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REMOTE WORK IN VIETNAM: LABOUR PROTECTION, REGULATORY GAPS AND REFORM DIRECTIONS

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ABSTRACT

Remote and hybrid work challenge labour-law rules developed primarily around a fixed workplace, observable working hours and employer-controlled premises. This article examines the legal protection of remote employees in Vietnam through doctrinal analysis of the 2019 Labour Code, its implementing regulations, the 2015 Law on Occupational Safety and Hygiene and relevant International Labour Organization guidance. It distinguishes the enforceability of ordinary employment rights from the regulatory techniques needed to implement those rights when work is performed outside an employer's premises. The analysis identifies five connected questions: agreement on the place of work, measurement of working time and overtime, allocation of equipment and connectivity costs, occupational safety, and the fairness of digital performance supervision. It argues that reliance on general contractual freedom leaves unresolved practical risks where the employer controls workplace technology and sets responsiveness expectations. Rather than creating a separate, lower-protection form of employment, reform should provide a mandatory minimum content for remote-work arrangements, reliable time-recording and disconnection safeguards, proportionate monitoring, documented allocation of costs and a risk-based approach to off-site safety. These measures would make flexibility compatible with enforceable labour rights.

Keyword: Remote work; Telework; Employment contract; Working time; Occupational safety; Vietnamese labour law; Hybrid work.

1. INTRODUCTION

Remote work has changed where employees perform their contractual duties without necessarily changing who controls their work. Video conferences, shared documents and electronic workflow systems allow employers to organize production beyond the boundaries of an office. Flexibility can reduce commuting and widen labour-market participation. It can also make working time less visible, shift operating costs onto workers and extend managerial surveillance into private spaces. These consequences raise questions for a legal framework traditionally oriented toward work performed at identifiable business premises.

Vietnam's 2019 Labour Code is applicable to employees irrespective of whether their duties are performed in an office or another agreed location. Article 21 requires the employment contract to identify the work and workplace, together with essential terms on wages and working time. Article 33 regulates amendments to contractual content. Articles 105 to 107 establish limits on normal hours and overtime. These provisions provide an important starting point for remote work, but they do not themselves specify how to manage a home workstation, document electronic availability, reimburse internet costs or investigate alleged overtime at a distance [1].

The policy problem is therefore not a complete absence of legal protection. It is a mismatch between general rights and the practical evidence and coordination mechanisms needed to enforce them. When an employee is required to remain online, the parties may disagree about whether time spent waiting for instructions counts as working time. When digital productivity software is used, the employer may treat an activity log as comprehensive evidence of work even though professional output cannot always be measured through keystrokes or logins. Contractual flexibility may conceal rather than resolve these conflicts.

This study uses doctrinal analysis of current Vietnamese legislation, supplemented by the International Labour Organization's research on

working from home [3] and guidance on teleworking during and after the pandemic [4]. It neither reports original interviews nor assumes that all remote workplaces face the same difficulties. Its contribution is a framework linking the legal allocation of control with the allocation of responsibility: the party directing work and selecting management systems should not be able to transfer resulting risks to employees merely because work is off site.

2. OVERVIEW OF THE LEGAL FRAMEWORK FOR REMOTE WORK IN VIETNAM

2.1. Concept, Legal Nature and Application of General Labour Rights

Remote work describes the performance of job duties away from the employer's ordinary premises using physical or digital communication arrangements. Fully remote work differs from hybrid work, in which workers alternate between locations. Neither term necessarily determines legal status. The more important question is whether the factual relationship involves remunerated work subject to another party's management, direction and supervision. The Labour Code's conception of an employment contract directs attention to the substance of the relationship rather than the label chosen by the parties [1].

This distinction prevents remote working arrangements from becoming a route around compulsory protection. An employee who performs duties from home remains an employee where the elements of employment are satisfied. The employer should not characterize such a person as an independent contractor solely because they provide their own desk or use a personal computer. Conversely, not every person who sells services online is an employee: legal classification requires analysis of the actual allocation of authority, remuneration and risk.

The contractual workplace is an important legal anchor. Article 21 lists the work and workplace among essential terms of the employment contract. If an office-based employee is permanently required to work elsewhere, Article 33's rules on amendments to contractual content are relevant [1]. A remote-work policy should therefore distinguish occasional permission to work from home, an agreed hybrid schedule and a permanent change of location. Each arrangement should explain whether and when the employee may be required to attend the employer's premises.

The principle of equal protection is fundamental. Remote employees should not lose wage protection, rest periods, social insurance rights or lawful disciplinary safeguards on account of location. The 2019 Labour Code establishes limits on normal working time under Article 105 and regulates overtime under Article 107. These limits do not become inapplicable simply because messages are delivered outside ordinary hours. Whether a particular online interaction constitutes working time must nevertheless be assessed by reference to the actual obligations imposed and the parties' records.

Remote work complicates the distinction between autonomous scheduling and availability dictated by an employer. A worker may choose to draft a report late at night for personal convenience, while another may be ordered to respond immediately to late-night messages. The first situation should not automatically be treated as authorized overtime; the second cannot be dismissed as voluntary simply because the work is done at home. This distinction suggests a need for predictable scheduling, explicit authorization processes and reliable records rather than a universal assumption about all after-hours activity.

Occupational safety and hygiene obligations also remain relevant. The 2015 Law on Occupational Safety and Hygiene provides general duties and a framework for prevention and protection [5]. Applying these duties to an employee's home requires attention to the limits of employer access to private premises and to the specific work-related risks involved. A legal requirement to maintain safe work practices need not entail an unrestricted right to inspect an employee's private living space.

Comparative and international guidance helps explain why the workplace cannot be reduced to a physical address. The ILO's 2021 study, Working from home: From invisibility to decent work, shows that home-based work spans different occupational and organizational settings [3]. The ILO's practical guide on teleworking emphasizes agreement, organization, health and well-being [4]. These materials are informative policy references, not statutes automatically binding Vietnamese employers.

2.2. Regulatory Challenges and Reform Directions

First, remote-work agreements often leave core expectations unspecified. An instruction that an employee may "work flexibly from home" says little about scheduled availability, attendance at meetings, access to business systems or recall to the office. Where terms remain ambiguous, the stronger party may later redefine flexibility as continuous availability. A written arrangement should specify approved locations, recurring schedules, communication windows, output expectations, equipment responsibilities and a procedure for revising the arrangement. This would translate general contractual duties into commitments capable of verification.

Second, working-time records require a distinction between technical activity and legally relevant work. Login times may overstate work if a device remains open during a private break, yet understate work performed through phone calls, reading or offline drafting. Employers should combine reasonable time declarations with manager confirmation and project records rather than rely solely on automated screen activity. Recording practices should be disclosed in advance, consistently applied and open to employee correction. Relevant overtime authorization and payment requirements must be satisfied regardless of work location [1].

Third, the boundaries of working time need an operational mechanism. A right to disconnect is best understood here as a proposed policy tool, not as an independently established, comprehensive statutory entitlement under the current Labour Code. Employers could define normal response periods, provide exceptions for genuine emergencies and prohibit negative performance assessments based simply on a failure to answer messages outside agreed hours. Employees with legitimate flexible schedules could retain autonomy, while managerial expectations would become transparent and reviewable.

Fourth, the costs of remote work require fair allocation. Electricity, internet access, software licences, secure devices, ergonomic furniture and technical support can be indispensable to the performance of assigned duties. If employers prescribe particular equipment or security systems while workers bear every resulting cost, the arrangement may effectively shift business expenses into household budgets. A minimum statutory framework should require the parties to document supplied equipment, reasonable reimbursements, maintenance duties and the process for recovering or securely deleting corporate material at termination.

Fifth, off-site occupational safety needs a risk-based approach. Remote computer work may produce ergonomic strain, prolonged sitting and psychosocial risks arising from isolation or excessive connectivity. An employer could provide workstation guidance, periodic voluntary self-assessment, equipment support and appropriate reporting channels without demanding routine entry into the employee's home. Safety responsibilities should be proportionate to the employer's capacity to identify and control the risk. Any home inspection should respect personal privacy and rely on an appropriate lawful basis.

Sixth, digital supervision can expand beyond legitimate performance management. Monitoring an employer-owned device for cybersecurity may be justified by defined organizational needs; continuous webcam observation or indiscriminate capture of personal communications raises a qualitatively different intrusion. The correct inquiry is not merely whether software is available but why particular data are needed and whether a less intrusive technique would be effective. Employers should explain monitoring purposes, limit access, set retention periods and allow workers to challenge erroneous inferences drawn from system data.

Seventh, remote work can make participation and collective voice less visible. Employees who rarely attend the office may receive policy changes late or find it difficult to raise concerns alongside colleagues. Workplace representative organizations and consultation mechanisms should be adapted to digital communication, while preserving confidentiality and the ability to meet or communicate independently. A remote policy negotiated with employee input is more likely to identify unrealistic response expectations and unequal access to equipment before they become disputes.

Eighth, equal treatment requires care where different occupations allow different degrees of location flexibility. It is not inherently unlawful to require a machine operator to work on site while

permitting a software developer to work remotely. However, eligibility rules should be tied to job requirements rather than unexamined assumptions about caregiving, age or perceived dedication. Decisions to revoke an existing remote arrangement should be reasoned, consistent with contract terms and open to discussion where the change materially affects working conditions.

Ninth, the evidentiary framework for remote disputes should be made practical. Conflicts about overtime, late delivery or alleged misconduct may involve chat logs, time records, document histories and online meeting records. Such evidence can be useful but incomplete. A timestamp may establish that a message was sent, not that the recipient was under a contractual duty to respond immediately. Decision-makers should examine the rules communicated to the employee, the context of the exchange and any technical limitations. Records should be preserved in ways that allow both sides to test their reliability.

Tenth, the legal framework should clarify how remote work intersects with contractual changes and management decisions. Employers need predictable procedures for introducing remote work, requiring temporary presence and responding to cybersecurity incidents. Employees need notice and reasonable opportunities to reorganize childcare, transport or home working arrangements when a location agreement changes. A statutory model annex or implementing guidance could help parties distinguish consensual flexibility from unilateral alteration of essential working conditions.

A coherent reform package should proceed in stages. Initially, the competent authorities could publish model remote-work clauses and compliance guidance explaining how the existing Labour Code applies to hours, overtime, wages, disciplinary procedure and contractual workplace changes. The model should include mandatory disclosure of monitoring and expenses, while allowing occupation-specific details. This practical step would reduce unnecessary uncertainty without creating a rigid separate employment category.

In a second stage, legislative or regulatory amendments could specify minimum content requirements for longer-term remote and hybrid arrangements. These would address eligibility, location, schedule, costs, equipment, data handling, safety procedures, reversal of arrangements and dispute resolution. Minimum content should be mandatory, but detailed methods should remain adaptable. Excessively prescriptive requirements might unintentionally discourage arrangements that improve access to employment.

Finally, evaluation should focus on actual enforceability. Public guidance and workplace policies should be judged by whether employees can identify expected availability, recover properly authorized expenses, obtain lawful overtime pay, understand monitoring and raise safety concerns without disproportionate consequences. The objective is not to privilege either remote or office-based work. It is to ensure that a change in the location of production does not quietly change the distribution of basic labour rights and responsibilities.

3. CONCLUSION

Vietnam's labour law already contains fundamental safeguards relevant to remote work: enforceable contractual terms, working-time limits, wage protection and general occupational-safety responsibilities. The principal difficulty is translating those safeguards into an employment setting where duties are coordinated digitally and tasks are performed beyond premises directly controlled by the employer. Mere recognition of contractual freedom cannot settle disputes over continuous availability, technological monitoring, home-work expenses or off-site safety.

A proportionate reform programme should establish minimum written terms for remote-work arrangements, credible mechanisms to record working time, predictable limits on out-of-hours communication, fair allocation of necessary expenses and privacy-respecting safety procedures. Digital supervision should be linked to demonstrable purposes and accompanied by opportunities to challenge erroneous evidence. These reforms would preserve the operational advantages of remote and hybrid work while making ordinary employment protections practically accessible. Flexibility should change where work is performed, not whether an employee can exercise their rights.

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