

*Research Article*

# Ensuring the Right to Equality and Non-discrimination in Labor: The Case of Vietnam

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**ABSTRACT:** The right to equality and non-discrimination in labor is recognized in many international legal documents and national legislation. However, in Vietnam, the implementation of laws ensuring the right to equality and non-discrimination in labor is often applied unequally between genders, and tends to prioritize the protection of female employees, recognizing additional rights for female employees, especially during pregnancy and raising children under 12 months. This interpretation has led to the existence of inequality within the very provisions of labor laws. Moreover, the definition of protected characteristics against discrimination remains unclear. This article clarifies the concept of the right to equality and non-discrimination in the workplace and analyzes signs of inequality and discrimination as grounds for identifying violations of workers' rights. Moreover, this paper examines the content of legal doctrine and assesses the practical implementation of the right to equality and non-discrimination in Vietnam through the application of analysis, synthesis, legal comparison, and statistical analysis. The article identifies limitations of the current Vietnamese legal framework and proposes solutions to improve labor laws. These include providing specific guidance on the protected characteristics against discrimination, adding new protected characteristics to reflect current realities, and clarifying the employer's right to request information from employees to prevent discriminatory practices. The article also discusses solutions for effectively enforcing the right to equality and non-discrimination in employment. These include providing guidance on the development of internal policies by employers to promote equality and prevent discrimination in the workplace, as well as strengthening the capacity of leaders of grassroots-level workers' representative organizations.

**KEYWORDS:** Discrimination, Equality, Labor, Law, and Vietnam.

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## I. INTRODUCTION

Ensuring the right to equality and non-discrimination in labor is of paramount importance for the comprehensive development of workers, enterprises, and society as a whole. The consequences of labor discrimination not only negatively affect employees and businesses but also create broader social harm. For workers, racial discrimination can lead to loss of employment or promotional opportunities, reduced income and benefits, psychological and physical harm, and diminished motivation and trust in the values of fairness and equality.<sup>1</sup> For enterprises, discriminatory practices in the workplace can reduce productivity and work efficiency, increase turnover rates, and undermine corporate reputation and branding. Businesses may also face legal risks, such as complaints, administrative penalties, or litigation.<sup>2</sup> For society, discrimination in labor and more broadly exacerbates inequality, obstructs equal realization of opportunities, and wastes human resources when capable individuals are not utilized or allowed to contribute fully due to prejudice. Persistent labor discrimination over time can lead to social conflict and erode trust in institutions and the legal system.<sup>3</sup> Although the right to equality and non-discrimination is among the fundamental human rights recognized in international legal instruments, in practice, achieving equality and preventing discrimination in labor remains a challenge.<sup>4</sup> Discriminatory conduct in employment continues to occur widely around the world in various forms. All forms of discrimination share a common definition: the differential treatment of individuals based on certain characteristics, such as

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<sup>1</sup> María Del Carmen Triana, Mevan Jayasinghe & Jenna R Pieper, “Perceived Workplace Racial Discrimination and Its Correlates: A Meta-analysis” (2015) 36:4 *Journal of Organizational Behavior* at 503.

<sup>2</sup> Alexis Smith & Shalei Simms, “The Oxford Handbook of Workplace Discrimination” in *Adrienne J Collella & Eden B King* (Oxford: Oxford University Press, 2018) at 350.

<sup>3</sup> Tahmina Akhter & Harmandeep Kaur, “The Multifaceted Impact of Discrimination: Psychological, Social, and Economic Consequences” (2025) 1:1 *Scientific Societal & Behavioral Research Journal* at 98.

<sup>4</sup> Charter of the United Nations, Can TS 1945 No 7 (1945), (entered into force 24 October 1945); Universal Declaration of Human Rights, GA Res 217 A (III), UNGAOR, 3<sup>rd</sup> Sess, Supp No. 13, UN Doc A/810 (1948); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 UNTS 13 (1979); United Nations, *Declaration on the Elimination of Violence Against Women*, UNGAOR, 48<sup>th</sup> Sess, Supp No 49, UN Doc A/RES/48/104 (1993); International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171 (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 UNTS 3 (1966), entered into force 3 January 1976; International Labour Organization (ILO), C100 - *Equal Remuneration Convention*, 1951; International Labour Organization (ILO), C111 - *Discrimination (Employment and Occupation) Convention*, 1958; International Labour Organization (ILO), C156 - *Workers with Family Responsibilities Convention*, 1981.

ethnicity, age, sex, or disability.<sup>5</sup> Therefore, studying the legal framework and the practical implementation of the right to equality and non-discrimination in labor holds significant value for workers, enterprises, and society at large.

Since the economic Doi Moi (reforms) of 1986, when the economy shifted toward a socialist-oriented market model, Vietnam has recognized workers' labor power as a form of "special commodity".<sup>6</sup> Workers are now free to choose their jobs and workplaces,<sup>7</sup> unlike the Bao Cap period of centrally planned, bureaucratic, and subsidized economic management, during which the State assigned labor and allocated jobs.<sup>8</sup> Today, the fundamental rights of workers, including the right to equality and non-discrimination in labor,<sup>9</sup> are upheld in the Constitution and the Labor Code,<sup>10</sup> and are effectively implemented in practice. Kristoffer Marslev and Cornelia Staritz (2022) evaluated Vietnam's 2019 Labor Code and noted significant changes to the country's labor relations framework. For the first time, the Labor Code granted workers the right to establish and join independent worker representative organizations which were not affiliated with the Vietnam General Confederation of Labor. These organizations represent their members in workplace dialogue and collective bargaining. The Code also strengthened protections against anti-union discrimination and employer interference in union activities.<sup>11</sup> Despite strengthened legal frameworks, the implementation of workers' rights in labor is still frequently violated due to several factors. The first is a lack of understanding of the legal regulations prohibiting discrimination against workers by business leaders. The second factor pertains to ineffective inspection, supervision, and enforcement of law violations related to labor discrimination by competent state agencies. Therefore, ensuring

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<sup>5</sup> *Time for Equality at Work*, by International Labour Office, in *Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2003) at 1.

<sup>6</sup> T T Vo, "Viet Nam: Transition to a Socialist-Oriented Market Economy" in *Viet Nam 2045: Development Issues and Challenges*, in Kimura, F et al (Jakarta: ERIA, 2023) at 110.

<sup>7</sup> *Constitution of the Socialist Republic of Vietnam*, 2013, Art. 35 [Vietnam Constitution].

<sup>8</sup> The term "*subsidy period*" refers to the time between the liberation of the South in 1975 and the start of the renovation process in Vietnam in 1986. Although the centrally planned economy was established in the North as early as 1954 after its liberation, the most comprehensive subsidy period in Vietnam occurred from early 1976 to 1986.

<sup>9</sup> *Constitution of the Socialist Republic of Vietnam*, 2013, Art. 26, 35 (3) [Vietnam Constitution].

<sup>10</sup> *Viet Nam Labour Code, Law No 45/2019/QH14*, Art. 4 (Clause 7); Art. 8 (Clause 1); Art. 32 (Clause 3).

<sup>11</sup> Kristoffer Marslev & Cornelia Staritz, "Towards a Stronger EU Approach on the Trade-Labor Nexus? The EU-Vietnam Free Trade Agreement, Social Struggles and Labor Reforms in Vietnam" (2023) 30:3 *Review of International Political Economy* at 2.

equality and non-discrimination across the entire employment process in Vietnam requires a thorough examination of the legal system and its implementation to identify shortcomings.

Scholars around the world have researched and evaluated labor discrimination at various stages of the employment process and identified its causes and consequences. Discrimination is most common at the recruitment stage, and even in countries with strong anti-discrimination legislation, such as the United States, eliminating discriminatory practices in recruitment remains challenging.<sup>12</sup> This discrimination can be based on factors including but not limited to ethnicity, sex, age, pregnancy, marital status, religion, political opinion, disability. Bursell et al. (2021) concluded that discrimination against applicants with “foreign-sounding” names occurs across both high-skill and low-skill segments of the labor market. Further, discrimination on the basis of national or social origin also excludes immigrants and their descendants from the labor market.<sup>13</sup> Regarding gender discrimination, Andrea Weber and Christine Zulehner (2014) argued that discrimination against female workers still occurs across the entire employment process. Although competition may eliminate prejudiced businesses, policy efforts are still needed to eliminate discrimination against female workers.<sup>14</sup> Sévane Ananian and Giulia Dellaferrera (2024), argued that people with disabilities are less likely to participate in the labor market, and when they do, they face higher unemployment rates and tend to earn lower wages.<sup>15</sup>

Dana Corina Deselnicu et al. (2024) found that even when employees of both genders work in the same or similar fields, men still receive higher salaries than women, even if the women have completed a higher level of education.<sup>16</sup> Gender-based discrimination in recruitment and employment may be caused by

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<sup>12</sup> David Neumark, “Experimental Research on Labor Market Discrimination” (2018) 56:3 *Journal of Economic Literature* at 857.

<sup>13</sup> Moa Bursell, Magnus Bygren & Michael Gähler, “Does employer discrimination contribute to the subordinate labor market inclusion of individuals of a foreign background?” (2021) 98 *Social Science Research* at 1 & 8.

<sup>14</sup> Andrea Weber & Christine Zulehner, “Competition and Gender Prejudice: Are Discriminatory Employers Doomed to Fail?” (2014) 12:2 *Journal of the European Economic Association* at 505.

<sup>15</sup> *A Study on the Employment and Wage Outcomes of People with Disabilities*, by Ananian Sevane & Giulia Dellaferrera (Geneva: International Labour Organization (ILO), 2024) at 14.

<sup>16</sup> Dana Corina Deselnicu, Andreea Barbu & Marius-lonel Anton, “Discrimination against Vulnerable Personnel in the Workplace” (2024) 18:1 *Proceedings of the International Conference on Business Excellence* at 1014.

incomplete conceptions of gender, underdeveloped legal concepts of discrimination based on gender and gender identity, and weak enforcement mechanisms, often depending on the 'goodwill' of the country concerned.<sup>17</sup>

Previous research in the field of labor discrimination primarily focus on the manifestation of discrimination in the workplace based on ethnicity, gender, and disability, particularly during recruitment and labor relations. However, the current literature overlooks the limitations of current legal implementations concerning equality and non-discrimination in employment.

The issue of labor and workplace discrimination in Vietnam has been increasingly studied in recent years, as the country has integrated into the international economy and joined international conventions on labor, as well as signed trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union-Vietnam Free Trade Agreement (EVFTA). As a result, Vietnam is actively implementing international labor standards, and its enterprises are gradually eliminating discriminatory practices in recruitment, employment, and wages.<sup>18</sup> However, female workers still face differential treatment, especially in terms of salary and issues related to maternity leave.<sup>19</sup> Although recent reforms to Vietnam's labor laws have reduced barriers to women's employment, gender inequality remains widespread, fueled by long-standing stereotypes about work that often disenfranchise women. In addition, discrimination against migrant workers from specific regions is still frequently observed in Vietnam.<sup>20</sup> Until recently, Vietnam had not established a comprehensive set of laws and regulations to address employment discrimination issues. Thus, existing research has only addressed discrimination based on gender, social origin, and similar factors such as disability, joining a trade union. To date, no literature has provided a comprehensive analysis of the theoretical framework concerning the right to equality and non-discrimination in labor, nor an examination of the legal situation and practical implementation of these

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<sup>17</sup> M Zharylouskaya, "Legal Aspects of Gender Equality in the Labour Market" (2023) 2 *Topos* 38.

<sup>18</sup> Hoa Thi Phuong Dang, "Amendments to Vietnam Labor Law after Two Years of Implementing European-Vietnam Free Trade Agreement" (2024) 8:3 *The Russian Journal of Vietnamese Studies* at 37.

<sup>19</sup> Thi Huong Giang Trinh, *A Comparative Legal Study of Sex Discrimination in Labour Law in the European Union and Vietnam: Critical Perspectives on Equal Pay, Pregnancy and Maternity* (Belgium, Ghent University, 2019) at 107.

<sup>20</sup> Đỗ Thị Vân Anh, "Hiện tượng phân biệt đối xử theo vùng miền: Nghiên cứu trường hợp người lao động gốc Thanh Hóa" (2017) 2 *Tạp chí Xã hội học* at 79.

provisions in Vietnam. This has led to theoretical gaps related to the indicators of direct and indirect discrimination in employment, the systematic analysis of legal regulations and their practical application for ensuring equality throughout the processes of recruitment, employment, and termination of the labor relationship, as well as a practical gap in examining the mechanisms for lodging complaints against discriminatory acts by employers.

To address these gap, this article first aims to clarify the theoretical frameworks related to the right to equality and non-discrimination in labor in Vietnam. Secondly, it aims to analyze the Vietnamese legal framework governing equality and non-discrimination, as well as the manifestations of discrimination across the entire employment process, including relevant case studies. This analysis will be used to evaluate the effectiveness of current enforcement measures and sanctions applied to discriminatory practices in employment. Based on this analysis, the article aims to propose solutions to strengthen protections against discrimination in labor practices in Vietnam.

The research poses several questions:

1. What are the key concepts and theoretical frameworks applicable to the right to equality and non-discrimination in Vietnam?
2. How has Vietnam developed and structured its legal framework on the right to equality and non-discrimination throughout the labor process?
3. Based on existing manifestations on labor discrimination, how effectively has Vietnam implemented the enforcement measures and sanctions regarding discriminatory practices in the labor process?
4. What possible recommendations can be made to strengthen Vietnam's legal framework on equality and non-discrimination and improve its implementation?

## **II. METHODOLOGY**

This research employs qualitative methods to analyze, interpret, and synthesize data from relevant literature, international legal documents, and Vietnamese legislation related to ensuring equality and non-discrimination in recruitment and employment. This method supports the detection of legal gaps, the construction

of sound legal arguments, and the logical inferences necessary to refine Vietnam's labor regulations, ensuring equality and eliminating discrimination. The article also employs comparative methods to evaluate the influence of international norms, as outlined in the conventions of the United Nations and the International Labor Organization (ILO), on the development of regulations related to labor equality and non-discrimination in Vietnam. The research also relies on statistical methods, and secondary data from reports of state management agencies, organizations, and previous studies.

### III. THEORITICAL FRAMEWORK ABOUT THE RIGHT TO EQUALITY AND NON-DISCRIMINATION IN LABOR

#### *A. The Concept of Equality and Non-discrimination in Employment*

Equality and discrimination are like two sides of the same coin. Equality means the absence of discrimination, and discrimination means the absence of equality. The 1948 Universal Declaration of Human Rights affirmed that everyone is equal before the law and is entitled to equal protection under the law. Additionally, all individuals are entitled to protection against any form of discrimination that violates this Declaration and against any incitement to such discrimination.<sup>21</sup> Equality in the workplace means that all workers are entitled to develop their abilities and benefit from opportunities on an equal footing, without being limited by stereotypes or prejudice.<sup>22</sup> To ensure equality, it is essential to identify and define what constitutes discrimination in the workplace, so that it can be eliminated. According to International Labour Organization (ILO) Convention No. 111, discrimination in labor includes:

“(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

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<sup>21</sup> United Nations, *Universal Declaration of Human Rights*, UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) Art. 7.

<sup>22</sup> *ASEAN-Pacific Decent Work Decade 2006-2015: Equality & Discrimination*, by ILO Country Office for Thailand, Cambodia and Lao PDR (International Labour Organization, 2006).

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.”<sup>23</sup>

Thus, Convention No. 111 discrimination in treatment and opportunities, not only for those already employed but also for those seeking employment. Research from the ILO shows that discrimination occurs more often during the recruitment process than at any other stage of the employment cycle.<sup>24</sup> In addition, ILO Convention No. 156, also known as the Workers with Family Responsibilities Convention, stipulates that each Member State shape its national policy in a way that allows these workers to exercise their right to work without facing discrimination due to their family obligations, and minimizes conflict between their occupational and family responsibilities.<sup>25</sup>

Based on the provisions of Convention No. 111, the 2019 Vietnam Labor Code defines labor discrimination as the act of practicing discrimination, exclusion or preference based on race, skin color, national origin or social origin, nationality, gender, age, pregnancy status, marital status, religion, belief, political view, physical disability, family responsibility, or HIV infection status, or for the reason for establishing, joining, or operating in a trade union organization or an employees' organization at an enterprise, which affects equality in employment or career opportunities.<sup>26</sup> In this article, the author examines the right to equality and non-discrimination in labor from the time of recruitment, through the establishment, implementation, and termination of labor relations. Accordingly, the right to equality and non-discrimination in labor is understood as applying from the time of recruitment through the signing and implementation of labor contracts to the termination of labor relations.

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<sup>23</sup> International Labour Organization (ILO), *Discrimination (Employment and Occupation) Convention*, ILO C111 (entered into force 15 June 1960), 1958.

<sup>24</sup> *Labour Inspection, Gender Equality and Non-Discrimination in the Arab States*, by International Labour Organization (Geneva: International Labour Organization, 2014) at 31.

<sup>25</sup> International Labour Organization (ILO), *Workers with Family Responsibilities Convention*, ILO C156 (entered into force 11 August 1983, 1981).

<sup>26</sup> *Supra* note 10, Art. 3.8.



Discrimination in the workplace can occur in both direct and indirect forms. Rules and practices that explicitly exclude or favor certain individuals solely based on a particular demographic, constitute direct discrimination. An example of direct discrimination may include an employer posting job advertisement stating that it only hires female workers between the ages of 18 and 40, or that it does not hire workers from a specific region or area. On the other hand, indirect discrimination occurs when a situation, measure, or practice inadvertently disadvantages a particular group. Indirect discrimination can be difficult to identify due to its hidden nature. For instance, if an employer sets criteria for selecting employees for advanced training, those criteria might unintentionally discriminate against certain types of employees.

### *B. Indicators of inequality and discrimination in labor*

#### **1. Direct Discrimination**

Direct discrimination occurs when an individual is placed at a disadvantage or treated less favorably because they possess a protected characteristic. Under the 2019 Labor Code of Vietnam, protected characteristics include race, skin color, national or social origin, ethnicity, gender, age, maternity status, marital status, religion, belief, political opinion, disability, family responsibilities, HIV status, as well as the practice of establishing, joining or operating a trade union or employee organization.<sup>27</sup> The reference to protected characteristics in the 2019 Labor Code is consistent with the provisions of Convention No. 111, however, several of these characteristics are not clearly defined, for example, the lack of clarity around the term “social origin”. In practice, employees may face discrimination based on factors such as appearance, voice, lifestyle, family circumstances, or regional origin. The 2019 Labor Code and its accompanying documents do not clarify whether these factors fall under the category of an employee's “social origin”.

Identifying inequality and direct discrimination involves three key parts:

The first is the presence of less favorable treatment, which is defined as any act that places an individual possessing a protected characteristic at a disadvantage compared to an individual who does not possess that characteristic. Although there is no legal definition of “disadvantage”, this may involve excluding an

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<sup>27</sup> *Supra* note 10, Art. 3.8.

individual from opportunities, causing distress, or making it harder for them to perform their job. Less favorable treatment can manifest in various ways, affecting employment opportunities, training, salary, rewards and promotions, social welfare and healthcare benefits, working conditions, and other factors related to wellbeing. Identifying less favorable treatment is crucial in determining whether discrimination has occurred. Pranas Zukauskas and Jolita Veinhardt also describe mobbing as a phenomenon associated with discrimination, which involves actions that create discomfort through psychological and emotional pressure, with the goal of excluding the victim from a group or activity.<sup>28</sup>

Secondly, the discrimination must be a direct result of the presence of protected characteristics or activities. For example, in Vietnam, the chairwoman of the grassroots union of TOPTEX Garment Company Limited faced illegal termination of her labor contract because of active participation in union activities, which is considered a protected activity in Vietnam.<sup>29</sup> Discrimination based on sex must be approached to use a “living” interpretation, which includes both sex-based discrimination (based on biological sex and sexual orientation), and also begin to introduce gender-based discrimination (based on gender identity as well as with recognition of non-binary sex) into legal practice.<sup>30</sup>

Third, it should be noted that less favorable treatment in employment does not constitute discrimination if it arises from objective requirements inherent to the job.<sup>31</sup> Here, the policy of Vietnam stipulates: “Acts of discrimination, exclusion or preference stemming from special requirements of a job and acts of maintaining and protecting jobs for vulnerable employees shall not be considered acts of discrimination.”<sup>32</sup>

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<sup>28</sup> Pranas Zukauskas & Jolita Vveinhardt, “Diagnosis of Mobbing as Discrimination in Employee Relations” (2009) 4 *Inzinerine Ekonomika--Engineering Economics* at 110.

<sup>29</sup> Trần Lưu, “Doanh Nghiệp Trù Dập Cán Bộ Công đoàn, Trả Giá Hơn 620 Triệu Bồi Thường” (2024) 25 *Tạp Chí Điện Tử Lao Động Đoàn Thể*, online: <<https://laodongdoanthu.vn/doanh-nghiep-tru-dap-can-bo-cong-doan-tra-gia-hon-620-trieu-boi-thuong-108823.html>>.

<sup>30</sup> Zharylouskaya, *supra* note 17.

<sup>31</sup> Hannah Huynh, “Discrimination in Labor” (2018), online: *Letran Law* <<https://letranlaw.com/vi/insights/phan-biet-doi-xu-trong-lao-dong/>>.

<sup>32</sup> *Supra* note 10, Art. 3.8.

## 2. Indirect Discrimination

Indirect discrimination occurs when a policy, practice, or rule disproportionately affects individuals with a protected characteristic.<sup>33</sup> Unlike direct discrimination, indirect discrimination may be less obvious and is often unintentional. For example, if a job advertisement for a salesperson states that applicants must have 10 years of experience in retail, its requirement could lead to indirect age discrimination, as it may exclude younger candidates. To avoid being considered indirectly discriminatory, the advertisement should also include the key duties and skills associated with the job, ensuring that applicants understand what is required of the position.

Furthermore, it is essential to consider what does not constitute employment discrimination. Not all distinctions based on personal characteristics are considered discrimination. Hiring based on the inherent requirements of the job is deemed fair and efficient. For example, practicing a particular faith is often viewed as an essential requirement to teach in religious educational establishments. However, in all cases, such exceptions to the general rule must be based on unquestionable evidence that special treatment is necessary for the job concerned, and they must not become the basis for systematic screening.<sup>34</sup>

Applying measures to support or protect certain groups to ensure equal treatment and opportunity in practice are generally not considered discriminatory, for instance, an employer organizing language classes in the workplace for recently immigrated employees.

Vietnam's 2019 Labor Code also stipulates that acts of discrimination, exclusion, or preference stemming from special requirements of a job, and acts of maintaining and protecting jobs for vulnerable employees, shall not be considered acts of discrimination.<sup>35</sup> For example, a company may implement a policy that allows all employees raising children under 18 months old to work one fewer hour per day while still receiving full wages. This policy is not

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<sup>33</sup> *Tackling Racial and Ethnic Discrimination in the World of Work*, by International Labour Organization (2024) at 9.

<sup>34</sup> Manuela Tomei, "Discrimination and Equality at Work: A Review of the Concepts" (2003) 142:4 *International Labour Review* at 405.

<sup>35</sup> *Supra* note 10, Art. 3.8.

considered discriminatory against those who are not raising children under 18 months old.

#### IV. REGULATIONS AND IMPLEMENTATIONS ON ENSURING THE RIGHT TO EQUALITY AND NON-DISCRIMINATION IN LABOR IN VIETNAMESE LAW

##### *A. Regulations and Implementation Ensuring Equality and Non-discrimination in Recruitment Practices*

Employers must ensure equality and non-discrimination from the start of the recruitment process. Beginning with the content of the recruitment information posted to the interviewing of candidates, employers must ensure that there is no discrimination based on protected characteristics.

The 2019 Labor Code stipulates that the minimum working age of employees in Vietnam is 15 years old, with exceptions for particular cases that allow employees can enter into labor contracts at an earlier age if they meet the conditions prescribed by the law.<sup>36</sup> Foreigners working in Vietnam must possess full civil capacity and meet certain requirements, such as having no criminal records and obtaining the necessary work permits. Further, Vietnamese enterprises only hire foreign workers for managerial positions or roles that require specialized skills not currently available among Vietnamese workers.<sup>37</sup> This regulation serves two purposes: firstly, it aligns with Vietnam's goal of utilizing foreign labor to benefit from management experience and advanced skills, since the country's domestic labor market still faces limitations. Secondly, it aims to protect the domestic labor force. Thus, to a certain extent, this protective regulation can be considered a form of discrimination in employment,<sup>38</sup> especially in the context where Vietnam has ratified ILO Convention No. 111 as well as other fundamental international labor conventions.

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<sup>36</sup> *Ibid*, Art. 3.1 and Section 1, Chapter X1.

<sup>37</sup> *Ibid*, Art. 151.1.

<sup>38</sup> Hoang Linh Pham, "Perfecting the Law to Ensure Equal Rights of Foreign Workers in Foreign-Invested Enterprises in Vietnam" (2019) 16:392 Legislative Studies, online: <<https://lapphap.vn/Pages/TinTuc/210351/Hoan-thien-phap-luat-bao-dam-quyen-binh-dang-cua-lao-dong-nuoc-ngoai-trong-doanh-nghiep-co-von-dau-tu-nuoc-ngoai-tai-Viet-Nam.html>>.

When signing a labor contract, the law stipulates the obligation of the employee to provide honest information, including:

“The employee shall provide the employer with truthful information about his/her full name, date of birth, gender, place of residence, education level, occupational qualifications and skills, health status, and other issues directly related to the entry into a labor contract as requested by the employer.”<sup>39</sup>

For a labor contract to be valid, all parties must meet the conditions prescribed by law, including the requirement of subject capacity. Requests for information on employees' health status are made by regulations of the Ministry of Health.<sup>40</sup> Regarding information on “other issues directly related to the conclusion of the labor contract that the employer requires”, there are no specific guidelines, leading to inconsistent application by businesses. In practice, some companies have requested employees to confirm their family status or disclose any criminal records before starting work.<sup>41</sup> This may cause difficulties for employees and present a risk of indirect discrimination against employees. According to the 2019 Labor Code, if an employee provides dishonest information which impacts their recruitment, the employer has the right to unilaterally terminate the labor contract with the employee.<sup>42</sup>

The most common forms of labor discrimination in Vietnam are based on factors of age,<sup>43</sup> gender,<sup>44</sup> and region.<sup>45</sup> A 2015 survey conducted by ILO and Navigos Search revealed that job postings specifying gender often favored male candidates for technical, specialized, and high-skill positions, as well as roles that require significant travel. For instance, among the gender-preferred postings, men were most often targeted for more technical and highly skilled jobs or jobs that require more outdoor activities, such as architects (100 per cent of gender-preferred job

<sup>39</sup> *Supra* note 10, Art. 16.2.

<sup>40</sup> Ministry of Health Viet Nam, *Circular No. 32/2023/TT-BYT Detailing a Number of Articles of the Law on Medical Examination and Treatment*, Art. 34, 35, 36, 37, 38 2023; Ministry of Health Viet Nam, *Circular No. 36/2024/TT-BYT on Health Standards and Health Examinations for Drivers and Specialized Motorbike Operators*, 2024; *Periodic Health Examinations for Car Drivers; Database on Health of Drivers and Specialized Motorbike Operator*.

<sup>41</sup> Minh Chien, “Applying for a Delivery Job Also Requires Submitting a Criminal Record. How Can I Fix This?” (2023), online: <<https://nld.com.vn/thoi-su/xin-lam-giao-hang-cung-phai-nop-phieu-ly-lich-tu-phap-cach-nao-chan-chinh-20231105080829484.html>>.

<sup>42</sup> *Supra* note 10, Art. 36.1.g.

<sup>43</sup> Employers often give preference to hiring younger workers or those within a certain age bracket.

<sup>44</sup> Employers often give preference to male or female workers for certain jobs.

<sup>45</sup> Job postings may specify that they will not employ workers from certain regions.

ads requiring men), drivers (100 per cent), engineers (99 per cent) and IT professionals (97 per cent). In contrast, women more frequently sought support and office roles, such as receptionists (95 per cent), secretaries and assistants (95 per cent), as well as positions in accounting, human resources, and administration (70 per cent).<sup>46</sup> When analyzing a 2024 recruitment announcement of a university in Hanoi across 36 departments, the author found that up to five departments had age requirement: one department required the applicant to be under 35 years old, and four departments required the applicant to be between 25 - 30 years old. Four departments clearly stated a priority for male applicants, one department requested that the applicant was male, and one department prioritized applicants residing near the university.<sup>47</sup>

Gender discrimination in recruitment primarily stems from the employer's perception that either men or women are more suitable for, or will perform better in, a particular job. Age discrimination arises from the employer's negative assumptions that middle-aged or older workers lack physical capacity, adaptability, or technological competence. Currently, many people have a rather one-sided view of unemployment at age 50. They often believe that the main reason is that workers do not make an effort to improve their skills to adapt to the new market.<sup>48</sup>

In some cases of regional discrimination, job postings explicitly state that applicants from certain provinces, such as Thanh Hoa, Nghe An, or Ha Tinh, will not be considered.

"Do not recruit people from Thanh Hoa, Nghe An, or Ha Tinh provinces" is a note in the recruitment advertisement of G.A VN Co., Ltd. (Road No. 17, VSIP II-A Industrial Park, Tan Uyen town, Binh Duong province), which specializes in manufacturing electronic components."<sup>49</sup>

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<sup>46</sup> *Bình đẳng giới trong thực tiễn tuyển dụng và thăng tiến tại Việt Nam*, by International Labour Organization & Navigos Search (2015) at 1.

<sup>47</sup> Dai Nam University, "Notice No. 169/TB-DN on Recruitment of Staff and Lecturers for the 2024–2025 School Year" (2024), online: <<https://dainam.edu.vn/vi/tin-tuc/thong-bao-tuyen-dung-can-bo-giang-vien-nam-hoc-2024-2025>> at 3-4.

<sup>48</sup> Smith & Simms, *supra* note 2.

<sup>49</sup> Nguyễn Nhân, "Dấu hỏi khi nhiều người thất nghiệp tuổi trung niên", *VnExpress*, online: <<https://vnexpress.net/dau-hoi-khi-nhieu-nguoi-that-nghiiep-tuoi-trung-nien-4814800.html>>.

Do Thi Van Anh (2017) argues that the root cause of regional discrimination mainly lies in the spread of stereotypes through informal media.<sup>50</sup>

### *B. Regulations and Implementation Ensuring Equality and Non-discrimination during the Implementation of Labor Contracts*

#### *1. Equality and Non-discrimination in Wages and Benefits*

Employers must ensure equal pay, regardless of gender, for employees doing work of equal value, and ensure that wages based on job or position are above the minimum wage.<sup>51</sup> In addition, employers may not restrict or interfere with employees' right to decide how to spend their wages, and may not force employees to spend their wages on purchasing goods or using the services of the employer.<sup>52</sup> This new provision in the Labor Code 2019 of Vietnam, implemented to ensure autonomy in the use of employees' wages and income, is consistent with the content of several ILO Conventions, No. 100 on equal pay, No. 26 on minimum wage fixing, No. 95 on the protection of wages, and No. 131 on special wage fixing for developing countries. Equal remuneration for equal work shall be provided, including a fixed amount of salary, without discrimination on any basis whatsoever. These Conventions consider remuneration to be all compensation and payments, whether in-kind or cash.<sup>53</sup> Moreover, the provisions on equal pay in the 2019 Labor Code 2019 are also consistent with the ILO's Recommendation No. 90 on Equal Remuneration. This Recommendation states that the principle of equal compensation can be effectively implemented through appropriate methods for analyzing and evaluating work. These methods must guarantee equal conditions for both sexes in areas such as professional guidance, social services, and welfare, to meet women's needs. In addition, the Recommendation emphasizes the elimination of discrimination by employers in access to employment opportunities. It also calls

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<sup>50</sup> Do Thi Van Anh, "Regional discrimination: A case study of workers from Thanh Hoa" (2017) 2 Sociological Review at 77.

<sup>51</sup> *Supra* note 10, Art. 90.

<sup>52</sup> *Ibid*, Art. 94.2.

<sup>53</sup> International Labour Organization, ILO C100 – *Equal Remuneration Convention*, *supra* note 4; International Labour Organization, *Discrimination (Employment and Occupation) Convention*, *supra* note 4; International Labour Organization, *Workers with Family Responsibilities Convention*, *supra* note 4.

for promoting public awareness of the meaning and importance of equality standards and investing in studies and research in this field.<sup>54</sup>

Data from labor and employment surveys conducted by the General Statistics Office of Vietnam from 2011 to 2019 reveal a wage gap between male and female workers in Vietnam. On average, female workers earn approximately 9% to 14% less than their male counterparts.<sup>55</sup> In recent years, the wage gap between male and female workers has tended to increase (Table 1).

Table 1: Average monthly income of wage workers by gender in the period 2020-2024

	<i>Million VND/month</i>					
	2020	2021	2022	2023	2024	5 year average
<b>General</b>	6.6	5.7	7.5	7.1	7.7	6.92
<b>Male worker</b>	6.9	6.6	8.0	8.1	8.7	7.66
<b>Female worker</b>	6.2	4.7	7.0	6.0	6.5	6.08
<b>The average income ratio of male workers is higher than that of female workers.</b>	11,2%	40,4%	14,2%	35%	33.8%	25,9%

*Source: Labor and Employment Survey data of the General Statistics Office of Vietnam over the years 2020-2024<sup>56</sup>*

<sup>54</sup> International Labour Organization, *Discrimination (Employment and Occupation) Convention*, *supra* note 4.

<sup>55</sup> *Labour and Social Trends in Viet Nam 2021: Outlook to 2030*, by International Labour Organization (Geneva, 2022).

<sup>56</sup> *Press Release on Labor and Employment Situation in the Fourth Quarter and the Year 2020*, Press Release, by General Statistics Office of Vietnam, Press Release (2021) online: <<https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2021/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2020/>>; *Press Release on Labor and Employment Situation in the Fourth Quarter of 2021 and Vietnam's Human Development Index: 2016–2020*, Press Release, by General Statistics Office of Vietnam, Press Release (2022) online: <<https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2022/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2021-va-chi-so-phat-trien-con-nguoi-viet-nam-2016-2020/>>; *Press Release on Labor and Employment Situation in the Fourth Quarter and the Year 2022*, Press Release, by General Statistics Office of Vietnam, Press Release (2023) online: <<https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2023/01/thong-cao-bao-chi-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2022/>>; *Press Release on Population, Labor and Employment Situation in the Fourth Quarter and 2023*, Press Release, by General Statistics



The income of female wage workers was on average 25.9% lower than that of male workers for the period of 2020-2024, having increased from period of 2011-2019 when it was only 9% - 14% lower. According to the UN's 2021 Overview of Gender Equality in Vietnam (CGEP), women work the same number of hours as men, and there is no significant difference in education levels between the genders. However, women are overrepresented in lower-paid segments of the labor market and part-time jobs.<sup>57</sup> This situation reflects the persistent gender wage gap in Vietnam.

Regional discrimination is also present in Vietnam. According to results from a 2017 survey of Thanh Hoa workers employed in 7 different provinces, 39.8% answered that they were very often discriminated against in salary compared to workers from other provinces, and 28.9% replied that they were often discriminated against in salary payment, compared to workers from other provinces. In addition, workers from Thanh Hoa province also said that they faced isolation due to the stereotype that workers from Thanh Hoa and other central provinces have a high level of solidarity. For instance, if an incident occurs, they can call each other for protection, which sometimes leads to aggressive behavior and workplace incidents.<sup>58</sup> As a result, employers have demonstrated reluctance towards recruiting workers from these localities.

Cases of workers being paid less than the regional minimum wage are less common; however, survey data indicate that this practice occurs in some enterprises. A 2020 survey found that of the 371 textile factories in Vietnam, 1% breached the regulations on minimum wages for workers.<sup>59</sup> This rate remained consistent in 2022, according to a survey of 422 textile factories.<sup>60</sup>

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Office of Vietnam, Press Release (2023) online: <<https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2023/12/thong-cao-bao-chi-ve-tinh-hinh-dan-so-lao-dong-viec-lam-quy-iv-va-nam-2023/>>; *Press Release on Labor and Employment Situation in the Fourth Quarter and the Year 2024*, Press Release, by General Statistics Office of Vietnam, Press Release (2025) online: <<https://www.gso.gov.vn/du-lieu-va-so-lieu-thong-ke/2025/01/thong-cao-bao-chi-ve-tinh-hinh-lao-dong-viec-lam-quy-iv-va-nam-2024/>>.

<sup>57</sup> *Country Gender Equality Profile Viet Nam – CGEP 2021*, by UN Women (2021) at 26.

<sup>58</sup> Do Thi Van Anh, *supra* note 50.

<sup>59</sup> *Better Work Vietnam Annual Report*, Annual Report, by International Labour Organization, Annual Report (Geneva, 2021) at 5.

<sup>60</sup> *Ibid* at 17.

## 2. Equality and Non-discrimination in Working Conditions and Career Development Opportunities

Fair treatment enables all workers to fully develop their skills according to their aspirations and interests, and to enjoy equal access to employment and working conditions. To ensure equality in employment, employers should have transparent labor management practices, including (i) providing a clear and reasonable job description suitable to the reality and nature of the job; and (ii) providing transparent salary and bonus policies clearly stating the conditions and levels of benefits, and registering with the appropriate authorities if required by law.

Working conditions are a principal factor that directly affects the health of workers. According to Vietnam's labor laws, employees should be ensured safe and hygienic working conditions, along with guaranteed working hours and leisure time. In addition, the law also stipulates the responsibility to confirm working conditions for specific groups, such as ethnic minorities, persons with disabilities, the elderly, individuals caring for children under 12 months old, and pregnant individuals.<sup>61</sup> These regulations ensure that working conditions are suitable for the health of these groups.

The 2019 Labor Code of Vietnam sets forth provisions for protecting pregnant workers and workers with children under 12 months old. If a female employee who performs a role that is considered hazardous, dangerous, or harmful to her reproduction or pregnancy notifies her employer of pregnancy, she can be assigned to an alternative job or entitled to a one-hour reduction of daily working time without having her wage reduced. These conditions are valid until her child reaches the age of twelve months.<sup>62</sup> This regulation aims to provide safeguards for female employees who perform difficult manual labor during pregnancy and while caring for young children.

Recognizing that the primary responsibility for raising children and caring for the family often falls on women, labor laws are designed to protect female workers during significant life events such as marriage, pregnancy, maternity leave, and

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<sup>61</sup> *Supra* note 10, Chapter X & XI.

<sup>62</sup> *Ibid.*, Art. 137.2.

caring for children under 12 months old. However, this focus has inadvertently led to inequalities within the legal framework itself. According to Vietnam's 2012 Labor Code:

“An employer may not mobilize female employees to work at night, work overtime, or go on a long working trip in the following cases: (a) The employee is in her seventh month of pregnancy, or her sixth month of pregnancy in case of working in a mountainous, remote, distant, border, or island area; (b) The employee is nursing a child under 12 months of age.”<sup>63</sup>

This regulation leads to an inconsistency; male workers raising children under 12 months old can still be arranged by their employers to work night shifts or go away on business trips. This makes it difficult for male workers to fulfill their family responsibilities. In addition, if female workers wish to work overtime while raising children under 12 months old, it is still considered illegal. This limits the freedoms of employees in labor relations. The shortcomings of the 2012 Labor Code have been addressed in the updated 2019 Labor Code, which provides as follows:

“Employers cannot require employees to work night shifts, work overtime, or go on long trips in the following cases: (a) if the employee is seven months or more pregnant, or six months or more pregnant if she work in a highland, remote, border, or island area; (b) if the employee is raising a child under 12 months old, unless the employee agrees to such work.”<sup>64</sup>

This provision highlights the social responsibility of both male and female workers in raising children under 12 months old. It represents significant progress in the 2019 Labor Code by incorporating international conventions on ensuring equality and non-discrimination. However, the emphasis on female-centric protection within the legal domain may inadvertently perpetuate gender biases, subtly suggesting that caregiving responsibilities predominantly fall to women. The implementation of gender-specific legal provisions is further complicated by economic factors. The costs associated with employing female workers, due to regulations regarding working conditions, maternity leave, and other gender-related issues, are generally higher than those for male workers.<sup>65</sup> It

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<sup>63</sup> *Viet Nam Labour Code Law No 10/2012/QH13*, Art. 155.1.

<sup>64</sup> *Supra* note 10, Art. 137.1.

<sup>65</sup> Minh Hoang Dang, “Applying Feminist Legal Principles to Achieve Gender Equality in Vietnam’s Labor Legislation” (2024) 10:1 *Cogent Social Sciences* at 7.

can lead to “implicit” discrimination in practice by employers or may reduce employment opportunities for women, thereby affecting their equal treatment in the workforce.<sup>66</sup> On the other hand, experts state that differences in treatment between female workers and male workers, as upheld by the law, further encourage a gender-based division of roles within the household. As a result, even when paid paternity leave exists, male workers can be reluctant to use it for fear of being stigmatized and not complying with the dominant societal model.<sup>67</sup>

A key highlight of the Labor Code 2019 in Vietnam is its explicit prohibition of sexual harassment in the workplace.<sup>68</sup> It also holds employers responsible for creating regulations aimed at preventing and addressing sexual harassment within their organizations. These regulations must be incorporated into the company's internal labor practices for effective implementation.<sup>69</sup>

When implementing opportunities for career development for employees, employers should be mindful of indirect discrimination. For example, holding a training session at the end of the workday may prevent interested employees from attending due to family responsibilities. Employees with less training are likely to be at a disadvantage in terms of improving their knowledge and skills, as well as in their prospects for career advancement. In this case, to ensure equal opportunity, the employer should offer training courses at different times for workers to choose from.

In Vietnam, some employers have taken steps to ensure gender equality, provide career development opportunities, and eliminate discrimination to promote sustainable business development. For instance, many textile and footwear enterprises have sent female workers to the Gender Equality and Values Project for training in productivity, knowledge, and management skills, to open opportunities for promotion. The results of these trainings have exceeded expectations, with up to 76% of the trainees being promoted from employees to

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<sup>66</sup> Minh Hoang Dang & Doan Thi Phuong Diep, “The Integration of ILO Convention C111 into Vietnamese Labour Law and Its Implications for Gender-Based Discrimination: A Feminist Legal Critique” (2024) 17:1 *Journal of East Asia and International Law* at 103-104.

<sup>67</sup> *SIGI 2024 Regional Report for Southeast Asia: Time to Care, Social Institutions and Gender Index*, by Organisation for Economic Co-operation and Development (OECD) (Paris: OECD Publishing, 2024) at 50.

<sup>68</sup> *Supra* note 10, Art. 3.9 and Art. 8.3.

<sup>69</sup> *Ibid*, Art. 3.9 and Art. 6.2.d and Art. 118.2.d.

direct managers immediately after completing the training course.<sup>70</sup> In addition, many factories have sent employees to participate in the Enterprise Core Employee Training Program, organized by Better Work Vietnam to promote gender equality and empower women in the workplace.<sup>71</sup>

Despite these developments, discrimination has continued to occur over the years, although at a decreasing rate. According to a 2020 report by Better Work Vietnam, of 371 factories surveyed, up to 9% faced some form of gender discrimination, mainly related to pregnancy status.<sup>72</sup> A 2022 survey of 449 factories reported that 4% still faced gender discrimination associated with pregnancy status.<sup>73</sup> Other cases of non-compliance were recorded, such as lack of implementation of legal regulations on overtime limits, and insufficient compliance with regulations on occupational safety and hygiene.<sup>74</sup> However, no discrimination against employees was reported in these cases.

### 3. Equality and Non-discrimination in Relating to Membership of Employee Representative Organizations

The first time, the 2019 Labor Code of Vietnam recognizes that employees can establish, join, and participate in activities of trade union organizations under the Law on Trade Unions, or establish, join,<sup>75</sup> and participate in the activities of enterprise-based employee organizations.<sup>76</sup>

Establishing or participating in a grassroots-level employee representative organization is entirely voluntary on the part of the employee. Labor law strictly prohibits employers from engaging in any act of:

“Discrimination against employees and members of the management board of the organization representing employees at the workplace for the reason of establishing, joining, or operating the organization representing employees.

Intervening in or manipulating the process of establishment, election, and formulation of working plans and organization of activities of grassroots-level

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<sup>70</sup> *Supra* note 59 at 8.

<sup>71</sup> *Ibid* at 22.

<sup>72</sup> *Ibid* at 5.

<sup>73</sup> *Ibid* at 16.

<sup>74</sup> Read more *Better Work Vietnam Annual Report, 2021, 2023*.

<sup>75</sup> Grassroots-level trade union organizations.

<sup>76</sup> Enterprise-based employees' organizations.

employees' representative organizations, including also providing financial support or taking other economic measures to neutralize or weaken the performance of the representative function of grassroots-level employees' representative organizations, or committing discrimination among grassroots-level employees' representative organizations.”<sup>77</sup>

The Labor Code 2019 of Vietnam affirms that organizations representing employees at the grassroots level have equal rights and obligations in representing and protecting the legitimate and legal rights and interests of employees in labor relations.<sup>78</sup>

The Vietnamese Government has not yet issued any document guiding the establishment of enterprise-based employee organizations. However, the 2019 Labor Code and the 2024 Trade Union Law still stipulate that these organizations, once established, have the right to join the Vietnam Trade Union.<sup>79</sup>

For the first time, Vietnam's Trade Union Law 2024 recognizes the rights of foreign employees working in Vietnam under labor contracts with a term of 12 months or more to join and participate in the activities of grassroots trade unions.<sup>80</sup> This regulation addresses the discrimination that previously existed against foreign workers regarding their right to participate in grassroots-level trade union organizations outlined in the Trade Union Law of 2012. However, foreign workers in Vietnam do not have the right to join trade unions if their labor contract term is less than 12 months.

Discrimination against employees who participate in employee organizations still exists in some workplaces. This has manifested in employers deliberately causing difficulties for union officials in the process of mobilizing the establishment of grassroots-level trade union organizations. Some employers also discriminate against union members or interfere in the selection of union officials and the use of union finances.<sup>81</sup> Leaders of grassroots trade unions or active trade unionists

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<sup>77</sup> *Supra* note 10, Art. 175.

<sup>78</sup> *Ibid*, Art. 170.3.

<sup>79</sup> *Ibid*, Art. 172.3; *Vietnam, Law on Trade Unions*, Law No 50/2024/QH15, Art. 6, 2024..

<sup>80</sup> Vietnam Law on Trade Unions, *Ibid*, Art. 5.2.

<sup>81</sup> Minh Tuấn, “Nhiều khó khăn phát triển tổ chức Công đoàn trong doanh nghiệp ngoài nhà nước”, *Nhandan*, online: <<https://nhandan.vn/nhieu-kho-khan-phat-trien-to-chuc-cong-doan-trong-doanh-nghiep-ngoai-nha-nuoc-post772051.html>>.

are often not permitted to renew their labor contracts when they expire or when the term of their trade union ends.<sup>82</sup>

### *C. Regulations for Ensuring Equality in the Handling of Labor Discipline and Termination of Labor Relations*

Employees are subject to labor discipline when they violate internal labor regulations and are at fault. Although labor law outlines specific circumstances under which employers can unilaterally terminate labor contracts.<sup>83</sup> This right is not absolute. The 2019 Labor Code of Vietnam stipulates cases where employers are not allowed to take disciplinary action even if the employee violates labor regulations. Disciplinary action cannot be taken against female or male employees during the following periods: pregnancy, maternity leave, or when raising children under 12 months old.<sup>84</sup> This regulation ensures that employees have income to fulfill their familial and childcare responsibilities.

Regulations on dismissal and the employer's right to unilaterally terminate labor contracts in the Labor Code 2012 of Vietnam have also caused gender inequality:

An employer may neither dismiss a female employee nor unilaterally terminate the labor contract with a female employee for the reason of her marriage, pregnancy, maternity leave, or that she is nursing a child under 12 months of age, except the case in which the employer is an individual who dies, or is declared by a court to have lost his/her civil act capacity, or to be missing or dead, or the employer is an institution that ceases operation.<sup>85</sup>

This provision does not exclude employers from dismissing or unilaterally terminating labor contracts with male employees for the same. This constitutes discrimination between male and female employees in the legal provisions. This limitation of the 2012 Labor Code has been overcome by the 2019 Labor Code by stipulating as follows:

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<sup>82</sup> *Precedent No 70/2023/AL of Vietnam on Termination of Labor Contracts for Employees who are Part-time Trade Union Officials*, 2023 Supreme People's Court of the Socialist Republic of Vietnam, adopted by the Council of Judges of the Supreme People's Court on 18 August 2023 and promulgated under Decision No. 364/QĐ-CA dated 1 October 2023 of the Chief Justice of the Supreme People's Court (2023).

<sup>83</sup> *Supra* note 10, Art. 36.

<sup>84</sup> *Ibid*, Art. 122.4.d.

<sup>85</sup> *Supra* note 63, Art. 155.3.

The employer may neither dismiss the employee nor unilaterally terminate the labor contract with the employee for the reason of marriage, pregnancy, maternity leave, or raising of a child under 12 months old... In case the labor contract expires while the female employee is pregnant or she raises a child under 12 months old, she may enter into a new labor contract.<sup>86</sup>

The employment relationship can be terminated by agreement of both parties, by the unilateral will of each party, or by the will of a third party. In cases where employers unilaterally terminate an employment contract or dismiss an employee, they must provide a justifiable reason. If an employee believes the employer unilaterally terminated the employment contract due to discrimination, the employee may file a lawsuit to resolve the labor dispute. To support their claim of discrimination, the employee must present evidence. Conversely, the employer must also provide sufficient evidence to demonstrate that the termination of the employee's contract was legal and did not involve discrimination.

For instance, the case of an individual labor dispute, unilateral termination of labor contract, and compensation for damages between employee Ms. Vu Thi Ngoc T and Bank D - Branch in City H.<sup>87</sup> The content of this dispute was related to Bank D's dismissal of Ms. T due to changes in the bank's organizational structure. The case went through a first instance trial and an appellate trial in the People's Court of Vietnam. The plaintiff, Ms. Vu Thi Ngoc T, claimed that she was discriminated against by the defendant, Bank D, because she repeatedly denounced the actions of leadership at Bank D. The defendant sought to terminate the plaintiff's indefinite-term labor contract on the grounds of changes in the bank's organizational structure.<sup>88</sup> In such cases, employees may petition the People's Court to declare the employer's decision to terminate their labor contract as unlawful. Additionally, the employee can request that the employer pay benefits for the period in which they are not allowed to work, as specified by the Labor Code of 2019 in Vietnam.<sup>89</sup> However, in this case, the plaintiff failed to provide evidence of discrimination, and the defendant stated that they had

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<sup>86</sup> *Supra* note 10, Art. 137.3.

<sup>87</sup> *Bản án số 94/2024/LĐ-PT về - tranh chấp đơn phương chấm dứt hợp đồng lao động và bồi thường thiệt hại*, 2024 Tòa án nhân dân Thành phố Hồ Chí Minh.

<sup>88</sup> *Judgment No 94/2024/LĐ-PT*, 2024 Ho Chi Minh City People's Court, appellate judgment on unilateral termination of labour contract and compensation for damages.

<sup>89</sup> *Supra* note 10, Art. 41.



followed the correct legal procedures in the termination of the labor contract with the plaintiff. Therefore, the People's Court declared that Bank D (Employer - Defendant) won the case and Ms. Vu Thi Ngoc T (Employee - Plaintiff) lost the case.<sup>90</sup> This dispute highlights the complexity faced by employees when gathering sufficient evidence to demonstrate that they have experienced discrimination. On the other hand, employers must also collect sufficient evidence to prove that the termination of an employment contract is lawful.

#### *D. Regulations on Procedures for Complaints and Administrative Sanctions against Acts of Discrimination in Labor by Employers and Implementation Practices*

Employees have the right to file a complaint when there is sufficient reason to believe that the actions of an employer violate labor law and infringe upon their legitimate rights and interests.<sup>91</sup> However, Vietnam's Labor Code 2019 does not stipulate the responsibility of employers for establishing and promulgating procedures for labor complaints. Therefore, when employees experience discrimination in the workplace, they are often unsure of which department within the company they should approach to report the issue.

Vietnam's labor law stipulates that all acts of discrimination by employers are subject to administrative sanctions ranging from 5 million to 10 million VND. However, some acts of discrimination may be subject to higher sanctions due to the nature of the acts' breaches.

For instance, (i) Discrimination against workers due to their refusal to work or leave the workplace when there is a clear risk of a work accident that could seriously threaten their life or health (up to 50 million VND).<sup>92</sup> (ii) Discriminatory acts against employees or members of the management board of grassroots-level employees' representative organizations for the reason of establishing, joining, or operating an organization representing employees (up to 30 million VND).<sup>93</sup> (iii) Acts of interfering with or manipulating the process of establishment, election, planning of work or organization of activities of grassroots-level employees' representative organizations, including financial support or other economic measures aimed at neutralizing or weakening the performance of representative

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<sup>90</sup> *Supra* note 88.

<sup>91</sup> Decree No. 12/2022/ND-CP Providing penalties for administrative violations in the fields of labor, social insurance, and overseas manpower supply under contract, Art. 8.2.a, 2022.

<sup>92</sup> *Ibid*, Art. 23.2.

<sup>93</sup> *Ibid*, Art 36.1.

functions of grassroots-level employees’ representative organizations or discriminating between grassroots-level employees’ representative organizations (up to 40 million VND).<sup>94</sup>

The regulations regarding administrative sanctions for employer discrimination are clearly stated. However, at present, Vietnam lacks specific data on how many employers breached and were sanctioned for acts of discrimination. Instead, there is only general data on administrative sanctions for labor violations.

Table 2: Data on inspection and administrative penalties for violations in the labor field in Vietnam

Year	Number of enterprises inspected	Number of violations issued	Total fine amount
2021	95	25	952.000.000 VNĐ
2022	124	23	773.497.600 VNĐ
2023	126	28	768.000.000 VNĐ

*Source: Vietnam, Ministry of Labor, War Invalids and Social Affairs<sup>95</sup>*

Table 2 indicates that while the number of inspected enterprises increased, the number of decisions on administrative sanctions for labor violations issued and the total amount of sanctions both decreased, suggesting an improvement in compliance with labor laws among enterprises.

<sup>94</sup> *Ibid*, Art. 37.2.

<sup>95</sup> *Summary Report of Work in 2021 and Direction and Tasks in 2022*, by Vietnam Ministry of Labour – Invalids and Social Affairs (2021) at 2-3; *Summary Report of Work in 2022 and Direction and Tasks in 2023*, by Vietnam Ministry of Labour – Invalids and Social Affairs (2022) at 2; *Summary Report of Work in 2023 and Direction and Tasks in 2024*, by Vietnam Ministry of Labour – Invalids and Social Affairs (2023) at 2.

## V. SOLUTIONS TO ENSURE THE IMPLEMENTATION OF EQUAL RIGHTS AND NON-DISCRIMINATION IN LABOR IN VIETNAM

### *A. Amending Provisions of Labor Law*

Vietnam's Labor Code 2019 has successfully integrated principles of equality and non-discrimination, as outlined in ILO Conventions No. 100 and No. 111, both of which the country has ratified. While the 2019 Labor Code includes strengthened provisions on equality and non-discrimination as compared to the 2012 Labor Code, improvements are still required in order to fully protect the rights of employees.

Firstly, the author suggests clarifying the scope of the term “protected characteristic” within the definition of labor discrimination regulated on Labor Code 2019. The term “labor discrimination,” as defined in the Labor Code 2019, refers to an act of practicing discrimination based on certain “protected characteristics.”<sup>96</sup> However, these protected characteristics themselves are not defined in any legal document. Therefore, labor law must clarify these provisions for consistent understanding and application.

To fully understand discrimination, exclusion, or preference based on an employee's sex, the concept should extend beyond discrimination based on biological sex (male or female) to encompass discrimination based on sexual orientation or non-binary gender identity.

What constitutes discrimination, exclusion, or preferential treatment based on “social origin” also requires clarification. Currently, the term “social origin” is not clearly defined in Vietnamese legal documents. Vietnamese lawmakers may refer to the interpretation proposed by Biljana Kotevska and Angelo Capuano, who state that an individual's social origin can be reflected in various ways, from their accent to the image they present to others, inherited social status, or even in their personal or professional networks, all of which may influence opportunities throughout their lives.<sup>97</sup> Based on this understanding, discrimination, exclusion,

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<sup>96</sup> *Supra* note 10, Art. 3.8.

<sup>97</sup> *Guide on Discrimination Grounds*, Guide, by Biljana Kotevska, Guide (Organization for Security and Co-operation in Europe (OSCE), 2013) at 47 & 49.

or preferential treatment based on appearance, lifestyle, accent, family background, or regional origin may be regarded as discrimination based on social origin. Establishing regulations against such discrimination is essential because biases based on these characteristics have occurred and continue to occur, while the legal framework for addressing them remains unclear.

Secondly, the authors suggest clarifying the meaning of the terms “specific job requirements” and “vulnerable employees” in Clause 8, Article 3 of the 2019 Labor Code. This section states that acts of exclusion or preference stemming from special requirements of a job, and acts of maintaining and protecting jobs for vulnerable employees, shall not be regarded as acts of discrimination.<sup>98</sup> However, there is no clear definition of what constitutes discrimination, exclusion, or preference arising from specific job requirements. This lack of clarity results in arbitrary enforcement of legal regulations and creates challenges in proving whether such discrimination, exclusion, or preference is indeed linked to job requirements. The authors suggest introducing a provision that defines the term “specific requirements of the job.” These requirements refer to the standards and conditions inherent to the nature of the job and necessary competencies for its performance. Only employees who meets these standards and conditions should be considered qualified to perform the job.

Additionally, the term “vulnerable employees” is not defined in the Vietnamese legal documents. Therefore, it is difficult to determine whether acts of maintaining and protecting employment for vulnerable employees are considered discrimination. This lack of clarity leads to inconsistent application in practice. Labor laws should stipulate that vulnerable employees are groups of employees at higher risk of adverse impacts from unemployment and income loss, including ethnic minorities, persons with disabilities, the elderly, individuals caring for children under 12 months old, and pregnant individuals.

Thirdly, it is crucial to provide specific guidance regarding the employee's obligation to furnish truthful information when entering an employment contract in order to mitigate the risk of discrimination during the recruitment process. Labor Code 2019 states that employees are obligated to provide truthful

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<sup>98</sup> *Supra* note 10, Art. 3.8.

information about their full name, date of birth, gender, place of residence, education level, occupational qualifications and skills, health status, and other issues directly related to the entry into a labor contract as requested by the employer.<sup>99</sup> However, the document does not explicitly define the phrase “other issues directly related to the entry into a labor contract.” The authors suggest introducing a specific instructions or requiring employers to stipulate a definition for each particular job. If the employer requires the employee to provide additional information about themselves, it should be necessary to clearly state how this information directly relates to the job’s requirements. This provision would ensure that employers do not abuse this clause, and eliminate discrimination for the reason of not providing requested information.

Fourthly, regulations should be established regarding the responsibility of employers to establish an initial complaint procedure for acts of labor discrimination.

Employees have the right to file a complaint if they believe they have been discriminated against during the recruitment process, or the implementation or termination of the labor contract. Employees who submit a first complaint to the employer and whose complaint is not resolved, who disagree with the decision resolving the first complaint, or whose complaint is not resolved within the prescribed time limit, have the right to file a second complaint to a competent state authority or to file a lawsuit in court.<sup>100</sup> However, Vietnamese labor law does not require employers to establish specific procedures for filing complaints in their internal labor regulations or policies. Therefore, many employees do not know how to exercise this right or which department within the employer’s organization to submit their complaint to. Thus, labor law should supplement regulations requiring employers to establish procedures that enable employees to exercise their right to file complaints and denunciations against violations of labor law, including acts of discrimination against employees. To promote equality and prevent discrimination in the workplace, employers should implement objective performance evaluations based on employees’ abilities and work outcomes. This

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<sup>99</sup> *Supra* note 10, Art. 16.2.

<sup>100</sup> *Supra* note 91, on providing regulations on the settlement of complaints and denunciations in the field of labor, vocational education and sending Vietnamese workers to work abroad under contracts, employment, occupational safety and hygiene.

approach helps create a fair work environment. Additionally, companies should establish policies that protect whistleblowers from adverse treatment for their actions.

## *B. Solutions to Improve the Effectiveness of Implementing the Right to Equality and Non-discrimination in the Workplace*

### **1. Establishing Internal Regulations to Ensure Equality and Prevent Discrimination in Labor**

To ensure the rights of employees to equality and non-discrimination in the workplace, as well as employers' compliance with the law, enterprises should develop clear and transparent internal policies on non-discrimination in recruitment, training, evaluation, and other labor-related activities. Moreover, policies related to wages, bonuses, benefits, promotions, and other practices should be fair and transparent. Currently, several enterprises in Vietnam have publicly stated their commitment to equality and non-discrimination in the workplace within their Codes of Conduct.<sup>101</sup>

Businesses should also adopt training programs to raise awareness among employees and managers about discrimination and gender equality.

### **2. Enhancing the Capacity of Grassroots-level Representative Organizations of Employees**

Currently, the employee representative organizations operating within labor-using units are grassroots-level trade union organizations. They are the official representative organization of employees, with the role of protecting the rights of union members.<sup>102</sup> When companies develop regulations, rules, and policies that affect employees, they are required to consult with employees through these grassroots-level trade union organizations. This applies to rules on the evaluation of job performance,<sup>103</sup> the development of wage scales and wage tables, labor

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<sup>101</sup> Procter & Gamble Vietnam Company Limited, "Non-Discrimination Policy", online: <<https://vn.pg.com/chinh-sach-va-thuc-thi/chinh-sach-khong-phan-biet-doi-xu-trong-viec-lam/>>; *Code of Conduct 2023*, Code of conduct, by T&C Investment Holding Joint Stock Company, Code of conduct (2023).

<sup>102</sup> *Supra* note 79, adopted by the National Assembly on 27 November 2024, entering into force on 1 July 2025.

<sup>103</sup> *Supra* note 10, Art. 36.1.a.

norms,<sup>104</sup> bonus regulations,<sup>105</sup> internal labor regulations,<sup>106</sup> and decisions on temporary suspension of employees.<sup>107</sup>

To contribute effectively to the development of policies, regulations, and rules within organizations, it is essential to provide regular training for grassroots-level trade union officials. This training should enhance their understanding of labor laws in general and specifically address legal regulations aimed at eliminating discrimination in the workplace.

## VI. CONCLUSION

This article discussed and clarified the concepts of equality and non-discrimination in labor as recognized in international legal documents and Vietnamese law. It has determined the connotation of the concepts of equality and non-discrimination in labor as the right of employees to equal opportunities from the stage of recruitment to the signing, implementation, and termination of the labor contract without any discrimination by the employer.

Based on fundamental theories, the article analyzed and commented on the regulations of Vietnam's labor law aimed at ensuring equality and non-discrimination in the processes of recruitment, implementation, disciplinary action, and termination of labor contracts for employees. In parallel, the article presented the limitations in the legal provisions on anti-discrimination in labor under the Labor Code 2019. The article also evaluated the practical implementation of legal provisions on ensuring equality and non-discrimination using specific data and evidence.

Based on this analysis, the article proposes improvements that would enhance the effectiveness of the implementation of the right to equality and non-discrimination in Vietnam, including: (i) Clearly defining the terms “protected characteristics,” “specific requirements of the job,” and “vulnerable employees” in legal documents. (ii) Developing internal reporting policies to ensure equality

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<sup>104</sup> *Ibid*, Art. 93.3.

<sup>105</sup> *Ibid*, Art. 104.2.

<sup>106</sup> *Ibid*, Art. 118.3.

<sup>107</sup> *Ibid*, Art. 128.1.

and combat labor discrimination in the workplace. (iii) Enhancing the capacity of officials within grassroots-level employees' representative organizations through training programs.

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## COMPETING INTEREST

None.

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