



Improving the legal framework on working time and rest periods to accommodate the demands of Industry 4.0 integration

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ABSTRACT

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Our country's economy has gone through different periods of development, becoming more progressive and modern, in which one factor that plays a dominant role throughout and has contributed significantly to its success is the source of energy, human resources. At any stage, workers always play an extremely important role in the development of the economy. To do so, we must ensure the rights of workers and motivate them to work to create high-quality products and stable productivity. However, human labor power is limited, so workers have the right to rest reasonably and scientifically. Given the current trend of industrial development in the 4.0 era, appropriate of working hours and rest times for workers is also an issue worthy of attention. On that basis, the article focuses on analyzing legal regulations on working hours and rest hours of workers, thereby pointing out unreasonable points and proposing perfect solutions.

1. INTRODUCTION

The Fourth Industrial Revolution (Industry 4.0) is currently in its initial phase—a strategic stage for developing countries striving to keep pace with global trends. However, factors that have traditionally been considered advantages for developing nations like Vietnam - such as a youthful manual labor force and low labor costs—are gradually losing their competitiveness and are even under serious threat. According to estimates

by the International Labour Organization (ILO), up to 86% of jobs in labor-intensive sectors such as textiles, garments, and footwear in Vietnam are at high risk of being displaced by technological breakthroughs brought about by Industry 4.0. This risk may translate into significant economic losses, as these sectors have historically generated a substantial number of domestic employment opportunities.

Moreover, Vietnam is currently striving to escape the middle-income trap. This implies that the current advantage of a large labor force could potentially become a hindrance to future development, especially if the adverse impacts of the Fourth Industrial Revolution are not proactively addressed. Meanwhile, in certain sectors in Vietnam, the annual demand for recruitment is estimated to grow steadily by nearly 50%. However, in reality, out of 500,000 information technology graduates each year, only about 8% meet the actual requirements of the labor market. (General Statistics Office 2023, 2024). This reality highlights the urgent need to improve the quality of the technical labor force, emphasizing that the right to work and to rest is a fundamental and legitimate right of workers. Vietnamese law has paid attention to this issue, as reflected in the provisions of the Labour Code on working time and rest periods. As society continues to develop, workers' expectations regarding their rights and benefits are also increasing. Working time and rest periods are receiving greater attention due to their direct impact on workers' lives and well-being. Accordingly, the law must be continuously revised to keep pace with the context of Industry 4.0.

In this spirit, the 2019 Labour Code introduced several innovations compared to the 2012 version, particularly concerning the regulation of working hours and rest periods. However, there remain shortcomings in the practical application of these new provisions within enterprises. Therefore, it is necessary to adopt appropriate solutions to improve the legal framework governing working time and rest

periods in the current stage of Industry 4.0 integration.

2. RESEARCH METHODS

In the content of this article, the author employs a comprehensive combination of various qualitative research methods, including books, newspapers, and legal journals, to clarify the issues under discussion. In addition, the author also utilizes several research methods such as:

(i) Methods: To achieve the stated objectives, the research is grounded in the dialectical materialist method of Marxism - Leninism and Ho Chi Minh's thought on the State and law. It also adopts the core viewpoints of the Communist Party and the State of Vietnam in the field of labor as the fundamental methodological foundation for the study.

(ii) Analytical and synthetic methods: These are the primary methods employed throughout the research. They are used extensively to analyze and synthesize documents, reports, books, newspapers, and legal journals, as well as to examine theoretical issues and legal provisions related to working time and rest periods for employees.

(iii) Statistical and comparative methods:

These methods are employed to collect relevant legal provisions as well as data and practical reports concerning working time and rest periods of employees. The data is obtained through the compilation of materials from books, newspapers, journals, and reliable statistical information available on trusted electronic sources.

3. RESULTS AND DISCUSSION

3.1 New provisions on working hours and rest periods for employees in the 2019 Labour Code

In the context of Industry 4.0 integration, the 2019 Labour Code introduced several significant changes regarding employees' working hours and rest periods.

Firstly, the 2019 Labour Code makes notable progress by providing more detailed provisions requiring employers to inform employees of their working hours in specific circumstances. Normal working time is limited to no more than 8 hours per day and no more than 48 hours per week. Employers are entitled to arrange working hours on a daily or weekly basis, but they must inform employees accordingly. In the case of weekly arrangements, normal working hours may not exceed 10 hours per day and 48 hours per week (Article 105 of the 2019 Labour Code). However, the State encourages employers to adopt a 40-hour workweek for employees.

Secondly, overtime refers to the period of work performed beyond normal working hours. Notably, the arrangement of overtime work must be subject to the employee's consent regarding the location, nature of the work, and the specific overtime hours (Article 59 of Decree No 145/2020/NĐ-CP, 2020). In special cases, there is no fixed limit on the number of overtime hours. However, it must be ensured that the employee's overtime hours do not exceed 50% of the normal working hours in a day. Where the employer applies weekly working time regulations, the total number of normal and overtime working hours must not exceed 12 hours per day and no more than 40 hours per month.

At the same time, it must also be ensured that an employee's overtime hours do not exceed 200 hours per year. Additionally, the 2019 Labour Code expands the circumstances under which employers may require employees to work up to

300 hours per year. These include: the production and processing of export goods in sectors such as textiles, garments, footwear, electricity, electronics, and the processing of agricultural, forestry, salt, and fishery products; the production and supply of electricity, telecommunications, oil refining, water supply and drainage; cases involving tasks that require highly skilled or technically specialized labor which the labor market cannot adequately and promptly supply; and urgent tasks that cannot be postponed due to the seasonal or time-sensitive nature of raw materials and products, or those arising from unforeseeable objective circumstances such as weather events, natural disasters, fires, enemy sabotage, electricity shortages, material shortages, or technical incidents in production lines (Article 107 of the 2019 Labour Code).

On the other hand, employers have the right to require employees to work overtime on any day without limitation on the number of overtime hours, and employees are not permitted to refuse in special circumstances such as: the execution of mobilization orders or deployment to ensure national defense and security tasks as prescribed by law; or the performance of duties aimed at protecting human life and the property of agencies, organizations, and individuals in the prevention and mitigation of consequences caused by natural disasters, fires, dangerous epidemics, or catastrophes (Article 108 of the 2019 Labour Code). However, employees may still refuse to work overtime in these special cases if the work poses a risk to their life or health.

Thirdly, there are notable changes concerning rest breaks and inter-shift rest periods. Employees who work for six hours or more in a day are entitled to a rest break of at least 30

consecutive minutes; for night work, the break must be at least 45 consecutive minutes. In addition, employees working in shifts are entitled to a minimum rest period of 12 hours before transitioning to another shift, commonly referred to as a shift change break or inter-shift rest (Articles 109 and 110 of the 2019 Labour Code). In cases where employees work continuously in shifts for six hours or more, the rest break is counted as part of the working hours.

Rest breaks refer to periods during the working day when employees are exempted from performing work duties, allowing them to rest and recover both mentally and physically after each phase of work. Break times are typically stipulated in the Labour Code or may be determined by the employer in accordance with legal regulations and specific working conditions.

Since the early 19th century, it has been recognized that prolonged work without rest imposes substantial strain on the human body and leads to various health issues. To this day, rest breaks remain one of the most essential elements of labor legislation, aimed at safeguarding the rights and health of employees. Breaks help reduce stress, enhance concentration, and mitigate the risk of illness or injury caused by overwork.

Regulations on rest breaks may vary depending on the country, territory, or specific industry. However, in general, such provisions are designed to ensure that employees are afforded better working conditions, treated fairly, and that a productive and healthy working environment is fostered (Terra, 2024).

Fourthly, employees are entitled to an increased number of public holidays compared to

previous regulations. For example, employees now receive two days off for the National Day holiday on September 2, whereas previously they were entitled to only one day (Point đ, Clause 1, Article 115 of the 2012 Labour Code). In addition, the 2019 Labour Code expands the categories of personal leave with full pay. Specifically, employees are entitled to: 3 days of leave in the event of their own marriage; 1 day of leave when their biological or adopted child gets married; 3 days of leave in the event of the death of their biological or adoptive parents, parents-in-law, spouse, or biological/adopted child. Furthermore, employees are entitled to one day of unpaid leave upon prior notice to the employer the event of the death of their paternal or maternal grandparents, siblings, or for the marriage of their parents or siblings. Employees may also negotiate with their employer for additional unpaid leave (Article 115 of the 2019 Labour Code).

Fifthly, the 2019 Labour Code also introduces various provisions aimed at safeguarding employee health. These progressive measures notably enhance the rights and benefits of female workers in Vietnam. For instance, female employees are entitled to regular obstetric health check-ups, are given more opportunities to take leave for prenatal examinations, and, furthermore, are entitled to a 30-minute rest period per working day during menstruation. This rest period is counted as part of the working time and is fully paid according to the labor contract (Article 80 of Decree No. 145/2020/NĐ-CP, 2020).

Sixthly, elderly employees have the right to negotiate with their employers on reducing their daily working hours or adopting a part-time

working arrangement. Moreover, employers are prohibited from assigning elderly employees to strenuous, toxic, hazardous, or especially arduous and dangerous work that could adversely affect their health. Employers are also obligated to take measures to safeguard the health of elderly employees in the workplace (Articles 148 and 149 of the 2019 Labour Code).

In summary, the above-mentioned points represent the most notable innovations of the 2019 Labour Code compared to the 2012 version regarding working hours and rest periods for employees (Articles 104, 105, and 106 of the 2012 Labour Code). These regulations have significantly improved workers' rights and reflect a progressive legal approach that aligns well with the current period of national and international integration.

3.2 Legal practice on working time and rest periods in enterprises in the context of Industry 4.0 integration

In recent years, the labor and employment situation in Vietnam has shown marked improvement compared to previous periods. The number of employed workers and their average monthly income has increased, while the unemployment and underemployment rates among the working-age population have declined. In 2023, the labor force participation rate reached 68.9%, an increase of 0.3 percentage points compared to 2022. Specifically, the male labor force participation rate was 75.2%, up by 0.2 percentage points from the previous year, while the rate for females was 62.9%, representing an increase of 0.4 percentage points (General Statistics Office, 2023). These figures indicate a growing trend in employment and a continued decrease in the unemployment rate.

Furthermore, domestic enterprises have shown increasing demand for labor to meet market requirements during the current phase of global integration. As a result, many enterprises in Vietnam have abused employees' working hours and rest periods. For instance, recent labor inspections in the garment sector revealed that 39.5% of enterprises failed to comply with legal provisions on overtime hours, and as many as 82% of the 257 surveyed factories required employees to work overtime beyond the legal limit (General Statistics Office, 2024). The primary reasons for enterprises exceeding the permitted overtime limits may include: (i) objective production demands in a modern market economy; (ii) the desire of many workers to work additional hours to increase income; and (iii) insufficient oversight and weak monitoring mechanisms from State management authorities and trade union organizations.

As a result, many domestic enterprises have exploited the loose regulatory framework of the Labour Code to maximize workers' labor capacity, particularly concerning the provision that normal working time shall not exceed 8 hours per day and 48 hours per week. Within this framework, enterprises especially in sectors such as textiles, processing, and electronics tend to fully utilize the 48-hour weekly limit due to pressure from orders, seasonal production demands, or as a contingency measure for fluctuations in raw materials and market conditions. This practice often leads to violations of the monthly and annual limits on working hours. In practice, such conduct contradicts the policies and principles of the Communist Party of Vietnam regarding the protection of workers. Extended working hours, sustained workloads,

and insufficient rest periods can result in severe physical exhaustion for employees, limiting their ability to recover mentally and physically. This increases the risk of occupational diseases, thereby adversely affecting workers' health and quality of life. Moreover, excessive working hours reduce opportunities for workers to participate in training or upskilling programs, hindering their ability to improve their qualifications, acquire new skills, and transition into higher-level positions.

It is evident that a significant discrepancy exists between actual practice and the guiding principles and policies of the Communist Party, as well as labor law provisions concerning the protection of workers. Therefore, appropriate and effective measures must be taken to reconcile this inconsistency contributing not only to economic growth but also to the realization of social progress and justice, while ensuring a fair balance of interests between employees and employers. In comparison with other countries in the region, Vietnam currently sets a relatively low legal limit on overtime hours. For instance, the maximum allowable overtime is 56 hours per month in Indonesia, 72 hours per month in Singapore, 104 hours per month in Malaysia, and 36 hours per week in Thailand. However, such comparisons must be made in light of Vietnam's regulation on regular working hours, which allows up to 48 hours per week. According to calculations by the International Labour Organization (ILO), when overtime (up to 400 hours per year) is added, the total average annual working time for Vietnamese workers may reach up to 2,720 hours per year. In contrast, South Korea permits a maximum of 624 overtime hours per year, and China permits 432 hours. Yet, even when

combining both regular and maximum overtime hours, the total annual working hours for employees in these countries remain lower than in Vietnam (Hoang Minh Anh and Bui Đàng Linh, 2019). According to surveys conducted by the ILO, Vietnam ranks among the countries with the highest working hours globally and regionally. After excluding official public holidays, the total annual working time in Vietnam stands at 2,320 hours - 440 hours more than in Indonesia, 184 hours more than in Cambodia, and 176 hours more than in Singapore (General Statistics Office, 2023, 2024).

Among the 155 countries surveyed by the International Labour Organization (ILO), more than two-thirds have adopted working time regulations of fewer than 48 hours per week. In contrast, Vietnam along with approximately 40 other countries, still maintains the 48-hour workweek (equivalent to 6 working days per week), a standard initially promulgated in 1947 under Decree No. 29 of the Democratic Republic of Vietnam. This regulation has remained unchanged for over 70 years. Additionally, out of the 155 surveyed countries (excluding 6 countries with no statutory provision), Vietnam ranks among the nations with the fewest minimum annual leave days (12 days), on par with only 8 countries, more than 31 countries, but fewer than 110 others (International Labour Organization (ILO, 2024).

These findings clearly demonstrate that Vietnamese employees are subject to one of the highest total working time levels globally and regionally. According to compiled data on actual working hours from 63 countries, Vietnam ranks third, with an average of 2,339.55 working hours per year - exceeding that of 60 countries. Among

the 11 member states of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Vietnam records the highest actual annual working hours.

On the other hand, under current regulations, Vietnam provides 11 public holidays per year—a relatively low figure compared to other countries in the region and around the world. For example: Cambodia grants 28 days; Brunei 15 days; Indonesia 16 days; Malaysia 13 days; Myanmar 14 days; the Philippines 19 days; Thailand 16 days; Laos 12 days; China 21 days; and Japan 16 days (News Agency - Vietnam News Agency, 2019). This disparity is a matter of concern and suggests the need for regulatory adjustments to better align with regional standards and to protect the legitimate rights and interests of employees.

3.3 Some legal solutions for improving regulations on working hours and rest periods for employees to meet the demands of Industry

4.0 integration

According to the International Labour Organization (ILO), working time and rest periods are ranked as the second most important aspect of labor conditions, just after wages. Excessive working hours not only negatively affect work quality but also create significant challenges in the daily lives of employees. However, practical implementation has revealed that the provisions on working time and rest periods under the 2019 Labour Code still contain various shortcomings that need to be addressed in order to better protect workers' health and well-being. Therefore, the author proposes the following solutions to improve labor law in relation to working hours and rest periods:

First, the legal provisions on overtime should be improved in a manner consistent with the

conventions of the International Labour Organization (ILO) and the labor laws of other countries in the region. Specifically, Clause 1, Article 107 of the 2019 Labour Code should be amended to provide clearer and more flexible regulations on overtime limits per day, month, and year. This means maintaining the current annual limit on overtime hours, while setting daily and monthly caps, such as: no more than 2 hours of overtime per day, no more than 25 hours per month, and a prohibition on working overtime for two consecutive days. However, in certain circumstances - such as to accommodate the operational needs of enterprises - overtime exceeding 25 hours per month may be permitted, provided that the total annual overtime does not exceed the existing limits of 200 or 300 hours. From a biological standpoint, a daily limit of 2 overtime hours in addition to the standard 8 working hours aligns with the human body's effective capacity for sustained work. This ensures workers' health and safety, while also allowing sufficient time for recovery and the regeneration of labor capacity.

Second, the number of public holidays and traditional celebration days should be increased. Specifically, Clause 1 of Article 112 (on public holidays and Tet) should be amended and supplemented as follows: Point b: Increase the number of days off for the Lunar New Year (Tet) holiday to 7 days; Add Point f: February 3 - the founding day of the Communist Party of Vietnam - 1 day off; Add Point g: July 27 - War Invalids and Martyrs' Day - 1 day off; Add Point h: November 20 - Vietnamese Teachers' Day - 1 day off; Add Point i: February 27 - Vietnamese Doctors' Day - 1 day off. Accordingly, the total number of public holidays proposed would be 17

days per year, an increase of 6 days compared to the current 11 days. This adjustment would bring Vietnam's public holiday regime more in line with those of other countries in the region (Tran Thi Thanh Trang, 2023).

Third, enhance the effectiveness of the enforcement of legal provisions on overtime work. In order to improve the implementation of overtime regulations, it is essential to ensure consistent direction and strict oversight from State authorities, in coordination with trade unions, to strengthen the monitoring and inspection of enterprises' overtime practices. In addition, it is necessary to promote the dissemination and education of legal provisions on overtime through mass media channels and direct outreach activities aimed at employees. This would help raise awareness and improve compliance with labor laws, enabling workers to understand and assert their rights more effectively. At the same time, it is crucial to foster a stronger legal compliance culture among all relevant stakeholders, enhance the State's capacity in labor administration, and impose strict sanctions against violations of legal regulations on working hours in general and overtime provisions in particular.

Fourth, promote flexible working arrangements. This refers to non-traditional work arrangements designed to accommodate the individual needs of employees or employers, often involving a certain degree of remote work or online work from home. Under such arrangements, enterprises allow employees greater autonomy in choosing their working hours, locations, and methods, as long as these remain compatible with job requirements and ensure productivity and efficiency. The adoption

of flexible working arrangements offers several benefits: it helps reduce stress and pressure, increases job satisfaction, supports better health outcomes, and saves time and commuting costs. For employers, flexible work can lower administrative and management expenses, improve employee retention - particularly of experienced and high-performing workers - and boost overall productivity and creativity, as employees feel greater freedom and comfort in their work environment.

Fifth, introduce flexible adjustments to daily working hours tailored to the nature of the job. In this regard, employers may allow employees to proactively adjust their start and end times to better accommodate their individual conditions and preferences. For example, a company may permit employees to begin their workday at any time between 6:00 a.m. and 9:00 a.m., provided that they fulfill the standard 8 working hours per day.

Sixth, reduce the number of working days per week while increasing the number of working hours per day in certain cases. For instance, employees in specific departments may be permitted to work 10 hours per day for 4 days per week, followed by 3 consecutive days off. Such flexible scheduling arrangements can provide significant benefits, including improved work-life balance, reduced commuting costs, and enhanced opportunities for rest and family care.

4. CONCLUSION AND RECOMMENDATIONS

In summary, as the country continues its trajectory of development in the current phase of Industry 4.0 integration, the protection of workers' rights remains an essential and pressing issue. In particular, legal regulations on working

hours and rest periods must be reasonable and scientifically grounded to help employees maintain stable health conditions. Only under such circumstances can labor productivity be improved, high-quality products be generated, and opportunities be created for the workforce to develop technical skills - contributing to Vietnam's economic growth and its standing among regional peers. Through the examination of practical realities and legal provisions, it is evident that various shortcomings still exist regarding the regulation of working hours and rest periods for employees, as well as in the oversight of overtime practices in enterprises. In response, the author has proposed a number of legal solutions aimed at improving the labor law framework, ensuring the legitimate rights and health of employees-who represent a vital production force in driving national economic development in this era of global integration.

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