

Original Research Article

## The Law on Termination of Labor Contracts during the Period of Dangerous Epidemics: Actual Situation and Recommendations for Improvement

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**Abstract:** The law on labor contracts has made an important contribution to the development of labor relations in Vietnam in the direction of the market, gradually contributing to promoting the formation and healthy development of the labor market. The content of the current labor contract law has basically adjusted the movement of the labor market, ensuring the flexibility, freedom, and voluntariness of the parties in the labor relationship. However, the legal provisions on labor contracts in the Labor Code 2019 have not yet solved all the existing problems of the law on labor contracts. Labor relations are increasingly developing and constantly fluctuating, on the other hand, the labor market, as well as the perception of the subjects participating in the labor relations, have also changed a lot. This study focuses on analyzing the legal provisions on the implementation and termination of labor contracts during the period of dangerous epidemics, finding inadequacies, thereby making some recommendations for improvement law in this area.

**Keywords:** Law on termination of labor, contracts, period of dangerous epidemics, actual situation, recommendations for improvement.

## INTRODUCTION

The prolonged epidemic and disease situation has directly affected the production and business activities of enterprises and production and business establishments. Most businesses have tried to find solutions to adjust production and business plans and maintain operations production to ensure income for workers. However, due to the prolonged epidemic and disease, a number of enterprises, production, and business establishments have sources of raw materials produced from abroad (have not been able to import raw materials), have major export markets abroad, and their health is limited endured by businesses to overcome difficulties on the day of decline and had to cut production, downsizing production or production in moderation, production suspension has affected employment, income, and life of workers and their families. This has put great pressure on the labor market as job losses increase, demand for labor decreases, and put pressure on other social issues.

The law on labor contracts has made an important contribution to the development of labor relations in Vietnam in the direction of the market, gradually contributing to promoting the formation and healthy development of the labor market. The content of regulations of The current labor contract law has basically adjusted the movement of the labor market, ensuring the flexibility, freedom, and voluntariness of the parties in labor relations. However, the legal provisions on labor contracts in the Labor Code 2012 [1] have not yet solved all the existing problems of the law on labor contracts labor. Labor relations are increasingly developing and constantly fluctuating, on the other hand, the labor market, as well as the perception of the subjects participating in the labor relations, have also changed a lot.

However, according to the provisions of the Labor Code 2012 [1], the rights of the employer are stipulated in Article 38 "The right to unilaterally terminate the labor contract of the employer" in the following conditions certain user conditions.

The employee has the right to terminate the labor contract and in this case, the employer can apply the terms of the labor contract. And according to Clause 1, Article 156 of the Civil Code 2015 [2] to apply force majeure conditions.

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Therefore, in the event of a dangerous disease outbreak and businesses apply this to stop terminating labor contracts in accordance with the law, leading to unemployment.

Therefore, the analysis of the conditions of application of force majeure or in the event of dangerous epidemics occurring in the community affects the rights and obligations of employees and employers, etc. Because of the regulations, the law has not kept pace with the practical operation of the labor sector, in case of force majeure and the occurrence of dangerous epidemics affecting the performance of labor contracts between employers and employees. However, according to the provisions of labor law in general, on the rights and obligations of employers and employees in particular, there are still some shortcomings that make it difficult to apply in practice. The parties take advantage of the employer's unilateral termination of the labor contract with the condition that a dangerous epidemic occurs to create conditions for the enterprise to suspend the labor contract. Whether the temporary or unilateral termination of the labor contract is true or illegal, it greatly affects the interests and sustainability of the two parties in the labor relationship established between employers and employees, as well as the economic stability and development of today's society.

In order to ensure the rights and obligations of users, it is also an important factor contributing to balancing the flexibility and dynamism of the labor market. For these reasons, employees, employers, the State, as well as the whole society, need to pay special attention to the rights and obligations of employers and employees. For these reasons, it is necessary to improve the legal provisions on the rights and obligations of employers.

Legal science with a system of research and theory in various fields, including labor, is a valuable source of knowledge for summarizing and evaluating, thereby amending and supplementing legal regulations in accordance with the law's economic conditions from time to time. But it must be admitted objectively that, in relation to other laws, some provisions of the law on the rights of employers are not really appropriate and not feasible. The State also interferes deeply in labor relations, somewhat limiting the autonomy and self-responsibility of employers in labor relations of the market economy.

Therefore, the study of "Performing and terminating labor contracts during the period of dangerous epidemics" to find out inadequacies in contract performance is a matter of theoretical and practical significance to improve the law in accordance with the requirements of domestic economic development and the environment international.

## LITERATURE REVIEW

Research issue of the topic "Implementation and termination of labor contracts during the period of dangerous epidemics", studies from undergraduate, master's and doctoral degrees focusing on research Regarding the exercise of rights of employees and employers, there are studies published in specialized research journals on labor law such as Labor-management of employers; contract performance labor; termination of labor contract; unilaterally terminate the labor contract of the employee or employer through the following studies:

Do Thi Dung (2014) in "Law on labor-management rights of employers in Vietnam". Doctoral Thesis in Law. Hanoi Law University [3]. The study on a number of regulations on the employer's labor-management rights is assessed to be relatively extensive and ensures the employer's right to self-determination in the process of selection, employment, and termination the use of labor, the fact that the employer tends to abuse power. Employers discriminate against employees by region, type of training, etc. have infringed on the rights and interests of employees, causing frustration in public opinion. Employers transfer employees to do other jobs, terminate labor contracts, dismiss employees, arbitrarily deduct wages, etc. not complying with the provisions of law occurs quite common, affecting the income, employment of workers, and the general social order.

Pham Thi Thu Huong (2019) in "Solving disputes about unilateral termination of labor contracts according to Vietnamese law from the practice of people's courts in Ho Chi Minh City". Thesis of Doctor of Laws. Academy of Social Sciences, Vietnam Academy of Social Sciences, Academy of Social Sciences [4]. The thesis research work sheds light on some theoretical and practical issues of the law on unilateral and unilateral termination of labor contract disputes from the trial practice of the two-level People's Court in Vietnam. Ho Chi Minh City. The thesis focuses on researching the law on unilateral termination of labor contracts (grounds, procedures, and legal consequences of unilateral termination of labor contracts) and settlement of disputes on unilateral termination of labor contracts action at the People's Court. The assessment of the practice of implementing this law on dispute settlement was carried out in Ho Chi Minh City (from the practice of first-instance and appellate trials of the two-level People's Courts in Ho Chi Minh City). (district and provincial level) according to civil procedure). The thesis does not study the cassation and reopening procedures of the appellate courts of the High People's Court and the Supreme People's Court in Ho Chi Minh City, because of the nature of the cassation and reopening procedures is to review the Court's judgment in order to ensure that the Court's settlement is lawful, and to protect the legitimate interests of the involved parties.

Le The Son (2015) in “Management rights of employers in Vietnamese labor law”. Master Thesis of Economic Law. Faculty of Law, Hanoi National University [5]. Research work: The law only stipulates in principle, employers are allowed to do things that are not prohibited by law, this is a progressive point but also poses problems in practice due to some regulations. The decision is still not suitable and not feasible.

Le Nguyen Mai An (2018) in “The right to work in a safe environment of employees according to Vietnamese labor law, through practice in Quang Tri province”. Master of Laws, Hue University, University of Law [6]. Research on the right for employees to work in a safe environment is not only the responsibility of the employer but also the State. Over the years, the State has issued many legal documents regulating occupational safety and health issues in general and many issues of ensuring the rights of employees to work in a safe environment in particular. Employees are entitled to work in a safe and hygienic working environment and conditions. Employees are equipped with means of labor protection, personal protection when participating in labor relations.

Luong Vien Thong (2019) in “Solving Labor Contract Disputes at”. Master’s Thesis in Economics, City University of Technology, Ho Chi Minh [7]. The legal research on labor dispute settlement in our country always has provisions to protect the interests of employees when there is a dispute between the employee and the employer. However, the Labor Code and the Civil Procedure Code also have provisions to ensure the harmony between social interests and economic interests in order to ensure the harmony of interests of both parties but also not to harmonize the interests of both parties create a disadvantage for the employer. The law also stipulates the role and authority of the People’s Court in settling labor disputes. Because of the popularity and specific regulation of the law, almost all labor disputes in general and labor contract disputes, in particular, choose the Court as the dispute settlement agency.

From a legal perspective, besides force majeure events, the basic change of circumstances regulation is also a very meaningful regulation for businesses, creating more solutions to solve problems in certain difficult circumstances. Thereby, the employer or the employer can agree with the employee on the labor contract, the termination or continuation of the performance of the labor contract, this is the basic important legal basis under Article 420 of this Law. Civil Code 2015.

## OBJECTIVES OF THE STUDY

### General objective

This study focuses on studying legal provisions that directly govern the rights and obligations of employers during the period of dangerous epidemics.

This study clarifies the theoretical and practical issues of the law on the rights and obligations of the employer. On that basis, propose perfect solutions on the rights and obligations of the employer to meet the requirements of objective reality in the current market economy and integration trend of our country. . Thereby improving the adjustment effect of Vietnam’s labor law on the rights and obligations of employers in the event of dangerous epidemics.

### Detail objective

To determine the scientific basis for the rights and obligations of the employer in the event of dangerous epidemics.

Clarifying the management rights of the employer as well as the legal system. Assess the suitability of legal documents related to the handling of contract performance in the event of a dangerous epidemic, through studies on this issue to get an overview.

Evaluation and analysis of inadequacies in implementation in the event of a dangerous disease to find out inadequacies, shortcomings, and inadequacies when applying in Vietnamese enterprises. Giving opinions and proposing solutions to improve the law in case of dangerous epidemics to improve efficiency when dangerous diseases occur.

## RESEARCH METHODS

During the implementation of this study, the author uses specific research methods used to carry out the thesis, including methods: analysis, synthesis, comparison, and proof. As follows:

Analytical methods: Collect and analyze data from sources and process relevant data and documents in order to assess the accuracy of data sources for effective analysis as a theoretical basis in Chapter I. Systematization of legal documents specialized in labor, situations arising during epidemics in Vietnam and abroad are studied in Chapter II of this study.

**Synthetic method:** This method is used to synthesize cases related to the rights and obligations of the employer, data, and experts' opinions to serve as the basis for improvement recommendations legislation in chapter 2 of this study.

**Comparative method:** This method is used to compare the provisions of the labor law, to synthesize actual situations, data, and opinions of experts, specialized labor management agencies action to serve as the basis for recommendations to improve the law on employers' rights in chapter 2 of this study.

**Method of proof:** This method is used in most of this research, in order to provide evidence (regulations, documents, legal documents, etc.) to clarify points of view in the theoretical contents in chapter 1 and chapter 2 of this study.

## RESEARCH RESULTS AND DISCUSSION

### Related Concepts

**Labor contract:**

The concept of an employment contract has appeared for a long time in the legal systems of many countries such as Britain, France, the United States, Germany, China, etc. There are many different approaches and explanations for different theories science, law, legal tradition, economic and social basis conditions of the economy, etc. But the concepts all have more or fewer similarities.

Currently, in the Vietnamese legal system, the concept of a labor contract is defined in Article 13 of the Labor Code 2019 [8] as follows:

1. "A labor contract is an agreement between an employee and an employer regarding paid employment, wages, working conditions, rights, and obligations of each party in the labor relationship.
2. In case two parties agree by another name but with contents showing paid employment, salary, and the management, administration, and supervision of one party, it shall be considered as an employment contract.
1. Before accepting employees to work, the employer must enter into a labor contract with the employee".

Pursuant to the above provisions on labor contracts, the concept of "performance of a labor contract" can be understood as follows: Performance of a labor contract is the realization of the legitimate rights and interests of the parties in the labor relationship. A labor contract, or performance of a labor contract is a legal act by two parties to mistakenly perform the rights and obligations committed in the labor contract.

### Type of labor contract:

According to Article 20 of the Labor Code, the "type of labor contract" is defined as follows:

1. Labor contracts must be entered into one of the following categories:
  - a) An indefinite term labor contract is a contract in which the two parties do not determine the term and the time of termination of the validity of the contract;
  - b) A definite-term labor contract is a contract in which the two parties determine the term and the time of termination of the contract's validity within 36 months from the effective date of the contract.
2. When the labor contract specified at Point b, Clause 1 of this Article expires, but the employee continues to work, the following actions shall be taken:
  - a) Within 30 days from the date of expiration of the labor contract, the two parties must sign a new labor contract; during the time when a new labor contract has not been signed, the rights, obligations, and interests of both parties shall be performed according to the signed contract;
  - b) If the time limit of 30 days from the date of expiration of the labor contract expires, but the two parties do not sign a new labor contract, the contract entered into under the provisions of point b, clause 1 of this Article becomes a labor contract indefinite term;
  - c) In case the two parties sign a new labor contract which is a definite-term labor contract, it can only sign one more time, after that, if the employee continues to work, he/she must sign a labor contract. for an indefinite term, except for the labor contract for the person employed as a director in a state-owned enterprise and the cases specified in Clause 1, Article 149, Clause 2, Article 151, and Clause 4, Article 177 of this Code.

### Dangerous epidemics

Epidemic (in Greek, the word epidemic means epi "upon or above" and δῆμος demos "people") is the rapid spread of an infectious disease with large numbers of infected people in a community or an area within a short time, usually two weeks or less.

Article 2, Law on Prevention and Control of Infectious Diseases 2007 [8] stipulates: “Epidemic is the occurrence of an infectious disease with the number of infected people exceeding the normally expected number of infected people in a specified period of time in a certain period of time certain area”.

Infectious diseases are usually caused by a number of factors including a change in the ecology of the host population (e.g. an increase or increase in the density of a vector species), a genetic change in the host population transmission in pathogen foci or the initiation of an emerging pathogen (due to a pathogen or host variation). In general, an epidemic occurs when the host immune system is either an emerging pathogen or an emerging pathogen suddenly falling below which is found in endemic equilibrium, and the transmission threshold is exceeded.

### **The law provisions on termination of labor contracts**

In the course of carrying out production and business activities, there are cases where the employer has to come to a decision to unilaterally terminate the labor contract with employees. Article 34, Labor Code 2019 stipulates “cases of termination of labor contract”, specifically as follows:

1. Expiration of the labor contract.
2. The work has been completed according to the labor contract.
3. The two parties agree to terminate the labor contract.
4. The employee is sentenced to imprisonment but is not entitled to a suspended sentence or is not released under the provisions of Clause 5, Article 328 of the Criminal Procedure Code, is sentenced to death, or is prohibited from doing the job listed in the labor contract under the court's judgment or decision that has taken legal effect.
5. Foreign employees working in Vietnam have expelled under legally effective court judgments or decisions, or decisions of competent state agencies.
6. The worker dies; has been declared by the Court to have lost his civil act capacity, is missing, or has died.
7. The employer being an individual dies; has been declared by the Court to have lost his civil act capacity, is missing, or has died. The employer who is not an individual terminates its operation or is notified by the specialized business registration agency of the People's Committee of the province that there is no legal representative or authorized person to do so rights and obligations of the legal representative.
8. The employee is disciplined and fired.
9. The employee unilaterally terminates the labor contract according to the provisions of Article 35 of this Code.
10. The employer unilaterally terminates the labor contract according to the provisions of Article 36 of this Code.
11. Employers terminate employees according to the provisions of Articles 42 and 43 of this Code.
12. The work permit expires for foreign employees working in Vietnam according to the provisions of Article 156 of this Code.
13. In case the probationary agreement is agreed upon in the labor contract, the probationer fails to meet the requirements or one party cancels the probation agreement.

Thus, in the provisions of this law, it is not possible to mention the termination of the contract in the event of a dangerous epidemic. This may cause some difficulties for businesses and labor-using units when the adverse effects of the epidemic will cause production stagnation, inability to hire labor and lead to a situation is a shortage of workers the state of having to accept the termination of labor contracts with employees.

### **Termination of labor contract because of dangerous epidemics occurs**

#### **For employers**

When a dangerous disease occurs, it will affect health, causing serious consequences that threaten human life. This is considered a force majeure event in one of the cases where the employer unilaterally terminates the labor contract, as specified at point c, Clause 1, Article 36 of the Labor Code 2019.

In the event of an outbreak of the disease, employers need to lay off employees to prevent the epidemic and receive a basic salary according to the contract.

However, the employer is only allowed to terminate the labor contract when there is a case of infection and needs to be isolated. As for the case where the employee has not been detected with signs of illness, is in a normal state of health, but terminates the labor contract, this is an illegal act and must bear heavy legal consequences.

#### **For employees**

Labor law gives priority to protecting the rights and interests of employees. Therefore, when there is a need to quit, the employee only needs to make sure to perform the obligation to notify the employee in advance as prescribed in Article 35 of the Labor Code 2019.



### **Some inadequacies in the law provisions on the implementation and termination of labor contracts during the period of dangerous epidemics**

The prolonged epidemic and disease situation has directly affected the production and business activities of enterprises and production and business establishments. Most enterprises have tried to find solutions to adjust production and business plans and maintain production activities to ensure income for employees. However, due to the prolonged epidemic and disease, a number of enterprises, production, and business establishments have sources of raw materials produced from abroad (have not been able to import raw materials), have major export markets abroad, and their health is limited. The suffering of businesses to overcome difficulties and decline and have to cut production, reduce production scale or produce in moderation, suspend production has affected jobs, incomes, and lives of people workers and their families. This has put great pressure on the labor market as job losses increase, demand for labor decreases, and put pressure on other social issues.

However, according to the provisions of Article 36 of the Labor Code 2019 [9], it is stated: "The right to unilaterally terminate the labor contract of the employer". Under certain conditions, the employer has the right to terminate the labor contract and in this case, can the employer apply the terms of the labor contract?

According to Clause 1, Article 156, 2015 Civil Law [2] to apply force majeure conditions, in case of dangerous epidemics and enterprises apply this to terminate labor contracts in accordance with regulations legislation leading to unemployment. Thereby, the analysis of the conditions of force majeure or the occurrence of dangerous diseases in the community affects the rights and obligations of employees and employers, etc. Because of legal regulations, the law has not kept pace with the practical operation of the labor sector, in case of force majeure and the occurrence of dangerous epidemics affecting the performance of labor contracts between employers and employees.

However, according to the provisions of labor law in general, on the rights and obligations of employers and employees in particular, there are still some shortcomings that make it difficult to apply in practice. The parties take advantage of the employer's unilateral termination of the labor contract with the condition that a dangerous epidemic occurs to create conditions for the enterprise to suspend the labor contract. The temporary or unilateral termination of the labor contract, whether it is right or illegal, greatly affects the interests and sustainability of the two parties in the labor relationship established between the employer and the labor, as well as the stability and economic development of today's society.

In order to ensure the rights and obligations of the employer, it is also an important factor contributing to balancing the flexibility and dynamism of the labor market. For these reasons, employees, employers, the State, as well as the whole society, need to pay special attention to the rights and obligations of employers and employees. For these reasons, it is necessary to improve the legal provisions on the rights and obligations of employers.

### **Proposals to improve the legal provisions on termination of labor contracts during the period of dangerous epidemics**

Supplementing regulations on notice time before unilaterally terminating the contract:

According to Article 35 of the Labor Code 2019 [9], "The right to unilaterally terminate the labor contract of the employee", specifically:

- a) At least 45 days if working under an indefinite term labor contract;
- b) At least 30 days if working under a definite-term labor contract with a term from 12 months to 36 months;
- c) At least 03 working days if working under a definite-term labor contract with a term of fewer than 12 months;
- d) For a number of specific industries, trades, and jobs, the time limit for advance notice shall comply with the Government's regulations.

With this regulation, it is unreasonable in the period of dangerous epidemics. Because in fact, like the current Covid 19 pandemic, the interruption of production and business activities can happen at any time and it is not possible to determine the exact time when production and business can resume. In that context, it is difficult to determine the exact time to notify employees. Therefore, in the law, it is necessary to add a clause "for unexpected cases of dangerous epidemics, based on legal documents of the State, the employer can unilaterally terminate labor contract without prior notice to the employee".

Regarding regulations on administrative penalties for violations of regulations on termination of labor contracts (Article 11, Decree 28/2020/ND-CP): A fine of between VND 1,000,000 and 20,000 shall be imposed on the employer. .000 VND when committing one of the following acts: failing to comply with regulations on the time limit for payment of employee benefits upon termination of the labor contract; fails to pay or fails to pay enough severance allowance or job loss allowance to employees in accordance with the law... and is forced to take remedial measures as prescribed.

For this Regulation, as analyzed above, it is necessary to add “in the event of a dangerous epidemic”, when are the grounds are legal documents of the State, “the employer has not In time to pay benefits to employees, based on the actual situation, it may be possible to extend the time for payment of benefits”.

## CONCLUSION

Legal science with a system of research and theory in various fields, including labor, is a valuable source of knowledge for summarizing and evaluating, thereby amending and supplementing legal regulations in accordance with the law economic conditions from time to time. But it must be recognized objectively that, in relation to other laws, some provisions of the law on the rights of employers are not really appropriate and lack feasibility exam. The State also interferes deeply in labor relations, somewhat limiting the autonomy and self-responsibility of the employer in the labor relations of the market economy.

In recent years, the labor law system in our country has been gradually amended and supplemented to meet the needs arising from the labor practice with the agreement element from the market economy. The organization and implementation of labor laws in recent years have also been focused on. Labor law is increasingly promoting its regulatory role in social working life, significantly contributing to the formation and stabilization of the labor market, promoting human resources in both quantity and quality quantity, liberating labor and productive forces. However, it must also be objectively recognized that violations of the labor law, including violations of the law on unilateral termination of labor contracts by employees or employers, have to be considered are giving rise to conflicts and disagreements of the parties involved in labor relations.

This illegal unilateral termination may be due to a violation of the termination grounds, termination procedures, or other procedures prescribed by law. But no matter who violates or for any reason, the unilateral termination of the labor contract against the employer, thereby infringing upon the interests of the State and the whole society. Solving the situation of illegal unilateral termination of labor contracts is not a simple matter, as it requires efforts from the actors in the labor relations, the State management agencies, and other agencies, organization, and individual.

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