

DOCTORAL THESIS IN BRIEF

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Labor law applicable to workers in the market economy in Vietnam

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Vietnam has gained encouraging social and economic achievements after having undergone the transition, formulation and development of the market economy over the last twenty years. Along with such significant development, many problems have risen, which need to be handled in line with standpoints apt with the requirements posed by the market economy. These problems, among others, include development of a labor market, effective and efficient regulation of industrial relations, more particularly protection of employees in enterprises, etc.

Many positive variations and radical developments have been witnessed in the legal field in our country over the past years, though quite a large number of regulations concerning the protection of workers are assessed to be inappropriate and inflexible. Whilst, some rational rules are not yet fully and effectively enforced to protect workers. It is a commonplace to see workers forced to work in insecure conditions, overwork, or to be paid overdue. This proves that the protection of workers is far more behind the desire. The above incident can be attributed to various reasons, but one of them is because we have not undertaken sufficient research on how to develop an efficient legal mechanism to deal with industrial relations in the market economy.

Excluding the introductory, concluding parts, the bibliography and annexes, the thesis consists of three chapters and seven sections, which are spread in 199 pages. The protection of workers is an intricate

and broad issue, possibly be subjected to the research jurisdiction of different sciences. From the legal study perspective, the thesis concentrates on theoretical and practical matters pertaining to the protective regime applicable to workers as wage - earners, but not the regimes designed for general workers. The thesis attempts, on the one side, to build a theoretical foundation for the protection of workers in the market economy in Vietnam; on the other hand, to suggest solutions with a view to perfectionating the labor legal system to protect workers in our country from two quarters: law adjustment and law enforcement.

Chapter I: Some theoretical issues concerning the protection of workers by labor law in the market economy in Vietnam (pp. 10-74)

It clarifies basic theoretical issues relating to the protection of workers within the labor legal framework in the market economy in general and in Vietnam in particular. They include, for instance, viewpoints, fundamental principles, major contents and significant measures undertaken to protect workers.

The thesis's author had an observation that protection of workers aims to prevent and combat infringements on employment, income, honor, and dignity, body of workers by employers or at work. Thus, there are three essential reasons to protect workers in the market economy, namely: 1/protection of workers aims to mitigate their unequal status in industrial relations, materializing the historical mission of the labor law; 2/protection of workers is also to avoid adverse impacts of the market economy; 3/protection of workers is to

carry forward the socialist orientation in the employment field in Vietnam. These reasons, according to the author, commence from the nature of industrial relations, objective requirements of the market economy, as well as the social characteristics of Vietnam.

The author observes that the labor law has a crucial role to play in the implementation of principles, identifying contents and measures to protect workers. Especially, it emphasizes on the principles to protect workers in a reasonable relevance with the protection of rights and legitimate benefits of employers, or in line with minimum standards in the spirit that more beneficial agreements for workers against those provided by the law are stimulated.

Chapter II: Vietnamese labor law in force to protect workers and its enforcement (pp. 75-149)

Based on researches, relevant conventions and recommendations adopted by the International Labor Organization (ILO), policies and laws of some countries concerning the protection of workers; having assessed the Vietnamese legislation pertaining to the protection of workers, the author arrives at the following observations:

- Similar to labor laws in force in most countries, the labor law of our country considers the protection of workers as a basic and cross-cutting content to adjust industrial relations. It is prescribed, among others, that safeguarding the employment of workers is the prerequisite, ensuring income and living condition of workers is the key, and protecting their personal rights is important.
- The contents concerning the protection of workers fully contain essential principles,

are rather comprehensive and compatible with the requirements; protective measures are relatively consistent, can be used collectively to ensure the enforcement of legal provisions relating to the protection of workers.

- Notwithstanding to such positive aspects, many regulations on the protection of workers still have inappropriate contents, such as employment transfer, strike procedures, etc. These are considerably strict, hampering the market's flexibility. Some provisions are impracticable or hardly implemented due to their ambiguity, or not accepted by relevant stakeholders, such as those relating to the priority given in recruiting female workers, sectoral agreements, and dispute mediation by grassroots mediators, salary compensation, etc.

- A wide range of issues are mentioned, but irrational or inadequate, such as the protection of workers subjected to unilateral termination of contract by employers, the proportion of disabled workers, the tripartite mechanism, compensation for occupational accidents and diseases, administrative fines applicable to violations of the rights and interests of workers, etc.

- There is still a lack of necessary regulations, such as the limitation of deposits in relation to the guarantee of labor contract implementation, health standards specifically applied to work patterns, sectors and crafts, or compensation for workers whose honor and dignity are infringed, etc.

- Numerous rules are not fully observed, such as overtime work, social insurance, etc. It is because the laws lack of transparency, clarity or legal sanctions are not sufficiently strict, etc.

It is affirmative that the greatest inconsistency in the system of legal provisions concerning the protection of workers in our country is inadequate flexibility and non-severe punishment against violations.

Chapter III: *Perfectionating the legal provisions and enhancing the turnout of protection of workers in compliance with Vietnamese labor law (pp. 150-196)*

Bearing upon the theoretical and practical issues discussed above, the author suggested solutions to perfectionate the law and improve the efficacy in protecting workers in the market economy in Vietnam.

The author analyzes and identifies basic requirements to perfectionate the existing legal provisions pertaining to the protection of workers. In that spirit, it is necessary, according to the author: to remedy irrationalities of the existing legal provisions, ensuring their consistency with the market economy characteristics in Vietnam; to separate less relevant policies to make the protection of workers more acceptable; to harmonize the market flexibility with the sustainability in protecting workers and access to international labor standards in the context of globalization and international integration.

Finally, the author suggests some specific solutions as follows:

Firstly, with regard to the way to perfectionate the law, it is important to amend and supplement some existing rules, such as those relating to employment, salary and income, protection of personal rights of workers, collective self-protective measures by workers, compensation for damages, punitive measures against violations, trial measures, etc. For example, it is recommendable to replace regulations on

priority given where female workers are recruited with privileges granted to enterprises that employ female workers; to ensure equality of retirement age and the right to procure social insurance of wage-earning workers in general; or to recognize other true representation of workers faculty along side with labor unions; to acknowledge the authorization by the workers faculty given to higher-level labor unions in collective bargaining or leading strikes, etc;

Secondly, in respect of capacity building for relevant stakeholders to protect workers, with the availability of representative units of all parties and the tripartite mechanism in place, according to the author, labor unions need to improve their operational quality, enhance their activities in the non-state sector and branches, make labor union officials specialized in important areas, etc; or as regards the capacity building for concerned state agencies to protect workers, the author suggests that legislative and executive agencies need to improve the quality of formulating, issuing and instructing laws; to control the information about labor market and industrial relations, which bases the policy making; to collaborate with relevant authorities such as the Ministry of Labor, Invalids and Social Affairs, the Ministry of Planning and Investment, etc. from the scratch in issuing investment licenses as well as when enterprises are in operation in order to protect workers properly.

The defense of the dissertation was recognized as success by the State-level Doctoral Thesis Examination Board at a ceremony held in Hanoi Law University in late October of 2006.

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