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Resolution of Labor Disputes Regarding the Termination of Employment Contracts – Current Situation and Recommendations for Vietnam

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Abstract

Terminating an employment contract is a process that gives rise to numerous complications and disputes and creates many difficulties for both employers and employees. Therefore, resolving labor disputes regarding the termination of employment contracts is essential to restoring the legitimate rights and interests of the parties, thereby putting an end to the dispute and avoiding losses of both time and assets. The Labor Code 2019 has established new provisions regarding jurisdiction and procedures for

resolving individual labor disputes; some of these provisions have made the process easier and more streamlined. However, there are still shortcomings that can be addressed to make the resolution of labor disputes increasingly faster and more effective. This article will analyze the current state of jurisdiction, procedures, and time limits for resolving labor disputes under current law, while also offering several recommendations on this issue.

Keywords: Labor Dispute Resolution, Labor Disputes, Termination of Employment Contracts, Employment Contracts

1. Theoretical Framework for Resolving Labor Disputes Regarding the Termination of Employment Contracts

1.1 Concept of Termination of an Employment Contract

The termination of an employment contract is defined as the event in which an employee ceases to work for an employer¹. The termination of an employment contract may result from the decision of one party or from various other objective reasons².

The termination of an employment contract under the Labor Code 2019 is primarily governed by Articles 34 and 35. These provisions establish the legal grounds upon which an employment relationship may come to an end, reflecting the principle that termination must occur in accordance with statutory requirements. Broadly, the grounds for termination can be classified into three categories based on the source of the decision or event giving rise to the termination.

The first category is termination by mutual agreement, which occurs when both the employer and the employee voluntarily agree to end the employment relationship. This form of termination reflects the principle of contractual freedom, allowing the parties to conclude the contract through consensus without attributing fault to either side.

The second category is termination resulting from the will of a third party or a legal change. In these circumstances, the employment contract ends due to events or legal conditions beyond the direct control of either the employer or the employee. Examples include the expiration of the contract, the completion of the agreed work, the death of the employee, the dissolution of the employer, or other statutory grounds prescribed by law.

The third category is termination by the will of one party, which occurs when either the employer or the employee unilaterally decides to terminate the employment contract. While employees generally have the right to resign subject to statutory notice requirements, employers may only terminate an employment contract on grounds expressly provided by law and must comply with the applicable procedural requirements. This category reflects the Labor Code's effort to balance contractual autonomy

¹ Diep Thanh Nguyen. Laws on the Termination of Employment Contracts and the Current Status of Their Application in Vietnam. Journal of Scientific Research, 2004.

² To Duy Kham. Resolving Disputes Regarding Unilateral Termination of Employment Contracts Under the Provisions of the Labor Code 2019: Current Status and Recommendations. Democracy Journal, 2022.

with the protection of employees against arbitrary dismissal³.

1.2 Definition of Labor Disputes

The definition of a labor dispute is set forth in Section 1 of Article 179 of the Labor Code 2019:

“A labor dispute is a dispute concerning rights, obligations, and interests arising between the parties during the establishment, performance, or termination of an employment relationship; a dispute between organizations representing workers; Disputes arising from relationships directly related to labor relations.”

In the current economic climate, labor disputes occur frequently due to employers' focus on profit; therefore, the effective resolution of labor disputes is of utmost importance⁴.

1.3 Definition of Labor Dispute Resolution Regarding the Termination of Employment Contracts

The resolution of labor disputes regarding the termination of employment contracts is defined as the process by which competent authorities carry out procedures to resolve disputes arising during the course of employment and labor relations, thereby restoring the legitimate rights and interests of the aggrieved party, reconciling conflicts, and strengthening long-term labor relations⁵.

2. Current Legal Framework for Resolving Labor Disputes Regarding the Termination of Employment Contracts

2.1 Jurisdiction for Resolving Labor Disputes Regarding the Termination of Employment Contracts

Jurisdiction over labor disputes regarding the termination of employment contracts is stipulated in Article 187 of the Labor Code 2019:

“Agencies, organizations, and individuals with jurisdiction to resolve individual labor disputes include:

- 1. Labor mediators;*
- 2. Labor arbitration councils;*
- 3. People's Courts.”*

The Labor Code 2019 has added a provision granting labor arbitration councils the authority to resolve individual labor disputes. This provides greater flexibility for the parties in selecting the dispute resolution body⁶.

2.2 Procedures for Resolving Labor Disputes Regarding the Termination of Employment Contracts

The procedures for resolving individual labor disputes by labor conciliators are stipulated in Article 188. Under this provision, the termination of an employment contract falls under one of the cases not required to undergo conciliation proceedings as specified in Clause 1 of Article 188: “a)

Disciplinary action in the form of dismissal or cases of unilateral termination of an employment contract.”

2.2.1 Procedures for Resolving Labor Disputes Regarding Termination of Employment Contracts by Labor Mediators

Clause 2 of Article 188 of the Labor Code 2019 provides:

“2. Within 5 working days from the date the labor conciliator receives a request from the party seeking dispute resolution or from the agency specified in Clause 3 of Article 181 of this Code, the labor conciliator must conclude the conciliation process.”

Therefore, the time limit for a labor conciliator to resolve an individual labor dispute is 5 days to conclude the conciliation process.

Regarding the procedure, within five days, the labor conciliator must complete the necessary tasks, including organizing a conciliation session and issuing the conciliation minutes. However, because the dispute resolution process is complex and requires the full presence of both parties to finalize the conciliation minutes, the five-day conciliation period should be extended to facilitate a smoother resolution.

In the resolution of individual labor disputes through a labor conciliator, the disputing parties may submit a request to the labor conciliator or to the specialized labor agency under the People's Committee. The Labor Code stipulates that the specialized labor agency under the People's Committee serves as a central point for receiving requests to resolve labor disputes and is responsible for classifying the disputes to forward the resolution requests to the competent authority within 5 working days from the date of receipt of the request (Article 181 of the Labor Code 2019). The law also stipulates that labor mediators must conclude the mediation process within 5 working days from the date of receiving the mediation request (Clause 2, Article 188 of the Labor Code 2019). This provision ensures that cases are resolved promptly and in a timely manner, enabling the parties to restore their relationship and increasing the likelihood of maintaining the employment relationship. On the other hand, this provision also requires mediators to possess the necessary knowledge, experience, and a highly proactive attitude toward resolving disputes.

The parties to the dispute or their representatives must be present at the mediation session; the parties may also authorize others to participate in the mediation session. At the start of the session, the mediator is responsible for guiding and assisting the parties in their negotiations; if the parties successfully negotiate and reach an agreement, the labor mediator shall prepare a record of the successful mediation. If the parties are unable to reach an agreement, the conciliator shall continue to propose conciliation options for the parties to consider. If the parties agree to the conciliation proposal put forward by the conciliator, the conciliator shall prepare a conciliation agreement recording the parties' mutual consent. If both parties reject the conciliation proposal, or if one of the parties, having been duly summoned for the second time, remains absent without a valid reason, the conciliator shall prepare a record of unsuccessful conciliation. The record must be signed by the disputing party present and the conciliator. A copy of the record of successful or unsuccessful mediation must be sent to both disputing parties within one working day from the

³ Nguyen Huu Chi & Nguyen Van Binh. Scholarly Commentary on the Labor Code 2019. Hanoi, Judicial Publishing House, 2021.

⁴ Nguyen Tien Dung. Commentary on New Provisions Regarding the Resolution of Labor Disputes. Commentary on New Provisions of the Labor Code 2019. Hanoi, Labor Publishing House, 2021.

⁵ Ibid.

⁶ Nguyen Huu Chi & Nguyen Van Binh (2021).

date the record is drawn up (Clause 4, Article 188 of the Labor Code 2019).

Overall, the Labor Conciliation Board's regulations on the conciliation procedure for individual labor disputes have met the requirements for resolving such disputes quickly and flexibly, while respecting and ensuring the legitimate rights and interests of the disputing parties and facilitating the process for them⁷.

2.2.2 Procedures for the Labor Arbitration Council to Resolve Labor Disputes Regarding the Termination of Employment Contracts

The procedures for the Labor Arbitration Council to resolve individual labor disputes are stipulated in Article 189 of the Labor Code 2019:

"1. By mutual agreement, the disputing parties have the right to request the Labor Arbitration Council to resolve the dispute in the cases specified in paragraph 7 of Article 188 of this Code. When requesting the Labor Arbitration Council to resolve the dispute, the parties may not simultaneously request the court to resolve it, except in the case specified in paragraph 4 of this Article.

2. Within 7 working days from the date of receiving a request to resolve the dispute as provided for in paragraph 1 of this Article, a Labor Arbitration Panel must be established to resolve the dispute.

3. Within 30 days from the date the Labor Arbitration Panel is established, the Labor Arbitration Panel must issue a decision on the resolution of the dispute and send it to the disputing parties.

4. If the Labor Arbitration Panel has not been established by the deadline specified in paragraph 2 of this Article, or if the Labor Arbitration Panel has not issued a decision resolving the dispute by the deadline specified in paragraph 3 of this Article, the parties have the right to request the court to resolve the dispute.

5. If one of the parties fails to comply with the Labor Arbitration Panel's decision resolving the dispute, the other party has the right to request the court to resolve the matter."

The establishment of the Labor Arbitration Council has made the dispute resolution mechanism much more flexible, as the council can resolve disputes that are not subject to mandatory conciliation, as well as disputes that conciliators are unable to resolve or where conciliation has failed.

Recently, the number of disputes brought before the courts has been rising rapidly. In 2018, the courts accepted 3,747 individual labor disputes; in 2019, they accepted 3,132 cases. Therefore, expanding the jurisdiction of labor arbitration boards will help reduce the number of cases resolved in court, thereby alleviating court overload, while also saving citizens time and money without compromising the full rights of the parties involved⁸.

2.2.3 Court Procedures for Resolving Labor Disputes

In cases where mediation is not mandatory; where the mediation period has expired without mediation taking place; where mediation fails; or where one of the parties fails to comply with the agreements set forth in the mediation minutes, each party to the dispute has the right to request that the labor arbitration panel or the court resolve

the dispute. If the parties choose arbitration as the resolution method, they may not simultaneously request the court to resolve the dispute while the arbitration panel is handling the matter. However, if the arbitration panel is not formed, if the resolution period expires without a decision being issued, or if either party fails to comply with the arbitration panel's decision, the parties have the right to request the court to resolve the dispute.

Naturally, the court will only accept cases within its jurisdiction and ensure compliance with the statute of limitations for resolution.

The statute of limitations for filing a claim to resolve an individual labor dispute is one year from the date the disputing party discovers the act that they believe has violated their lawful rights and interests. The resolution of disputes in court is governed by the procedural rules set forth in the 2015 Civil Procedure Code.

2.3 Statute of Limitations for Resolving Labor Disputes Regarding the Termination of Employment Contracts

The statute of limitations for resolving labor disputes regarding the termination of employment contracts, in accordance with the statute of limitations for individual labor disputes, is stipulated in Article 190 of the Labor Code 2019 as follows:

"1. The statute of limitations for requesting a labor conciliator to mediate an individual labor dispute is six months from the date the disputing party discovers the act that they believe has violated their lawful rights and interests.

2. The statute of limitations for requesting the Labor Arbitration Council to resolve an individual labor dispute is 9 months from the date of discovery of the act that the disputing party claims has violated its lawful rights and interests.

3. The statute of limitations for requesting a court to resolve an individual labor dispute is 1 year from the date of discovery of the act that the disputing party claims has violated its lawful rights and interests.

4. If the claimant can prove that, due to force majeure, objective obstacles, or other reasons prescribed by law, they were unable to file a claim within the time limit specified in this Article, the period during which such force majeure, objective obstacles, or other reasons existed shall not be counted toward the statute of limitations for resolving individual labor disputes."

In labor disputes concerning the termination of employment contracts, there is an issue regarding the determination of the date on which the conduct giving rise to the dispute was discovered. In this context, the date of discovery must be defined as the date on which the legal event occurred—the date the conduct affecting the parties to the dispute took place—rather than the date on which they became aware of the incident or the date on which the parties realized that their rights and interests had been infringed.

3. Recommendations for Resolving Labor Disputes Regarding the Termination of Employment Contracts

First, the time allotted for labor mediators to conduct mediation should be extended to ensure the mediation process is completed. The termination of an employment contract is a significant dispute that greatly impacts workers' lives; therefore, the time allotted for mediators to conduct the mediation process with the parties should be

⁷ Khuc Thi Phuong Nhung. Resolving Individual Labor Disputes Through Mediation: Existing Issues and Solutions. *Procuracy Science Journal*. 2020; 5:46-52.

⁸ Nguyen Huu Chi & Nguyen Van Binh (2021).

extended, to at least 07 working days.

Second, the statute of limitations for resolving labor disputes needs to be defined more clearly. There should be a clear provision regarding the “date of discovery of the act,” thereby preventing confusion among the parties to the dispute and providing a clear basis for calculating the statute of limitations for handling the case.

Third, to ensure that mediation in the resolution of individual labor disputes is conducted professionally, and to ensure that the training and professional development of labor mediators is in-depth and closely tied to the realities of the labor environment, it is necessary to conduct regular training sessions and provide opportunities for labor mediators to gain hands-on experience.

4. Conclusion

Labor laws are increasingly playing a regulatory role in social labor life, contributing significantly to the formation and stabilization of the labor market, promoting the growth of the workforce in both quantity and quality, and liberating labor and productive forces. The adoption of the Labor Code has helped align Vietnam’s labor law system more closely with the principles of a socialist-oriented market economy; adapt to the rapid new developments in the labor market driven by science and technology; and bring Vietnam’s labor laws more in line with international labor standards, thereby supporting Vietnam’s process of international integration in the coming period.

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