
Completing the Law on State Management of Foreign Workers in Vietnam

Hoang Le Buu
Thu Dau Mot University, Vietnam

Abstract. Opening up to international integration is a trend among nations in the contemporary global context. This results in jobs being transferred between nations, which has a significant impact on social and economic development. It also makes the labor market extremely competitive and puts management businesses under pressure. Effective and efficient state policies regarding foreign workers are necessary. In Vietnam, the Party and State have taken note of the state administration of foreign laborers through a framework of legislative laws. This article analyzes current laws pertaining to state management of foreign employees and suggests some actions to encourage legislative improvement.

Key words: labor, foreign, foreign workers, state management

Introduction

In an era of global economic integration, firms are free to hire people and employees are free to look for work in a variety of settings, which results in unemployment. Look for places that offer good career prospects on a proactive basis. The global labor market is a new market that has emerged as a result of the growth of the global economy. Every nation has the ability to both accept and send its own foreign employees to work internationally.

Through an array of legal texts, the Party and State of Vietnam have given state control of foreign labor considerable attention. The legal system for foreigners has been defined by everyone's rights and obligations, particularly in the 2013 Constitution. Previously restricted to Vietnamese citizens alone, some rights are now available to foreigners as well. After been developed and integrated for more than 30 years, this regulation has showed progress. Notwithstanding the successes attained, there are still certain issues with the foreigner management law that have an impact on foreign investment capital. It is imperative that Vietnam's legislation on the management of foreign workers be perfected immediately.

Overview of Foreign Workers

Approaching theoretical issues about the concept of foreign workers, we must clarify important signs to identify the subject of foreign workers as the "foreign" element. Determining whether a person is a foreigner is very important because this determination is directly related to that person's legal rights and obligations, and especially in the field of international labor, is labor mobility. Each country can send its people abroad to work and vice versa. Foreign workers who come to work in a country may be called migrant workers (Department of Legal Affairs, Ministry of Labor, War Invalids and Social Affairs, 2010).

The ILO ratified the Convention on the Protection of Migrant Workers in 1939. The Convention No. 97 on Migrant Workers was revised by the ILO in 1949, and Convention No. 143 on Migrants in Abusive Environments and the Promotion of Equality of Opportunity and Treatment with Migrant Workers was created in 1975.

According to the ILO's view in article 11 of convention 143, *"Migrant worker is the concept of a person who migrates from one country to another to work for his or her own benefit and includes any person who has been regularly admitted to being a migrant worker"* (Nga, 2009).

According to ICRMW, ^{*}a document considered the declaration of human rights of migrant workers worldwide was adopted by the United Nations on December 18, 1990 under resolution A/RES/45/158. *This document sets out "The term "migrant worker" refers to a person who has been, is doing, or will be doing a paid job in a country of which he or she is not a citizen".* This Convention also stipulates that migrant workers include *"documented migrant workers"* who are legal migrant workers who are allowed to enter, stay and participate in a job in the host country and *"Undocumented migrant workers"* are illegal or clandestine migrant workers who work in the host country without requirements such as a residence permit or labor permit.

In Singapore, the Foreign Labor Employment Law explains two terms about foreign workers as follows:

"Foreign worker" means a foreign person, other than the self-employed, who seeks or is invited to work in Singapore or such other person or group of persons as the Minister may prescribe by publication in the Official Gazette. Where *"Foreigner"* means a person who is not a citizen or permanent resident of Singapore.

"Self-employed foreigner" means a foreigner who is not employed under a contract of service, engaged in a trade, profession or profession or otherwise engaged in any for-profit activity in Singapore (Creighton & Stewart, 2005).

While the 2019 Labor Code in Vietnam does not presently provide a precise definition for foreign workers, there are other legal documents that make reference to foreign workers in Vietnam. The 2008 Law on Nationality states that "Foreigners are people who do not have Vietnamese nationality" in Clause 1, Article 2. The requirements for foreign nationals to work as foreign workers in Vietnam are outlined in Article 151 of the Labor Code 2019.

It can be seen that the similarities between the concepts of foreign workers in international treaties and national laws are based on three criteria to distinguish domestic workers and foreign workers: (1) Nationality, (2) Ability to move, (3) Determining employee status in labor relations.

Vietnamese Legal Regulations on State Management of Foreign Workers in Vietnam

Characteristics of State Management of Foreign Workers in Vietnam

Management actions carried out by capable institutions within the state apparatus are referred to as state management of labor in general or state management of foreign labor in particular. Given that labor is an area that combines social and economic aspects, it is evident that state management of foreign labor is a particular activity of state management. The employment of foreign workers is a unique issue that requires coordinated supervision by several capable state authorities. In arranging socio-economic activities, including labor management, the state has the highest obligation as the subject possessing general power in society. The establishment and operation of labor relations are governed by the laws that the state promulgates. In addition, the state acts as a mediator in the resolution of disputes and inconsistencies that arise from labor relations. The subjects of state administration of foreign labor include foreign laborers, businesses, groups and individuals that hire workers directly, and the management committees of industrial parks that house foreign labor away from the workplace.

Because foreign workers have unique characteristics different from domestic workers, state management of foreign workers has the following unique characteristics:

^{*}International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families.

First, foreign labor management is directly related to the protection of human rights. The state needs to ensure equal treatment of foreign workers as domestic workers. The state management process needs to ensure basic human rights for foreign workers related to working conditions and employment conditions such as employment, wages, labor safety, and employee safety.

Second, foreign labor management is deeply international. With growing international integration and participation in many new generation free trade agreements, it has facilitated the opening of the labor market, leading to an increase in the number of foreign workers entering Vietnam. Work is increasing day by day. This will entail stricter commitments in the labor sector that we need to comply with, and complexity when resolving arising disputes is inevitable. The state management process for foreign workers needs to develop policies to contribute to strengthening international cooperation between countries, promoting investment and expanding markets for goods and services between countries.

Third, managing foreign workers working in Vietnam is a process that requires close coordination between many industries, localities and subjects in labor relations. Foreign workers eligible to work in Vietnam can work, reside, travel and carry out transactions in all localities throughout the country and they can participate in many labor relations. There are many issues that are raised and need to be strictly managed such as: entry, exit, residence, work permits, working conditions and employment, education, health care, public health, social insurance, security, order. Therefore, state management agencies for foreign workers need to coordinate with each other to carry out appropriate functions, tasks, and powers with each specific characteristic of state management activities towards foreign workers.

Content of State Management of Foreign Workers in Vietnam

The content of state management of foreign workers includes tasks and tasks that the state must perform according to its functions, expressed in the following contents:

Firstly, about the subject of foreign worker management. According to the law, state management agencies for foreign workers in Vietnam include: Government; Ministry of Labor, War Invalids and Social Affairs; Ministries and ministerial-level agencies implement and coordinate with the Ministry of Labor, War Invalids and Social Affairs; People's Committees at all levels.

Second, about the conditions for recruiting foreign workers. Foreign workers who want to work in Vietnam need to meet the conditions specifically stipulated in Article 151 of the 2019 Labor Code and Clause 1, Article 2 of Decree 152/2020/ND-CP, including regulations on related issues. Topics: behavioral capacity, health, professional qualifications, criminal record (no criminal record, no criminal record, no criminal prosecution or currently serving a criminal penalty), work permit approved by the receiving country.

Third, about measures to manage foreign workers. Currently, the most popular method of managing foreign workers is through work permits. Work permits are issued to foreign workers for a certain period of time, based on the job, tied to a specific employer. Work permits are considered a condition for foreign workers to work and are also the basis for the state to manage foreign workers.

Fourth, on handling violations in foreign labor management. Because of the complex and diverse nature of foreign labor management, central and local state management agencies need to coordinate to monitor and inspect the situation of foreign workers working in localities, and provide solutions when violations arise, to ensure that foreign workers comply with their obligations to the business and comply with the laws of the country where they work.

Current State of State Management of Foreign Workers in Vietnam

By the end of 2023, the total number of foreign workers in Vietnam is approximately 136,800 people. Of which: there are more than 10,000 workers not subject to work permits, nearly 126,000 workers subject to work permits (including 91,974 newly issued workers, 15,875 renewed workers, over 10,000 workers reissued, and more than 8,000 workers are completing work permit applications) (Hang, 2024).

In recent years, state management of foreign workers working in Vietnam has achieved some results as follows:

Firstly, the system of legal documents on the management of foreign workers in Vietnam has been and is being completed:

The 2012 Labor Code and documents guiding the implementation of the 2012 Labor Code have revealed a number of limitations related to the management of foreign workers working in Vietnam. Realizing those shortcomings, our State has issued the 2019 Labor Code, effective from January 1, 2021. This is a solid legal corridor for the management of workers in general and the management of foreign workers working in Vietnam in particular. Strengthen the responsibility of state management agencies regarding foreign workers, ensure that activities are in the spirit of respect for the law, and enhance the effectiveness and efficiency of state management activities. The 2019 Labor Code regulates the rights and obligations of foreign workers when working in Vietnam with contents such as wages, social insurance, conditions for foreign workers to work in Vietnam.

On August 15, 2023, the National Assembly of Vietnam issued Law No. 23/2023/QH15 amending and supplementing a number of articles of the Law on exit and entry of Vietnamese citizens and the Law on entry, exit, and transit, residence of foreigners in Vietnam. Regulations on entry, residence and work procedures for foreigners in Vietnam, adjusting issues related to issuance of work visas, residence duration, and regulations related to employment for foreigners. Foreigners working in Vietnam.

Decree No. 70/2023/ND-CP dated August 18, 2023 of the Government amending and supplementing a number of articles of Decree 152/2020/ND-CP regulating foreign workers working in Vietnam. Vietnam, recruiting and managing Vietnamese workers working for foreign organizations and individuals in Vietnam; regulations on the use of foreign workers; Abolish a number of regulations of Decree No. 35/2022/ND-CP dated May 28, 2022 of the Government related to foreign workers working in Vietnam.

Circular No. 22/2019/TT-BLDTBXH dated December 23, 2019 of the Ministry of Labor, War Invalids and Social Affairs promulgating regulations on the minimum amount of knowledge and capacity requirements that learners achieve after graduation, intermediate level, college level in technical fields and occupations. This Circular guides the issuance of work permits to foreigners in Vietnam and the necessary conditions and requirements for work. This has overcome the situation where employers, especially foreign contractors, take advantage of the lack of clear consensus on what constitutes highly qualified and specialized labor to recruit unskilled foreign workers, working in positions where Vietnamese workers should still meet the requirements.

Thus, the system of documents regulating the management of foreign workers in Vietnam has been increasingly improved, overcoming existing limitations and gradually strictly managing related activities, bringing foreigners to work in Vietnam, ensuring security, order, social safety and socio-economic development of Vietnam.

Second, through the 2019 Labor Code, our State has clarified the issue of signing labor contracts for foreign workers working in Vietnam. Something that the 2012 Labor Code previously did not have provisions for, leading to a number of difficulties and obstacles for judicial agencies and parties in resolving labor disputes with foreigners, typically Judgment No. 640/2018/LD-PT dated June 28, 2018 of the People's Court of Ho Chi Minh City. Thus,

Clause 2, Article 151, Labor Code 2019 stipulates that the term of labor contracts for foreign workers working in Vietnam must not exceed the term of the Work Permit. When using foreign workers to work in Vietnam, the two parties can agree to enter into multiple, fixed-term labor contracts. The conversion of indefinite-term labor contracts in Point c, Clause 2, Article 20, Labor Code 2019 will not apply to foreigners working in Vietnam. In addition, by stipulating that the term of labor contracts for foreigners working in Vietnam must not exceed the term of the Work Permit, the authors find this to be an effective solution for management, strictly use foreigners to work in positions that Vietnamese people can do, limit the indiscriminate use of foreign labor by businesses and contractors.

Third, on determining the subjects of labor contracts for foreign workers working in Vietnam. Previously, the 2012 Labor Code did not clearly stipulate this issue and created a gap in determining the subjects of labor contracts with foreign elements. To overcome this problem, Clause 1, Article 151 of the 2019 Labor Code clearly stipulates: foreign workers working in Vietnam are people with foreign nationality and must ensure the conditions according to the Ministry. This law stipulates. Thus, foreigners who want to work in Vietnam must first have foreign citizenship. Foreigners without citizenship are automatically not allowed to work in Vietnam. This ensures the rights and responsibilities of employers towards foreign workers working in Vietnam, enhancing the effectiveness and efficiency of management by state management agencies.

Besides the points achieved, there are still some limitations in state management of foreign workers working in Vietnam, as follows:

Firstly, violations in the management and issuance of work permits for foreigners. In recent years, since the 2019 Labor Code took effect, the management of foreign workers working in Vietnam has been tightened by competent authorities. However, in some localities there are still violations in the management and issuance of work permits for foreign workers. Typically in Da Nang city, according to Inspection Conclusion Notice No. 192/TB-TTTP dated March 23, 2022, the Department of Labor, War Invalids and Social Affairs, relevant organizations and individuals still have many shortcomings. Errors and violations in the management and issuance of work permits for foreign workers need to be rectified and have remedial measures taken in the near future.

Regarding the appraisal and inspection of information in the application documents for use by businesses and organizations, there are still some shortcomings; issued approval documents inconsistent in content.

The work permit application has shortcomings, such as: no original or certified copy of the labor contract; no certified copy of Passport; Information about the employee's working time at organizations abroad shown on the Certificate of Work Experience has been confirmed to coincide with the time the employee temporarily resides in Vietnam; Inaccurate name and business information; The labor contract signed before the time of issuance of the work permit does not comply with regulations.

In addition, a number of violations in returning work permits for foreign workers to units and businesses employing foreign workers at the Receiving and Returning Results Department of the Department of Labor - War Invalids and Society of Da Nang City; The preparation and updating of the Department's foreign worker monitoring book lacks information and is not in the correct form according to regulations of Circular No. 40/2016/TT-BLDTBXH and Article 30 of Decree 152/2020/ND-CP; The implementation of the Department's information and reporting regime still has many shortcomings, shortcomings and a number of other violations; Notably, there are 10 foreign work permit dossiers of 4 businesses showing signs of falsifying dossiers so that foreigners can enter or stay in Vietnam as experts but through physical inspection do not work in the country, organizations and businesses. Based on the inspection conclusions, on February 21, 2022, the City Inspectorate issued Official Dispatch No.

05/TTTP-VP on transferring case files with criminal signs to the Investigation Agency and City Police. Da Nang City to continue investigating and clarifying 10 foreign work permit applications at 4 businesses and 2 applications approving the need to use foreign workers with signs of crime according to regulations (Minh, 2022).

In Binh Duong, from October 9 to October 13, 2023, the People's Court of Binh Duong Province tried the case of falsifying documents, bribery, accepting bribes and abuse of position in granting work permits to people. Illegal foreign shipments occurred in Binh Duong and Binh Phuoc. The group of about 10 people are freelance workers and business directors who falsified documents and then bribed a number of former officials of the Department of Labor, War Invalids and Social Affairs of Binh Duong province, former officials of the Board of Management of Binh Duong and Binh Phuoc industrial zones to issue 2,800 work permits to foreigners illegally from 2019-2022 (Trong, 2023).

Second, the delay in granting work permits to foreign workers working in Vietnam affects the production and business activities of many businesses. Specifically, many businesses in Binh Duong province have reported that the authorities of this province are continuously late in issuing permits for foreign workers, even though businesses have petitioned many times, but the situation is still delayed. This situation has not yet been completely resolved. Explaining the reason, Mr. Pham Van Tuyen, Deputy Director of the Department of Labor, War Invalids and Social Affairs of Binh Duong province said: "It is due to some difficulties in personnel, as well as problems in the process of implementing the Decree. Decree 70/2023/ND-CP has resulted in the handling of administrative procedures regarding foreign workers being slow, at least 2 to 5 days behind regulations."; "The causes leading to delays in granting permits to foreign workers, such as Decree No. 152/2020/ND-CP dated December 30, 2020 of the Government, have many inadequate contents - especially regulations on Confirm work experience, time, application forms...; Applications for permits for foreign workers are increasing; Verifying the registration documents of businesses takes a lot of time, because it must be done carefully and learn from previous violations. In addition, many businesses have not researched carefully and fully and have not properly implemented the regulations on licensing for foreign workers according to Decree No. 152/2020, including suspected fake documents, so they have to send documents. Units and agencies verify and return documents. In addition, as the licensing application software has degraded, the process steps are no longer appropriate, leading to slow transfer processes; Coordination with departments and branches to share data, review, check and compare information about businesses is not synchronized, causing time delays; The expertise of staff advising on licensing for foreign workers is limited, and they have to do many things at the same time..." (Thao, 2024).

Third, the penalty level for foreign workers working in Vietnam and for foreign employers working in Vietnam according to Article 31, Decree No. 28/2020/ND-CP dated January 1/ 03/2020 of the Government regulating penalties for administrative violations in the fields of labor, social insurance, and sending Vietnamese workers to work abroad under contracts is still too low. Specifically:

- A fine of from 1,000,000 VND to 3,000,000 VND shall be imposed on the employer when violating one of the following acts:

- a) Failure to report or reporting incorrect content and time limit on the situation of using foreign workers at the request of state labor management agencies;

- b) Do not send a copy of the signed labor contract to the agency that issued the work permit in the case of foreign workers working under a labor contract.

- Fine from 15,000,000 VND to 25,000,000 VND for foreign workers working in Vietnam who commit one of the following acts:

- a) Working without a work permit or without a written confirmation that you are not eligible for a work permit according to the provisions of law;
- b) Using a work permit or document certifying that you are not subject to a work permit that has expired.

This penalty level is too low and not enough of a deterrent to limit violations as described above, leading to many loopholes in the management of foreigners working in Vietnam, requiring policies and solutions. Practical and highly feasible solution.

Proposing a Perfect Solution (Uncle Ngan)

By researching, evaluating and analyzing legal regulations as well as the current state of state management of foreign workers in Vietnam, the authors have proposed a number of solutions to continue improving foreign workers. Improve the law on using foreign workers as follows:

Firstly, continue to improve the system of legal documents regulating the issue of using foreign workers in Vietnam.

Currently, issues related to the use of foreign workers are regulated in the Labor Code 2019 and many other legal documents such as: Civil Code 2015; Law on entry, exit, transit, and residence of foreigners in Vietnam; Law on Occupational Safety and Health; Social Insurance Law; Health Insurance Law... These guiding documents are issued by many ministries and branches, so they can cause overlap and difficulty in application. Reality shows that the number of foreign workers working in Vietnam is increasing and complicated, therefore, according to the authors, it is necessary to research, develop and promulgate a separate law regulating the use of foreign workers, which clearly stipulates the content of legal adjustments to the reception, management, and assurance of policies and regimes for foreign workers, creating a solid legal basis for the management of foreign workers. State regulations on labor. Some countries in the world today (Canada, Australia, Korea, Singapore, ...) have also issued separate laws on foreign labor to strictly manage and effectively use this labor resource. Our state needs to learn and absorb more experiences from developed countries, and continue to research both theoretically and practically related to the entire legal system of state management of foreign labor outside to build and adjust to suit the actual situation.

Legal regulations need to be improved with more specific and clear content, however, administrative procedures should be simplified to ensure convenience for the management of state agencies, while avoiding causing difficulties. , troublesome for employees and employers during the implementation process, especially related to procedures and administrative authority in managing work permits of foreign workers. Most recently, the implementation of Decree 70/2023 of the Government amending and supplementing a number of articles of Decree 152/2020 regulating foreign workers working in Vietnam and recruitment and management of workers Vietnamese workers working for foreign organizations and individuals in Vietnam have had an outstanding change worth noting, which is the shortening of reporting time on the need to use foreign workers. Accordingly, at least 15 days in advance from the expected date of using foreign workers, employers (except contractors) are responsible for determining the need to use foreign workers for each position. jobs that Vietnamese workers cannot meet and report and explain to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs where the foreign worker is expected to work, instead of 30 days as prescribed in the old regulations (Government, 2023).

Second, promote inspection, examination and handling of violations in the process of organizing and perfecting the mechanism for handling violations. Strengthen coordination between the Police and labor management agencies at all levels to strictly manage the activities of foreign workers in Vietnam; ensure the issuance of visas in accordance with the purpose of

entry according to the provisions of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam; promptly detect cases of circumvention and violation of the law for personal gain, causing economic instability, social order and safety and national security.

In addition, it is necessary to increase the level of penalties for violations of using foreign workers to be enough of a deterrent; Supplementing administrative sanctions for agencies, organizations, businesses and individuals who violate legal regulations in case of declaring information to request visas for foreigners that is not in accordance with the purpose destination.

Third, continue to improve the state apparatus and improve the quality of officials and civil servants performing state management of foreign labor. This is considered a core part in implementing and enforcing the law, a bridge between the State and local governments, foreign workers and foreign employers. In recent times, the team of officials and civil servants performing state management of foreign workers has made many efforts to perform their functions and tasks, bringing many remarkable results. However, there are still many limitations that need to be re-evaluated and promptly resolved.

Finally, it is necessary to further promote propaganda and dissemination of legal regulations on using foreign workers to work in Vietnam. Develop appropriate information channels and document sources for employers and foreign workers in electronic form and translated into many foreign languages so that all parties can proactively learn information and comply with regulations. Because, in order to fully and accurately implement the provisions of the law, it is first necessary to correctly understand and raise the awareness of legal compliance for all organizations and individuals.

Conclusion

Opening up to international integration is an inevitable trend of most countries in the world. Creating great opportunities to promote the development of Vietnam's economy and society, including opening the labor market. This creates conditions for foreigners to work in Vietnam. According to annual statistics, there are more and more foreigners working in Vietnam, creating a requirement for strict management of this subject. Up to now, the system of legal documents of our State has gradually been completed, strictly and clearly regulating the contents and requirements for the management of foreigners working in Vietnam. However, although the 2019 Labor Code has taken effect, overcoming many shortcomings of the 2012 Labor Code, up to now, detailed guiding documents for implementing the 2019 Labor Code have not been issued in time. Furthermore, there are inadequacies and shortcomings in issuing work permits to foreigners, work permit issuance procedures are cumbersome, permit issuance time is slow, etc. This causes difficulties for agencies. State management of foreign workers in management; Effectiveness and effectiveness are not guaranteed; Subjects take advantage of loopholes to bring foreigners to work in Vietnam indiscriminately and massively; affecting national security, political order, and social safety. The authors realize that it is necessary to synchronously implement the solutions proposed by the authors to strictly manage foreign workers working in Vietnam; enhance the effectiveness and efficiency of state management activities; ensuring political security, social order and safety, contributing to Vietnam's socio-economic development in the coming time.

References

- Creighton, B. & Stewart, A. (2005). *Labor Law*. The Federation Press.
- Department of Legal Affairs, Ministry of Labor, War Invalids and Social Affairs (2010). *Some Conventions of the International Labor Organization*. Social Labor Publishing House.
- Government (2023). Clause 2 Article 1 Decree No. 70/2023/ND-CP Amending and Supplementing a Number of Articles of Decree No. 152/2020/ND-CP dated December 30, 2020 Government Regulations About Foreign Workers Working in Vietnam and Recruitment and Management of Vietnamese Workers Working for Foreign Organizations and Individuals in Vietnam.
- Hang, T. (2024). Foreign workers in Hanoi are mainly experts and managers. *VnEconomy electronic magazine*. Retrieved April 24, 2024, from <https://vneconomy.vn/lao-dong-nuoc-ngoai-tai-ha-noi-chu-yeu-la-chuyen-gia-nha-quan-ly.htm>
- Minh, N. (2022). Department of Labor, Invalids and Social Affairs of Da Nang City: Violations in management and issuance of work permits for foreign workers. *Inspection Magazine*. Retrieved April 25, 2024, from <https://thanhtvietnam.vn/thanh-tra/sai-pham -in-management-cap-phep-lao-dong-voi-people-lao-dong-country-ngoai-199867.html>
- Nga, P. T. T. (2009). *Labor contracts are invalid under current Vietnamese labor law*. Doctoral thesis in jurisprudence, Academy of Social Sciences.
- Thao, N. (2024). Enterprises suffer because of work permits. *Laborer Newspaper*. Retrieved April 25, 2024, from <https://nld.com.vn/cong-doan/doanh-nghiep-kho-vi-giay-phep-lao-dong-20231121194807712.htm>
- Trong, D. (2023). Filling loopholes in violation of work permits for foreigners in Binh Duong. *Labor Newspaper*. Retrieved April 25, 2024, from <https://laodong.vn/xa-hoi/tram-lo-hong-vi-pham-cap-phep-lao-dong-for-people-foreign-o-binh-duong-1254301.lldo>