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Whistleblowing in the workplace: key employment considerations in Vietnam

This Legal - Forensics Newsletter emphasizes the growing role of whistleblowing in modern governance and compliance frameworks, and highlights key considerations for organizations operating in Vietnam. This is the second article in our in-depth whistleblowing series, with future articles exploring related legal, compliance and personal data protection considerations.

In the first newsletter of this series, we examined how whistleblowing has evolved from an employee-protection mechanism into an important component of corporate governance and compliance. From an employment-law perspective, however, establishing a reporting channel is only the beginning.

The real value of a whistleblowing framework is not that concerns are reported, but that the organisation can investigate them effectively and take legally supportable action where appropriate. To many employers, the key challenge is therefore not whether misconduct occurred, but whether the misconduct can ultimately be proven and whether the employer remains legally entitled to act on it. This distinction is particularly important in Vietnam, where employment decisions are often assessed not only on the underlying facts but also on whether the employer can demonstrate compliance with the applicable evidentiary, procedural and statutory requirements. As a result, even a well-founded allegation may not support disciplinary action or a compensation claim if evidence is inadequately preserved, the statutory limitation period has expired or the required procedures have not been properly followed.

This second newsletter highlights:

- A whistleblowing report is only the starting point
- Evidence often determines whether action can be taken
- Employment measures require separate legal assessment
- Whistleblowing may give rise to compensation and criminal law considerations

1. A whistleblowing report is only the starting point

From an employment-law perspective, a whistleblowing report is rarely the evidence that determines the outcome of a case. Rather, it serves as the trigger for a fact-finding process.

When considering labour discipline, Vietnamese law places the burden of proving employee fault on the employer.¹ As a result, allegations, suspicions or preliminary investigation findings will not, by themselves, be sufficient to support disciplinary action. The employer must still establish the relevant facts through reliable and legally supportable evidence.

The distinction is equally important when dealing with reports that ultimately cannot be substantiated. An allegation should not be regarded as false merely because an investigation fails to establish misconduct. Employees may report concerns based on incomplete information, reasonable suspicions or an honest misunderstanding of the facts. This should be distinguished from cases involving deliberate fabrication or intentional misuse of the reporting process.

Consequently, an effective whistleblowing framework should not only encourage employees to raise concerns in good faith, but also ensure that reports are assessed objectively and supported by an evidence-based investigation process.

2. Evidence often determines the outcome

Once a report is received, one of the most important practical considerations is evidence preservation. Internal investigations often involve a broad range of materials, including emails, chat messages, system logs, interview records and other forms of electronic evidence. However, information that appears persuasive internally may not necessarily carry the same weight in a subsequent labour dispute or civil proceeding. In designing such a framework, companies should consider the following elements.

Under Articles 94 and 95 of the Civil Procedure Code, evidence must derive from legally recognised sources and satisfy applicable requirements regarding authenticity, origin and form. Accordingly, employers should consider not only the content of the information obtained, but also how it was collected, preserved and documented.

This issue frequently arises in practice where investigations rely on photocopied documents, recordings with unclear origins, retrospectively prepared witness statements or electronic records whose integrity cannot subsequently be demonstrated. Vietnamese courts have, in a number of cases, declined to recognise such materials as valid evidence.²

For that reason, investigations should be conducted with potential litigation in mind from the outset. Documents, interview records and electronic data collected during the whistleblowing process may later become critical evidence in disciplinary proceedings, compensation claims or court litigation. Attempting to reconstruct the evidential record after an employment decision has already been challenged is often significantly more difficult.

Employers should therefore preserve original records where possible, maintain evidence concerning the source and chain of custody of key materials, retain relevant metadata and ensure that witness interviews and investigation records are properly documented. In sensitive

¹ Labour Code 2019, Article 122.1(a).

² See, for e.g., Judgment No. 522/2019/LD-PT of the Ho Chi Minh City People's Court dated 5 June 2019; Judgment No. 02/2019/LD-PT of the Tuyen Quang People's Court dated 22 July 2019; Judgment No. 524/2017/LD-PT of the Ho Chi Minh City People's Court dated 12 June 2017.

cases, employers may also consider using bailiff records to document events or preserve evidence.³

An investigation may successfully establish what happened. Whether the employer can subsequently rely on those findings is a different question. If the underlying evidence cannot be authenticated, traced or lawfully presented, a well-founded conclusion may not translate into a legally defensible outcome.

3. Investigation findings and employment decisions are different matters

A further issue often overlooked in practice is the distinction between an internal investigation and the employment measures that may follow.

The purpose of an investigation is to establish facts, assess risks and determine an appropriate organisational response. It is not, however, a disciplinary process or a determination of legal liability. A conclusion that misconduct occurred does not automatically entitle the employer to impose labour discipline, terminate employment or pursue compensation.

Employers should therefore treat the investigation and the subsequent employment decision as separate legal stages. Investigation reports should carefully distinguish between allegations, preliminary observations, corroborated evidence and substantiated findings. This distinction becomes particularly important if the matter is later scrutinised by labour authorities, mediators or the courts.

4. Potential employment measures require separate legal assessments

Depending on the circumstances, an employer may consider a range of measures following an investigation, including (i) temporary reassignment,⁴ (ii) temporary suspension from work,⁵ (iii) labour disciplines including disciplinary dismissal,⁶ (iv) unilateral termination,⁷ (v) material liability under the Labour Code,⁸ or (vi) compensation claims under the Civil Code.

Each of these measures is governed by its own legal requirements. Consequently, the relevant question is not simply whether misconduct occurred. The employer must also consider whether the conduct constitutes a violation under applicable law, the labour contract or the registered Internal Labour Regulations (ILRs), whether the proposed measure is permitted under the ILRs and applicable law, whether sufficient evidence exists to establish employee fault and whether the applicable procedural requirements can be satisfied.

From a practical perspective, employers should avoid treating investigation findings as the final step in the process. A substantiated finding often marks the beginning of a separate legal assessment, particularly where the company is considering disciplinary action, termination or the recovery of losses.

A substantiated finding does not automatically justify disciplinary action. Employers should also consider whether the proposed measure is supported by a sufficient legal basis and can withstand scrutiny from a procedural perspective.

This distinction is particularly important in disciplinary dismissal cases. In practice, labour courts frequently focus not only on the employee's conduct but also on whether the employer complied

³ See, for e.g., Judgment No. 54/2025/LD-PT of the Ho Chi Minh City People's Court dated 9 June 2025; Judgment No. 01/2023/LD-PT of the Hai Duong Province People's Court dated 29 September 2023.

⁴ Labour Code 2019, Article 29.

⁵ Labour Code 2019, Article 128.

⁶ Labour Code 2019, Articles 124 and 125.

⁷ Labour Code 2019, Article 36.

⁸ Labour Code 2019, Articles 129 and 130.

with the statutory requirements governing labour discipline. As a result, a dismissal may be held unlawful despite evidence of misconduct where procedural requirements, evidentiary standards, limitation periods or Internal Labour Regulation requirements have not been properly satisfied.

If an employment measure is found to be unlawful, the employee may seek remedies through the labour dispute resolution process. In the case of unlawful unilateral termination, these may include reinstatement, payment of salary and compulsory insurance contributions for the period during which the employee was unable to work, as well as statutory compensation.⁹

5. Timing may determine whether action remains available

A well-founded whistleblowing report does not necessarily mean that labour discipline remains available.

Vietnamese labour law imposes strict limitation periods for disciplinary action. Consequently, employers should not only investigate whether misconduct occurred, but also determine when it occurred, whether the conduct has ceased and whether it should properly be characterised as a completed act, a series of separate violations or ongoing conduct. The general limitation period for labour discipline is six months from the date of the violation, extended to 12 months for violations directly relating to finance, property, technological secrets or business secrets.¹⁰

This assessment can be critical because it may directly affect whether disciplinary action remains available at all. A well-founded allegation may ultimately be impossible to pursue if the applicable limitation period has expired before the employer completes the statutory process.

Where there is a risk that the employee's continued presence may interfere with verification, evidence preservation or witness cooperation, employers may also consider temporary suspension from work under Article 128 of the Labour Code 2019. Properly used, this measure can support the investigation process by preserving the integrity of evidence and facilitating fact-finding. It should not, however, be viewed as a disciplinary sanction or a presumption that misconduct has already been established.

The suspension period should be used to preserve evidence, conduct interviews, review relevant records and assess whether sufficient grounds exist for further action. Importantly, suspension does not relieve the employer of its obligation to prove employee fault or comply with the legal requirements applicable to any subsequent disciplinary measure.

6. Material liability and compensation

Whistleblowing reports frequently reveal issues that extend beyond labour discipline. Misconduct may involve financial loss, damaged assets, misuse of company resources, breaches of confidentiality obligations or other forms of economic harm. In such cases, employers may consider pursuing material liability under the Labour Code or compensation under the Civil Code.

In practice, employers often focus on proving the misconduct itself. However, the legal requirements for recovering losses are typically broader.

The same body of evidence collected during a whistleblowing investigation may ultimately support multiple legal outcomes simultaneously, including labour discipline, material liability and civil compensation claims. Employers should therefore assess evidentiary requirements at the outset of the investigation rather than only after a dispute arises.

⁹ Labour Code 2019, Article 41.

¹⁰ Labour Code 2019, Article 123.1.

Although these legal regimes differ in scope and procedure, both generally require the employer to establish several core elements: a violation, fault, actual damage and a causal connection between the conduct and the damage suffered.

7. Beyond employment consequences

The implications of a whistleblowing report may, in some cases, extend beyond employment matters. Reports involving fraud, corruption, embezzlement, theft, cybercrime or other potentially criminal conduct may require employers to consider whether broader legal obligations arise.

A particular consideration is the potential obligation to report certain offences to the competent authorities. Vietnamese criminal law recognises liability in limited circumstances for failure to report specified crimes.¹¹ Accordingly, where a whistleblowing report reveals conduct that may potentially constitute a criminal offence, employers should assess whether the information available is sufficient to warrant further escalation or consideration of a referral to the competent authorities.

In some cases, the practical challenge is not whether an offence has been committed, but whether the information obtained through the whistleblowing process is sufficient to justify further escalation or referral to the competent authorities.

This does not mean that every whistleblowing report should automatically be reported. The appropriate response will depend on the nature and seriousness of the allegations, the information available and the outcome of the company's preliminary assessment. Employers should therefore evaluate each case carefully and seek legal advice where appropriate before deciding whether referral to the competent authorities is necessary.

At the same time, employers should exercise caution when characterising allegations and investigation findings. Internal investigations are intended to establish facts and assess risks; they are not a substitute for criminal proceedings. Reports should therefore distinguish clearly between allegations, preliminary observations and substantiated findings, particularly where the information may affect an individual's legal position or reputation.

8. Key takeaway

The value of a whistleblowing mechanism lies not merely in receiving reports, but in enabling organisations to convert concerns into reliable evidence and legally defensible decisions.

Establishing misconduct is only the beginning. Employers must also ensure that evidence has been properly preserved, employee fault can be demonstrated, the proposed measure has a valid legal basis, the relevant limitation period remains available and all procedural requirements have been satisfied.

Where labour discipline, material liability or compensation is contemplated, the ability to prove the misconduct itself may be only one part of the exercise. Employers may also need to establish actual damage, causation and compliance with the applicable legal framework before a decision can withstand scrutiny.

Ultimately, a well-designed whistleblowing framework is not simply a reporting channel. It is a governance and risk-management tool that enables organisations to identify concerns early,

¹¹ Penal Code 2015 (as amended in 2017), Articles 19 and 390.

preserve evidence, conduct effective investigations and take legally supportable action before employment, regulatory or financial risks escalate.

In the next article, we will examine the intersection between whistleblowing, internal investigations and personal data protection.



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