

LEGAL FRAMEWORK ON OCCUPATIONAL SAFETY AND HEALTH IN VIETNAM

MARCO LEGAL SOBRE SEGURANÇA E SAÚDE OCUPACIONAL NO VIETNÃ

Article received on: 1/20/2026

Article accepted on: 2/19/2026

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The authors declare that there is no conflict of interest

Abstract

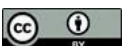
The article focuses on analyzing the legal system governing occupational health and safety in Vietnam's construction industry during the 2021 - 2025 period, with a primary emphasis on the compatibility between legal theory and practical application. By employing document research and normative analysis methodologies, the study evaluates the efficacy of the Law on Occupational Safety and Health 2015 alongside the current system of sub-law documents. The article highlights the fundamental requirements for perfecting labour legislation regarding occupational safety and health. On this basis, the author proposes solutions to refine the law and enhance synchronization between the Law on Occupational Safety and Health and specialized legislations to ensure the optimal protection of workers' rights.

Keywords: Labour Law, Occupational Safety and Health, Policy Enforcement.

Resumo

O artigo se concentra na análise do sistema jurídico que rege a saúde e a segurança ocupacional no setor da construção civil do Vietnã durante o período de 2021 a 2025, com ênfase principal na compatibilidade entre a teoria jurídica e a aplicação prática. Por meio de metodologias de pesquisa documental e análise normativa, o estudo avalia a eficácia da Lei de Segurança e Saúde Ocupacional de 2015, juntamente com o atual sistema de documentos normativos subordinados. O artigo destaca os requisitos fundamentais para aperfeiçoar a legislação trabalhista em matéria de segurança e saúde ocupacional. Com base nisso, o autor propõe soluções para refinar a lei e melhorar a sincronização entre a Lei de Segurança e Saúde Ocupacional e as legislações especializadas, a fim de garantir a proteção ideal dos direitos dos trabalhadores.

Palavras-chave: *Direito do Trabalho. Segurança e Saúde Ocupacional. Aplicação de Políticas.*



1 INTRODUCTION

Legal regulations on occupational safety and health play a foundational role in ensuring workers' rights to labour protection in the construction sector, enabling employees to work in a safe and hygienic working environment. This legal framework establishes a strict legal structure that defines and binds the responsibilities of both employers and employees in ensuring occupational safety.

Article 35 of the 2013 Constitution stipulates that wage earners are guaranteed fair and safe working conditions (National Assembly, 2013). It affirms that employees have the right to work in conditions that ensure occupational safety and health. In accordance with the Constitution, employers are responsible for ensuring occupational safety and health for employees throughout the entire working process; providing adequate personal protective equipment and safe, hygienic working tools; organizing training and instruction on occupational safety and health for employees; conducting periodic health examinations; and implementing preventive measures to control hazardous and harmful factors arising during work. Employees have the right to receive information regarding occupational safety and health; to participate in the development and implementation of measures ensuring occupational safety and health; to report and make recommendations concerning potential occupational safety and health risks; and to refuse to work in conditions that pose a threat to their life or health.

In the modern working environment, the risks of occupational accidents and occupational diseases are always present, creating an urgent need to protect workers. Legal regulations on occupational safety and health not only serve as a legal safeguard but also provide a solid foundation that enables workers to perform their duties and develop their careers in a safe and healthy working environment. These regulations function as a multi-layered protection system, ranging from the establishment of technical safety standards and work procedures to the provision of personal protective equipment. Such measures ensure that every worker is adequately equipped with the knowledge and means necessary to protect themselves.

In addition, these legal regulations also demonstrate the State's concern for the rights and interests of workers, thereby affirming its commitment to protecting workers'

health and livelihoods. A working environment that ensures occupational safety and health is not only a direct benefit to workers but also contributes to the sustainable development of enterprises and society. It can therefore be seen that legal regulations on occupational safety and health are not only a legal basis but also an essential foundation for the right to labour protection, contributing to the creation of a progressive, safe, and equitable labour society. These regulations on occupational safety and health also contribute to improving working conditions and enhancing labour productivity.

Employers are required to comply with mandatory regulations on occupational safety and health. In the long term, when enterprises properly implement occupational safety and health measures, it helps stabilize production, improve the efficiency of labour utilization, increase labour productivity, and ensure product quality.

Legal regulations on occupational safety and health are not merely technical measures aimed at protecting workers' health and lives; they also reflect the State's progressive perspective in building a modern and advanced society in which the rights and obligations of every citizen are respected and protected. Establishing a comprehensive and stringent system of occupational safety regulations not only helps reduce occupational accidents and diseases but also plays an important role in protecting the ecological environment, thereby promoting sustainable development.

Furthermore, these regulations contribute to fostering legal awareness and social responsibility within the business community, thereby creating a solid foundation for socio-economic development. When enterprises comply with occupational safety and health regulations, they not only create a safe working environment for employees but also enhance their image and reputation in the eyes of partners and customers. In the long term, this will generate a sustainable competitive advantage and contribute to the economic development of the nation.

Therefore, it can be affirmed that legal regulations on occupational safety and health not only bring direct benefits to workers but also exert a profound influence on the business environment, as well as the social and political landscape of a country. These regulations are not merely technical provisions but also reflect a political commitment to the comprehensive development of both individuals and society.

2 METHODOLOGY

To address the research objectives regarding legal gaps and enforcement, this article employs a combination of qualitative and quantitative research methodologies, as detailed below:

- **Legal Theoretical Research Method:** The authors conduct a review, systematization, and analysis of current legal documents related to occupational health and safety. The focus is on analyzing the structure of the Law on Occupational Safety and Hygiene 2015, the Labour Code 2019, and specialized technical standards such as QCVN 18:2021/BXD to identify overlaps or inconsistencies.
- **Comparative Legal Method:** The article compares Vietnam's domestic regulations with international standards, particularly the International Labour Organization's Convention No. 187 on the promotional framework for occupational safety and health, to assess the degree of compatibility and integration.

3 CURRENT LEGAL FRAMEWORK

- The legal framework is the overall body of legal norms that are internally interconnected and unified, organized into legal institutions and branches of law, and expressed in legal documents issued by the State in accordance with prescribed procedures, forms, and authority. The legal framework can be understood from two perspectives: the structural system of law and the system of legal normative documents (Hanoi Law University, 2009). In this study, the legal framework is understood as the system of legal normative documents. The system of legal normative documents includes instruments such as the Constitution, codes and laws (acts), and sub-law documents with lower legal validity.
- Thus, the legal framework on occupational safety and health in the construction sector is understood as the collection of legal documents and sub-law documents that have legal validity. The system of these documents includes the following:

3.1 System of legal documents

- The 2013 Constitution (Article 35).
- The Labour Code 2019.
- The Law on Occupational Safety and Hygiene 2015.
- The Law on Construction 2014.
- The Trade Union Law 2012.
- The Law on Chemicals 2007.
- The Law on Fire Prevention and Fighting 2001 (amended and supplemented in 2013).

3.2 System of sub-law documents

- The system of documents guiding the implementation of the Law on Occupational Safety and Hygiene 2015, the Trade Union Law 2012, the Law on Chemicals 2007, and the Law on Construction 2014 consists of numerous guiding documents, amendments, supplements, and replacements¹ issued by the Government and several ministries². Due to the large number of these guiding documents - both those currently in force and those that have expired - it is not possible to list them all within this study. Therefore, the research team only lists the documents that are currently effective, while those that have expired are presented in the Appendix (see Appendix - page **Erro! Indicador não definido.**).
- The guiding, amending, supplementing, and replacing documents currently in force include:
- Official Dispatch No. 2533/LDTBXH-ATLD (2016) providing temporary guidance on the implementation of the regime for occupational accidents and occupational diseases in accordance with the Law on Occupational Safety and

¹ The Labour Code 2019 does not contain specific guiding documents regarding occupational safety and health for workers employed in the construction sector

² The main responsible authorities are the Ministry of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs), the Ministry of Health, and the Ministry of Finance

Hygiene, issued by the Ministry of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).

- Circular No. 19/2016/TT-BYT providing guidance on the management of occupational hygiene and workers' health, issued by the Minister of Health.
- Circular No. 20/2016/TT-BLDTBXH on the list of heavy, hazardous, and dangerous occupations and jobs, and particularly heavy, hazardous, and dangerous occupations and jobs in the military, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 07/2016/TT-BLDTBXH regulating the organization and implementation of occupational safety and hygiene in production and business establishments, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Decree No. 39/2016/ND-CP providing detailed guidance on the implementation of the Law on Occupational Safety and Hygiene.
- Decree No. 44/2016/ND-CP providing guidance on the Law on Occupational Safety and Hygiene regarding technical safety inspection activities, occupational safety and hygiene training, and monitoring of the working environment.
- Circular No. 56/2017/TT-BYT providing guidance on the implementation of the Law on Social Insurance and the Law on Occupational Safety and Hygiene in the health sector, issued by the Minister of Health.
- Decree No. 143/2018/ND-CP providing guidance on the Law on Social Insurance and the Law on Occupational Safety and Hygiene regarding compulsory social insurance for foreign employees working in Vietnam.
- Decree No. 140/2018/ND-CP amending and supplementing decrees related to business investment conditions and administrative procedures under the state management of the Ministry of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 36/2019/TT-BLDTBXH on the list of machinery, equipment, materials, and substances subject to strict requirements on occupational safety and hygiene, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).

- Circular No. 13/2020/TT-BLDTBXH providing guidance on the collection, storage, compilation, provision, publication, and assessment of data on occupational accidents and serious technical incidents causing violations of occupational safety and hygiene, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 11/2020/TT-BLDTBXH on the list of heavy, hazardous, and dangerous occupations and jobs, and particularly heavy, hazardous, and dangerous occupations and jobs, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 06/2020/TT-BLDTBXH on the list of jobs with strict requirements for occupational safety and hygiene, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Decree No. 88/2020/ND-CP providing guidance on the implementation of the Law on Occupational Safety and Hygiene regarding compulsory insurance for occupational accidents and occupational diseases.
- Decree No. 58/2020/ND-CP stipulating the contribution rates for compulsory social insurance to the Occupational Accident and Occupational Disease Insurance Fund.
- Circular No. 28/2021/TT-BLDTBXH providing guidance on the implementation of the Law on Occupational Safety and Hygiene regarding benefits for employees who suffer occupational accidents or occupational diseases, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 29/2021/TT-BLDTBXH stipulating standards for the classification of labour based on working conditions, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 29/2021/TT-BYT providing guidance on professional training activities in occupational health, issued by the Minister of Health.
- Circular No. 134/2021/TT-BQP regulating three procedures for technical safety inspection of machinery and equipment subject to strict occupational safety requirements within the Ministry of National Defence.

- Circular No. 18/2022/TT-BYT amending Circular No. 56/2017/TT-BYT guiding the implementation of the Law on Social Insurance and the Law on Occupational Safety and Hygiene in the health sector, issued by the Minister of Health.
- Circular No. 24/2022/TT-BLDTBXH stipulating in-kind allowances for employees working in conditions with hazardous or harmful factors, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 25/2022/TT-BLDTBXH regulating the provision of personal protective equipment for workers, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 19/2023/TT-BLDTBXH supplementing the list of heavy, hazardous, and dangerous occupations and jobs, and particularly heavy, hazardous, and dangerous occupations and jobs, issued by the Minister of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs).
- Circular No. 09/2023/TT-BYT amending Circular No. 14/2013/TT-BYT providing guidance on health examinations, issued by the Minister of Health.
- In addition, there are several other guiding documents for the implementation of the Trade Union Law 2012, the Law on Construction 2014, the Law on Chemicals 2007, and the Law on Fire Prevention and Fighting 2001 (amended and supplemented in 2013).

4 DISCUSSION: FUNDAMENTAL REQUIREMENTS FOR IMPROVING LABOUR LAW ON OCCUPATIONAL SAFETY AND HEALTH

First, the legal framework should continue to be improved to ensure greater compatibility with ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health of the International Labour Organization.

The content of Convention No. 187 on the Promotional Framework for Occupational Safety and Health of the International Labour Organization is as follows.

Regarding objectives, member States of the Convention commit to continuously promoting improvements in occupational safety and health, and to preventing

occupational accidents and occupational diseases through national policies, systems, and programs.

Regarding national policy, each member State must develop a national policy aimed at strengthening a safe working environment, promoting the right to work in a safe and healthy workplace, and applying fundamental principles such as risk assessment and hazard prevention at the source.

Regarding the national system, member States are required to establish and maintain a national system for occupational safety and health, including legislation, competent authorities, compliance mechanisms, and cooperation at the workplace.

Regarding support mechanisms, the national system should include advisory councils, information and training services, research activities, and data collection mechanisms to improve working conditions and support the informal economy.

Regarding the national program, each country should develop and maintain a national program on occupational safety and health, with consultation involving representative organizations of workers and employers.

Vietnam has incorporated certain provisions of Convention No. 187 into its domestic legal framework. However, several aspects have not yet received adequate attention, such as “consultation with the most representative organizations of employers and workers” and the “development of a national preventive culture of occupational safety and health.” In addition, support mechanisms aimed at continuously improving occupational safety and health conditions at the micro-enterprise level and within the informal economy remain weak and have not been given sufficient attention.

Second, it is necessary to ensure the leadership of the Communist Party in occupational safety and health governance.

After ten years of implementing Directive No. 29-CT/TW dated September 18, 2013 of the Party Secretariat, which aimed to strengthen occupational safety and health during the period of industrialization, modernization, and international integration, many positive results have been achieved, and the rate of serious occupational accidents has decreased (Secretariat, 2013). However, occupational safety and health management still faces numerous challenges. The number of occupational accidents has not significantly declined, and occupational diseases have not received adequate attention, particularly in sectors without formal employment relationships. Therefore, it is necessary to strengthen

leadership and coordination among relevant authorities and to promote research and the application of science and technology in order to ensure safety for workers and the broader community. Accordingly, on March 19, 2024, the Central Committee of the Communist Party of Vietnam issued Directive No. 31-CT/TW on further strengthening the Party's leadership over occupational safety and health (Secretariat, 2024). The directive emphasizes:

Strengthening leadership and direction in implementing policies and laws on occupational safety and health, with the objective of reducing occupational accidents and improving safe working conditions for workers.

Disseminating knowledge on occupational safety and health to all segments of the workforce, particularly those working in sectors without formal employment relationships. Reviewing and updating legal regulations to prevent and reduce risks related to occupational accidents and occupational diseases. Strengthening the effectiveness and efficiency of state management, inspection, and supervision to ensure strict enforcement of occupational safety and health policies and laws. Improving administrative procedures, developing sectoral databases, and promoting the application of information technology. Emphasizing environmental impact assessments, controlling hazardous factors in the workplace, and reviewing the list of hazardous occupations and jobs.

Attention should also be given to occupational safety and health for vulnerable or special groups of workers, improving the management of training services, and enhancing the quality of occupational health services. Greater investment should be directed toward occupational safety and health activities, including reforming financial mechanisms and prioritizing resource allocation for the prevention of occupational accidents and diseases. Enterprises should be encouraged to conduct self-inspections, reduce occupational accidents, make flexible use of the Occupational Accident Insurance Fund, and provide support for beneficiaries. Coordination among ministries, sectors, and local authorities should be strengthened, particularly in areas without formal labour relations. Violations of occupational safety and health regulations should be detected, commended where compliance is exemplary, and strictly sanctioned where breaches occur.

Third, it is necessary to ensure consistency between occupational safety and health legislation and other related legal policies, while also strengthening coordination among

state authorities in the implementation and enforcement of occupational safety and health laws.

In the current context, improving the legal framework on occupational safety and health has become increasingly urgent and must be carried out in a comprehensive and coordinated manner. This process should not be limited to coordination among competent state authorities but must also be implemented in parallel with improvements to other related legal policies. Such coherence requires that new regulations on occupational safety and health be developed on the basis of scientific research, ensuring both accuracy and feasibility, thereby establishing a solid legal foundation for this field.

Coordination among state authorities in the implementation of occupational safety and health legislation is an important factor in ensuring the effectiveness of regulatory management. This responsibility is assigned to the Ministry of Labour, Invalids and Social Affairs (now under the Ministry of Home Affairs) at the central level, as well as to the Departments of Labour, Invalids and Social Affairs (now under the Departments of Home Affairs) and the Divisions of Labour, Invalids and Social Affairs (now under the Divisions of Culture and Social Affairs) at the local level. Each authority, depending on its specific functions and duties, bears distinct responsibilities in the management of occupational safety and health. At the same time, coordination among relevant ministries and sectors must also be carried out appropriately to ensure the effectiveness of legal enforcement. This coordination also reflects the internal relationships among different branches of law within the Vietnamese legal system.

Fourth, the improvement of legislation on occupational safety and health must be aligned with Resolution No. 27-NQ/TW dated May 21, 2018 on public sector salary reform for cadres, civil servants, public employees, members of the armed forces, and employees in enterprises.

Resolution No. 27-NQ/TW sets out a roadmap for salary reform from 2021 to 2025, with a vision toward 2030. According to Resolution No. 27-NQ/TW (2018), starting from July 1, 2024, the new salary policy will be implemented through the abolition of the current statutory base salary and salary coefficient system, and the establishment of a new wage regime (Central Committee of the Communist Party of Vietnam, 2018).

Regulations on occupational safety and health related to the statutory base salary are provided in Section 3 of the Law on Occupational Safety and Hygiene 2015 (National Assembly, 2015). These provisions regulate the occupational accident and occupational disease insurance scheme applicable to employees participating in social insurance.

Therefore, in accordance with the spirit of Resolution No. 2-NQ/TW, these provisions need to be amended.

5 POLICY RECOMMENDATIONS: MEASURES FOR IMPROVING LABOUR LAW ON OCCUPATIONAL SAFETY AND HEALTH IN THE CONSTRUCTION SECTOR

- Regarding internal regulations and procedures for ensuring occupational safety and health. According to legal provisions, employers must rely on various factors, such as laws and technical standards, when issuing internal rules and procedures for ensuring occupational safety and health. However, these regulations are numerous and scattered across different legal documents. Therefore, the State should promulgate standardized templates for internal regulations and procedures on occupational safety and health.
- Regarding occupational safety and health for certain categories of workers. Current legislation has not provided specific provisions on occupational safety and health for certain groups of workers, such as foreign workers employed in Vietnam and highly skilled workers performing specialized tasks for which there are no substitutes. Therefore, the law should establish specific regulations for these groups based on international treaties to which Vietnam has committed regarding foreign workers in Vietnam, as well as the particular characteristics of these groups.
- Regarding information dissemination, communication, and education on occupational safety and health. At present, there are no detailed regulations governing information dissemination, communication, and education on occupational safety and health, such as the content, methods, and frequency of

such activities. Therefore, the Government should provide detailed guidance on these matters.

- Clarification of the concept of occupational accidents.

Currently, according to Article 3 of the Law on Occupational Safety and Hygiene 2015, “an occupational accident is an accident that causes injury to any part or function of the body or results in the death of an employee, occurring during the course of work and associated with the performance of work or labour duties,” and “an occupational disease is a disease arising from harmful working conditions associated with a particular occupation that affect employees.” However, the law has not clearly defined what constitutes the course of work, nor whether it includes the period when an employee travels to the workplace, takes rest breaks at the workplace, or returns home. In practice, when providing benefits to employees, in certain cases workers may still be entitled to compensation for occupational accidents occurring while commuting to work, resting at the workplace, or returning home. Therefore, there exists an inconsistency between the legal definition of an occupational accident and the circumstances under which employees are entitled to occupational accident benefits. Accordingly, the law should be supplemented to clarify this issue.

- Additional provisions should be studied for workers (with or without labour contracts) who suffer from work-related illnesses.

A work-related illness refers to symptoms or diseases in which occupational factors act as risk factors that influence, increase the likelihood of disease occurrence, or accelerate the progression of a disease.

- It is necessary to supplement provisions on rescue and emergency response and integrate them into the Law on Fire Prevention and Fighting 2001 (amended and supplemented in 2013) in order to ensure legal consistency, as regulations on rescue and emergency operations are also an integral component of fire prevention and firefighting activities.

6 CONCLUSION

The legal system on occupational safety and health in Vietnam has established a relatively comprehensive legal corridor, adhering to the constitutional spirit of protecting workers' rights. However, the research indicates that inconsistencies in legal theory persist, particularly the lack of clarity in the concept of the "labour process," leading to difficulties in defining eligibility for insurance benefits. To ensure optimal protection for workers, the refinement of legal documents and the integration of rescue regulations into a unified framework are inevitable directions for the future.

ACKNOWLEDGEMENT

This research is partly funded by University of Finance - Marketing.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA)

Thang, T. D., Phong, P. V., & Nhung, P. T. H. (2026). LEGAL FRAMEWORK ON OCCUPATIONAL SAFETY AND HEALTH IN VIETNAM. *Veredas Do Direito*, 23(5), e235346. <https://doi.org/10.18623/rvd.v23.5346>