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Social Security Policy for Foreign Employees in Vietnam

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Abstract

In the context of globalization, employees tend to migrate to countries that have the ability to find jobs and live more comfortably. However, these employees may face the risks relating to their health, financial difficulties, etc. Meanwhile, the social security policy in the host country might not guarantee minimum social security rights, or there could be discrimination between domestic and foreign employees. To protect transnational migrant employees, the International Labor Organization (ILO) has issued several conventions and recommendations on ensuring (minimum) social

security and equality of treatment, which is intended to be performed by countries that have already ratified and to serve as reference for countries that have not yet ratified. Although Vietnam has not ratified the Conventions on social security for foreign employees, the social security policy has been being developed and improved based on conventions of ILO. The authors focus on researching social security policy for foreigners working in Vietnam, with reference to the provisions of ILO Conventions.

Keywords: Social Security, Foreign Employees, Vietnam

1. Introduction and literature review

According to ILO's estimates, up to 2019, there were 169 million migrant employees worldwide (accounting for nearly 5% of the global workforce). These migrant employees contribute to growth and development in both their home countries and the countries they migrate to. However, the migration process entails numerous potential challenges and risks for them, such as language barriers leading to disadvantages when signing labor contracts, illness, natural disasters, epidemics, etc. According to data from ILO, many migrant employees are engaging in temporary, informal and unprotected jobs, particularly women, who often undertake simple tasks with low wages^[4]. During the Covid-19 pandemic, many of these employees were vulnerable and not adequately protected by the policies of the host country.

ILO has protected "the interests of workers when employed in countries other than their own" (ILO Constitution, 1919)^[2] since it was founded, by establishing specific international standards for the management and protection of migrant workers. First among these were two Conventions: Convention No. 97 (Migration for Employment Convention (Revised)) in 1949 and Convention No. 143 (Migrant Workers (Supplementary Provisions) Convention) in 1975. Subsequently, many international labor standards were adopted by ILO's International Labour Conference, and in principle, all international labor standards, unless otherwise stated, apply to migrant workers. These standards include eight core ILO conventions on primary rights outlined in ILO's 1998 Declaration on Fundamental Principles and Rights at work, such as equal remuneration, non-discrimination, abolition of forced labor, etc. In addition to workplace-related Conventions that protect migrant workers, there are Conventions ensuring their social security rights, including:

ILO's Convention No. 102 in 1952 on social security C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102), is considered the legal document basis stipulating minimum standards for 9 social security schemes, including: (i) Medical care; (ii) Sickness benefit; (iii) Unemployment benefit; (iv) Old - age benefit; (v) Employment injury benefit; (vi) Family benefit; (vii) Maternity benefit; (viii) Invalidity benefit; (ix) Survivors' benefit. Each scheme's content includes the applicable subjects, scope and benefit level. The Convention also provides that non-citizen residents will have the same rights as domestic residents. Under social security schemes that contribute to the protection of workers, migrant workers are also obliged to contribute and will have the same rights as local workers, unless alternate provisions are specified by bilateral or international agreements.

Convention No. 118 in 1962 on Equality of Treatment (Social Security) Convention, 1962 (No. 118) clearly states the principle of "equality of treatment" between domestic and foreign workers in all nine social security schemes (similar to Convention No. 102). To ratify this Convention, nations must possess social security laws which are applicable within their territories. State-

operated social security programs, relying on the employers' contribution, are designed to pay foreign workers. In particular, the way of applying a country's social security policy to local workers is recommended to extend to foreign workers similarly. ILO also recommends that a country's legal framework for implementing social security policy to foreigners should be equally applied to that country's citizens abroad. Convention No. 118 requires States parties to make every effort to maintain the rights for their residents as well as encourages migrant workers from non-ratifying countries that uphold the obligations of this Convention.

Convention No. 157, Maintenance of Social Security Rights Convention, 1982 (No. 157), reaffirms the principles established by Convention 118, which encompass not only equality of treatment but also the maintenance of acquired rights. The Convention also requires member states to clarify the obligations of contribution and benefits of the nine regime branches. Convention No. 157 supplements two aspects not addressed in Convention No. 118: determining the applicable law under the rules established by the Convention to avoid conflicts of law and providing administrative assistance. Member states of the Convention are mandated to promote the development of social services to assist those within the scope of application, particularly emphasizing on migrant workers, when dealing with authorities, relevant organizations and courts. All member States are responsible for endeavoring to engage with the other member States concerned in plans to sustain social security rights for each sector protected by law.

2. Research Objective and Methodology

The primary objective of this study is to examine the social security policy for foreign employees in Vietnam in comparison with the provisions of ILO Conventions. The study uses secondary data sources from the Ministry of Labour - Invalids and Social Affairs and Vietnam Social Security to illustrate the outcomes of policy implementation. Based on this, recommendations are formulated to enhance social security policy for foreign employees.

The writing utilized the analysis-synthesis method and normative research, used to synthesize and analyze empirical data to obtain results and identify limitations of the policy on social security for foreign employees, thereby providing recommendations for its improvement.

3. Social Security Policy for Foreign Workers in Vietnam

Although Vietnam has not signed the Conventions on ensuring social security for foreign workers as listed above, and is limited due to reasons involving national security, economy and society, the nation still guarantees their fundamental rights and interests. The State has promulgated regulations on specific responsibilities for employers to jointly contribute and implement the welfare of foreign employees. Foreign employees working under labor contracts are citizens of foreign nationality, who fully meet the legal requirements to work in Vietnam. When entering into labor contracts, their rights and obligations are established. The 2019 Labor Code stipulates: "Foreign workers working in Vietnam must comply with Vietnamese labor law and be protected by Vietnamese law, unless otherwise provided for by international treaties of which the Socialist Republic of Viet Nam is a member".

Vietnam has currently implemented 6 out of 9 schemes outlined in ILO Conventions, through 2 types of insurance:

health insurance (equivalent to Medical care scheme) and social insurance (including 5 schemes: Sickness benefit; Maternity benefit; Old - age benefit; Employment injury and occupational disease benefit; Survivors' benefit). There are still 3 schemes that have not been implemented. However, considering the conditions for foreign workers to be employed in Vietnam, they are unlikely to encounter these risks. For the risk of unemployment, foreign workers must be accepted/recruited into an enterprise/organization within Vietnam's territory in order to be granted a work permit. Once the work permit expires, the labor contract must be terminated and the foreign worker is required to return to home country. Another condition to obtain a work permit is to be physically capable of performing the job, which means they are not eligible for invalidity and family benefit schemes, even though Vietnam provides an assistance policy to individuals with disabilities or families facing economic difficulties, especially when they are at risk due to natural disasters or epidemics.

Health insurance for foreign workers employed in Vietnam is regulated with the Law on Health Insurance of 2008 and its amended and supplemented version in 2014. According to these regulations, individuals who must participate in health insurance are "Employees working under indefinite-term labor contracts, fixed-term labor contracts with a term of at least 3 full months; managers of enterprises who receive salaries". The monthly health insurance contribution rate for employees is 1.5% and for employers is 3% of employee's salary. Health insurance participants receive coverage of 80% medical expenses incurred within the eligible range of benefit for medical examination, treatment, functional recovery, regular pregnancy check-ups and childbirth (at the cost level of public hospitals) at medical facilities. Health insurance policy does not differentiate between Vietnamese and foreign workers. As a result, by the end of 2022, the number of foreign workers covered by health insurance reached 100%.

Social insurance for foreign workers working in Vietnam has been implemented since 2018, as prescribed in 2014 Social Insurance Law, and further detailed in Decree 143/2018/NĐ-CP. According to these regulations, foreign workers working in Vietnam are compelled to participate in compulsory social insurance: (i) Must hold a work permit, practice certificate, or a practicing license issued by a Vietnamese competent authority (collectively referred to having a work permit); (ii) Must sign an indefinite-term labor contract, or a fixed-term of at least 01 full year with an employer in Vietnam; (iii) Are not involved in internal enterprise transfers; (iv) Have not reached the statutory retirement age. Foreign workers are entitled to participate fully in 5 social insurance regimes. 3 of them including Sickness benefit, Maternity benefit, Employment injury and occupational disease benefit have been implemented since December 2018, while the remaining 2 regimes (Old - age benefit; Survivors' benefit) have been applied since January 2022. Contribution responsibilities, entitlements, and procedural implementation for foreign and domestic workers are identical. Employees only have to pay 8% of the salary for the old-age benefit and survivors' benefit scheme, while employers are required to contribute 17.5% of the salary for all 5 regimes.

The compulsory participation outcomes of foreign workers in social insurance in Vietnam are as follows:

Table 1: Status of participation in social insurance of foreign employees working in Vietnam

Indicators	Units	2018	2019	2020	2021	2022
Number of foreign workers participating in social insurance ⁽¹⁾	People	37,052	68,346	66,540	71,265	81,527
Number of foreign workers with work permits ⁽²⁾	People	72,186	109,660	96,202	99,876	95,454
Ratio of workers participating in social insurance to those holding work permits	%	51.3%	62.3%	69.2%	71.4%	85.4%

Source: 1. Vietnam Social Insurance,

2. The Ministry of Labor - Invalids and Social Affairs

Due to the trend of international economic integration, along with Vietnam's stable economic growth in recent years, attractive policies for investment and skilled labors, and a safe political and social environment, many foreign workers have chosen Vietnam as a destination for working and living. The number of foreign workers with work permits had reached 95,454 people by the end of 2022. Since the social insurance policy for foreign workers started in December 2018, the number and proportion of employees participating in social insurance remain relatively low, at about 51.3%, while the percentage of workers with permits to participate in social insurance has increased gradually over the years, which had been 85.4% by 2022. The number of employees who have not participated in social insurance because the contract term is less than 12 months, which means they are not eligible to participate, or occasionally because employers have not properly complied with regulations on participation in social insurance for their employees.

The social security policy for foreign workers working in Vietnam still has certain limitations:

- One advantage of the health insurance policy in Vietnam is that there is no distinction between domestic and foreign employees (there is no separate guiding document on health insurance for foreign workers). However, foreign employees may face obstacles when seeking medical examination and treatment if they do not speak and understand Vietnamese, which may create difficulties in communicating, especially in hospitals with health insurance coverage, where there is no translation support for employees. In international or private hospitals that do offer translation support, medical costs can be high, and employees might need to cover the cost difference, which is too high for many people to afford these additional expenses.
- The new social insurance policy only stipulates compulsory participation for people with labor contracts of at least 12 months. Consequently, those who sign labor contracts with a term of less than 12 months are not financially protected in the event of risks that could lead to a reduction or loss of income from labor. Furthermore, lack of implementation of the law by some employers, such as evasion of contribution or unpaid social insurance dues, can also negatively affect the social insurance benefits of foreign employees.
- Specific guidelines on the transition to participate in social insurance when foreign employees are staying in Vietnam and when they return to their home countries have not been provided yet. For the short-term benefits

such as sickness, maternity, because benefits are calculated annually, so it doesn't affect their benefits. But with the long-term regimes, such as retirement, employees' interests will be affected, because, in order to have pension, they need a long time contribution, if the transition have not been approved, they may not get pension yet.

- There is currently no social security policy for foreign employees in case they face difficulties due to risks due to natural disasters, epidemics, etc.

4. Proposals to Ensure Social Security for Foreign Workers Working in Vietnam:

In order to effectively manage and implement social security policy for foreign employees working in Vietnam, the competent authorities should promptly issue guiding documents:

Regarding health insurance policy: It is necessary to have separate guidelines for foreign workers when choosing medical facilities, registration process for medical examination and treatment, scope of benefits, etc. These guidelines should be available in both Vietnamese and English, as well as in some other commonly spoken languages. This will enable foreign employees, even if they are not proficient in Vietnamese, to seek medical examination and treatment with health insurance.

Regarding social insurance policy: Firstly, the coverage of mandatory participation in social insurance should be expanded to foreign workers. According to the current regulations, those who are not eligible to participate in social insurance include: (i) Employees, such as those holding permits issued by Ministry of Foreign Affairs for media-related activities in Vietnam, or having been certified by Ministry of Education and Training to engage in teaching and researching at educational institutions in Vietnam, who do not possess valid work permits, practicing certificates or vocational licenses issued by competent authorities in Vietnam are not subject to the provisions of Social Insurance Law; (ii) Employees with labor contracts lasting less than 12 months. Therefore, it is necessary to extend the coverage to include all foreign workers working in Vietnam. Secondly, the Government needs to promote bilateral and multilateral negotiations and agreements with other countries regarding the principles and methods of implementing mandatory social insurance for workers migrating abroad for employment. In addition, it is important to consider the possibility of signing agreements to prevent double payment of social insurance and apply exclusion clauses in cases that there is no bilateral agreement, etc. Collaborating with countries that engage in labor exchanges to facilitate the continuation of participation and benefits under long-term social insurance schemes such as Retirement or Employment injury and occupational benefit disease benefit.

Thirdly, it is essential to strengthen the management of foreign workers working in Vietnam, as well as enhance the inspection and monitor the implementation of social insurance law to avoid situations where foreign workers do not have work permits or fail to comply with social insurance regulations, which can negatively impact employees' rights.

Fourth, in order to have a base for managing and implementing regimes and policies for foreign employees working in Vietnam, competent agencies should issue

documents guiding the implementation of social security regimes for foreign employees. Currently, there is no circular guiding the implementation of Decree 143/2018/ND-CP (only official documents guiding for specific situations).

Regarding other social security policies: Foreign employees employed in Vietnam may encounter unexpected risks, such as the bankruptcy of the company which they have signed contracts with, epidemics, etc. Therefore, it is necessary to enact additional social security policies to offer assistance to foreign workers in such situations, such as unemployment insurance policy or family allowance, to ensure equal treatment between domestic and foreign workers.

5. Conclusion

In the open economy, the movement of labor from surplus regions to areas with labor shortage is an inevitable and objective trend. With the development of information technology, jobs information and labor market is easily accessible to workers from anywhere around the world. Countries also tend to look for skilled labor from other nations to compensate for domestic labor shortage. As a result, cross-border labor migration is becoming increasingly common. Therefore, ensuring social security for foreign workers is not only an obligation (under international conventions and agreements) but also a right of the host countries because implementing an effective social security policy for foreign workers is a way to protect workers of their own countries when working abroad. Moreover, creating a safe working environment can attract skilled and qualified workers as well as investment from reputable corporations, which contributes to the economic development of the country. Vietnam is a developing country that needs a lot of highly qualified workers and foreign investment. Properly implementing social security policies for foreign workers can help the Government achieve its economic goals.

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