

LABOUR DISCIPLINE IN VIETNAM: PROCEDURAL SAFEGUARDS, LEGAL CHALLENGES AND REFORM DIRECTIONS

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ABSTRACT

Labour discipline allows employers to preserve workplace order, yet it creates an immediate risk of arbitrary sanctions when managerial power is not balanced by procedural guarantees. This article examines the Vietnamese framework for internal labour regulations and disciplinary measures under the 2019 Labour Code and Decree No. 145/2020/ND-CP. Using doctrinal legal analysis, it distinguishes legitimate workplace management from punitive actions taken without proper legal grounds. Particular attention is given to the employer's burden of proving fault, employee participation and representation, notification of disciplinary meetings, time limits, the prohibition of monetary fines and wage deductions as disciplinary substitutes, and the exceptional nature of dismissal. The article argues that procedural defects are not merely technical errors: they may undermine the reliability of factual findings and deprive employees of an effective opportunity to defend themselves. It proposes clearer drafting of internal rules, documented proportionality in selecting sanctions, stronger access to evidence, practical guidance for small enterprises and more effective avenues for challenging unlawful disciplinary decisions. The aim is an accountable disciplinary framework that reconciles productive management with dignity and legal certainty at work.

Keyword: Labour discipline; Internal labour regulations; Procedural fairness; Dismissal; Labour Code 2019; Vietnam.

1. INTRODUCTION

Employers need predictable standards of attendance, safety, confidentiality and performance. Nevertheless, an internal rule gains legal legitimacy not simply because management publishes it. Employment is structured by contractual obligations and mandatory labour standards, and sanctions can threaten both income and professional reputation. The law must accordingly distinguish discipline from ordinary performance feedback and must restrict the circumstances in which an employer may punish an alleged violation.

Vietnam's 2019 Labour Code recognizes specified disciplinary measures and imposes conditions on their adoption and use [1]. Decree No. 145/2020/ND-CP adds procedural detail, including advance notification of disciplinary meetings [2]. The combined regime attempts to prevent decisions based on unsupported accusations, unilateral proceedings or unauthorized sanctions. Its practical success turns

on whether employers can translate formal requirements into fair workplace processes.

The legal problem is especially visible in small and medium-sized enterprises, where personnel policies may be informal and managers may treat an apology, salary deduction or pressured resignation as the quickest way to end conflict. In larger organizations, digital access logs and automated performance indicators may generate a different risk: a technically convincing record can be mistaken for complete proof of employee fault. Neither organizational simplicity nor sophisticated technology removes the need for procedural justice.

This article uses doctrinal and institutional analysis. It first explains the foundations of disciplinary authority and employees' safeguards; it then analyzes recurring points of legal vulnerability and suggests reforms. It does not claim to quantify the incidence of unlawful discipline. Its contribution is to show that the evidential, participatory and remedial dimensions

of discipline must operate as an integrated legal process.

2. OVERVIEW OF THE LAW ON LABOUR DISCIPLINE IN VIETNAM

2.1. The Nature of Disciplinary Authority and Employees' Safeguards

Labour discipline is a regulated response to employee conduct that breaches applicable workplace rules. Articles 117–119 of the Labour Code frame internal labour regulations as an essential source of workplace obligations [1]. Those regulations must be consistent with legislation and should define relevant behavior with sufficient clarity to give employees advance notice. A vague command to maintain “appropriate attitude” should not be treated as an unlimited license to punish any disagreement with management.

Article 124 identifies four disciplinary measures: reprimand; postponement of a wage increase for no more than six months; demotion; and dismissal. The existence of a closed set of sanctions is important. It prevents an employer from inventing punishments simply because an employee handbook provides for them. Article 127 separately prohibits monetary fines and wage deductions as substitutes for disciplinary measures, as well as degrading treatment [1]. These are substantive limits, not optional rules of workplace culture.

Article 122 provides the procedural center of the framework. Employers must prove the employee's fault, ensure participation by the relevant representative organization of employees where required, permit the employee to be present and defend themselves, and record the proceedings in minutes [1]. The same article prevents multiple sanctions for a single violation and limits the sanction where several violations are addressed simultaneously. Such provisions reflect the principle that discipline cannot be reduced to a manager's suspicion.

The implementing procedure matters in operational terms. Article 70 of Decree No. 145/2020/ND-CP requires advance notice of the disciplinary meeting, generally at least five working days, containing prescribed information for the necessary participants [2]. A meeting's legality therefore involves more than announcing a conclusion. The worker must receive a genuine

chance to understand the allegation, prepare a response and participate in a procedurally valid process.

Dismissal is a particularly intrusive sanction because it ends the employment relationship. Article 125 defines circumstances permitting dismissal, while the Code also prescribes periods during which disciplinary action may not be taken and limitation rules governing timing [1]. Employers should distinguish a legally recognized ground for dismissal from generalized dissatisfaction with an employee's work. Performance-management tools cannot bypass requirements applicable when the real reason is alleged misconduct.

An important conceptual separation is between disciplinary liability and material liability. An employee might be responsible for damage under applicable legal conditions, but that question should not be merged with an informal fine. Employers should record the factual basis, legal character and calculation of any claim separately, allowing disputes about fault, actual loss and causation to be examined on their merits.

2.2. Implementation Difficulties and Proposed Reforms

The first difficulty concerns the quality of internal rules. Regulations copied from a generic template often lack precise descriptions of prohibited conduct, reporting duties or competence to impose sanctions. Employees may then be accused of breaching standards that were never clearly communicated. Enterprises should conduct a regular legal review, remove obsolete rules, translate critical safety obligations where necessary and retain evidence that workers received the current regulations.

A second problem lies in evidence. The employer carries the burden of proving fault; an allegation of economic loss or an adverse productivity score cannot alone establish a disciplinary violation. Evidence should identify the relevant act, its connection to a rule and the employee's actual responsibility. Digital records warrant special care: shared accounts, technical outages and missing context can make an apparently objective log misleading. Fair procedure requires a meaningful opportunity to inspect and challenge relied-upon material.

Third, participation must be substantive rather than ceremonial. An employee who arrives at a meeting without knowing the factual allegations cannot defend themselves effectively. Written notice should identify the conduct at issue and provide a reasonable route for examining evidence. Minutes should capture the worker's explanation and unresolved factual disagreements, not merely confirm that management announced a sanction.

Fourth, representative participation can be uncertain in workplaces where a recognized employee organization is absent or where employees have limited confidence in existing channels. The Labour Code's actual participation requirements must be followed, but policymakers should also consider accessible independent advice, simplified legal information and rapid referral to mediation or legal assistance. Procedural rights are fragile where a worker does not know that they exist.

Fifth, sanction selection should be connected to the seriousness of the conduct. Even where the formal ground is established, decision-makers should document relevant context: whether the rule was clear, whether training was provided, the foreseeability of harm, and whether less severe measures can restore compliance. Proportionality is a useful standard for internal policy, although it should not be confused with a statutory permission to impose a sanction outside Article 124.

A recurrent compliance risk is the substitution of financial penalties for lawful measures. Employers sometimes perceive fines or wage withholding as efficient because they avoid formal proceedings. Yet the statutory prohibition is categorical in its purpose: an enterprise must not invent a monetary disciplinary system alongside the Code. Training should use worked examples distinguishing lawful compensation for proven damage, proper payroll adjustments and prohibited disciplinary deductions.

Time limits are also significant. The Code's limitation periods and protected intervals prevent indefinitely pending accusations and discipline during legally protected circumstances [1]. Human-resource departments should therefore use a decision calendar recording discovery, investigation, notice, meeting, decision and service. This creates traceability while reducing

the risk of procedural shortcuts motivated by an approaching deadline.

The 2025 transition to a two-tier model of local government reinforces the need for practical and consistently disseminated guidance on institutional responsibilities. Workers should not have to determine administrative competence through obsolete forms. Legal information from public bodies and employer associations should use current organizational names and identify the available routes for conciliation, inspection and adjudication.

Reform should begin with model internal regulations that distinguish misconduct, inadequate performance and compensable damage. The model should include a transparent complaint procedure and a checklist of required steps. However, standardization must not degenerate into automatic decisions. A checklist should support reasoned judgment, not substitute for the examination of facts.

Second, the workplace process should support access to evidence while protecting personal information of other workers. An employee accused on the basis of CCTV, messages or system logs should be shown the relevant material or a fair, reviewable representation of it. Where confidentiality is invoked, the employer should explain the restriction and consider an alternative that preserves the capacity to respond.

Third, access to remedies needs to be timely. A disciplinary decision can affect the worker before judicial review is completed. Effective mechanisms should provide understandable procedures, preservation of records, opportunities for negotiated correction and legally appropriate restoration when a sanction is set aside. Prevention and correction are complementary: better internal practice reduces the need for litigation, while credible external scrutiny makes internal safeguards meaningful.

Finally, employers should assess disciplinary outcomes rather than count only completed cases. Repeated reversals, missing minutes, unexamined employee responses and disproportionately severe sanctions can reveal institutional defects. Periodic audits can turn discipline from an episodic exercise of authority into a consistent rule-governed practice.

3. CONCLUSION

The 2019 Labour Code and Decree No. 145/2020/ND-CP furnish a structured framework for workplace discipline. They restrict available measures, require proof of fault, guarantee procedural participation and prohibit financial punishment masquerading as discipline. These protections seek to ensure that organizational order is maintained by legally accountable decisions rather than arbitrary authority.

The principal challenge is implementation. Clear internal rules, reliable evidence, meaningful notice, employee participation and reasoned sanction selection must function together. Practical employer guidance, improved access to contested records, reliable documentation and effective remedies would strengthen legal certainty for both parties. A fair disciplinary system need not weaken management: it creates predictable standards and reduces the cost of avoidable workplace conflict.

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