

FAIR LABOR
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ISSUE BRIEF

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FREEDOM OF ASSOCIATION IN THE NEW VIETNAM LABOR CODE

THE ISSUE

How should companies ensure workers' freedom of association when implementing Vietnam's new Labor Code?

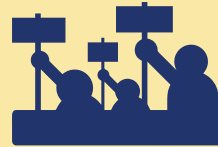
BACKGROUND

In June 2019, Vietnam took an historic step toward freedom of association (FOA) and ratified International Labor Organization (ILO) [Convention 98](#), which enshrines a worker's right to organize and bargain collectively. The government followed in November with an [updated version of the Labor Code](#). Vietnam is now on a path to end the state and employer dominance of trade unions at the company level, allowing workers to form their own labor unions.

The changes to the Labor Code include provisions needed to implement Convention 98 and close loopholes and clarify provisions from the Labor Code of 2012. To guide implementation, the government will issue a set of decrees and circulars by the fourth quarter of 2020.

While the new Labor Code will not take effect until January 1, 2021, employers operating in Vietnam should note its' changes and prepare for implementation. Notably, the revised Labor Code allows workers to form or join an Independent Worker Representative Organization (WRO) of their choosing, which does not have to be affiliated with the Vietnam General Confederation of Labor.

FLA CODE ELEMENT: FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING



FLA Code Language:

Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

Changes and Additions Regarding Worker Representative Organizations

Under the previous code, trade unions were required to be approved by and affiliated with the [Vietnam General Confederation of Labor \(VGCL\)](#). The 2019 Labor Code gave workers the right to join or form a representative organization of their choosing, independent of the VGCL; to promote and improve the effectiveness of representation; and to protect their rights and interests in accordance with ILO conventions and other international commitments. In addition, the code facilitates the integration of Vietnamese labor law with ILO standards.

Under the 2019 Labor Code, all worker representative organizations must register with the government. The procedures and details for registration will be determined by the government and provided in forthcoming guidance.

While the implementation of ILO Convention 98 is significant and expected to lead to more workplace freedoms, the Vietnamese government has yet to ratify ILO Convention 87, which allows workers to establish and join unions of their choosing without prior authorization.¹ Ratification and implementation of Convention 87 would legalize independent labor organizations and therefore allow unions to operate independently of government influence. The government has announced its intention to ratify Convention 87 by 2023.

RECOMMENDATIONS

1. Follow closely any new decrees or circulars related to the new Labor Code that are issued by national authorities, at <https://english.luatvietnam.vn/> or www.molisa.gov.vn.
2. Review and update all internal monitoring procedures to ensure that suppliers' and facilities' compliance with the new requirements is tracked and evaluated.
3. Survey suppliers in Vietnam to understand current collective bargaining agreements; stay alert for information on WROs in facilities and begin auditing for potential non-compliance with the new code and subsequent government decrees and circulars.
4. Ensure all suppliers have a policy on freedom of association, collective bargaining, and industrial relations, and a process for collective bargaining. The FOA policy must include a nonretaliation clause to protect workers who decide to organize.
5. Ensure that these policies are communicated to workers and management, including new employees.
6. Ensure internal and third-party auditors in Vietnam are informed and trained on the new code and regulations as well as FLA benchmarks on freedom of association, collective bargaining, and industrial relations.
7. Engage with local civil society organizations or service providers to share information on best practices or seek out opportunities for training on and effective implementation of the updated provisions.

¹ Convention 87 and Convention 98 are two of the [ILO's eight core principles](#). The conventions each address a different aspect of freedom of association: [Convention 87](#) codifies specific rights around the formation and management of unions—specifically to “join organizations of their own choosing without previous [government] authorization.” [Convention 98](#) codifies the rights of union members to organize independently, without interference by employers; and recognizes the right to collective bargaining.

About the Fair Labor Association

The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.