

Fulfillment of Obligation to Pay Wages in Enterprises According to Vietnamese Law

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Abstract

Labor relations between enterprises and individuals are expressed in the legal form of labor contracts signed and implemented by the parties. In which, wage is a basic term, representing the value of labor, enterprises must clearly state in contracts and pay employees based on the effort they have put in. This not only ensures labor rights but also contributes to the development of the labor market, bringing business efficiency to enterprises. Any violation must be sanctioned in the form of late payment interest on late wages, except in cases where the enterprises encounter certain difficulties, as permitted by law. The research in this article clarifies wages and the obligation to pay wages of enterprises under Vietnamese law and proposes solutions to overcome the limitations arising from practice.

Keywords: wage, labor, wage payment, labor obligations.

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1. INTRODUCTION

International trends, trade liberalization, capital investment transfer, and labor transfer at home and abroad, pose the need to use diverse labor resources in Vietnam, with the ability to pay wages, and reasonable welfare regimes - important factors to help enterprises' production and business activities achieve high efficiency.

These are also challenges for lawmakers to issue appropriate and fair wage regulations, and ensure the implementation of this obligation for serious enterprises (as employers), contributing to protecting the legitimate rights and interests of employees, building an effective labor market in Vietnam, attracting the attention of investors, who are the regular users of the labor force. In this wage relationship, lawmakers guarantee the right to freely negotiate and agree on wage levels, wage payment regimes, and sanctions, which serve as a basis for resolving wage disputes when they occur.

The State does not interfere in these agreements between enterprises and employees. In addition, the regulations under Vietnamese law also set out strict

sanctions for violating enterprises through sanctions, by international practices and laws.

2. STUDY CONTENT

2.1. The Nature of Wages and the Obligation to Pay Wages in Enterprises

2.1.1. The Nature of Wages in Enterprise Labor Relations

Firstly: Theory

The classic theories on wages include the theory of wage payment based on the value of labor (W. Petty); on factors governing wages, wages are not lower than the minimum cost of labor (A. Smith and Ricardo); efficient wages, [¹] high wages increase labor productivity, etc. The above scientific views on wages in the field of economics - labor are strongly accepted by lawmakers, expressed through international conventions: Convention No. 95 (1949) on protection of wages; Convention No. 100 (1951) on equal pay between male and female employees for a job of equal value; Convention No. 131 (1970) setting minimum wages, especially for developing countries, etc., adopted by the General Conference of the International Labour

¹ According to Wikipedia, *Efficiency Wage Theory*, https://vi.wikipedia.org/wiki/L%C3%BD_thuy%E1%B

A%Bft_t%E1%BB%81n_c%C3%B4ng_hi%E1%BB%87u_qu%E1%BA%A3, accessed on 10/9/2025

Organisation (ILO). [2] These legal foundations are the "compass" for building and forming national laws on wages, and labor regimes and benefits according to international standards.

Secondly: Scientific arguments

- (i) The wage factor is generally approached by (interdisciplinary economic-labor) studies, and is considered as "the labor price" [3] (tentatively understood in the sense that: labor is a type of commodity, and the value is calculated according to the needs of the labor market), and at the same time serves as a measure for implementing social insurance, health insurance, unemployment benefits, etc. Among those labor values, the issue of minimum wage must continue to be maintained and strengthened in the law to solve the expenses and minimum living standards of employees. The State, as an intermediary regulating labor resources and macro-management, is responsible for supporting the development of labor resources, bringing about fairness in economic and social benefits for the subjects. [4]
- (ii) The State's intervention in these relationships requires a reasonable wage level to protect employees in all fields and professions, avoiding the situation where wages, the main source of income, are much lower than other sources of income, leading to the situation where businesses "circumvent the law", pushing the actual wages that employees are entitled to out of the signed labor contract. This is a difficult task because, to a certain extent, the State must be responsible for balancing the interests of all parties, not for the benefit of employees causing difficulties and damage to businesses or vice versa. Therefore, the agreement on wages and payment terms, and sanctions for violations of wage payment obligations are still practical solutions so that the value of labor is paid correctly and promptly, enhancing corporate responsibility, and protecting the rights of most employees when disputes arise before the law.

2.1.2. Adjustment of Wage Payment Obligations of Enterprises

Firstly: Labor relations, the wage that employees receive along with the obligations under the labor contract voluntarily established by the parties, binding the payment responsibility of enterprises in a flexible direction regarding time, and payment method, ... This is also an important factor, formed based on the right to freedom of labor relations, according to the principle of self-agreement that is not contrary to the law, as well as not contrary to collective agreements approved by State labor management agencies.

Secondly: The obligation to pay wages is present through the regulations regulating this issue, in addition to the agreements, this basic obligation is also legalized, to ensure optimal benefits for employees, and limit conflicts and disputes that affect the business environment of enterprises. Therefore, the labor contract must fully reflect the wages according to the effort, capacity, and labor efficiency in a complete way, and at the same time must also show sanctions and punishments for the act of appropriating wages, pushing employees into difficult circumstances, due to not having a timely source of income, solving urgent needs in their lives from the wages they should have received on time.

Thirdly: In addition to contractual obligations, employees must also have the responsibility to accompany and support businesses facing objective difficulties due to business losses due to natural disasters, or force majeure reasons, and not being able to balance financial resources to pay wages on time; at the same time, employees themselves are also guaranteed full and timely wage payment by regulations binding the responsibility of the implementation to the business, with strict sanctions for businesses that intentionally delay (appropriate) wages; actively abscond, dissolve without resolving labor rights.

In summary, In a working environment following the modern development trend, employees must receive the value of wages and regimes, benefits corresponding to what they have spent. It is also the legitimate right of employees, the majority of the disadvantaged, recognized and protected by the laws of Vietnam and other countries in the world with specific enforcement measures. Cases of enterprises intentionally

² English name: International Labour Organisation (ILO), founded in 1919, headquartered in Geneva, Switzerland

³ See: Karl Marx, *By what are wages determined?* at: Marxists.org/archive/marx/works/1847/wage-labour/ch04.htm, accessed on 01/10/2025

⁴ Regulations under the Convention 131 on Minimum Wage Fixing for Developing Countries, 3 June 1970 and foreign legislation (specifically: in China, the regulation of wages and minimum wages is implemented according to Article 46 of the Labor Law of China (1994); in

France, in 2013, the gross monthly minimum wage in France was 1,430.22 euros, compared to 1,589.47 euros in 2021. Therefore, the average annual wage in France has increased since the early 2000s despite the financial crisis of 2008. However, in a survey from 2019, most French respondents stated that they were not satisfied with their current wages. See: Statista, Gross minimum hourly wage in France from 2005 to 2024, in euros <https://www.statista.com/statistics/460606/minimum-wage-france/>, accessed on 03/19/2025

violating the obligation to pay wages must be sanctioned with legally binding measures to protect the rights of employees and maintain stable labor relations.

2.2. Current Status of Laws Regulating the Obligation to Pay Wages in Enterprises

2.2.1. Wages according to the Current Labor Code of Vietnam

The provisions on wages under Article 90 of the Labor Code of Vietnam 2019 are as follows: “1. *Wages are the amount of money that an employer pays to an employee according to an agreement to perform work, including wages according to work or position, wage allowances, and other supplements...* 3. *Employers must ensure equal wages, regardless of gender, for employees doing work of equal value.*”

Article 5 of the International Labour Organization Convention No. 95 on Protection of Wages provides that: “*Wages must be paid directly to the worker, unless national laws or regulations, a collective agreement or an arbitration award provide otherwise, or the worker has agreed to another method of payment.*” [5]

According to the citation, the obligation to pay wages is mandatory for enterprises to perform. This comes from the basic principles of contractual relations and the characteristics of labor relations. Accordingly, the parties voluntarily agree to perform effectively and are bound to perform as prescribed by law (stipulated in Clause 2, Article 2; Clause 2, Article 3 of the Civil Code of Vietnam 2015; Article 1103 of the French Civil Code), especially in labor relations, employees must use their labor and must receive appropriate wages.

In general, contracts and court judgments when resolving labor disputes in practice all acknowledge this issue in the trial and dispute resolution activities at the Court. For example, Judgment No. 04/2024/LD-PT dated May 28, 2024, of the People's Court of Tay Ninh Province resolving the labor contract dispute between Ms. Le Thi H and TY Joint Stock Company stated as follows: “TY Company is required to pay Ms. Le Thi H the amount of VND 392,574,000 of wage for working and non-working days.” The Court's judgment also declares compulsory enforcement of the judgment if TY Company is slow to enforce the judgment.

Current regulations on wages under Vietnamese law, although allowing parties to freely negotiate, still maintain a minimum wage to assess capacity and more specifically bind the responsibility of enterprises towards employees:

This is the lowest wage paid to employees who do the simplest work, under normal working conditions with the minimum living needs of employees and their families. The minimum wage is based on the gap in living standards, the ability to pay wages, and the competitiveness of enterprises. According to Vietnamese law, the Government announces regional minimum wages based on the recommendations of the National Wage Council according to the roadmap.

Article 90 of the Labor Code of Vietnam 2019 states as follows: “2. *Wage according to job or title must not be lower than minimum wage.*”. Article 4 of the ILO Minimum Wage Convention also states that: “1. *Each Member that ratifies this Convention shall take the necessary measures, through a system of monitoring and enforcement, to ensure that employers and employees concerned are informed of the prevailing minimum wage rates and that wages are not paid below those rates in applicable cases.* 2. *Employees who are covered by the minimum wage rates and who are paid below those rates shall have the right to recover the amount of underpayment through judicial or other lawful proceedings, subject to time limits determined by national laws or regulations.*” [6]

Resolution No. 27-NQ/TW of the 7th Conference of the Party Central Committee (12th tenure) dated May 21, 2018, on wage reform stipulates “2.1. *For the business sector, fully implement 2 contents: (1) Adjust the regional minimum wage (monthly and hourly) according to the provisions of the Labor Code (increase 6% compared to 2023), applied from July 1, 2024*”. Article 3 of Decree 74/2024/ND-CP of the Government issued on June 30, 2024, stipulates the monthly minimum wages according to 4 regions applied from July 1, 2024, as follows: Region 1 is VND 4,960,000/month, region 2 is VND 4,410,000/month, region 3 is VND 3,860,000/month, region 4 is VND 3,450,000/month.

In summary: According to these regulations, enterprises are not allowed to pay wages lower than the minimum wage set by law, to ensure the life and labor regeneration of employees. If violated, employees are allowed to sue to “reclaim the underpaid amount” as prescribed by law, cited by the author. With the above regulations on the obligation to pay wages, it can be seen that lawmakers both respect the agreed wages and set the minimum wage to protect employees and ensure the flexibility of wages through wage allowances proactively implemented by enterprises.

Experience under foreign law shows that: In France and Taiwan, wages include benefits such as

⁵ ILO, Protection of Wages Convention, 1949 (No. 95) https://webapps.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312240, access on 1/5/2025

⁶ ILO, Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026, accessed on 01/7/2024

bonuses [7]. Meanwhile, in Vietnam, the law only recognizes wages as “fixed wages”, allowances and supplements must be agreed upon and recorded in the labor contract to be valid. However, labor contracts are inherently contracts drafted by businesses, they easily eliminate these contents... Benefits related to wages: labor productivity and work efficiency can only be enjoyed when employees work, these benefits are not recognized by law when protected before the law, even when the labor contract is terminated illegally due to the fault of the business owner.

2.2.2. Obligation to Pay Wages in Enterprises - *Obligations under Contractual Commitments and Legal Regulations*

Article 94 of the Labor Code of Vietnam 2019 stipulates the principles of wage payment as follows: “1. *The employer must pay wages directly, fully, and on time to the employee. In case the employee cannot receive wages directly, the employer may pay wages to a person legally authorized by the employee.* 2. *The employer must not restrict or interfere with the employee's right to decide how to spend his or her wages; must not force the employee to spend his or her wages on the purchase of goods or services of the employer or another entity designated by the employer.*”

Current Vietnamese law protects the rights of employees due to late payment of wages by the following two measures:

- (1) Clause 4, Article 97 of the Labor Code of Vietnam 2019, if due to force majeure, the employer has taken all measures to remedy the situation but cannot pay the wage on time, the delay must not exceed 30 days; if the wage is paid late for 15 days or more, the employer must compensate the employee with an amount at least equal to the interest on the late payment calculated at the interest rate for 1-month term deposits announced by the bank where the employer opens the wage payment account for the employee at the time of wage payment;
- (2) The regulation also prioritizes wage payment and settlement of labor benefits when the enterprise falls into bankruptcy (Clause 1, Article 54 of the Bankruptcy Law 2014).

With the above regulations, according to the author of the article, the nature of the labor contract relationship has not been fully assessed. The employee, as the weaker party, must normally provide his labor before the enterprise performs its corresponding obligations - the obligation to pay wages. The enterprise cannot use the excuse of delaying the performance of this obligation. With the nature of the bilateral contract

relationship (giving rise to mutual obligations between the parties), the employee must work hard to receive the corresponding wage - the obligation to pay wages must be performed.

The obligation to delay payment of wages must be similar to the benefits in other civil, business, and commercial transactions, and of course, must be subject to sanctions for breach of contractual payment obligations. With the provisions of the current labor law allowing late payment when encountering objective reasons, sharing difficulties with businesses is reasonable, but the provisions on late payment interest rates are not consistent with the form of sanctions for breach of contract. According to current regulations, asset loan contracts have an agreement allowing interest rates not to exceed 20%/year (Article 468 of the Civil Code 2015); the interest rate for late payment obligations in commerce is equal to the average overdue lending interest rate of commercial banks, fluctuating around 15-16.5%/year (According to Article 306 of the 2005 Commercial Law); Meanwhile, the late payment labor sector is subject to the mobilization interest rate, currently about 5.5%/year, which is inconsistent with other sectors, creating opportunities for employers to take advantage of this regulation to delay wage payment for personal gain.

However, when implemented, the regulation on negotiated wages is not effective, losing the flexibility of the right to freedom of labor according to market demand. In other words, this regulation does not reflect the actual level of wages and quality and productivity of labor. By setting the minimum wage and basic wage, enterprises often record in labor contracts an unrealistic basic wage, proactively pushing significant labor values into bonuses and productivity increase payments to avoid the law, significantly reducing obligations to pay social insurance, health insurance, and unemployment insurance....

For example: Judgment No. 01/2019/LĐ-ST dated May 20, 2019, of the People's Court of Bac Tan Uyen District, Binh Duong Province (Vietnam) decided on the wage dispute between Mr. Nguyen Minh T and VC Limited Liability Company. Accordingly, the wage and labor regimes and benefits were VND 40,000,000/month, but when the trial was held, the court only accepted the wage and contractual allowances of VND 4,512,500/month. The performance, technical and diligence bonuses of VND 26,526,400/month were not accepted. [8]

On the other hand, with the nature of being the creator, contributing to the formation and value of goods,

⁷ See: Wikipedia, Wage, vi.wikipedia.org/wiki/Tien-luong, accessed on 15/9/2025

⁸ See: Supreme People's Court (VN), Announcement of judgment,

<http://congboanan.toaan.gov.vn/2ta329031t1cvn/chi-tiet-ban-an>, accessed on 7/10/2025

the priority of resolving the rights of employees has not been set by lawmakers, even though the goods are formed from the labor force in the enterprise. According to the author, it is necessary to analyze the rights of employees to goods contributed by their labor that are mortgaged or pledged to secure the debt repayment obligations of the enterprise with the goods of the enterprise that have been transferred or sold on the market. The provisions of current Vietnamese civil law (according to the Civil Code 2015) have expanded and strengthened the rights of priority in handling secured assets, as well as recognized the rights of the bona fide transacting party, but the rights of contributing labor to goods with secured transactions are left open. Experience to be learned, this provision is mentioned in French civil law, according to which employees still have the general priority right to movable property if “*wage has not been paid for the past year and the year of work under the labor contract*” (stipulated in Article 63 of the Decree dated July 29, 1939). [9]

- Participation and Intervention of Unions to Protect Employees' Rights

The role of trade unions, labor federations, local authorities, and judicial agencies (when there are disputes) to a certain extent is still not really effective in resolving the rights of employees and implementing welfare regimes. Regulations still recognize that labor relations are resolved by the parties themselves, and the participation of the government to ensure common interests is very limited. This leads to untimely interventions, resulting in wages and labor regimes being appropriated, and strikes occurring, seriously in export processing zones and industrial zones with a large number of employees.

Solutions to postpone the exit of business owners have been proposed, but even if there is a response, it is not really effective. Because then the business owner is hired to manage, the business proactively changes the legal representative. Looking deeper, these solutions are not optimal because they hinder the freedom of individuals.

State agencies have set regulations on the use of accounts for tax declaration and payment in enterprises, and regulations on the use of separate accounts, which are determined throughout the operation process, to control financial resources. However, the effectiveness of these regulations is still limited. There is still no proactive, specific mechanism to handle, enforce the

seizure of the balance in the account or collect capital contribution obligations of enterprises to fully perform the obligations regarding wages and benefits for employees.

The judicial mechanism for resolving disputes over wages and labor regimes is still lacking in flexibility and initiative. Filing a lawsuit in court to require businesses to pay social insurance, health insurance, etc. is unnecessary because this is a natural obligation that businesses must perform, not a civil transaction that gives rise to disputes¹⁰; Labor rights protection organizations at the grassroots level have not yet fully promoted their roles and functions, for many reasons. Among them, the decisions of these agencies have not yet had meaning and binding value on the responsibilities of the parties according to current regulations.

2.3. Solutions to Overcome Shortcomings

With the analysis and assessment of the existing problems in the regulations, as well as the practical implementation of the law on wages, the author proposes some solutions and recommendations as follows:

Firstly, with significant contributions to creating products and goods, and supplying the economy, labor benefits have not yet been given priority by civil and labor lawmakers. That is the factor that pushes business risks for employees to bear when business owners abscond or are declared bankrupt. Scattered in regulations, there is an affirmation of the right to priority in paying labor wages, but the right to priority in terms of labor contributions to business products and goods has not yet been mentioned by law, which is a potential risk - employees “lose” their wages, because there is no binding responsibility towards the employer as well as towards the banks that guarantee the assets of the business. Establishing the right to priority in paying wages based on the products and goods they create, even if those assets are pledged or mortgaged, should be realized in law, overcoming the situation of businesses absconding, pledging assets to banks, and not paying wages to employees.

Secondly, the obligation to pay wages “on time and in full” has been legalized, but it needs to be further strengthened because the mechanism for implementing this obligation has not been effective in the past. Even the regulation on sanctions for late payment of wages is not similar to sanctions for late payment in other areas. In terms of contractual relations, employees are

⁹ Vietnamese French Law House (1998), *Civil Code of the French Republic*, National Political Publishing House, p. 524

¹⁰ According to Minister Dao Ngoc Dung, at the meeting with the National Assembly's Committee on Social Affairs on the afternoon of October 4, 2019, sharing experiences in China, in cases where businesses do not pay social insurance funds, health insurance, etc., the

competent authorities will coordinate with the tax authorities to collect and forcibly freeze the business accounts, and it is not necessary to file a lawsuit in court. Reference: Le Kien (2019), *Learn from China to freeze assets of businesses that do not pay social insurance?*, see: <https://tuoitre.vn/hoc-trung-quoc-phong-toa-tai-san-doanh-nghiep-khong-dong-bao-hiem-xa-hoi-20191004201920679.htm>, accessed on 2/10/2025

secondary parties, protected by the state promptly by an effective mechanism for enforcing the obligation to pay wages through prompt intervention from labor protection organizations. The measure of sanctioning late payment of wages only plays a secondary role, but when applied, it must be truly equal to other civil and economic relations - this sanction must correspond to the average overdue loan interest rate (150% of the in-term loan interest rate) of new banks to be appropriate.

Thirdly, taking advantage of the freedom of capital movement, many businesses do business in a dishonest manner, embezzling wages, and pushing employees into difficult and miserable situations. Lawmakers need to establish a mechanism to allow proactive enforcement of the recovery of labor regimes (without going through the courts) like other countries; the resolution of wage disputes must be truly streamlined; the responsibility to prove payments for employers must be increased, avoiding the situation of “circumventing the law”, recording wages in labor contracts that are not by the agreement, causing disadvantages to employees.

3. CONCLUSION

In the relationship between the parties: the state, enterprises, and employees, the issue of wages must maintain harmony, and the interests of all parties, in which the rights of employees to receive wages in full and on time are still the top priority. The above research practice shows that compliance with the obligation to pay wages to employees is still entangled in Vietnamese law. The above recommendations, if implemented, will have positive impacts as predicted, which are not only contractual rights but also opportunities, factors to maintain and liberate labor in the conditions of Vietnam's economy is deeply integrating into the international economy.

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