

## LABOR LAW ON UNDERAGE WORKERS IN VIETNAM - REALITY AND SOLUTIONS

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**Abstract** - Underage workers can be considered as special subjects in labor legal relations compared to the legal capacity of other legal relations in the Vietnamese legal system. This is also completely consistent with international labor practices, especially since Vietnam officially joined the International Labor Organization in 1992, with the ratification of the conventions of this organization, relating to the field of labor in general, child labor or underage workers in particular, contributing significantly to the improvement of the legal basis for ensuring the rights and legitimate interests of underage workers. That is why Vietnam has gradually concretized its commitments on human rights in labor relations, contributing to the improvement of labor laws. However, the reality shows that the situation of violations of the rights of underage workers is still taking place, which leads to the rights and legitimate interests of underage workers not being guaranteed. In this article, the authors hope to contribute to improving the law to better protect the rights and interests of underage workers in Vietnam in the coming period.

**Keywords:** workers, underage workers, rights and benefits


### INTRODUCTION

The current labor law of our country has achieved certain achievements in regulating general regulations on labor relations, especially in labor relations for the group of underage workers, contributing greatly to the improvement of the system of legal regulations on care and protection for children in particular and minors in general in our country today. It can be seen that the regulations in Section 1, Chapter XI of the Labor Code 2019 as well as in the guiding documents for the implementation of this content on underage workers have concretized the exceptional regulation on the age of workers in the concept of workers. Accordingly, when considering the capacity for labor behavior, Clause 1, Article 143 of the Labor Code 2019 stipulates that "Underage workers are workers under 18 years old", meaning that in terms of labor capacity, underage workers include workers who may not be 13 years old yet, workers from 13 to under 15 years old, workers from 15 to under 18 years old will be allowed to participate in labor relations with certain jobs in the List of jobs for specific ages, in addition to the regulation on jobs in the List of restricted rights for underage workers due to certain effects on intelligence and health...

Based on the concepts of workers and regulations on underage workers, it can be simply understood that: "underage workers are people under 18 years old who participate in labor relations with suitable jobs as prescribed, work according to agreement, are paid and are under the management, direction and supervision of the employer." Based on the above concept and specific regulations on underage workers, some differences between underage workers and adult workers are clearly shown as follows:

Firstly, regarding the psychological and physiological characteristics of underage workers, which are considered to be incomplete, therefore, in order to ensure the development of health, intelligence and spirit of this subject in labor relations, it is necessary to specifically supplement the content of regulations on working conditions, working hours, rest hours, etc. Because underage workers are also a group of workers with specific characteristics for each age compared to adult workers, this is also necessary for the protection of underage workers in labor law and the sustainable development of human resources for the labor market in particular and for society in general.

Secondly, the capacity of the subject in the contract formation of underage workers is still incomplete. Therefore, when this subject participates in labor relations, the authority to form a contract belongs to their representative, guardian, including the need for the consent of the provincial labor professional agency for artistic, physical education, and sports activities but does not harm the physical, intellectual, mental, and personal development of workers under 13 years old.



Thirdly, the scope of work that underage workers are allowed to participate in labor relations is still very limited compared to adult workers, which is also one of the important principles set for underage workers, as well as employers to consider and ensure this principle when establishing labor relations, because underage workers are only allowed to do work that is suitable for their health to ensure comprehensive development in terms of physical strength, intelligence, and personality according to the regulations for specific ages for this subject.


### 1. VIETNAM LABOR LAW ON UNDERAGE WORKERS

The Labor Code 2019 and a series of guiding documents for the implementation of the regimes on labor in general and underage workers in particular have been gradually improved, in line with international commitments on human rights, on protection and care for children... in labor law, thereby creating a legal framework to help underage workers exercise their labor rights in a fair manner and be protected by law when participating in labor relations. However, besides the progress achieved, the current regulations on underage workers still exist certain limitations as follows:

Firstly, regarding the working age for underage workers, Vietnam has ratified the United Nations Convention on the Rights of the Child, as well as ratified two Conventions of the International Labour Organization (ILO) directly related to underage workers. However, the current labor law of Vietnam has regulations but is not clear about the working age of underage workers. Evidence for this content is that in Section 68, Appendix III issued with Circular No. 09/2020/TTBLĐTBXH dated November 12, 2020 of the Ministry of Labor - Invalids and Social Affairs, detailing and guiding the implementation of some articles of the Labor Code 2019 on underage workers, there are regulations on work must carry, carry, lift heavy objects exceeding the physical condition of underage workers from 180 months to under 216 months. This appendix only regulates underage workers who participate in carrying, carrying, and lifting a fixed heavy object, but does not regulate the jobs and industries that are prohibited from using underage workers. Besides, Section 35, Appendix III of Circular 09/2020/TT-BLĐTBXH is also not specific about the scope of work for underage workers, but only stipulates "Work on ships at sea, except for cases where they are 16 years old or older". Therefore, in Section 68 or Section 35, Appendix III of the aforementioned Circular only stops at generalization, and there is no enumeration showing the specificity in the regulation of jobs "must carry, carry, lift heavy objects exceeding the physical condition of underage workers from 180 months to under 216 months" for jobs and industries prohibited from using underage workers.

Secondly, regarding the authority to enter into a labor contract. According to the regulations at point c, clause 4 on the person entering into a labor contract on behalf of the employee in Article 18 of the Labor Code 2019: "A person under 15 years of age and the legal representative of that person". Thus, the regulation at point c, clause 4, Article 18 still has legal loopholes for the group of subjects under 15 years old. A specific case is raised: if a child from 1 year old when participating in filming, but there is no way to determine the will and desire of that subject when participating in the labor relationship if only with the consent of the legal representative. Therefore, it is necessary to have more specific regulations on the age at which they can participate in the labor relationship when that subject can express their will and the legal representative of that person.

Thirdly, regarding the rest time for underage workers, the current law only has separate regulations for the working hours of underage workers, the rest time for underage workers is still applied in the general regulations for adult workers. In fact, underage workers have different physical, intellectual and mental characteristics compared to adult workers. Therefore, applying a regime for adult workers to underage workers does not ensure the rights of this subject in the labor legal relationship. Fourthly, Vietnam still follows the model of unified labor inspection, that is, there is no specialized inspection for underage workers. The Labor - Invalids and Social Affairs Inspectorate is responsible for all matters related to labor, including underage labor. Besides, currently the sanction measures applied to employers of underage workers are mostly administrative measures, rarely applying criminal sanctions due to difficulties in determining criminal acts, it is very difficult to determine the act of cruel discrimination against the dependent person to be punished for the crime of Torturing others under Article 140 of the Penal Code 2015; or proving that children begging, peddling... doing dangerous, hard work to punish the employer of this labor force according to Article 296 of the Penal Code 2015 is a complicated matter. The Penal Code 2015 stipulates the prosecution of criminal liability for employers who use people under 16 years of age to do hard, dangerous, and harmful work, but underage workers according to the Labor Code 2019 are people under 18 years of age. So, the criminal law is still "clumsy" in the sanctions for employers who use workers from 16 to under 18 years old to do the above jobs.



Fifthly, in practice, it shows that the majority of underage labor comes from rural areas. Specifically, the press release on the population, labor and employment situation in the fourth quarter and 2023 shows that there were 52.5 million people, an increase of more than 113,500 people compared to the previous quarter and 401,900 people compared to the same period last year. Compared to the previous quarter, this number increased in both urban and rural areas, for men and women (respectively increasing by 46,400 people; 67,200 people; 77,500 people and 36,000 people) [General Statistics Office 2023]. From the above data, the practice of applying legal regulations to protect workers also raises the issue of the need to propagate and disseminate regulations on labor law and underage labor. This is because the level of access to and understanding of the law in general and the law on protection of underage workers in particular is still limited.

## 2. SOLUTIONS TO IMPROVE LABOR LAW FOR UNDERAGE WORKERS IN VIETNAM

Based on the limitations that the authors have analyzed previously, it can be seen that the regulations of labor law in Vietnam on underage workers need to be reviewed and oriented for improvement in the near future, in order to improve the feasibility and overall effectiveness in the legal system in general and labor law in particular. Therefore, the group of authors would like to propose some solutions to improve the legal regulations on underage workers as follows:

Firstly, the regulations on the age and work limits for underage workers in legal documents and sub-legal documents need to be specific and consistent in the regulations on age and work limits. Therefore, in the Appendix of Circular No. 09/2020/TTBLĐTBXH, the section on regulations on fixed heavy lifting work for underage workers but does not specify the jobs that are of a fixed heavy lifting nature, which also leads to the application of the right to use labor of employers and the workers themselves do not fully understand the issue of protecting themselves when entering into labor relations. Therefore, it is necessary to have a clearer and more specific regulation on fixed heavy lifting work, or to be more specific in the specific regulation of the weight of the object, the groups of jobs falling within the scope of this regulation, in order to ensure that both workers, employers and the labor law enforcement mechanism have a full legal basis to both fully exercise their legal rights and fully ensure their obligations, avoiding violations more effectively.

Secondly, regarding the authority to enter into labor contracts for workers under 15 years of age. The law needs to specify an age to ensure that the subject participating in the labor relationship is completely based on the voluntary will of that individual subject, avoiding the situation of underage workers being exploited for their labor when only needing the consent of the legal representative. Besides, the law needs to provide specific instructions on how to determine the will and awareness of the subject participating in the labor relationship when under 15, in order to ensure the rights and legitimate interests of both the worker and the employer when using this group of workers.

Thirdly, regarding the working hours and rest regime for underage workers, currently the law does not have any specific regulations governing this issue. It is recognized that underage workers and adult workers are completely different in terms of physical condition, spirit, intellectuality, and also in terms of needs and other physical factors. Therefore, when the law stipulates the same working hours and rest regime for these two groups of subjects, it is completely inappropriate and unscientific. It is necessary to adjust it accordingly, because the intellectual, physical and psychological qualities are different, so it is impossible to adjust and apply it in the same way. Therefore, in order to improve the law on the protection of underage workers, and at the same time consider the feasibility of applying labor law in practice, the current Labor Code needs to have separate regulations on the regime and working hours and rest regime for the group of underage workers. Besides, the inspection and handling of violations need to be carried out more closely and regularly, thereby minimizing the general violations in labor relations for underage workers.

Fourthly, it is necessary to supplement the legal basis for determining the violation of the law related to underage workers in order to apply criminal sanctions to crimes related to underage workers; to supplement criminal sanctions for employers who use workers from 16 to under 18 years of age to do hard work, dangerous to health and life. In addition, it is necessary to raise the level of administrative sanctions for the act of using child labor in order to increase the effectiveness of the prevention and elimination of the abuse of underage workers. At the same time, it is possible to consider additional sanctions such as suspending the business operation of the establishment that violates the illegal use of child labor.

Fifthly, regarding the solution to propagate, raise awareness and disseminate necessary knowledge for rural people, especially in areas with low literacy level about policies and laws on protecting underage

workers. At the same time, organize career guidance and orientation programs for underage workers. Thereby contributing to the formation of basic knowledge, necessary skills as well as a clear understanding of the rights and obligations of underage workers.

### CONCLUSION

Vietnam is the first country in Asia and the second country in the world to ratify the United Nations Convention on the Rights of the Child. Vietnam is also the country that ratified the two basic Conventions of the International Labor Organization - ILO directly related to the issue of child labor, namely Convention No. 138 of 1973 on the Minimum Age for Admission to Employment and Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. The policies on caring for and protecting children and child laborers are always of interest to the Government and directed by ministries, branches, and localities as a top priority. The development of strict regulations on the use of underage labor aims to prevent the exploitation, oppression, and exploitation of child labor; at the same time, ensure the rights of both underage workers and employers of underage workers, and help the state manage this group of workers well.

Regulations on underage workers have always been an issue that has been assessed as extremely important, needing to be interested in and gradually improved in labor law in the past in our country. These are also the specific contents of the right to children that have been set out in the Constitution, as well as ensuring Vietnam's commitments in international treaties in this field, based on the specific socio-economic conditions in our country. Therefore, the introduction of the Labor Code in 2019 and its implementing guidelines have inherited and achieved certain progress, meeting the timely need for necessary adjustments in the regulations on underage workers of the previous labor law, contributing to creating a tighter legal framework in labor relations.

However, through research, it shows that these regulations still have certain limitations such as regulations on specific rest hours for underage workers, the minimum wage for underage workers, popularizing regulations on underage workers for general subjects in labor relations... in order to ensure the right to work and use labor, but at the same time ensure the legality of this issue in practice, therefore, it is necessary to consider, care, and research to overcome the limitations in the near future. Within the scope of the article, the group of authors has proposed five solutions to contribute to the improvement of legal regulations on underage workers in Vietnam.

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