ADJUSTING LABOR SUBLEASE ACTIVITIES IN THE CURRENT LABOR CODE IN VIETNAM

a Dao Mong Diep

ABSTRACT

Objectives: Research the legal status of labor subleasing and practical implementation in Vietnam, thereby proposing solutions to improve the provisions of the Labor Code on labor subleasing activities in the current period.

Legal framework: The legal foundation of this study is based on the provisions of the 2019 Labor Code on labor subleasing and related legal documents.

Methodology: The methods used include analysis, synthesis, comparison, statistics, and commentary, combined with a review of legal regulations related to labor subleasing activities. This study also draws on secondary sources, including articles and academic commentaries, to gain a comprehensive understanding of the research topic.

Results and conclusions: The study proposes solutions to improve the effectiveness of implementing the law on labor subleasing in Vietnam. The research will be the legal basis for effectively regulating businesses that provide professional services for specific industries, improving business performance in recruiting and training human resources in order to respond to international economic integration. Besides, the research is also the basis for protecting employees in outsourcing businesses. At the same time, it improves the efficiency of state management of subleasing in the current period.

Keywords: labor subleasing, labor code, Vietnam.

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AUSTANDO AS ATIVIDADES DE SUBLOCAÇÃO DE MÃO-DE-OBRA NO CÓDIGO DE MÃO-DE-OBRA ATUAL NO VIETNÃ

RESUMO

Objetivos: Estudar o estatuto jurídico da sublocação de mão de obra e a sua aplicação prática no Vietname, propondo, assim, soluções para melhorar as disposições do Código do Trabalho relativas às atividades de sublocação de mão de obra no período em curso.

Enquadramento legal: A base legal deste estudo é baseada nas disposições do Código do Trabalho de 2019 sobre sublocação de mão de obra e documentos legais relacionados.

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**Metodologia:** Os métodos utilizados incluem análise, síntese, comparação, estatísticas e comentários, combinados com uma revisão de regulamentos legais relacionados às atividades de sublocação de mão de obra. Este estudo também se baseia em fontes secundárias, incluindo artigos e comentários acadêmicos, para obter uma compreensão abrangente do tópico de pesquisa.

**Resultados e conclusões:** O estudo propôs soluções para melhorar a eficácia da implementação da lei sobre sublocação de mão de obra no Vietnã. A pesquisa será a base legal para regulamentar efetivamente as empresas que prestam serviços profissionais para setores específicos, melhorando o desempenho das empresas no recrutamento e capacitação de recursos humanos a fim de responder à integração econômica internacional. Além disso, a pesquisa também é a base para proteger os funcionários em empresas terceirizadas. Ao mesmo tempo, melhora a eficiência do gerenciamento estatal de subleasing no período atual.

**Palavras-chave:** sublocação de mão de obra, código do trabalho, Vietnã.

### 1 INTRODUCTION

In the world, labor subleasing is a common phenomenon in the use of labor in countries with early-developed market economies. Labor subleasing relationships were formed in the 60s and 70s of the twentieth century and later became popular in the United States and Western European countries. According to the 2020 report of the World Employment Confederation (World Employment Confederation), in 2018 alone, the 15 largest labor hire markets in the world grew 91% in sales, with sales by 344 billion euros (of which the largest global market is the US, followed by Japan and the UK) and providing 53.9 million workers for businesses that directly employ workers (in which, the US is the leading with 16.8 million workers, followed by China with 10.7 million workers and Japan with 3.8 million workers (Confederation, 2020). Currently, many countries and territories have issued their own laws to regulate this issue, such as the United States, Japan, Taiwan, and Korea; or in China, a chapter of the Labor Contract Law; or Thailand, Singapore, etc. There are also specific regulations on labor subleasing activities. (Diep, 2014).

From the ILO's point of view, labor leasing is understood as the practice of private employment organizations (main employers) recruiting workers but not directly using them but providing labor to third parties (enterprises that directly employ workers). Enterprises that directly employ workers have the right to assign work as well as supervise workers in performing assigned work; however, the rights of workers are primarily responsible for private employment organizations. (Martin P. L.--.--.--.--., 2016).

In Vietnam, in fact, labor subleasing activities have appeared since the 2000s when a wave of foreign investment poured into Vietnam and developed quite strongly in
localities with concentrated industrial parks and export processing zones like Hanoi, Ho Chi Minh City, Binh Duong, Dong Nai, etc. As of December 31, 2020, according to the report of the Department of Labor Relations and Wages of the Ministry of Labor, Invalids and Social Affairs, the whole country has 393 licensed enterprises and is operating labor leasing activities concentrated in 25 provinces and cities under the central. The number of employees working in the form of labor subleasing at enterprises is estimated at 170,730 people. Specifically, according to the following chart:

Figure 1: Data on labor subleasing activities in Vietnam in 2020 (Report on labor The Department of Labor Relations - Wages, 2020)

<table>
<thead>
<tr>
<th>No</th>
<th>Province/City directly under the Central Government</th>
<th>Number of labor subleasing enterprises in operation</th>
<th>Number of subleased workers (person)</th>
<th>Average salary of outsourced employees (Million VND/person/month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>BA Ria Vung Tau</td>
<td>22</td>
<td>4,238</td>
<td>11.47</td>
</tr>
<tr>
<td>2</td>
<td>Bac Giang</td>
<td>21</td>
<td>26,739</td>
<td>5.447</td>
</tr>
<tr>
<td>3</td>
<td>Bac Ninh thirty first</td>
<td>53,210</td>
<td>4.6</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Binh Duong twelfth</td>
<td>2,940</td>
<td>5.75</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Can Tho</td>
<td>4</td>
<td>731</td>
<td>5.17</td>
</tr>
<tr>
<td>6</td>
<td>Dong Nai</td>
<td>55</td>
<td>20,050</td>
<td>5.26</td>
</tr>
<tr>
<td>7</td>
<td>Ha Nam</td>
<td>7</td>
<td>3,450</td>
<td>4.68</td>
</tr>
<tr>
<td>8</td>
<td>Hanoi</td>
<td>54</td>
<td>20,704</td>
<td>10,414</td>
</tr>
<tr>
<td>9</td>
<td>Hai Duong</td>
<td>8</td>
<td>3,064</td>
<td>4.495</td>
</tr>
<tr>
<td>10</td>
<td>Hai Phong</td>
<td>14</td>
<td>6,005</td>
<td>18</td>
</tr>
<tr>
<td>11</td>
<td>Hung Yen</td>
<td>6</td>
<td>3,496</td>
<td>5.75</td>
</tr>
<tr>
<td>12</td>
<td>Kien Giang first</td>
<td>3</td>
<td>579</td>
<td>4,344</td>
</tr>
<tr>
<td>13</td>
<td>Lam Dong first</td>
<td>213</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Nghe An</td>
<td>5</td>
<td>1,989</td>
<td>6.7</td>
</tr>
<tr>
<td>15</td>
<td>Quang Ngai first</td>
<td>3</td>
<td>141</td>
<td>10.55</td>
</tr>
<tr>
<td>16</td>
<td>Quang Ninh first</td>
<td>88</td>
<td>4.194</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Soc Trang first</td>
<td>183</td>
<td>3.67</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Thai Nguyen first</td>
<td>7</td>
<td>3,990 yen</td>
<td>4.2</td>
</tr>
<tr>
<td>19</td>
<td>Thanh Hoa</td>
<td>5</td>
<td>814</td>
<td>19.034</td>
</tr>
<tr>
<td>20</td>
<td>Ho Chi Minh first</td>
<td>45</td>
<td>16,317</td>
<td>25,022</td>
</tr>
<tr>
<td>21</td>
<td>Vinh Phuc</td>
<td>4</td>
<td>741</td>
<td>4.73</td>
</tr>
<tr>
<td>22</td>
<td>Phu Tho first</td>
<td>663</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Lai Chau first</td>
<td>200</td>
<td>5.25</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Danang first</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Ninh Thuan first</td>
<td>185</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>313</td>
<td>170,730</td>
<td></td>
</tr>
</tbody>
</table>

The data reported by localities shows that the provinces with stronger development in labor subleasing activities are economically developed provinces, with many industrial parks, businesses and workforce concentrated. The most enterprises operating in labor subleasing are Dong Nai with 55 enterprises, followed by Hanoi with 54 enterprises, Ho Chi Minh City with 45 enterprises and Bac Ninh with 31 enterprises. Leading the number of hired employees is Bac Ninh, with 53,210 people, followed by
Dong Nai and Hanoi, with about 20,000 people. The total number of hired employees accounts for about 0.0037% of the total number of employees nationwide in 2021 (50.7 million people) (Thien, "Law on sub-leasing labor in Vietnam", 2022) Resourcing labor is understood as an employer's business - Labor leasing enterprises lease their employees to other employers for a certain period of time under a "service" contract. Accordingly, the sub-hiring employer has the right to use, manage and operate that employee and must pay service fees to the labor leasing enterprise (Thuy, 2022).

Figure 2: Structure diagram of labor subleasing relationship

In the image above, we see that the labor subleasing relationship is a relationship with a triangular structure of three parties: (i) The relationship between the labor subleasing enterprise and the subleasing employee (essentially is Labor relations are established on the basis of labor contracts); (ii) Relationship between the labor subleasing enterprise and the labor subleasing person/party (service relationship is formed on the basis of the labor subleasing contract); (iii) Relationship between the subleased employee and the person/party subleasing the labor.

Starting from the above definition, it can be seen that labor subleasing has some of the following basic characteristics:
First, labor subleasing involves three subjects, and these subjects have a close connection.

To form a labor-subleasing relationship, there needs to be the participation of three entities: the labor subleasing enterprise, the subleasing employee, and the labor subleasing enterprise. In this relationship, two types of contracts exist: the labor contract between the labor leasing enterprise and the subleasing employee and the service contract (labor subleasing contract) between the labor leasing enterprise and businesses that hire workers (Diu, 2016). Therefore, labor subleasing activities will include three relationships:

(i) The relationship between the outsourcing enterprise and the subcontracted employee. This relationship is the labor relationship established on the basis of the labor contract. The labor subleasing enterprise recruits and signs a labor contract with the employee and then leases the labor to another enterprise. Therefore, in this relationship, the enterprise subleasing the labor is the employer, and the subleased labor is the employee. Although the employee does not work directly at the labor outsourcing enterprise, the labor outsourcing enterprise is still responsible for paying wages and ensuring the employees' rights in accordance with the law.

(ii) The relationship between labor subleasing enterprises and labor subleasing enterprises. The relationship between these two enterprises is a service and commercial relationship formed on the basis of a labor sublease contract. Accordingly, the outsourcing enterprise is responsible for providing the outsourcing enterprise with the quantity of labor according to the conditions and standards set by that enterprise, and at the same time, the outsourcing enterprise has the responsibility to pay the labor subleasing business an amount of money as a service fee. At the end of the labor hire term under the contract, the outsourcing enterprise shall return the hired labor to the outsourcing enterprise.

(iii) The relationship between subleasing employees and labor subleasing enterprises. In this relationship, the labor subleasing enterprise, although not the employer, has the right to operate, supervise, and manage the subleasing employees during the process of sub-contracting the employee to perform labor obligations at their enterprise. However, in the process of using subleased workers, if the subleased employee violates labor obligations or violates labor
discipline, the sub-hiring enterprise will not take disciplinary action but return the employee. Laborers for enterprises to sublease labor.

Second, the labor subleasing relationship is both economic and social.

* Economically, labor subleasing is governed by market economic laws such as the law of value, the law of competition, and the law of supply and demand. The labor supplier must calculate all of its activities to offset costs and make a profit. The outsourcing party must also carefully calculate the effectiveness of using labor. Those are economic manifestations. (Oanh, 2015).

* Socially, labor subleasing is formed as an important solution to promote the development of the labor market in labor rotation, exploiting the true nature of special goods - commodities in the labor market, contributing to ensuring the lives of workers through providing job opportunities for workers as well as creating job and reducing the unemployment rate in society. Along with management measures such as economic restructuring and developing industries with a large labor capacity, such as textiles and garments, food processing, mechanics, and services..., labor subleasing is one of the important solutions for matching labor supply and demand to attract and take advantage of labor opportunities and create jobs for workers, especially in the period of increasingly deep international economic integration, diverse and complex as it is today.

Third, labor subleasing only applies to certain occupations.

In fact, the jobs that businesses need to hire laborers often focus on are temporary, seasonal, and service-based jobs such as translation, interpretation, accounting, etc. math, service, housework, etc, or jobs that require high technical expertise; replace employees during maternity leave, work accidents, occupational diseases, or perform civic duties or reduce working hours. On the other hand, due to the nature of labor subleasing activities, which is a three-way relationship between the labor subleasing business, the labor subleasing business, and the subleasing employee, it seems that the employee is the weaker party that suffers more disadvantages. Therefore, to protect employees' legal rights and interests and harmonize the interests of the parties in the labor-subleasing relationship, it is necessary to limit labor subleasing in some occupations and certain jobs.

The common point that can be easily seen in the international legal corridor and many other countries' laws is that labor subleasing is a conditional business activity. This is because the labor subleasing activity itself has other benefits; there are many possibilities of negative impacts on all relevant entities, especially negative impacts on
leasing workers and the labor market order because of the risk of such activity (Nhuong, 2015). For Vietnam, labor subleasing is a new field in employment service activities, so Decree No. 145/2020/ND-CP stipulates that only 20 jobs can be performed for labor subleasing. At the same time, labor subleasing enterprises must fulfill deposit obligations and must be licensed to operate by the Ministry of Labor, Invalids and Social Affairs. (Government, 2020).

2 EVALUATE THE PRACTICAL IMPLEMENTATION OF THE PROVISIONS OF THE 2019 LABOR CODE ON LABOR SUBLEASING ACTIVITIES

2.1. CONDITIONS FOR LABOR SUBLEASING OPERATIONS

According to the report of the Department of Labor Relations and Wages in 2020, 100% of labor subleasing businesses strictly comply with legal regulations on business conditions: 100% of businesses ensure human resources requirements and the head of the business; 100% of businesses have deposited deposits at 38 banks, concentrated in some banks such as BIDV with 48 businesses, Vietcombank with 42 businesses, Vietinbank with 33 businesses; Agribank has 15 enterprises, MB has 14 enterprises, PVcombank has 13 enterprises, Sacombank, Techcombank and Seabank have 12 enterprises, and the remaining banks have from 01 to 08 enterprises. (Department of Labor Relations - Wages, 2020).

The practice of implementing regulations on conditions for labor subleasing activities has revealed the following problems and difficulties:

![Figure 3: Percentage of the number of workers working in occupations that are subleased](image-url)
Firstly, although some conditions on legal capital and corporate headquarters have now been removed compared to before, the obligation to make a deposit of 02 billion VND is rigid and inappropriate. (Thien, "Law on sub-leasing labor in Vietnam", 2022). In reality, the majority of businesses in our country belong to the category of micro, small and medium enterprises. This is a large part of the business community in Vietnam. Thus, a deposit amount of 02 billion VND will be a large number for many businesses, causing them not to meet this condition and becoming a barrier for investors who want to. Furthermore, this regulation also appears to be quite rigid and inappropriate when it only sets a specific number of 02 billion VND without depending on factors such as: Scale, scope of business, and number of employees. Accordingly, the scale of labor subleasing businesses is different. Some businesses provide labor subleasing services with a very large number of workers, up to thousands of workers; still, some only provide labor subleasing services business on a small scale with the number of outsourced employees about tens or hundreds of employees. This inadequacy can easily lead to the risk of forming an illegal labor subleasing service, in which the relevant entities, including the State, may suffer disadvantages that the victim suffers. Most are employees. Also, when this situation occurs, the management and handling of disputes arising by competent agencies over labor subleasing activities will be very difficult. (Dung, 2022). There is an opinion: "The fact that the 2019 Labor Code stipulates that in all cases, businesses deposit the same amount of 2 billion is unreasonable. For small businesses, that amount is too small, on the contrary, for large-scale businesses with up to a few hundred employees, this amount is too small to ensure payment to workers. In addition, this regulation leads to a situation where small-scale businesses that want to continue operating must merge companies, leading to conflicts of interest. (Hoang, 2022).

Second, the hard regulation of the list of jobs that can be performed in labor subleasing activities does not meet practical needs, causing disadvantages for all three subjects in the labor subleasing relationship. In general, the regulations on labor subleasing jobs in our country are not reasonable regarding quantity and job category: the quantity is limited, and the category does not meet market demand. In fact, the job market shows that some jobs have very high demand and use large human resources in the short term (demand does not come through recruitment, training and labor relations between subtenants). workers and hired workers) such as: textiles and garments, footwear, electronic component assembly, export processing workers, freight forwarders, factory
infrastructure operators, computer engineers, construction workers, financial consulting, housekeeping, and landscape maintenance, etc. Meanwhile, some jobs in the category are not in high demand, such as secretaries, drivers, and programmers. (Tho, 2019). There are opinions that the 2019 Labor Code continues to stipulate that it only applies to certain jobs, which will inevitably prevent this type of service business from developing in the labor market. Compared with other countries (at first, it was only implemented for some jobs, but has now expanded to all jobs in the labor market), in the context of increasingly diverse development. Forming labor relations to meet the requirements of the 4.0 revolution, attracting foreign investment and international trade integration, the rigid regulation of the list of jobs that can be subleased to labor does not meet the needs. In practice, it has not promoted the business development of labor subleasing activities and can cause disadvantages for both businesses using subleased labor as well as employees working in this form. (Nguyen Huu Chi, Nguyen Van Binh, 2021)

2.2. LABOR SUBLEASE CONTRACT

A labor subleasing contract is understood as an agreement between a labor leasing enterprise and a labor subleasing party regarding labor subleasing, whereby the labor subleasing party provides labor and the leasing party provides labor. Workers must pay service fees to the labor lessor (Son, 2010). A labor subleasing contract has the following components: (i) The enterprise needs to hire a laborer (this is the first condition to establish a labor subleasing contract); service fee (this is the amount of money that the labor outsourcing party must pay to the labor lessor); There is a legal binding between the labor leasing enterprise and the labor subleasing party (this is a manifestation of a bilateral contract) (Nhuong, 2015).

On labor subleasing activities of the Labor Relations - Wage Department, Ministry of Labour, Invalids and Social Affairs: (i) about the form of the labor subleasing contract, 100% have been drafted and signed; labor sublease contract in written form; (ii) Regarding the content of the labor subleasing contract: detailed and complete content prescribed by law has been shown. The positive point is that the labor sublease contract has content regulating the responsibility for compensating labor accidents and occupational diseases of the subleased employee to the sublease party. Accordingly, the labor subleasing enterprise is responsible for paying all expenses for the employee first, then considers the causes and errors of labor accidents and occupational diseases to
negotiate the level of compensation with the labor subleasing party. Survey results of the research project "Solutions to strengthen state management of labor subleasing activities" of the Ministry of Labor, War Invalids and Social Affairs in 2018 on this provision show that the level of understanding of employees with this content is: 100% of interviewed employees confirmed that this content exists, of which 81.4% of employees said that they knew but did not understand the specific content; 18.6% of employees surveyed said that they knew specifically. (Ministry of Labor, 2018).

In addition to the mandatory provisions prescribed by law, in many labor subleasing contracts, the parties also sign the contents and forms of handling issues that arise during implementation, such as In cases where employees do not meet job requirements or have inappropriate attitudes in the working environment at the enterprise. However, in addition to the results achieved in the process of implementing contract regulations, there are still some shortcomings in outsourcing labor, as follows:

Firstly, about the name and connotation of the concept of labor subleasing contract. In practice, there are many forms of distortion or circumvention of the law so as not to enter into labor sublease contracts but to sign other types of contracts with names such as employment contracts or labor-supplying service contracts. A common variation in the labor market is to use outsourcing contracts instead of labor subleasing contracts. Currently, labor law does not specifically distinguish between employment contracts and labor contracts or labor subleasing contracts, so in fact, this type of contract is still widely recognized and applied according to the Civil Code. Some common forms of contracting that businesses apply are electronics manufacturing companies contracting assembly, food production contracting packaging, garment manufacturing contracting, construction contracting construction, etc. In essence, it only uses the subcontractor's employees to do contract work at its production location. For example, in the case of Tra Vinh province, after being discovered by the Department of Labor, Invalids and Social Affairs, there are several signs of violating the law, including no operating license, not signing labor contracts with employees, etc. The One Member LLC Minh Tri Labor Supply Officer did not fix it but showed non-cooperation, responding by switching to contracting but subleasing labor to enjoy the difference from the employee's salary. (Newspaper D. T., 2015).

This variation occurs very commonly in the construction industry: main contractors use workers through labor subcontractors. This subcontractor will provide
workers to perform the work and pay the workers. The essence of this form is labor subleasing activity because it carries all the elements of labor subleasing activity such as the subject (main contractor, subcontractor and employee); The main contractor pays money (service fee) to the subcontractor; subcontractors supply workers and pay workers; The main contractor supervises, manages and directs employees, forces employees to comply with internal rules and operating regulations, etc. This form of contractor supervision in the construction industry actually leads to a violation of the legitimate rights and interests of contractors. It is only when an occupational accident occurs that the state management agency discovers it. (Newspaper B. R., 2020).

Another variation is to switch from a labor subleasing contract to a service contract. In fact, service business activities are quite common, such as: security, goods delivery, loading and unloading of goods in the factory, and cleaning, sanitation, landscaping, gardening, etc., when entering into a contract. In this case, the service provider performs work for the service user, and the service user must pay the service fee to the service provider. However, many businesses only use this form to conceal the nature of labor subleasing activities. Because in reality, when employees come to work at a subleasing enterprise, they still have to be subject to the management, administration, and compliance with the labor rules and other regulations of this enterprise. Many service units essentially become labor brokers, only paying wages according to agreement, while obligations and responsibilities to employees are not fulfilled. By avoiding the form of subleasing labor mentioned above, businesses still create enough human resources (mainly unskilled workers) but avoid obligations to subleased employees such as social insurance and health insurance. Health insurance, unemployment insurance, maternity benefits, vacation leave, bonuses for employees, etc. While businesses save costs and increase profits, employees' rights are seriously affected justifiable. (Ha, 2023).

Second, about the content of the labor subleasing contract

The practice of signing labor sublease contracts shows that the contents of the labor sublease contract do not have clear provisions on the responsibilities, obligations and benefits of the subleased employee. In many cases, a labor subleasing enterprise and a labor subleasing party sign a contract but do not make it public or notify the employee about the content of the signed labor subleasing contract, working conditions and other welfare regimes, etc. According to actual surveys, the majority of subleased employees
only understand part of the content of the labor sublease contract; this is shown in the chart below.

Figure 4: Survey results on the level of knowledge of the content of labor sublease contracts of employees (Ministry of Labor, 2018).

<table>
<thead>
<tr>
<th>Survey content</th>
<th>Hanoi Quantity</th>
<th>Hanoi Ratio</th>
<th>City. Ho Chi Minh Quantity</th>
<th>City. Ho Chi Minh Ratio</th>
<th>Medium Quantity</th>
<th>Medium Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don't understand</td>
<td>8</td>
<td>8%</td>
<td>26</td>
<td>26.3%</td>
<td>34</td>
<td>17.1%</td>
</tr>
<tr>
<td>Understand part of it</td>
<td>81</td>
<td>81%</td>
<td>63</td>
<td>63.6%</td>
<td>144</td>
<td>72.4%</td>
</tr>
<tr>
<td>Completely understand</td>
<td>11</td>
<td>11%</td>
<td>ten</td>
<td>10.1%</td>
<td>21</td>
<td>10.5%</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100%</td>
<td>99</td>
<td>100%</td>
<td>199</td>
<td>100%</td>
</tr>
</tbody>
</table>

3 CONCLUSION AND RECOMMENDATIONS

In the labor market, there are always available units specializing in providing human resources services to meet the needs of personnel for enterprises to carry out production and business activities, in which there is a service of providing employees of an available service party to work directly at the working place of the enterprise for a certain period of time called labor subleasing. This is a flexible method of using labor in the labor market to help businesses save personnel costs, perform unexpected jobs (due to expanding orders, production fields, and operating areas), temporary jobs (replacing employees who leave unexpectedly), or find the most suitable personnel (trial before officially recruiting). Therefore, labor subleasing is a popular and well-growing business activity in developed economies. (Thien, "Law on sub-leasing labor in Vietnam", 2022). Most countries all over the world have enacted laws regulating labor subleasing activities, including Vietnam. Vietnam's 2012 Labor Code officially regulates labor outsourcing for the first time. After that, the 2019 Labor Code was adjusted with many amendments and supplements. Although it has been formed, revised, supplemented, and gradually perfected, however, the actual implementation of the law on labor subleasing in Vietnam still has many problems and inadequacies. With the trend of deep global trade integration and international labor mobility, labor subleasing activities will certainly develop in the near future. This poses the need to continue perfecting the regulations of the 2019 Labor Code on labor subleasing activities on the basis of institutionalizing the Party's guidelines and viewpoints and in accordance with constitutional principles. At the same time, it is necessary to ensure compliance with national labor laws and international integration and create a "harmonious, stable and progressive" labor relationship between the parties.
3.1 FIRST, COMPLETE REGULATIONS ON LABOR SUBLEASING OPERATING CONDITIONS

3.1.1 Firstly, modify the deposit level of labor subleasing businesses.

It can be seen that setting a deposit level of 02 billion VND for all businesses that want to operate in the field of labor subleasing is too high, rigid and unreasonable, leading to activity reporting figures for labor rehiring is low and does not accurately reflect this practice in the labor market. Although the deposit is to ensure minimum rights and benefits at the workplace for employees when a violation occurs (to pay wages or compensate rehired employees), it is necessary to consider adjusting it. The application of deposit levels is based on the classification of size, the scope of operations or number of employees, salary fund, etc, of the enterprise to stipulate each specific deposit level for each group of enterprises. (Thien, "Legislation on labor subleasing in Vietnam - Theoretical and practical issues", Doctoral thesis in Jurisprudence, Hanoi Law University, 2021). During the process of amending the 2012 Labor Code, some expert opinions commented: "Due to the different sizes of enterprises, the Labor Code stipulates that all enterprises operating in the field of labor subleasing must deposit a deposit. 2 billion is not appropriate. This is a challenge because the regulations are only suitable for large-scale businesses, while for small-scale businesses with limited financial potential. Therefore, the drafting agency should consider adjusting and amending this condition according to the scale of the enterprise (Duc, 2016). During the process of amending the 2012 Labor Code, some expert opinions commented: "Due to the different sizes of enterprises, the Labor Code stipulates that all enterprises operating in the field of labor subleasing must deposit a deposit. 2 billion is not appropriate. This is a challenge because the regulations are only suitable for large-scale businesses, while for small-scale businesses with limited financial potential. Therefore, the drafting agency should consider adjusting and amending this condition according to the scale of the enterprise (Duc, 2016). Therefore, the author believes it is necessary to design regulations on deposit amounts based on the scale of business operations. The business size will be calculated based on the number of hired employees. Accordingly, it is proposed to amend and supplement regulations in Clause 2, Article 21 of Decree 145/2020/ND-CP guiding the Labor Code on working conditions and labor relations with the decentralization of specific deposit levels as follows: (i) 01 billion VND applies to labor subleasing enterprises with no more than 100 employees; (ii) 02 billion VND applies to labor
subleasing enterprises with employees from 100 to 300 people; (iii) 03 billion VND applies to labor subleasing enterprises with employees from 300 to 500 people; (iv) 05 billion VND applies to labor subleasing enterprises with employees from 500 to 1,000 people; (v) 10 billion VND applies to labor subleasing enterprises with over 1,000 employees. With this decentralization, when a labor subleasing enterprise changes its business scale (in the direction of increasing or decreasing the number of employees), the enterprise's deposit amount will also have to be adjusted.

Secondly, it is necessary to consider expanding the occupations and jobs that are allowed to sublease workers. Accordingly, it is possible to design a list of occupations not allowed to sublease workers. That is, the regulation prohibits the implementation of labor subleasing in a number of specific occupations such as: public activities (cleaning, garbage collection, public transport, etc); mining, underground mining; jobs and groups of jobs in the list of dangerous and hazardous jobs that require a higher social security regime than other job. In all other professions, businesses are free to conduct labor subleasing activities. This option is based on the opt-out approach, which means that the law stipulates what is not to be done (abandoned), what is prohibited, and what should be restricted, is specified in the law. This is also a new approach applied in the Investment Law 2020 and the Enterprise Law 2020 and is highly appreciated by the business community and legal researchers. This is because, in the context of the ever-evolving labor market, especially when the Industrial Revolution 4.0 is taking place as strongly as it is today, it is difficult to immediately predict the professions and jobs that may arise in the future. If under this option, the rights of businesses and employees will be maximized, reflecting the spirit of the 2013 Constitution on the right to freedom of business of citizens and businesses, but also difficulties in management activities. actual state. (Thien, "Law on sub-leasing labor in Vietnam", 2022).

3.2 SECOND, FINALIZE REGULATIONS ON LABOR SUBLEASING CONTRACTS

3.2.1 Firstly, regulations on labor subleasing service fees

   Although it is a regulation first stipulated by lawmakers in the 2012 Labor Code and supplemented and amended in the 2019 Labor Code on the basis of practical labor relations and international practices, the 2012 Labor Code, The implementing documents and the 2019 Labor Code do not stipulate labor rental/subleasing fees, which is an important content related to the rights of labor subleasing enterprises and the main
obligations of the lessee. Because this is a service operation, the service fee is an indispensable element in the composition of service activities. This is a benefit that any labor leasing enterprise is especially interested in because the purpose of the enterprise is business. At the same time, this is an important obligation of the labor subcontractor because the purpose they are interested in is the use value of the labor commodity. The fact that the law does not specifically stipulate these rights and obligations in the content of the current labor leasing contract is a major omission in ensuring the rights of labor leasing enterprises and the obligations of the lessee.

### 3.2.2 Secondly, add regulations on invalid labor sublease contracts

During the process of developing the 2019 Labor Code, there was a proposal: To have a basis for resolving invalid labor subleasing contracts, there should be regulations for determining whether the labor subleasing contract is entirely or partially invalid. (Chi, 2021). Regarding legislative techniques, the 2019 Labor Code has not devised a legal solution for invalid labor sublease contracts. Thus, in case of an invalid labor subleasing contract, the provisions on invalid labor contracts of the Labor Code will be applied to resolve according to the principle of similar application of law or apply the provisions of the 2015 Civil Code on invalid civil transactions based on the principles in Article 4 of the 2015 Civil Code in the direction of civil relations in each specific field that other relevant laws do not stipulate or There are regulations but are contrary to the basic principles of the Civil Code as a general law governing contractual relationships. (Chi, 2021). Regarding legislative techniques, the 2019 Labor Code has not set out a legal solution for invalid labor sublease contracts. Thus, in case of an invalid labor subleasing contract, the provisions on invalid labor contracts of the Labor Code will be applied to resolve according to the principle of similar application of law or apply the provisions of the 2015 Civil Code on invalid civil transactions based on the principles in Article 4 of the 2015 Civil Code in the direction of civil relations in each specific field that other relevant laws do not stipulate or There are regulations but are contrary to the basic principles of the Civil Code as a general law governing contractual relationships. (Doan Duc Luong, 2020). Although, legally, the 2012 Labor Code and the 2019 Labor Code both stipulate that invalid labor contracts are divided into two types: partially invalid and fully invalid. However, the legal nature of labor contracts and labor subleasing contracts has certain differences. Therefore, in the case of applying regulations on invalid labor
contracts to resolve labor subleasing contracts, it is not entirely appropriate. Therefore, lawmakers should add provisions on invalid labor subleasing contracts to the Labor Code based on reference to the contents of invalid labor contracts in accordance with the legal nature of this relationship in the following direction:

(i) Regulations on cases where labor sublease contracts are completely invalidated:

* The entire content of the labor subleasing contract is illegal;
* The person who signs the labor sublease contract is not authorized;
* Violation of cases where labor subleasing is not allowed according to the provisions of law;
* Labor subleasing businesses operate without a work permit.

(ii) A labor sublease contract is invalid in part when the content of that part violates the law but does not affect the remaining parts of the contract.
REFERENCES


