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Employer liability for failure to comply with mandatory written-form requirements of employment contracts

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Abstract
The practice of employers failing to enter into written employment contracts with employees has become increasingly prevalent, particularly among small-business. The absence of written employment contracts causes negative impacts on both the State's labor administration and employees' lawful rights and interests. At present, such violations are subject to administrative sanctions, accompanied by remedial measures requiring employers to execute written employment contracts. However, there are still no specific provisions governing the type of employment contract to be concluded, nor the minimum duration of such contracts. Furthermore, Vietnamese labor legislation does not provide for any financial compensation payable to employees where the failure to conclude a written employment contract is attributable to the employer. This legal gap may be exploited by employers and may undermine employees' job security while exposing them to financial disadvantages. Through a comparative examination of the labor laws of China and France, the author proposes several recommendations aimed at improving the Vietnamese legal framework governing employer liability for non-compliance with statutory requirements concerning the form of employment contracts.

Keywords: Written employment contract; employer's liability; form of employment contract

Introduction

According to data published by the General Statistics Office under the Ministry of Finance (2026), Vietnam recorded approximately 32.7 million informal workers during the first quarter of 2026, accounting for 62.2% of the total employed workforce. Although this figure was lower than that reported for the first quarter of 2024 (33.3 million workers, representing 64.8% of total employment (General Statistics Office, 2026)), the proportion of informal workers remains substantially high, exceeding 60% of all employed persons.

Pursuant to applicable regulations, informal employment includes wage earners who perform work without entering into employment contracts (Prime Minister, 2023) [6]. While no official statistics are currently available regarding the proportion of workers lacking employment contracts within the informal labor sector, the aforementioned statistics and practical observations indicate that the failure of small commercial establishments to conclude employment contracts with workers remains widespread. There are a number of factors contributed to this situation. Employers often seek to avoid administrative procedures associated with written employment contracts including drafting, execution, and record retention. In addition, some employers attempt to evade legal obligations owed to employees, such as the ability to terminate the labor contract at any time, non-compliance with working hours regulations, or exemption from paying statutory mandatory insurance premiums, while only having to pay correct wages for days worked without implementing annual leave or paid leave regimes, etc. The absence of written employment contracts therefore not only impedes effective state management but also exposes employees to significant legal and economic vulnerabilities, particularly by depriving them of documentary evidence necessary to protect their rights in the event of disputes.

Under current legislation, an employer who fails to conclude a written employment contract in circumstances where such form is legally required may be subject to administrative penalties and compelled to execute a written employment contract with the employee concerned (Government, 2022) [2]. However, the remedial measure does not specify whether the contract to be concluded must be a fixed-term or an indefinite-term employment contract. Nor does it prescribe a minimum duration where a fixed-term contract is adopted. This legislative omission may be exploited by employers, who may enter into a written labor contract with a duration just long enough to terminate it upon expiry immediately after being administratively penalized. Moreover, employees are entitled to severance allowances only where they have worked continuously for at least twelve months; those with shorter periods of service are not eligible for such benefits (National Assembly, 2019) [4]. Accordingly, the employer's failure to comply with statutory form requirements may cause substantial harm to employees, while existing enforcement mechanisms do not adequately safeguard their right to stable employment. Therefore, there is a necessary for legal provisions specifically designed to protect employment stability and to provide employees with financial redress where an employer fails to execute a written employment contract as required by law.

Under the Labor Code 2019 [4], employment contracts may be concluded either in writing or, in certain circumstances, orally (National Assembly, 2019) [4]. In practice, verbal agreements always exist between the two parties; therefore, within the scope of this article, this article focuses exclusively on violations involving the failure to comply with statutory requirements mandating the use of written employment contracts. The discussion is further limited to the legal liability of employers arising from such violations.

Concept and forms of employment contracts

An employment contract is a civil agreement entered into between an employer and an employee, the content of which concerns "paid employment, wages, working conditions, and the rights and obligations of each party within the employment relationship" (National Assembly, 2019) [4]. To ensure the protection of the legitimate rights and interests of both parties, particularly those of employees, any agreement containing the substantive elements prescribed by law shall be deemed an employment contract, regardless of its explicit title.

Vietnamese labor law recognizes two forms of employment contracts: written and oral. A written employment contract serves as a clear legal instrument documenting the parties' intentions, objectives, and mutual commitments concerning employment, remuneration, rights, obligations, and benefits. The existence of a written employment contract constitutes an important legal basis for labor administration by state agency and significantly reduces evidentiary difficulties when labor disputes arise, as neither party is required to prove the existence of the employment relationship when a dispute arises.

Under the Labor Code 2019 [4], written employment contracts are mandatory in four circumstances, (1) where the contractual term is one month or longer, (2) where the employee is under fifteen years of age, (3) where an employment contract is concluded with a representative of a group of employees aged eighteen years or older for seasonal work or a specific task with a duration of less than twelve months, (4) where the employee is engaged as a domestic worker (National Assembly, 2019) [4].

Legal liability for failure to conclude employment contracts in written form

Where an employer fails to comply with statutory requirements mandating the execution of a written employment contract, the employer may be subject to either a warning or an administrative fine (up to 25 million VND depending on the fault (Government, 2012). In addition, the employer is required to implement remedial measures by entering into a written employment contract with the employee or, where applicable, with the authorized representative of a group of employees performing seasonal work or a specific task with a duration of less than twelve months (Government, 2012). However, the law does not expressly require the implementation of remedial measures where the violation concerns an employment contract involving an employee under fifteen years of age and that employee's legal representative. This omission may be regarded as a legislative oversight.

Notably, non-compliance with the statutory form requirements of an employment contract does not render the contract invalid under Article 49 of the Labor Code 2019 [4]. This constitutes a significant departure from the approach adopted by the Civil Code 2015 [3], under which a transaction may be declared invalid where it fails to satisfy legally prescribed conditions regarding form (National Assembly, 2015) [3].

At present, the legal consequences imposed on employers for violating the written-form requirement remain limited to administrative sanctions and the obligation to subsequently execute a written employment contract in accordance with the law. Nevertheless, the law has not yet stipulated the type of labor contract that must be concluded, nor the minimum duration in months if a fixed-term labor contract is executed. This legislative gap creates opportunities for abuse. An employer can execute a fixed-term labor contract with a duration just long enough to terminate it upon completion of the administrative inspection and sanctioning, meaning the employee can be dismissed at any time at the employer's discretion. Furthermore, where the employment relationship is terminated due to the expiration of such a contract, only employees who have accumulated at least twelve months of continuous service are entitled to severance allowances; conversely, they will not receive this allowance (National Assembly, 2019) [4]. The absence of a written employment contract may also deprive employees of access to important social security benefits, including medical care, sickness benefits, maternity benefits, ... Despite these potentially significant losses, Vietnamese labor law does not currently impose civil liability on employers in the form of compensatory damages or financial compensation payable to employees for harm resulting from the employer's failure to conclude a written employment contract.

Accordingly, the existing legal framework does not provide adequate protection for employees' lawful rights and interests.

Comparative perspectives and recommendations for reforming Vietnamese Labor Law

Insights derived from a comparative analysis of foreign legal regimes concerning employer liability for non-compliance with mandatory formal requirements of employment contracts may serve as an important basis for improving Vietnamese labor legislation through the adoption of suitable regulatory mechanisms.

1. The Experiences of China and France

A review of the labor laws of China, a neighboring country with the world's second-largest population and a labor-force participation rate of approximately 68.9%, equivalent to around 968.5 million working-age individuals (Textor, 2026), and France, a representative civil law jurisdiction, reveals legal approaches that differ significantly from those currently adopted in Vietnam.

- **Chinese Labor Contract Law**

The Labor Contract Law of the People's Republic of China 2007 [7] provides that "*to establish a labor relationship, a written labor contract shall be concluded*" (Standing Committee of the National People's Congress, 2007) [7]. To ensure compliance with this requirement, Chinese law imposes substantial legal consequences on employers who fail to execute written labor contracts: "*If an employing unit fails to conclude a written labor contract with a worker within one year as of the date when it employs the worker, it shall be deemed to have concluded an open-ended labor contract with the latter*" (Standing Committee of the National People's Congress, 2007) [7]. Furthermore, where an employer fails to execute a written employment contract for a period exceeding one month but less than one year following the employee's recruitment, the employer is required to pay the employee double wages for each month of employment during the period of non-compliance; if the period of employment is less than one month, it shall be calculated based on the basis of the actual hours worked (The Supreme People's Court, 2025).

- **French Labor Code**

Under the French Labor Code, a written form is mandatory for fixed-term employment contracts (Article L1242-12), whereas the form of an indefinite-term employment contract is generally left to the discretion of the parties (Article L1221-1). Where a fixed-term employment contract fails to satisfy the statutory formal requirements, French law reclassifies the contract as an indefinite-term employment contract (Articles L1242-12 and L1245-1). In addition, the employer is required to compensate the employee by paying an amount equivalent to no less than one month's salary, irrespective of which party is at fault (Article L1245-2) (France, 2026) [1].

A common feature of both the Chinese and French legal systems is that where an employment contract is not executed in written form as prescribed, it shall be identified as an indefinite-term labor contract to protect the employee's right to stable employment. In addition, both jurisdictions require employers to provide financial compensation to employees due to the statutory violation. They not only redress the disadvantages suffered by employees but also encourage employers to comply with their legal obligations and discourage attempts to circumvent labor regulations.

2. Recommendations for improving Vietnamese Labor Law

Based on the foregoing analysis, the author proposes several legislative reforms aimed at strengthening labor administration and enhancing the protection of employees' rights, particularly their right to stable employment and their entitlement to financial redress where employers fail to comply with mandatory written-form requirements.

First, Vietnamese labor law should be amended to provide that an employment relationship established in violation of mandatory written-form requirements is automatically converted into an indefinite-term employment contract. Besides, for seasonal or specific jobs with a duration of under twelve months, the law should require that any written employment contract executed as a remedial measure have a minimum term of twelve months calculated from the employee's commencement date.

Second, the law should further impose a financial obligation on employers who fail to execute written employment contracts as required by law. Such compensation should be calculated based on the employee's actual period of service. The Labor Code 2019 [4] already recognizes several allowances payable to employees, including severance allowances equal to one-half month's salary for each year of service, redundancy allowances equivalent to one month's salary for each year of service, and compensation based on one month of regional minimum wage per year of service where an employment contract is declared wholly invalid because its contents violate the law or concern prohibited work (National Assembly, 2019) [4]. In practice, cases involving the absence of written employment contracts frequently arise in sectors characterized by seasonal employment, unskilled labor, or part-time work. Employees engaged in such occupations typically earn wages close to the region-based minimum wage. To minimize disputes concerning the calculation of compensation, the author proposes that employers be required to pay financial compensation equivalent to one month of the regional minimum wage for each year of service, with a minimum threshold of one month's regional minimum wage. The region-based minimum wage should be determined by reference to the date on which the parties ultimately execute the written employment contract.

Conclusion

The widespread failure to conclude written employment contracts in circumstances where such form is mandated by law highlights the urgent need to refine the legal framework governing the consequences of non-compliance. Through a comparative analysis of the labor laws of China and France, this article demonstrates that more effective legislative solutions are available. Based on a comparative analysis of the labor laws of China and France, the author proposes several recommendations for improving Vietnamese labor legislation with respect to the type and duration of employment contracts to be concluded as remedial measures, as well as the financial liability of employers toward employees in cases of non-compliance with statutory requirements governing the form of employment contracts. These solutions are intended to enhance the effectiveness of labor agency's administration while safeguarding employees' rights to employment stability and to financial compensation when the violation does not originate from themselves./.

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