

The internal organisation of employees in the enterprise in Vietnam - regulations and recommendations

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ABSTRACT

The relationship between an employee and an employer has been referred to as a "unequal relationship" since the dawn of time. Internally, this relationship always has potential risks of conflicts and disputes over rights and interests. Employees are almost always in a vulnerable position in almost all disputes, and they can scarcely use their limited strength to assert their legal rights. Many workers experience injustice and exploitation as a result of this imbalance, necessitating the involvement of a third party to protect the rights of difficult workers in particular and workers in general. After ratifying Convention No. 98 on Right to Organize and Collective Bargaining of the International Labor Organization (ILO) as well as signing new-generation free trade agreements (FTAs), Vietnam has codified many of its paramount commitments into the Labor Code 2019. In which, the articles that allow employees to establish their own organizations in the enterprise (not affiliated with trade union) appear for the first time. Because it is only regulated for the first time, there is no precedent in the labor law of our country and the legal provisions on the establishment and operation of this organization are still not specific, the author finds that researching the internal organization of employees in the enterprise is momentous on the basis of reference to ILO regulations. In this article, the author clarifies three assumptions: the appearance of internal employee organizations in an enterprise is unavoidable in the current situation, when Vietnam has just ratified the ILO's convention and FTAs; the law on employee organization in enterprises, according to the Labor Code 2019, is still rudimentary, sketchy, and unclear; author's suggestion for improving a company's internal employee groups.

Key words: organization of employees in the enterprise, the Labor Code 2019, ILO

INTRODUCTION

The Labor Code 2019, which goes into effect on January 1st 2021, permits employees to form the internal employee organizations in an enterprise, besides trade unions, based on legal requirements, international labor rules, and new free trade agreements Vietnam has signed. In the 2012 Labor Code, the legislator introduced the term "grassroots-level representative organizations of the employee's collective", but in the 2019 Labor Code, that term has been substituted with "grassroots-level representative organization of employees". The grassroots-level representative organizations of employees are established on the voluntary basis of the employees in an enterprise for the purpose of protecting the legitimate rights and interests of the employees in the labor relations through collective bargaining or other forms as prescribed by the labor law (Clause 3 Art 3 of the 2019 Labor Code). Representative organizations of employees (a dual system of worker representation) incorporate not only grassroots-level Trade unions but also internal employee organizations in an enterprise

(or worker representative organizations at the enterprise level) - a completely new term and organization in Vietnam's labor laws¹.

Employees in businesses can establish, join, and operate two types of organizations that represent workers' interests: Grassroots-level Trade unions and internal employee organizations in an enterprise. Because of the differences between the two types of organizations, as well as the relatively new regulations for the type of employee representative organization in the Labor Code 2019, it is necessary to study the regulations on employee representative organizations in the enterprise to understand their nature, formation, and operation. In addition, the author offers other suggestions for improving this new and delicate legislation.

RESEARCH METHOD AND LITERATURE REVIEWS

This article is based solely on a critical review and analysis of secondary literature on the internal employee organizations in an enterprise such as "Tổ chức

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đại diện người lao động tại doanh nghiệp theo Bộ luật Lao động năm 2019” of Nguyễn Thị Hồng Nhung and Lê Thị Ngọc Yến; “Tổ chức đại diện người lao động theo quy định của pháp luật lao động Việt Nam” of Trần Thị Nguyệt; “Núp bóng ‘tổ chức đại diện người lao động’ để chống phá Đảng, Nhà nước” of Nguyễn Sơn.

Recently, although there have been articles about the internal employee organizations in an enterprise, the number is still very limited because in Vietnam, this is a relatively new and sensitive rules: Articles “Tổ chức đại diện người lao động tại doanh nghiệp theo Bộ luật Lao động năm 2019” of Nguyễn Thị Hồng Nhung and Lê Thị Ngọc Yến, 2021; “Tổ chức đại diện người lao động theo quy định của pháp luật lao động Việt Nam” of Trần Thị Nguyệt: authors generally reviewed and analyzed the provisions of Vietnam’s employment law on the establishment of the representative organizations of the employees in the enterprise, as well as on the right to collective bargaining of these organizations and in conclusion, the authors pointed out several recommendations. The article by Nguyễn Sơn exposes strategies to use internal employee organizations in a company to develop an opposing political force in order to carry out a scheme to change Vietnam’s political rule². In addition, the article makes proposals for strengthening the role of trade unions and limiting the exploitation of anti-Vietnamese organizations.

RESEARCH RESULTS

Firstly, the emergence of the internal employee organizations in an enterprise is unavoidable as a result of both external and internal influences.

Secondly, the laws on the internal employee organizations in an enterprise under the 2019 Labor Code are rudimentary and vague.

Finally, the author’s suggestion for strengthening the internal employee organizations in an enterprise, e.g. the number of internal employee organizations in an enterprise; the required minimum members; establishment process, etc.

DISCUSSION

The appearance of the internal employee organizations in an enterprise in current situation.

In the world, internal employee organizations in an enterprise have existed for a long time in countries around the world and are protected by bilateral or multilateral conventions or agreements. And internal employee organizations in an enterprise was born in

tandem with the birth of the right to freedom of association. In the ILO’s view, freedom of association is critical to the development of decent work, which entails ensuring that all male and female employees can find decent and productive work in conditions of freedom, justice, safety, and dignity³. Freedom of association and effective acknowledgment of the right to collective bargaining are described as necessary conditions for decent employment to be achieved. Freedom of association is necessary to ensure that workers’ organizations and employers’ organizations can contribute fully to development processes: workers’ organizations and employers’ organizations have this capacity only when their representatives are able to freely express their views, opinions and advocates on behalf of their members. Freedom of association is not only a desired outcome of progress, but also an essential component of all free and open communities. Without this right, there can be no genuine or effective communication or cooperation on labor and development issues between workers, employers, and government.

Furthermore, allowing the formation of the internal employee organizations in an enterprise is part of the process of amending Vietnamese law to comply with international conventions and new free trade agreements that Vietnam has signed, such as the EU-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Articles 1 and 2 of ILO Convention No. 98 protect workers’ right to join Trade unions and organizations; Article 19.3 The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) requires the parties to codify the provisions of the ILO’s freedom of association into their domestic legislation. Recognizing that urgency, Resolution No. 06-NQ/TW: Resolution of the Fourth Conference of the 12th Central Committee of the Communist Party of Vietnam on effectively implementing the international economic integration process, maintaining socio-political stability in the context of context of our country joining new generation free trade agreements dated 5th November 2016, Vietnamese Communist Party outlined the first steps to create a premise for the establishment of internal employee organizations in an enterprise and in the current context, the addition of regulations on the organizations of employees at the enterprise is very necessary and consistent with the conventions and agreements to which Vietnam is a member:

“Renovating the Party’s leadership method for socio-political organizations, especially Trade unions in the

process of international integration. Renovating the organization and operation of the Vietnam General Confederation of Labor to meet the requirements of the new situation; creating conditions on resources strong enough to ensure effective representation activities to protect the legitimate rights and interests of employees, attract employees and internal employee organizations in an enterprise participating in the Vietnam General Confederation of Labor”⁴.

Legal provisions on the internal employee organizations in an enterprise.

If the Trade Union is a socio-political organization of employees, established on a voluntary basis, a member of the political system of Vietnamese society, under the leadership of the Communist Party of Vietnam; representing employees; performing the function of taking care of and protecting the lawful and legitimate rights and interests of employees; participating in state management, socio-economic management, participating in inspection, examination and supervision of activities of state agencies, organizations, enterprises, etc (Art 1 Law on Trade Union 2012). In other words, The Vietnam General Confederation of Labor (VGCL), a state-run federation that is part of the Party’s Fatherland Front, must approve and affiliate all trade unions.

The internal employee organizations in an enterprise, on the other hand, is just a social-organizations (not affiliated with the official trade union), independent of the State and also performs the function of representing and protecting the legitimate rights and interests of employees in labor relations (Clause 3 Art 170 of the 2019 Labor Code). In terms of funding, unlike Trade unions in Vietnam, these organizations are supported entirely by worker dues, with no contributions from the corporation or the government. Because it appeared for the first time in Vietnam’s labor law, the internal employee organizations in an enterprise only stopped at a few articles in the 2019 Labor Code (Articles 170, 172, 173, 174 of Chapter XIII).

Firstly, the establishment and operation of internal employee organizations in an enterprise must be based on the employees’ willingness. The willingness of employees is understood that any employee has the right to establish his/her representative organization at the enterprise and to join any organization. Secondly, that organization must register with the competent state’s agency (Article 172 of the Labor Code 2019). Finally, internal employee organizations in an enterprise must be organized and operate based on principles such as compliance with the Constitution,

laws and charters; voluntary, self-governing, democratic, transparent.

Therefore, through the above regulations, it can be seen that employees’ organizations are only established at the grassroots-level (its activities are limited to the enterprise), which is equivalent to the lowest level of the Trade union system⁵, although both of these organizations are equal in legal status in representation and protection of the employees’ legitimate rights and interests in labor relations (Clause 3, Article 170 of the Labor Code 2019) - an organization that is completely different from the traditional Trade union system in the country. From the national level down, trade unions are free to participate in political and policy debates and deliberations. The internal employee organizations in an enterprise, on the other hand, are unable to participate in such debates and discussions outside of their own company⁶. So far, that is, the grassroots-level Trade union is the lowest level, the upper level also has the local industry union, the district-level Labor Confederation... and the highest level is the Vietnam General Confederation of Labor. And from the Labor Code 2019, employees have the freedom to join any organization they want, either the grassroots-level Trade union or their internal employee organizations in an enterprise.

The internal employee organizations in an enterprise terminates its operation when the enterprise divides, separates, consolidates, merges, dissolves or goes bankrupt (Clause 2, Article 172 of the Labor Code 2019). In addition, the 2019 Labor Code also stipulates that the internal employee organizations in an enterprise will have its registration certificate revoked when it violates the principle, purpose and scope of operation which is to protect the members’ legitimate rights and interests in labor relations at the enterprise; together with employers to resolve issues related to the rights, obligations and interests of employees and the employers; building progressive, harmonious and stable labor relations (Clause 2, Article 172 and Point b, Clause 1, Article 174 of the Labor Code 2019).

The structure, tenure and representative of the internal employee organizations in an enterprise are specified in the organization’s charter (point d, clause 1, Article 174 of the Labor Code 2019). According to the regulations, the internal employee organizations in an enterprise will consist of the Board of Directors and members, of which the Board of Directors is elected by members of the organization if it meets the conditions in Article 173(2) of the Labor Code 2019. Independence of the internal employee organizations in an

enterprise is shown that such organizations will not be subject to the direction of the Vietnam Confederation of Labor, but when the internal employee organizations in an enterprise join the Vietnam Trade Union, they shall comply with the provisions of the Law on Trade Union 2012 (Clause 3, Article 172 of the Labor Code 2019). In order to ensure the objectivity of the internal employee organizations in an enterprise as it is, paragraph 2 of Article 174(1)(c) of the Labor Code 2019 does not allow the internal employee organizations in an enterprise not to simultaneously have members that are ordinary employees and members that participate in the process of making decisions relevant to working conditions, recruitment, labor discipline, employment contract termination or employee reassignment. Based on this, we can divide the internal employee organizations in an enterprise into two types, that is: the internal employee organizations in an enterprise of ordinary employees and the internal employee organizations in an enterprise of the employees mentioned in paragraph 2 of Article 174(1)(c) of the 2019 Labor Code.

Despite its inherent independence, the establishment and operation of the internal employee organizations in an enterprise must observe the process of perfecting the legal framework, consolidating management tools and measures to create favorable conditions for this organization to operate smoothly in accordance with the provisions of Vietnamese law and the principles of the ILO, while maintaining socio-political stability and ensuring leadership of the Party towards employees' organizations outside the system of the Vietnam General Confederation of Labor on the basis of promoting the synergy of the whole political system from the central to the grassroots-level. Although Vietnam has not ratified the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize 1948, the direction of the Party and the provisions of Vietnam's labor law are still consistent with the provisions of the Convention (Clause 1 Art 8) and Vietnam have clearly determined that ILO Convention No. 87 or internal employee organizations in an enterprise are not 'the shield' for violations of the law and activities affecting national security, public order or the normal operation of the enterprise⁷. Vietnam's policy is well-founded. Using these regulations, hostile forces, reactionaries are attempting to spread, persuade, and provoke workers and employees in businesses to form "employee representative organizations" in Vietnam, to transform generals into "independent trade unions" by gradually gathering forces, inciting demonstrations, strikes, and demands for freedom and democracy, etc. Their plan

is to create an opposition political force in the country, then stage a "color revolution", a "street revolution", and eventually overturn the Communist Party, putting an end to Vietnam's democratic system⁸.

Finally, the Labor Code 2019 stipulates that the representative organization of employees has the following rights and obligations: Enter into collective bargaining with the employer; Hold dialogues at work Comment on the establishment; supervise the implementation of the pay scale, payroll, labor rates, regulations on salary payment, rewards, internal labor regulations, and other issue relevant to rights and interests of employees that are members of the organization Represent the employee during labor dispute settlement when authorized by the employee Organize and lead strikes... (Article 178 of the 2019 Labor Code). It can be seen that the Labor Code 2019 gives more rights to the representative organization of employees, specifically the internal employee organizations in an enterprise, has built up 'strength' for employees in protecting their rights at work.

Limitations and recommendations.

As mentioned above, because of being stipulated in the Labor Code for the first time, the regulations on the internal employee organizations in an enterprise inevitably have limitations and obstacles. Below are the problems and suggestions for solving the above regulations that the author needs to focus on solving. Firstly, at present, Article 172(1) of the Labor Code 2019 stipulates that the internal employee organizations in an enterprise is legally established and operated after a competent state's agency has granted registration, but which agency has the authority to issue operating licenses of the internal employee organizations in an enterprise has not yet been regulated by the law. Therefore, the Government needs to issue guiding documents, detailing which state's agencies are competent to issue licenses for the establishment and operation of the internal employee organizations in an enterprise. We should empower the state management agency in charge of labor in granting establishment and operation licenses of internal employee organizations in an enterprise, namely the provincial Department of Labor - Invalids and Social Affairs (DOLISA). Because at the district level, we only have the Labor Union which recognizes grassroots-level Trade union, its union members and its executive committee, so it is not possible to assign the establishment and the operation license of an organization is completely different from grassroots-level Trade Union for a superior Trade Union organization.

And lastly, because it is a state administrative agency, when it is not granted a license to establish and operate the organization by the DOLISA, the employee has the right to lodge a complaint according to the complaint procedure or initiate a lawsuit to the court according to the administrative litigation procedure.

Secondly, in parallel with the regulations on the competent authority to grant licenses to the internal employee organizations in an enterprise, the Government should focus on the guide of procedures for the applicant and the licensing authority to shorten the time when performing their rights and obligations. Will the process of establishing the internal employee organizations in an enterprise have a completely new process or will inherit the process of establishing grassroots-level Trade union according to Article 14 of the 12th Vietnam Trade Union Charter and Article 12 of Guidance No.03- HD/TLD implemented the Charter of Vietnam Trade Union on February 20, 2020?

According to the author, we should keep the registration process for the establishment and operation of the internal employee organizations in an enterprise the same as the establishment of the grassroots-level Trade union. Because the nature of the two organizations, according to the author, is that they both grassroots-level represent workers grassroots and must register with the competent state agency to operate, the establishment process is kept the same so that there is no confusion or perplexity about having to create an entirely new process for two essentially identical organizations. Therefore, the process of establishing the internal employee organizations in an enterprise will include following steps:

Step 1: Organizing a committee to canvass for the establishment of the internal employee organizations in an enterprise

Step 2: Holding conference to establish the internal employee organizations in an enterprise

Step 3: Carrying out the procedures for establishing the internal employee organizations in an enterprise

Step 4: The assigned agency under the provincial DOLISA will issue the establishment and operation license of the organization and recognize the members and provisional management board of the internal employee organizations in an enterprise

Step 5: Organizing the launching ceremony and announcing the license to establish members and the provisional management board of the internal employee organizations in an enterprise.

Thirdly, the Labor Code 2019 only stipulates the establishment of the internal employee organizations in an enterprise when the number of members the

internal employee organization that are employees of the enterprise shall reach the minimum number prescribed by the Government (Clause 1, Article 173 of the Labor Code 2019), without specifying the minimum number of members required to establish the internal employee organizations in an enterprise. Regulations on membership of the organization contribute to limiting the situation where organizations are established redundantly, or each organization just represents only a few employees but loses its inherent nature of representing legitimate rights and interests of the majority of employees in the labor relations. However, it is necessary to provide a reasonable minimum number of employees of each organization, to avoid the situation that when the requirement for the number of members is too high, it will give rise to enterprises with too few employees, which will not have enough employees of the enterprise to establish an organization to represent them, and then the inherent rights of employees as prescribed by law are generally invisible. The most typical example is the right to enter into collective bargaining with the employer of the employees' organizations at the enterprise. The Labor Code 2019 only allows the internal employee organizations in an enterprise to request collective bargaining when reaching the minimum ratio of members to the total number of employees in the enterprise as prescribed by the Government (Clause 1, Article 68 of the Labor Code 2019).

In addition, the Labor Code 2019 also does not stipulate how many internal employee organizations can be established in each enterprise. Therefore, is it possible that the guiding documents on Chapter XIII of this Code will limit the number of internal employee organizations in an enterprise or the number of internal employee organizations in each enterprise will depend on the needs of employees? According to the author, the Government should limit the number of internal employee organizations in each enterprise and the number of such organizations will depend on the number of employees in that enterprise. This recommendation is to avoid the situation that internal employee organizations in an enterprise are established rampantly, operating in a discrete manner without focus and deviating from the initial criteria set out. That is, in lieu of being established for the purpose of protecting the legitimate rights and interests of employees in labor relations, these internal employee organizations in an enterprise represent only a small group of employees and will lead to conflicts of interest, benefits among employees. Moreover, internal employee organizations in an enterprise are only established at the grassroots level, which means that

each enterprise will have its own internal employee organizations. According to the author, there should be regulations that allowing internal employee organizations of many small enterprises with few employees in the same industry or internal employee organizations of a certain sector to connect with together to protect not only the employees of the enterprise but also employees who are engaged in production in related sectors.

Finally, the Government should rigidly and fully guide other regulations related to the internal employee organizations in an enterprise such as operating expenses, membership fees, charter of the organization, funds of the organization; standards on the Board of Directors (Can a member of the Board of Directors be a relatives of the employer or a member who is a management position of the enterprise itself?) and importantly, propagating and educating deeply and widely for employees so that they know about their right to establish the internal employee organizations in an enterprise so that they can rest assured to produce, improve their lives and contribute to the socio-economic development of the locality...

CONCLUSION

The Political Report of the 12th Central Committee of Communist Party at the 13th National Congress of the Communist Party of Vietnam, set out the requirements for good orientation and management of the establishment and operation of the internal employee organizations in an enterprise in Vietnam outside the current Trade Union. Therefore, the legislators will sooner or later have to issue guiding documents Chapter XIII of the Labor Code 2019 on the internal employee organizations in an enterprise. Moreover, when we have a solid legal foundation for internal employee organizations in an enterprise, ratification of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize 1948 is only a matter of time and from there, gradually improve the system of labor relations and labor standards in Vietnam as well as in line with standards and commitments to international conventions to which Vietnam has joined.

The number of workers and employees will rapidly grow in the next years; the process of market economic development; the opportunities and challenges of the Fourth Industrial Revolution; the deepening of international integration; allowing the internal employee organizations in an enterprise will have a

significant impact on employment, human resource quality, worker attraction and gathering, and so on. In light of this, the Vietnam Trade Union's organization and operations have been strengthened and expanded so that both workers' organizations (Trade Union and the internal employee organizations in an enterprise) can truly protect workers' legitimate rights and interests.

ABBREVIATION

ILO: International Labor Organization
FTA: Free Trade Agreement
DOLISA: Department of Labor - Invalids and Social Affairs
EVFTA: EU-Vietnam Free Trade Agreement
CPTPP: The Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

CONFLICT OF INTEREST STATEMENT

The author declare that he ha no conflicts of interest

AUTHOR S' CONTRIBUTION

The author declares that he is the mere author.

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Tổ chức của người lao động tại doanh nghiệp ở Việt Nam - quy định và kiến nghị

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TÓM TẮT

Từ xưa đến nay, mối quan hệ giữa người lao động và người sử dụng lao động đã được gọi là "mối quan hệ bất bình đẳng". Trong mối quan hệ này luôn tiềm ẩn những nguy cơ về mâu thuẫn, tranh chấp về quyền và lợi ích. Người lao động hầu như luôn ở vị thế dễ bị tổn thương trong hầu hết các tranh chấp và họ hiếm khi có thể sử dụng sức lực hạn chế của mình để khẳng định các quyền hợp pháp của mình. Nhiều người lao động phải trải qua sự bất công và bóc lột do hậu quả của sự mất cân bằng này, đòi hỏi sự tham gia của bên thứ ba để bảo vệ quyền lợi của người lao động khó khăn nói riêng và người lao động nói chung. Sau khi phê chuẩn Công ước số 98 về Quyền được tổ chức và thương lượng tập thể của Tổ chức Lao động Quốc tế (ILO) cũng như ký kết các hiệp định thương mại tự do thế hệ mới (FTA), Việt Nam đã pháp điển hóa nhiều cam kết tối quan trọng vào Bộ luật Lao động năm 2019. Trong trong đó lần đầu tiên xuất hiện các điều khoản cho phép người lao động thành lập tổ chức của mình tại doanh nghiệp (không trực thuộc tổ chức công đoàn). Do chỉ mới được quy định lần đầu, chưa có tiền lệ trong pháp luật lao động nước ta và các quy định pháp luật về thành lập và hoạt động của tổ chức này còn chưa cụ thể, tác giả nhận thấy rằng nghiên cứu về tổ chức nội bộ của người lao động ở doanh nghiệp là quan trọng trên cơ sở tham khảo các quy định của ILO. Trong bài viết này, tác giả làm rõ 3 giả thiết: việc xuất hiện tổ chức nhân viên nội bộ trong doanh nghiệp là điều khó tránh khỏi trong tình hình hiện nay, khi Việt Nam vừa phê chuẩn các công ước của ILO và các FTA; pháp luật về tổ chức người lao động tại doanh nghiệp theo Bộ luật Lao động năm 2019 còn thô sơ, sơ sài, chưa rõ ràng; đề xuất của tác giả để cải thiện tổ chức người lao động tại doanh nghiệp.

Từ khóa: tổ chức người lao động tại doanh nghiệp, Bộ luật Lao động năm 2019, ILO

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