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LAW ON OBLIGATIONS OF VIETNAMESE WORKERS WORKING ABROAD UNDER CONTRACTS

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Abstract

This paper focuses on studying the current Vietnamese legal provisions related to the obligations of workers going to work abroad under contract. By analyzing legal documents such as the Law on Vietnamese Workers Working Abroad under Contract 2020, Decree 112/2021/NĐ-CP, and guiding documents, the research clarifies key worker obligations such as compliance with contracts, local laws, financial duties, training obligations, and post-contract responsibilities. Additionally, it identifies several implementation limitations and offers recommendations to improve the legal system and enhance enforcement effectiveness. The research results raise legal awareness and ensure transparency and fairness in sending Vietnamese workers abroad under contract. **Keywords:** obligations, working abroad, labor law, labor contract.

1. Introduction

In the context of deepening globalization and international economic integration, sending Vietnamese workers abroad under contract has become one of the key channels for job creation, income improvement, and economic advancement. This activity contributes significantly to foreign currency inflows and the country's socio-economic development. With hundreds of thousands of workers sent abroad each year, Vietnam is currently one of the countries with the largest number of overseas laborers in the region.

However, alongside the economic benefits and career development opportunities, workers must also fulfill a range of legal obligations throughout their time working abroad. These obligations are not only stipulated in labor contracts but are also governed by Vietnamese law and the laws of the host country. In practice, numerous issues have arisen concerning workers' violations of these obligations, such as contract abandonment, illegal residency, failure to meet financial responsibilities, or non-compliance with labor discipline regulations. Such violations not only impact the workers' rights and benefits but also damage the national reputation and erode international partners' trust.

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The Law on Vietnamese Workers Working Abroad under Contract (2020) and its implementing regulations have laid the groundwork for a relatively comprehensive legal framework governing the rights and obligations of overseas workers. Nevertheless, there remain significant shortcomings in the formulation, implementation, and supervision of these obligations, particularly in the form of unclear provisions, legal gaps for newly emerging situations, and inefficiencies in dissemination, inspection, and enforcement.

For the reasons stated above, a comprehensive and systematic study of the current legal provisions relating to the obligations of Vietnamese workers working abroad under contract is truly essential. This research aims not only to clarify the content and legal nature of these obligations but also to evaluate the practical effectiveness of their implementation, identify shortcomings and obstacles, and thereby propose recommendations to improve the legal framework.

To achieve the above research objectives, the author applies a combination of scientific research methods, including:

The method of analysis and synthesis of documents: Used to study the system of current legal documents, related scientific works, and information from competent authorities.

The comparative legal method: Aims to contrast Vietnamese legal provisions with those of several countries that have experience in managing overseas labor, thereby drawing useful lessons.

The method of practical analysis and evaluation is based on reports, typical cases, and information from state agencies to accurately reflect the current situation regarding workers' compliance with their obligations.

The method of systematization and legal logic: Helps present and analyze legal issues coherently, scientifically, and in a way that aligns with practical realities.

The combination of these research methods not only ensures the objectivity and comprehensiveness of the study, but also provides a solid theoretical and practical foundation for making recommendations aimed at improving the legal system, enhancing state management effectiveness, and protecting the legitimate rights and interests of all parties involved in sending Vietnamese workers to work abroad under contract.

2. Research Content

2.1. Obligations of Vietnamese Workers Working Abroad under Contract

Firstly, the obligation to comply with the laws of Vietnam and the host country

Compliance with the law is a crucial obligation for both workers and enterprises participating in the international labor market. This obligation not only involves Vietnamese law but also includes the legal provisions of the host country. Legal compliance not only protects the rights and interests of workers but also contributes to enhancing the image of Vietnamese laborers internationally.

According to Point a, Clause 2, Article 6 of Law No. 69/2020/QH14, workers must comply with the laws of Vietnam and those of the host country. Regarding Vietnamese law, workers must adhere to the provisions of the Law on Vietnamese Workers Working Abroad under Contract. Specifically, they must meet requirements related to age, health, and professional qualifications as prescribed; work abroad only through licensed enterprises; complete all necessary contract registration procedures with competent authorities before departure; and fulfill all financial obligations as stipulated.

At the same time, the law (Point a, Clause 2, Article 6) also stipulates that workers must preserve and promote the cultural traditions of the Vietnamese nation; respect the customs and traditions of the host country; and foster solidarity with fellow workers in the host country. These provisions play an important role in protecting the national image and interests. Workers should not engage in unlawful activities that might negatively impact diplomatic relations between Vietnam and the host country, and they should uphold the image of Vietnamese workers by respecting local culture and customs.

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In terms of compliance with the host country's laws, each country has its legal framework governing foreign labor. Therefore, Vietnamese workers abroad must comply with provisions such as:

Abiding by the labor laws of the host country: signing lawful labor contracts, adhering to work conditions, working hours, wages, and statutory benefits. They must not work illegally or outside the scope of the signed contract.

Observing social insurance, income tax, and other financial obligations.

Complying with immigration and residency regulations: properly registering temporary residence, extending visas or work permits on time, avoiding illegal stay, document forgery, or immigration violations.

Avoiding involvement in illegal activities such as theft, public disorder, gambling, or illicit drug trade.

Respecting the culture, customs, and social ethics of the host country: integrating into the work environment and local community, avoiding acts that cause disunity or breach social ethics, and refraining from participating in illegal political organizations or groups.

In practice, violations of the laws of Vietnam or the host country can lead to serious consequences for workers, such as:

Being subject to administrative or criminal penalties: Workers may be deported, banned from reentry, or held criminally liable under the laws of the host country.

Loss of employment opportunities: Violations of regulations may result in premature termination of the labor contract.

Damage to personal and national reputation: Workers who violate the law may negatively impact Vietnam's labor recruitment policies in the host country.

Second, the obligation to complete the pre-departure orientation training course before working abroad

Completing the pre-departure orientation training course is a mandatory obligation for workers, as stipulated in Point a, Clause 2, Article 6 of Law No. 69/2020/QH14. Accordingly, the public service unit responsible for sending Vietnamese workers abroad under contract is obligated to organize the orientation training and issue a certificate of completion to the worker before their departure, as prescribed in Point d, Clause 2, Article 43 of the same law.

The orientation training content for Vietnamese workers going abroad under contract is defined in Clause 1, Article 65 of Law No. 69/2020/QH14. It comprises 12 core topics and is specifically guided in terms of program, duration, and content in Appendix XII attached to Circular No. 21/2021/TT-BLĐTBXH.

For specific markets, sectors, or job types governed by agreements between the Ministry of Labor, Invalids and Social Affairs and the competent authorities of the host country, enterprises are responsible for implementing the training by such agreements, in addition to the general orientation regulations.

According to Point b, Clause 2, Article 12 of Circular No. 21/2021/TT-BLĐTBXH, the Certificate of Completion for the orientation training course is valid for 24 months from the date of issuance. After this period, enterprises, public service units, organizations, or individuals investing abroad who send Vietnamese workers to work abroad must re-conduct the orientation training.

In cases where the certificate is still within the 24-month validity period but the worker changes the service company, public unit, organization, or sending individual—or changes their job, occupation, or destination country—then the new sending entity is required to conduct additional orientation training covering the relevant changes.

Workers must be re-evaluated and issued a new Certificate of Completion for the pre-departure orientation training. The standard labor contract for sending workers abroad, issued with Circular No. 21/2021/TT-BLĐTBXH, also includes a mandatory clause requiring workers to: "Fully participate in the pre-departure orientation training course organized by the sending party, ensure a duration of 74 periods, pass the assessment, and be granted a Certificate of Completion."

Accordingly, workers are required to attend all sessions and meet the requirements of the training program. Upon successful completion, the worker will be issued a Certificate of Completion, which is a mandatory condition for completing exit procedures.

The contract also specifically provides that, if the worker no longer wishes to go abroad (within 180 days from the date the worker is selected to work overseas, based on the enterprise's commitment document), the sending party must return the worker's documents (passport, curriculum vitae, diplomas, etc.), and the worker must bear any incurred expenses (if any) related to the preparation for working abroad. These expenses may include: transportation costs from Vietnam to the workplace, foreign language training fees, vocational skills training costs, passport issuance fees, visa application fees, medical examination fees, etc.

In the event of force majeure (such as natural disasters, pandemics, war, political instability, or other emergencies) resulting in the worker no longer wishing to work abroad after 180 days or the sending party being unable to send the worker abroad, the sending party must return the worker's documents (passport, CV, diplomas, etc.), refund service fees, and reimburse any unspent costs. For incurred expenses, reimbursement to the worker shall be made by the agreement between the worker and the sending party.

Third, the obligation to pay service fees and make security deposits as prescribed.

According to Clause 1, Article 23 of Law No. 69/2020/QH14: Service fees are amounts collected by service enterprises from foreign employers and Vietnamese workers to cover costs related to market research and development, labor supply contract negotiation and signing, and the management of workers during their employment abroad, as prescribed by this Law.

According to Clause 2, Article 23 of the same law, Vietnamese workers working abroad under contract are only required to pay service fees to service enterprises after the labor supply contract has been approved by the Ministry of Labor, Invalids and Social Affairs, and the labor export contract has been signed.

As stated in Clause 4, Article 23, the maximum service fee collected from Vietnamese workers going abroad under contract must not exceed one month's salary per 12 months of employment as specified in the contract. For officers and crew members working on seagoing vessels, the service fee must not exceed 1.5 months' salary per 12 months of employment.

If the labor export contract stipulates 36 months or more, the total service fee must not exceed three months' salary as stated in the contract.

In cases where the labor export contract includes a provision for collecting service fees during the extension period of the employment contract, the maximum service fee allowed for every 12-month extension must not exceed 0.5 month's salary under the contract.

Additionally, maximum service fee limits for certain markets, industries, occupations, and job positions are specified in Appendix XI issued with Circular No. 21/2021/TT-BLĐTBXH. For example, for highly skilled workers or shipbuilding construction workers under Japan's Specified Skilled Worker Program, the maximum service fee collected from workers is 0.7 month's salary per 12-month contract, and no more than 2 months' salary for contracts lasting 36 months or longer. Deposit is regulated in Article 330 of the 2015 Civil Code as follows:

A deposit is when the obligated party deposits an amount of money or precious metals, precious stones, or valuable papers into a blocked account at a credit institution to guarantee the fulfillment of the obligation.

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Accordingly, the deposit money is the amount used for the deposit and is sent to the blocked account at the credit institution based on an agreement or designated by the entitled party to ensure the fulfillment of the obligation.

Workers going abroad to work under a contract must deposit according to the provisions at point d, Clause 2 of Law No. 69/2020/QH14.

The deposit procedure for workers is regulated in Article 25 of Law No. 69/2020/QH14 as follows: The deposit is based on an agreement between the service enterprise and the worker going abroad to work.

The deposit aims to guarantee that the worker fulfills their obligations under the contract for sending Vietnamese workers abroad by Vietnamese law or the agreement with the foreign receiving party.

The worker agrees with the service enterprise to deposit the money into a blocked account of the worker at a bank.

The worker will receive back both the principal and interest of the deposit when the contract for sending Vietnamese workers abroad is terminated.

In case the worker violates the obligations under the contract for sending Vietnamese workers abroad, the deposit money will be used by the service enterprise to compensate for damages caused by the worker's fault.

If the deposit money exceeds the amount of damages, the excess must be returned to the worker; if it is insufficient, the worker must pay the additional amount.

In case of disputes arising from the service enterprise not returning the deposit money, the worker has the right to petition the Ministry of Labor, Invalids and Social Affairs, or file a lawsuit under the law.

According to the provisions of Article 29 of Decree 112/2021/ND-CP, the deposit amount will be agreed upon between the worker and the service enterprise and clearly stated in the contract. In addition, the deposit amount must not exceed the ceiling stipulated in Appendix II issued together with this Decree and must be recorded in the contract for sending Vietnamese workers abroad.

Specifically, for occupations such as offshore fishing vessel crew members and cargo ship crew members in the Taiwan (China) market, no deposit is required; for other occupations in the Taiwan (China) market, the deposit ceiling is 12,000,000 VND.

Fourth, the obligation to comply with labor discipline and labor regulations

Labor discipline can be considered an indispensable factor in every labor organization process. Different labor relations and different historical periods have resulted in different methods of maintaining and organizing labor discipline.

According to Article 117 of the 2019 Labor Code: "Labor discipline refers to the regulations on compliance with working hours, technology, and the management of production and business activities issued by the employer in the labor regulations and stipulated by law."

Based on this concept, labor discipline defines the responsibilities and obligations of the parties to comply with the contents prescribed in the labor regulations.

Labor regulations are documents containing rules of conduct, including the following basic contents: Working hours and rest periods, order within the enterprise; Labor safety and hygiene at the workplace; Protection of the enterprise's assets and business technology secrets; Acts violating labor discipline, forms of labor discipline penalties, and material responsibilities.

At point d, Clause 2 of Law No. 69/2020/QH14 stipulates that workers must work at the designated place; comply with labor discipline and labor regulations; and adhere to the management, operation, and supervision of the employer abroad under the labor contract. Accordingly, workers must work at the location specified in the labor contract.

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They are not allowed to leave the workplace or transfer to another workplace without the consent of the employer and the competent authority. Workers must comply with the working hours and rest periods as regulated by the company and the laws of the host country. They must strictly follow occupational safety regulations to avoid risks in the job. Workers must not violate company rules, such as being late, doing personal work during working hours, or using phones if prohibited.

Workers are required to comply with the management, operation, and supervision of the employer, specifically by working according to assigned tasks and instructions from superiors, reporting promptly if they encounter difficulties or need support in the work, and not striking, protesting, or causing disturbances that affect the company and the image of Vietnamese labor.

Workers who violate these obligations may be subject to disciplinary actions as prescribed in the contract, including labor discipline, early termination of the contract, or deportation back to Vietnam. Workers are responsible for compensating any damages (if any) by the contract and related laws.

Thus, this regulation not only helps better manage Vietnamese laborers abroad but also protects the interests of all three parties: the workers, the sending enterprises, and the foreign employers.

However, the sample contract for sending workers abroad under Circular No. 21/2021/TT-BLDTBXH does not include this content in the contract clauses. Additionally, although the contract includes a provision stating that after the probation period, if the worker fails to meet the job requirements as requested by the employer, the sending party will coordinate with the worker and the employer to extend the probation period, arrange another suitable job with an appropriate salary, or send the worker back home, this regulation imposes strict constraints that limit the worker's ability to change jobs without the consent of the intermediary or the employer.

Many workers want to change jobs due to poor working conditions or contract violations by the employer, but face difficulties because of these restrictive provisions. This situation leads to workers being bound to unfavorable working conditions without the possibility of job transfer.

Fifth, the obligation to compensate for damages due to breach of contract

Compensation for damages (hereinafter referred to as "compensation") due to breach of contract is an important legal remedy that serves to indemnify the injured party (the entitled party) for losses resulting from the breach. However, different legal systems have variations regarding this remedy, such as which types of damages are compensable, the grounds for applying compensation, how to determine the compensation amount, and cases where compensation liability may be exempted.

When workers violate the contract while working abroad, it may cause financial, reputational, and legal damages to the sending enterprise as well as the foreign employer. Therefore, the law stipulates that workers must compensate for damages caused by breach of contract at point e, Clause 2 of Law No. 69/2020/QH14.

According to Circular No. 21/2021/TT-BLDTBXH, the sending party and the worker shall agree on the compensation for damages and the amount of compensation in case the worker unlawfully terminates the contract or illegally remains abroad after the contract ends. The compensation amount shall be agreed upon (except in cases where the labor-receiving country or territory or labor supply contract does not require the worker to be compensated).

In addition to compensating damages at the agreed contractual amount, under Clause 1, Article 46 of Decree No. 12/2022/ND-CP, the penalty for Vietnamese workers who unlawfully remain abroad after contract termination is a fine ranging from 80,000,000 VND to 100,000,000 VND.

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Sixth, the obligation to return to the home country on time and notify the residence registration authority

The obligation to return home on time helps protect the rights of workers, maintain the reputation of the sending enterprises, and ensure labor cooperation between Vietnam and the receiving country. Accordingly, when the labor contract expires, workers must leave the host country according to the timeframe specified in the contract. Exceptions apply in cases of force majeure where the worker must return early due to work accidents, unforeseen risks, illness, or medical conditions that prevent continuing work; because the foreign employer dissolves, goes bankrupt, or downsizes production due to natural disasters, epidemics, political instability, war, economic recession, or other force majeure reasons; or due to unilateral termination of the labor contract.

If the worker wishes to continue working, they must sign a new contract according to the legal regulations of both Vietnam and the host country.

According to Article 9 of the 2020 Residence Law, citizens must register their residence according to the Residence Law and other relevant legal regulations. They must provide complete, accurate, and timely information, documents, and materials related to their residence to competent authorities and bear responsibility for the information and documents provided. They must also pay the residence registration fees as prescribed by the law on fees.

At point g, Clause 2 of Law No. 69/2020/QH14 stipulates that workers must return to the country on time after the labor contract or vocational training contract ends; and to notify the residence registration authority either at their place of residence before going abroad or at the new residence after returning within 15 days from the date of entry, by the Residence Law.

This regulation helps improve the management and tracking of information from workers after their return to Vietnam, enabling specialized agencies managing labor to have full data for analyzing and evaluating the effectiveness of working abroad. At the same time, it facilitates workers to receive support for job introduction and counseling upon returning to the country.

The law also provides that citizens may be fined from 500,000 VND to 1,000,000 VND for failing to properly register permanent residence, temporary residence, cancel permanent residence, cancel temporary residence, household separation, or adjustment of residence information in the residence database, as prescribed in point a, Clause 1 of Decree 144/2021/ND-CP of the Government on sanctioning administrative violations in the fields of security, order, social safety; social evils prevention; fire prevention and fighting; rescue and relief; domestic violence prevention.

However, for workers going abroad, there is currently no specific guideline regarding the forms, procedures, or processes for notifying the residence registration authority before departure and after return, nor measures to handle cases where workers fail to notify within the prescribed time. This causes difficulties for workers in complying with deadlines and procedures according to the regulations.

Seventh, the obligation to pay taxes, participate in social insurance, and other forms of insurance

According to Article 2 of the Personal Income Tax Law dated December 12, 2012, the subjects liable to personal income tax (PIT) are defined as follows:

"Subjects liable to personal income tax include resident individuals with taxable income specified in Article 3 of this Law arising within and outside the territory of Vietnam, and non-resident individuals with taxable income specified in Article 3 of this Law arising within the territory of Vietnam."

Accordingly, Vietnamese workers working abroad under a contract are considered non-resident individuals subject to PIT. These workers typically earn taxable income from sources such as business operations, wages and salaries, or capital investment.

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Based on Article 26 of the Personal Income Tax Law, PIT on income from wages and salaries is calculated as follows:

"PIT = Taxable income from wages and salaries \times Tax rate of 20%."

In this formula, the taxable income from wages and salaries refers to the total amount of wages and salaries received by the non-resident individual for work performed in Vietnam, regardless of the income payer's location. Point g, Clause 2, of Law No. 69/2020/QH14 stipulates that Vietnamese workers employed abroad under a contract are obligated to pay taxes by Vietnamese law and the laws of the host country. However, if Vietnam and the host country have signed a Double Taxation Avoidance Agreement, Vietnamese workers working abroad under a contract are not required to pay personal income tax twice—both in Vietnam and the host country.

In parallel, participating in social insurance and other types of insurance as required by Vietnamese law and the laws of the host country is a mandatory obligation. It also helps protect the rights of workers, allowing them to receive benefits such as retirement pensions, survivorship allowances, occupational accident and disease compensation, sickness, and maternity benefits.

Eighthly, the obligation to contribute to the Overseas Employment Support Fund.

According to Point i, Clause 2, Article 6 of Law No. 69/2020/QH14, Vietnamese workers employed abroad are obligated to contribute to the Overseas Employment Support Fund.

Under Article 8 of Decision No. 40/2021/QĐ-TTg on the Overseas Employment Support Fund, workers going abroad for employment are required to contribute 100,000 VND per person per contract to the Fund.

Workers must contribute directly to the Fund either in cash or via bank transfer, no later than three (03) days before departure, or no later than five (05) working days from the date of receiving the official notification of contract registration approval from the competent authority, in cases where the labor contract is signed after departure.

If the worker contributes to the Fund through an enterprise, organization, or individual that sends workers abroad, that party is responsible for collecting and transferring the total contributions to the Fund's account by the 10th of the following month at the latest.

In cases where the worker contributes to the Fund in cash, the receiving agency, enterprise, organization, or individual must issue a receipt to the worker.

This contribution helps support workers in case of risks and gives them the right to request financial assistance from the Fund when necessary.

2.2. Limitations, Inadequacies, and Causes of the Limitations

First, the issue of workers absconding, failing to return to Vietnam on time, and residing illegally in the host country still occurs, and effective educational, disciplinary, and deterrent measures have not been implemented, creating a negative impression of Vietnamese overseas workers. The cause lies in the low legal awareness among a small portion of workers who do not comply well with the laws of the host country and Vietnam. Furthermore, inspection and supervision of compliance with laws regarding sending Vietnamese workers abroad have not been conducted regularly or consistently. Additionally, current legislation on penalties for Vietnamese workers who violate their overseas labor contracts is not strict enough.

Second, the debt recovery process in certain cases where workers borrowed capital remains difficult. There are still cases of overdue and frozen debts. Some families of workers abroad do not fulfill their repayment obligations for bank loans, lack a proper financial management plan, or fail to use remittances effectively. In some cases, after receiving loans and leaving the country to work, other family members move to different provinces, and contact information provided to the bank becomes unreachable, making it difficult to follow up on loan repayment and accrued interest, resulting in defaults.

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Currently, in the entire province, 9 workers have returned home before the end of their contracts due to various reasons such as inability to meet job requirements, health issues, or the company's failure to ensure employment. Some workers, after completing their contracts and returning home, have moved to distant workplaces or relocated with their families, causing challenges in following up on debt collection and outstanding interest. There are 19 cases where, after receiving loans, workers did not go abroad due to reasons such as the COVID-19 pandemic, extended waiting times for departure, or a change of mind, leading them to find domestic jobs instead of going overseas under contract. For these cases, banks are currently working with local authorities to collect debts, but progress remains very slow.

Third, the management and tracking of information from workers after returning to Vietnam is still not thorough or closely monitored.

Fourth, service fees and related costs (such as orientation training, foreign language courses, and dormitory accommodation fees) vary between enterprises, causing difficulties for workers in fulfilling their payment obligations.

2.3. Solutions to Improve the Legal Framework on the Obligations of Vietnamese Workers Employed Abroad under Contract

First, add provisions to the template labor contract for sending workers abroad, issued under Circular No. 21/2021/TT-BLĐTBXH, to explicitly state the obligation of workers:

"To work at the designated location; to comply with labor discipline and internal regulations; and to follow the management, direction, and supervision of the foreign employer under the labor contract."

Second, amend Clause 1, Article 6 of Law No. 69/2020/QH14 to grant workers the right to change jobs when facing issues such as unsafe working conditions, employer violations of the contract, or non-payment of wages on time. A reporting mechanism should be established, allowing workers to contact competent authorities and provide regular updates on their working conditions, as well as to report difficulties or labor disputes. This would enable them to change jobs without being excessively bound by complicated procedures imposed by employers or brokerage companies.

This mechanism would allow regulatory agencies to monitor and support workers promptly in case of problems, especially in situations involving mistreatment or delayed wage payments. In addition, Article 9 of Law No. 69/2024/QH14 could be supplemented with a provision requiring labor brokerage companies not to restrict workers from changing jobs when they have legitimate reasons. Third, issue detailed guidelines on forms and procedures for notifying the residency registration

authority before leaving and after returning to Vietnam. There should also be measures to address non-compliance when workers fail to fulfill the notification requirement to the residency authority before departing to work abroad, and after returning home

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