREE No. 152/2020/ND-CP also details this issue in Section 2

The Current Situation of Foreign Workers in Vietnam

With relatively comprehensive regulations aimed at attracting high-quality human resources to the country, a legal framework has been initially established for foreigners to live and work in Vietnam, contributing to the country's development. *3.1. General situation of foreign workers in Vietnam* According to reports from the Departments of Labor, Invalids and Social Affairs of provinces and municipalities and the Management Boards of industrial parks, export processing zones and economic zones, the number of foreign workers in Vietnam as of July 2012 in some localities with a large number of foreign workers is shown in the following table:

No.	Province/city	Total (People)	Percentage of total foreign workers (%)
1	Ho Chi Minh City	18065	23.43
2	Hanoi	9812	12.73
3	Kien Giang	9696	12.58
4	Binh Duong	8654	11.23
5	Dong Nai	5943	7.71
6	Quang Ninh	2301	2.98
7	Bac Ninh	2000	2.56
8	Hai Phong	2732	3.54
9	Ba Ria – Vung Tau	1431	1.86
10	Hai Duong	1138	1.48

According to statistics from the Ministry of Labor, Invalids and Social Affairs, as of 2013, there were approximately 77,359 foreign workers in Vietnam. Of which, 40,529 were granted work permits, 5,500 were exempt from work permits, and 31,330 had not yet been granted work permits. It can be seen that the number of foreign workers in Vietnam has been increasing, especially in provinces with industrial zones and export processing zones. However, these figures do not fully reflect the total number of foreign workers in Vietnam, particularly in the sectors employing unskilled labor, non-technical workers, or those working in large industrial zones owned by Chinese investors. These places still have a large number of “undocumented foreign workers”. Ha Tinh province is one of the “hotspots” for illegal Chinese workers. In 2013, the Inspectorate of the Department of Labor, Invalids and Social Affairs of Ha Tinh province fined 3 contractors (with a total amount of 35 million VND) and forced the early deportation of 102 undocumented workers. However, this handling is inadequate to tackle the widespread violation in the locality. When the Formosa project was implemented in Vung Ang Economic Zone (Ky Anh district, Ha Tinh), many Chinese enterprises and contractors won bids and brought with them thousands of “manual” workers.

The number of foreign workers in 2019 increased nearly 10 times compared to 2005 and 1.4 times compared to 2015. Statistics show that in 2019, foreign workers concentrated most in the Southeast region with 54,600 workers, of which Ho Chi Minh City had 16,100 workers and the highest in the whole country was Binh Duong with 21,600 workers. In addition, in the Red River Delta, there were 35,400 workers, of which Hanoi had the highest number with 10,700 workers. Foreign workers in the Central Highlands region were the lowest, with only 425 workers, and Kom Tum province also had only 12 foreign workers. The high or low density of foreign workers in the territory depends on the formation of industrial zones or the development of urban areas. In 2015, Ho Chi Minh City attracted the most foreign workers with 20,400 workers, but by 2019, Binh Duong province became the province with the highest attraction of foreign workers nationwide (21,600 workers). If in 2015, the Central Highlands region only attracted 438 foreign workers, with Kom Tum province accounting for just 8, the number of foreign workers arriving in this region has remained relatively stable in the nearly 5 years since.

The Current Situation of Attracting High-Skilled Foreign Workers to Vietnam

At the end of 2016, Vietnam climbed to the 11th spot on InterNations' list of the most livable countries, based on five key criteria: ease of settling in a country or territory, quality of life, personal finances, working environment, and stability and integration. However, in a recent HSBC survey on the lives of foreign experts - the HSBC Expat Explorer 2017 - Vietnam only ranked 30th among the best countries overall for foreign experts, falling 11 places compared to 2016. The above criteria, along with some other criteria, did not help Vietnam to achieve a higher position. This shows that Vietnam's policies to attract high-skilled labor have not really been effective.

Fourthly, Vietnam's legal system has undergone numerous changes in a short period during its development

process, leading to difficulties in updating and implementing laws. Moreover, many legal regulations have not kept pace with the dynamic development of the market economy, integration, and information technology.

However, Vietnam also has several advantages in attracting high-skilled foreign workers. These advantages are as follows:

Firstly, Vietnam remains in the top 30 most livable countries according to the HSBC Expat Explorer 2017 (although it dropped 11 places compared to 2016). Although the income for foreign experts in Vietnam is lower than the world average, the percentage of people who can save more or have a higher income compared to their home country is still encouraging. Notably, 72% of respondents reported saving more and 67% agreed that their income had improved compared to working in their home country. This value is higher than the global average for the same criterion when compared to other countries. According to the survey, 36% of respondents reported a 25% increase in income since starting work in Vietnam.

Secondly, Vietnam pays more attention to its workforce, as evidenced by the fact that Vietnamese workers enjoy more holidays and have more time for leisure. Additionally, support services such as housekeeping and childcare are more convenient and affordable compared to other countries.

Thirdly, the treatment of foreign experts in Vietnam is highly regarded. As much as 79% of foreign experts in Vietnam receive additional benefits in their employment contracts, most commonly medical and healthcare allowances, housing allowances, and annual return airfare. This evaluation has a rating of over 40-49%, significantly higher than the global average

Fourthly, Vietnam has a stable political situation and is considered safe, with nearly 70% of foreign experts expressing optimism about the economy. However, many experts remain concerned about restrictions on international money transfers, less competitive exchange rates, and global economic instability, which could impact their financial security.

The Current Situation of Attracting High-Skilled Foreign Workers to Vietnam

At the end of 2016, Vietnam climbed to the 11th spot on InterNations' list of the most livable countries, based on five key criteria: ease of settling in a country or territory, quality of life, personal finances, working environment, and stability and integration. However, in a recent HSBC survey on the lives of foreign experts - the HSBC Expat Explorer 2017 - Vietnam only ranked 30th among the best countries overall for foreign experts, falling 11 places compared to 2016. The above criteria, along with some other criteria, did not help Vietnam to achieve a higher position. This shows that Vietnam's policies to attract high-skilled labor have not really been effective.

Fourthly, Vietnam's legal system has undergone numerous changes in a short period during its development process, leading to difficulties in updating and implementing laws. Moreover, many legal regulations have not kept pace with the dynamic development of the market economy, integration, and information technology.

However, Vietnam also has several advantages in attracting high-skilled foreign workers. These advantages are as follows:

Firstly, Vietnam remains in the top 30 most livable countries according to the HSBC Expat Explorer 2017 (although it dropped 11 places compared to 2016). Although the income for foreign experts in Vietnam is lower than the world average, the percentage of people who can save more or have a higher income compared to their home country is still encouraging. Notably, 72% of respondents reported saving more and 67% agreed that their income had improved compared to working in their home country. This value is higher than the global average for the same criterion when compared to other countries. According to the survey, 36% of respondents reported a 25% increase in income since starting work in Vietnam.

Secondly, Vietnam pays more attention to its workforce, as evidenced by the fact that Vietnamese workers enjoy more holidays and have more time for leisure. Additionally, support services such as housekeeping and childcare are more convenient and affordable compared to other countries.

Thirdly, the treatment of foreign experts in Vietnam is highly regarded. As much as 79% of foreign experts in Vietnam receive additional benefits in their employment contracts, most commonly medical and healthcare allowances, housing allowances, and annual return airfare. This evaluation has a rating of over 40-49%, significantly higher than the global average.

Fourthly, Vietnam has a stable political situation and is considered safe, with nearly 70% of foreign experts expressing optimism about the economy. However, many experts remain concerned about restrictions on international money transfers, less competitive exchange rates, and global economic instability, which could impact their financial security.

The current situation of issuing work permits for foreigners

According to the consolidated report of the Departments of Labor, Invalids and Social Affairs up to July 2012, the issuance of work permits is as follows:

No.	Content	Quantity (People)	Percentage (%)
	Total number of foreign workers, including:	77087	100
	Number of people subject to work permit issuance		
	Particularly:	74438	96.56
	- Issued work permits	49983	67.15
1	- Pending work permit issuance	24455	32.85
2	Not subject to work permit issuance	2649	3.44

The current situation of work permit issuance reveals several issues:

Firstly, many foreign workers who do not meet the requirements to work in Vietnam have found ways to circumvent the law by using 90-day (less than 3 months) passports, tourist visas, etc.

Secondly, the work permit issuance procedure is still considered cumbersome, with more than 19% of foreign workers reporting that the process is quite complicated, requiring multiple trips to government agencies to complete. Moreover, due to concerns about difficulties and obstacles in the work permit application process, a portion of businesses and individual foreign workers have had to hire companies/individuals to handle the work permit application process and pay fees for this “service”.

Thirdly, Challenges faced by licensing authorities for foreign workers in issuing and managing work permits (Department of Labor, Invalids and Social Affairs, Management Board of Industrial Parks and Export Processing Zones). Licensing authorities only issue work permits when businesses or foreign workers provide complete dossiers and procedures. The management of foreign workers after the issuance of work permits still faces many challenges.

The expertise, technical skills, and job positions of foreign workers in Vietnam have improved significantly over the past 15 years (2005-2019). In 2015, the proportion of foreign workers with university degrees and higher or technical certificates were as follows: 54% held university degrees and higher, 38.6% had vocational certificates, and 7.4% were traditional artisans. Nearly 35.5% of foreign workers held management positions, 46% were technical experts, and the remaining 30.1% held other positions. In 2019, the proportion of expertise was: 12.0% of foreign workers held management positions; 9.0% were executive directors; 56.0% were technical experts; and 21.7% held other positions.

By 2019, the proportion of management positions decreased from 35.5% to only 12%. These management positions have been gradually replaced by Vietnamese workers. Conversely, the proportion of technical experts increased from 46% to 56%. Typically, technical experts are highly trained individuals with extensive experience and practical skills. They also possess superior knowledge and skills compared to their domestic counterparts, thereby positively contributing to technology transfer, management skills, and modern production workstyles for domestic workers.

Recommendations to improve legislation and enhance the effectiveness of enforcement of legal regulations on foreign workers in Vietnam

Regarding Legal Improvement

Firstly, there is a need to codify the provisions defining foreign workers in Vietnam, creating a unified and systematic set of regulations in a specific legal document or a system of legal documents ranging from Laws to Decrees and Circulars. This would replace the current situation where multiple regulations in various fields govern this matter.

Secondly, the system of legal documents, especially the provisions of the Labor Code, the Law on Science and Technology, and the law on immigration, should be reviewed, particularly in the management of foreign workers entering and leaving the country. Review immigration regulations regarding background checks to prevent companies from bearing the costs for workers who have not yet started working during the 20-day background check period (which can actually be longer in practice).

Thirdly, the provisions on the work permit issuance procedures should be improved to reduce the phenomenon of foreign workers circumventing the law and working in Vietnam in violation of the permitted content (wrong workplace, wrong profession, wrong qualifications, etc.); regulations on proving the professional qualifications of foreign workers should be stipulated.

On Implementation

Firstly, it is necessary to strengthen management, modernize, and gradually apply technology in managing foreign workers in Vietnam in the context of the 4.0 Industrial Revolution. This includes establishing a national database on foreign workers linked to the police, security, immigration, and insurance agencies; And creating electronic labor files that can be synchronized among agencies managing foreign workers.

Secondly, it is essential to enhance inter-agency cooperation among labor management agencies, police, security, and immigration authorities to facilitate procedures, reduce costs for both foreign workers and employers, and ensure compliance with the law.

Thirdly, it is crucial to strengthen inspection, supervision, and enforcement of labor laws for foreign workers to prevent illegal employment and undocumented work, especially in labor-intensive industries or in key economic, security, and defense areas.

Fourthly, leveraging the advantages analyzed in the previous section, it is necessary to promote measures to attract high-skilled labor, improve the economic, social, security, and occupational safety environment, enhance the quality of work, and increase the income of foreign workers. Measures should also be in place to ensure the income and facilitate the remittance of foreign workers to their home countries.

Fifthly, it is essential to encourage employers to create incentives and benefits for highly skilled foreign workers in Vietnam.

References

- The United Nations Convention on the Rights of Migrant Workers and Members of Their Families dated 18 December 1990
- 2012 Labor Code
- Decree No. 87/2014/ND-CP
- Decree No. 11/2016/ND-CP
- Circular No. 24/2015/TT-BLDTBXH
- Consolidated report data from Departments of Labor, Invalids and Social Affairs as of July 2012
- <https://baomoi.com/lao-dong-nuoc-ngoai-tai-viet-nam-bo-tay-trong-quan-ly/c/13544890.epi>
- <https://baomoi.com/lam-gi-de-thu-hut-chuyen-gia-nuoc-ngoai/c/23522957.epi>
- <http://www.ilssa.org.vn/vi/news/lao-dong-nuoc-ngoai-o-viet-nam-thuc-trang-va-nhung-van-de-dat-ra-131>
- <https://consosukien.vn/lao-dong-nuoc-ngoai-o-viet-nam-qua-con-so-thong-k.htm>