



BetterWork
Vietnam

**LABOUR PLAN OPTIONS FOR
ENTERPRISES AFFECTED BY COVID-19**

**GUIDE FOR FACTORIES PARTICIPATING
IN THE BETTERWORK VIETNAM PROGRAMME**

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International
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COVID-19 has spread worldwide and was declared a pandemic by the World Health Organization (WHO) on 11 March 2020. Strict measures are in place to contain the epidemic, which have caused disruption in global supply chains.

The garment and footwear industries in Vietnam are labour-intensive, and directly connected to global manufacturing networks. Raw materials and accessories are imported from China and South Korea and finished products are shipped to European and U.S markets. From January – mid March 2020 many enterprises faced delayed imports from China and South Korea, and since mid March 2020 European and U.S brands report struggling with customs clearance and export-import procedures. The greatest risk now however is posed by a decrease in demand resulting in shrinking business operations and layoffs.

This Guide has been developed by Better Work Vietnam, in consultation with the Labour Inspectorate of the Ministry of Labour, Invalids and Social Affairs, to support garment and footwear enterprises who are forced to shrink production due to COVID-19.

II. OBJECTIVES

The objective of this Guide is not to suggest or recommend employers and workers to follow any specific option or a combination of options, but to adequately inform employers and workers about:

- Labour plan options - as regulated by Vietnam law.
- Advantages and disadvantages of each option, for workers and for employers
- How to enhance social dialogue and labour compliance while implementing the labour plan.

Employers and workers should negotiate and develop the most suitable labour plan to meet and support the interests of both sides.

III. MAIN CONTENTS

General principles:

1. While there are common difficulties facing the garment and footwear industry, each enterprise has their own business conditions. The enterprise should analyse their business operations and identify the root causes of the problems they face e.g. lack of raw materials, delayed shipment, order cancellation, order concentration level, etc.. With this information the enterprise should proactively discuss with business partners and suppliers how to minimize the risk of business losses and layoffs.
2. If planning for reduced production or layoffs, the enterprise should consider factors such as; average regional wage levels, labour shortage levels, vocational skills, seniority, and workers' situation e.g. need to care for old parents or young children.
3. Plans should be discussed and negotiated (social dialogue is even more critical in a crisis) with a view to reaching consensus so workers are willing to come back to work when the crisis has passed. Workers should have access to information and fully understand how any changes affect their income and welfare.
4. The Human Resources (HR) Officer should consider the business culture and core values of the enterprise when implementing temporary policies, so as not to negatively affect sustainable enterprise development in the post crisis phase.

5. The Vietnamese Government is planning to provide a stimulus package to support enterprises (with decreased production or layoffs caused by Covid-19) on social insurance, employment insurance, occupational employment insurance etc. Enterprises should seek the most up to date government information before implementing any changes.
6. According to Vietnam law, enterprises and workers can consider the following labour plan options. Each has advantages and disadvantages and provides benefits and responsibilities for the involved parties. Enterprises may apply one or a combination of options depending on the situation (e.g. the development of COVID 19, financial situation of the enterprise etc.).

IV. LABOUR PLAN OPTIONS

4.1. ANNUAL LEAVE ARRANGEMENT

4.1.1. Legal basis:

- Article 111, 114 of the Labour Code 2012;
- Clause 9, Article 1, Decree 148/2018/ND-CP

4.1.2. Implementation procedure:

- Factory to plan the annual leave schedule of workers.
- Consult with Trade Union.
- Inform workers before implementation.

4.1.3. Analysis:

a) For employers:

- **Finance:** No extra cost - this is a standard regular cost.
- **Production:** Provides a solution for short-term production (less than half a month)
- **Health:** Prevents workplace infection, especially during the high risk period.
- **Industrial Relations:** No need for agreement with workers. Factories can retain workers in the short term.

b) For workers:

- **Finance:** Provides income for daily living costs. However required to use their entire annual leave entitlement so if they want a day off later in the year they may have to request unpaid leave.
- **Employment:** Still employed, but short-term.
- **Health:** Safer for themselves and family members.
- **Social insurance:** Remain covered by social and health insurance even in case of sickness (75% of paid salary), including maternity leave.

This does not, on its own offer a complete solution to address the requirements and need of both enterprises and workers in the current complex situation. It is possible for enterprises and workers to combine this with options 2,3,4 and/or 5 to ensure that workers are able to get income and social insurance longer term (i.e. beyond 14 days).

4.2. WORK STOPPAGE DUE TO FORCE MAJEURE

4.2.1. Applying conditions:

- Factories can apply a work stoppage due to force majeure if, as a result of infectious disease, they are forced to delay production which threatens worker layoffs due to a delay in delivery of raw materials/accessories, reduced orders or delayed delivery deadlines.
- Temporary closure of business, at the Government's request, for disease prevention and control.

- Where workers are requested by the Government to stay at home or at concentration quarantine sites.

4.2.2. Legal basis:

- Article 98, Labor Code 2012
- Clause 3, Article 13, Decree 95/2013/ND-CP, Decree 88/2015/ND-CP, Decree 28/2020/ND-CP effective from Apr. 15, 2020.
- Article 30 Circular 59/2015/TT-BLDTBXH

4.2.3. Implementation procedure:

- Employers discuss with Trade Union Executive Committee and publish work stoppage decision.
- Employers negotiate the payment for work stoppage with each worker. The negotiated payment is not less than the legal regional minimum wage.

4.2.4. Analysis:

a) For employers:

- **Finance:** Must pay workers' wages and social insurance at the work stoppage payment rate (not less than the legal regional minimum wage).
- **Production:** Addresses the need to delay production. The period of application depends on the duration that the business is affected due to the force majeure situation and the financial capacity of the enterprise.
- **Health:** Workers do not have to go to work, reducing health risks.
- **Industrial relations:** Have to negotiate stoppage payment rates with workers. Factories can maintain the labour force during the period of the work stoppage.

b) For workers:

- **Finance:** Still paid but at a lower rate. Income may be lower than the legal minimum wage as they still have to pay social insurance contributions. Can negotiate with the employer on allowances and bonus during the work stoppage period.
- **Employment:** Still employed but only short-term - depending on employer's financial capacity.
- **Health:** Safer for themselves and family members.
- **Social insurance:** Entitled to Social Insurance, including: health insurance, sick leave payment (equivalent to 75% of preceding 6 months' salary) when under medical treatment and maternity leave.

4.3. TERMINATION OF EMPLOYMENT CONTRACTS

4.3.1. Applying conditions:

- Employers have the right to terminate employment in case of infectious disease where the employer has made every effort to overcome difficulties but is nevertheless compelled to make cuts in production and workforce.
- In case of unilaterally terminating the employment contract, employers have to provide workers advance notice of termination (Clause 2, Article 38, Labor Code) and pay workers severance allowance in accordance with the job-loss allowance (guided in Clause 3, Article 13, Decree 05/2015/ND-CP).
- In case the infectious disease causes economic recession, which leads to the termination of more than 1 worker, employers are responsible for developing a labour utilization plan. In case employers fail to maintain employment for workers and have to terminate the employment, they have to pay workers job-loss allowance (in accordance with Article 44 of the Labour Code, and guided by Article 14 of Decree 05/2015/ND-CP).

4.3.2. Legal basis:

- Article 44, 46, 49 Labor Code 2012
- Article 13, 14 Decree 05/2015/ND-CP, Clause 4, Article 1, Decree 148/2018/ND-CP (job-loss allowance)
- Article 46, 49 (conditions for unemployment insurance), Article 50 (calculation, qualifying working time for unemployment insurance); Article 51, Law on Employment 2013 (health insurance under the period of receiving unemployment insurance)

4.3.3. Implementation procedure:

- Employers, based on the above legal basis provide workers prior notice about the employment termination.
- In case of terminating more than 1 worker, employers have to consult with the Trade Union Executive Committee and develop a labour utilization plan and submit it to the local Management Authority before implementation.

4.3.4. Analysis

a) For employers:

- **Finance:** Do not have to cover employment related costs during the work stoppage but have to pay workers job-loss allowance (for the periods not covered by unemployment insurance) and cost of future recruitment and training.
- **Production:** Addresses the need to reduce workforce due to downsizing production. Can affect production schedule when orders resume/are stable again, due to need to recruit and train workers.
- **Health:** Ensures the safety of workers remaining at the workplace.
- **Industrial Relations:** Need to provide workers prior notice. Lose experienced and skilled workers. However to attract skilled workers and reduce training costs employers can negotiate (when production resumes/recovers) to recruit the same workers back on the same benefits as at the time of employment termination.

b) For workers:

- **Finance:** Receive salary during the notice period as well as payment for unused annual leave, severance/job-loss allowance (if eligible), and unemployment insurance (during the eligible period). Those who have worked less than 12 months for the factory at the time of termination are not eligible for unemployment insurance and severance/job-loss allowance.
- **Employment:** Continue to work during the notice period. Employment is not maintained (and not easy to apply for new jobs during the crisis); however, workers can negotiate with the employer to return when required.
- **Health:** Still have to work during the notice period but not thereafter.
- **Social insurance:** Still entitled to health insurance when receiving unemployment insurance.

4.4. UNPAID LEAVE:

4.4.1. Applying conditions:

- Have to reach mutual agreement between 2 parties.

4.4.2. Legal basis:

- Article 116 Labor Code 2012;
- Clause 3 Article 13, Decree 95/2013/ND-CP, Decree 88/2015/ND-CP, Decree 28/2020/NĐ-CP effective from Apr.15, 2020

4.4.3. Implementation procedure:

- If the worker requests unpaid leave, employer discusses and reaches a mutual agreement (with each requesting employee) for implementation. (Note: The Trade Union Executive Committee cannot represent workers to negotiate this term.)

4.4.4. Analysis:

a) To employers:

- **Finance:** Employers do not have to pay workers wages and social insurance if the total unpaid leave is more than 14 days in a month. If an employer fails to reach a mutual agreement with workers but still implements this, they shall be subject to a penalty due to not paying work stoppage following Clause 3, Article 13, Decree 95/2013/NĐ-CP, adjusted by Clause 10, Article 1 Decree 88/2015/NĐ-CP (replaced by Article 16 Decree 28/2020/NĐ-CP effective from Apr.15, 2020).
- **Production:** Addresses the need to extend production plan and does not have a time limit.
- **Health:** Workers do not have to go to work, reducing health risks.
- **Industrial relations:** In theory employers retain their labour force, however workers may no longer wish to maintain their employment with the enterprise.

b) For workers:

- **Finance:** No income while on unpaid leave.
- **Employment:** Jobs are secure.
- **Health:** Safer for themselves and family members.
- **Social insurance:** Not covered by Social and Health Insurance (for sickness or maternity) if their total unpaid leave is more than 14 days in a month. However, workers can negotiate with their employer to combine unpaid leave with work, work stoppage leave or annual leave so that their total unpaid leave days in a month are less than 14 days, in which case workers are eligible for social insurance (with entitlements related to sickness and maternity leave).

4.5. TEMPORARY SUSPENSION OF LABOR CONTRACTS

4.5.1. Applying conditions:

- Have to reach mutual agreement between 2 parties.

4.5.2. Legal basis:

- Article 32, 33 Labor Code 2012
- Clause 7 Article 42 Decision 595/2017/QĐ-BHXH
- Decree 95/2013/ND-CP; Decree 88/2015/NĐ-CP; replaced by Decree 28/2020/ND-CP effective from Apr.15, 2020

4.5.3. Implementation procedure:

- Employers discuss and reach a mutual agreement with every employee for implementation.

4.5.4. Analysis:

a) For employers:

- **Finance:** Employers do not have to pay workers salary or social insurance. If employers fail to reach a mutual agreement with workers but still implement this, they shall be subject to a penalty due to not paying work stoppage following Clause 3, Article 13, Decree 95/2013/ND-CP, adjusted by Clause 10, Article 1 Decree 88/2015/ND-CP (replaced by Article 16 Decree 28/2020/ND-CP effective from Apr. 15, 2020)
- **Production:** Addresses the need to extend production plan and does not have a time limit.
- **Health:** Workers do not have to go to work, reducing health risks.
- **Industrial relations:** In theory employers retain their labour force, however workers may no longer wish to maintain their employment with the enterprise.

b) For workers:

- **Finance:** No income during suspension.
- **Employment:** Jobs are secure.
- **Health:** Safer for themselves and family members.
- **Social insurance:** Not entitled to social or health insurance (or entitlements related to sickness and maternity leave) if the total suspended time and unpaid leave are 14 days or more in a month.