

LEGAL HANDBOOK



FOR
ENTERPRISES

“Manage human resources effectively - control risks from contracts and debt settlement”



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CDLAF, law firm located in Ho Chi Minh City. We have a team of Lawyers with deep experiences, used to hold the important positions in law firms, enterprises, banks...CDLAF advises in various legal fields, from Finance, Manufacture, Labor Supply, Real Estate, Investment, Litigation and other legal services, etc. We always strive to become a reliable confidant during your business process.

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Our Services:

Enterprise

Investment

In house - Council

Contract

Labor

And other
Services

INTRODUCTION

*“Any enterprises, when established, operated, and managed, shall be based on the regulations of law. Besides, experience and skills in applying the law are essential. With many years of experience in the legal field, CDLAF Lawyers have launched the LEGAL HANDBOOK FOR ENTERPRISES. CDLAF hopes this handbook will support basic and most necessary issues for your enterprise to **Manage human resources effectively - control risks from contracts and debt settlement.**”*



EMPLOYEES AND EFFECTIVE MANAGEMENT TOOLS

Human resources management with standardized tools, forms, processes, and regulations according to labor laws is an effective method to maintain compliance and control enterprise risks. So, which tools are essential for enterprises? Let's review the following content with CDLAF:

01. Labor Contract

Labor contract is a tool that fully records the mandatory contents according to the law and the necessary contents to regulate the employees corresponding to each job position. For some special sectors or employees holding important information, terms on non-disclosure agreements, anti-competition, and anti-conflict of interest shall be carefully regulated.

02. Internal labor regulations

Currently, labor laws and labor contracts do not regulate all issues arising in the process of management and employment. It is necessary to mention the violations of the employees, and the enterprise cannot discipline the employees if the violations are not specified in the Internal Labor Regulations. Therefore, Internal Labor Regulations are always a priority document that enterprises develop to bind the employee's responsibilities and maintain compliance within the enterprises.

03. Set of documents related to labor discipline

- Minutes recording violations;
- Minutes of labor discipline meetings;
- Decision on labor discipline.

According to regulations, labor discipline will require correct form, processing sequence, and violation content. If an enterprise's shortcomings lead to violations in form or content, the enterprise will face a loss of wages and additional compensation for employees.

04. Set of documents related to the termination of a labor contract

- Agreement on termination of the labor contract;
- Minutes of handover of work;
- Decision on termination of the labor contract.

These documents are required when the parties agree to terminate the labor contract. To record the rights and obligations of the parties when terminating the labor contract, a written termination agreement and documents on handover and termination are necessary to avoid subjective damages.

05. Collective labor agreement

A collective labor agreement is a document that generally regulates the labor relationship and focuses on benefits beyond the level prescribed by law that the enterprise already applies to employees. It does not adjust employee behavior. In other words, this document records the enterprise's employee welfare policy.

Building standards from the beginning, along with instructions and application procedures for each specific situation, will help enterprises easily apply when legal issues arise in practice and save costs to resolve disputes.



CONTROL RISKS FROM CONTRACTS WITH CLIENTS

Client contracts are the most important tool to ensure the enterprise's rights in business activities. The provisions that often cause risks and disputes that affect the interests of enterprises have been reviewed by CDLAF below:

01. Description of goods and services

These terms are understood as the subject matter of the contract or the service content recorded in the first articles of the contract. This is a seemingly simple provision, but an inaccurate, unclear, or incomplete description will lead to disputes during contract implementation, receiving goods, or accepting service results. Reality shows that only clarity and completeness in the description of goods and services can create the most common understanding that both parties aim for when implementing the contract. This also eliminates disputes regarding the quality of goods and services.

02. Implementation progress

Implementation progress for each type of contract is the service provision period, delivery time, and construction completion time..., specifically:

- The implementation period needs to specify the start and end dates allowed clearly;
- It is necessary to regulate the legal actions that a party is allowed to take when progress is delayed, the renewal method of implementation progress, the method to record the delay in implementation progress due to force majeure events...;
- It is necessary to determine the limit for how long the delay is, penalties for violations for each day of delay, the level of penalties for violations and the liability to compensate for incurred damages;
- A party's liability for delays, especially related to contracts for the sale and purchase of goods, storage costs, and waiting costs from the transporter, is a large expense. Therefore, it is necessary to clearly record the responsibility of one party if there is a delay in providing services or goods or a delay in receiving them.

03. Unilateral termination of the Contract

Basis Unilaterally terminate the contract:

According to the law, the right to unilaterally terminate the contract before the expiration date of one party in the contract will be based on:

- When a party commits a serious breach of contractual obligations;
- According to the regulations of the law;

The parties agree on the cases that are the basis for one party to have the right to terminate the contract unilaterally. This is considered the clearest basis for a party to rely on to determine whether unilateral rights arise without proving whether the other party's violation is considered a serious breach of obligations in the contract.

How to unilaterally terminate the contract:

To unilaterally terminate the contract in accordance with the law and avoid the risk of penalties for violations and compensation for damages, in addition to the reason for unilateral termination, the enterprise will need to properly implement the form of notice to terminate the contract as well as giving prior notice unilaterally.

The form of notice will be in person, by post, or via electronic means such as email, fax... It depends on the agreement of the parties in the contract. The law does not specifically regulate it.

How long is the notice period, or does the contract terminate immediately?

The law regulates for a reasonable period in advance notice, but the law does not guide what time is reasonable. To have a basis for implementation in the contract, the parties need to clearly agree on how long the advance notice period is when one party unilaterally terminates the contract and whether or not this advance notice period applies to all breaches or, for some special cases, the parties agree to shorten the notice period. The advance notice period is calculated from what time to suit the form of sending the notice is also one of the points that the parties need to clarify in the contract.

04. Penalties for violations - Compensation for damages - Interest on late payment

What are the penalties for violations, and when do they apply?

According to the law, a penalty for violation is the aggrieved party's request to the violating party to pay due to breach of contract according to the content of the penalty term agreed upon by the parties in the contract. Thus, sanctions for violations shall not automatically be applied if the parties do not have an agreement in the contract. The penalty for violation shall be 8% or 12%, depending on each field, and the penalty will be determined on the part of the violated obligation.

Compensation for damages

Compensation is understood as the act of one party compensating for losses caused by a breach of contract to the other party. The value of compensation for damages includes the value of actual and direct loss that one party has suffered due to the other party's actions. Thus, the basis for arising liability for damages is that the party requesting compensation must prove that the party causing the damage committed a breach of contract. This breach also needs to be the direct cause of the damage, and at the same time, it determines the actual damage that occurred.

Interest on late payment

If one party to the contract is late in paying for goods or service remunerations and other reasonable expenses, the other party has the right to request that party pay interest on that overdue amount. Thus, the requirement to pay late payment interest is a sanction that can only be applied to violations of payment obligations. The late payment interest rate will be determined according to the average overdue debt interest rate on the market at the time of payment corresponding to the late payment period unless otherwise agreed.

Thus, carefully reviewing the contract terms, predicting possible risks, and building a backup plan for the Enterprise during the contract implementation process is essential.

To shorten contract preparation time and control content risks, enterprises should consider building a set of model contracts with many customizable terms for each specific transaction.



CONTROLLING AND SETTLING DEBT EFFECTIVELY

In today's competitive business environment, effectively controlling and settling debt is also an important factor in ensuring an enterprise's survival and sustainable development.

01. Debt tracking

Enterprises must first ensure "debt tracking" to control debt and choose appropriate settlement methods. However, debt tracking is not simply tracking on accounting books but the tracking is considered in terms of:

- Does that debt still have a statute of limitations (time limit) for the Enterprise to take actions to request authorities to settle?
- Are partners and clients making any moves to dissolve, declare bankruptcy, or transfer capital?
- Are there documents recording debts such as emails, contracts, reconciliation minutes, and acceptance minutes? Whether the enterprise keeps it and which documents confirm the client's debt.
- The reason why the client does not pay the debt is subjective to the client or for any reason belongs to the quality of products and services that the company has provided to the client. Enterprises also need to determine which party is at fault and whether that element of fault is a permissible condition for clients not to pay debts.

- The customer's ability to pay debt is important for enterprises to choose how to request clients to pay debt effectively.

Therefore, debt tracking is not just about monitoring the cash flow in and out of that debt. Still, enterprises should have a process to monitor and evaluate each debt's recovery ability to find appropriate and quick debt recovery methods and avoid losing the right to sue in Court or Arbitration when the statute of limitations has passed.

02. Choosing a method of debt settlement: Arbitration or Court

To choose the appropriate method of debt settlement, enterprises first need to review the agreements of the parties in relevant documents, such as contracts, appendixes, and principal contracts, etc. to determine the time of signing the contract and whether the parties have noted the term for selecting a dispute settlement agency?

In cases where the term recognizes arbitration as the dispute settlement agency, then this term takes effect, the arbitration will settle the enterprise's request for debt recovery.

In cases where the terms for choosing a dispute settlement agency are not established between the parties or the parties agree to choose a court to resolve the dispute, the Court will settle the enterprise's request for debt recovery.

In some cases, the choice of arbitration or court to resolve the dispute will help determine the ability to recover the debt. Therefore, from the contract negotiation stage, enterprises need to determine many factors such as the ability to execute judgments, language, settlement location, the confidentiality of transactions, and speed of processing to resolve disputes depending on whether the enterprise's clients are domestic or foreign, etc. From here, the enterprise would decide between arbitration or Court.

CDLAF hopes that the information in this Handbook has given enterprises and managers a general perspective on Corporate Law related to effective human resource management – controlling risks from contracts and debt settlement.

The publication contains general information which is of reference value. If your enterprise wants to receive legal opinions related to current issues, don't hesitate to get in touch with our lawyers via email: info@cdlaf.vn

Best regards,

Manage human resources effectively - control risks from contracts and debt settlement

6+ Lawyers

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