



## **Employees' Organizations at the Enterprise-level and Grassroots Trade Unions in Vietnam**

**Compliance and Ethics**

**Employment and Labor**



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Vietnam's active integration into the global supply chain leads to a high requirement under which employees' unions must be independent from the state governance and employers' influence. The 2019 Labor Code, which took effect on January 1, 2021, paved a critical path to satisfying the requirement for better protection of employees' rights and interests. This article introduces the birth of the modern union called "employees organizations" at the enterprise-level next to the traditional trade unions governed by the state.

## Key highlights

- Why was there a change to "Employees' Organization at the Enterprise-level" from the previous trade union definition?
- Establishment of an "Employees' Organization at the Enterprise-level."

In Vietnam, the trade union was the only organization dedicated to protecting employees' legitimate rights and interests from the implementation of the first Labor Code in 1994 until the Labor Code of 2012 was enacted.

Under the Labor Code of 2012, the term referring to trade unions was changed to: "*Representative organization of a grassroots-level employees "collective."* However, the essence of this organization remained and was defined as "*the executive committee of a grassroots trade union or the executive committee of the immediate upper-level trade union in a non-unionized enterprise.*" As such, it could be said that it was old wine in a new bottle.

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[The Labor Code of 2019](#) revised the term to “*Employees’ representative organizations at the grassroots level*,” comprising grassroots trade unions and employees’ organizations at all enterprises. Specifically, Article 3.3 of the 2019 Labor Code stipulates: “*The employees’ representative organizations at the grassroots level means an internal organization voluntarily established by employees of an employer which protects the employees’ legitimate rights and interests in labor relations through collective bargaining or other methods prescribed by labor laws. The employees’ representative organizations at the grassroots level comprise the grassroots trade union and the employees’ organization at enterprise-level.*”

## **Why was there a change to “the Employees’ Organization at Enterprise-level” from the previous trade union definition?**

In practice it was proven that the trade union had not been influential and could not competently perform its function as an independent representative organization for the rights and interests of employees because the trade union’s organizational structure and operational mechanism were still dependent on the enterprise.

- The leaders of the grassroots trade unions remained employees of the enterprise and received wages and benefits from the enterprise. Therefore, they were still under the influence of the management of the enterprise. As a result, they are unable to act objectively, independently, and decisively for significant and fair protection of employees’ interests.
- Employees did not want to join the trade union because they had to pay union dues while not fully understanding — or being aware of — the effectiveness and actual benefits of becoming a member of the trade union.
- The sources of operational finance for the trade union depended on the enterprises’ monthly contributions (2 percent salary funds based upon payment towards employees’ social insurance premiums). Many companies also did not want to establish a trade union because of their misunderstanding that they would not need to pay union fees unless they created a trade union.
- In addition, the recognition of the immediate upper-level trade union representing employees in a non-unionized enterprise was neither consistent with the provisions of the International Labor Organization (ILO) nor a guarantee of voluntariness (freedom) in joining a representative organization chosen by employees. Specifically, this involved the provisions C087 – Freedom of Association and Protection of the Right to Organize Convention (1948) and C098 – Right to Organize and Collective Bargaining Convention (1949). Where the employees did not establish or join the trade union, they would be unable to authorize the immediate upper-level trade union to protect their legitimate rights and interests in labor relations. Furthermore, there are no legal grounds to affirm that employees who are not members of the grassroots trade union agree to authorize the grassroots trade union to act on their behalf for rights and benefits.
- Further, ILO member states have the expectation that the ILO’s standards, or even higher ones, are being implemented. For example, US corporations and companies doing business in Vietnam strongly desire that their products manufactured in Vietnam follow a production process that [complies with the standards](#) of voluntary and equal labor, non-oppression and exploitation, and respect for human rights and dignity at work. Therefore, to protect human rights at work, it is essential to have an independent organization that is prepared to stand up for the interests of employees and, in particular, is not dominated or influenced by the enterprise. For instance, there were instances in the past where garment manufacturers (in Asia) for foreign corporations treated their workers unfairly and violently. One well-known

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example was a garment manufacturer that fulfilled orders placed by N Corporation. When N Corporation learned about the bad behavior towards the workers, N Corporation performed an investigation, proposed changes, and prohibited the practice for future manufacturers. In fact, N Corporation now places its representative offices in countries where their outsourcing enterprises are located to closely monitor local issues. This ensures that any products sold under its brand name always follow or exceed the ILO's standards.

Moreover, Vietnam's economy has been increasingly dynamic and responsive in recent years and has proven that it is an active and progressive member of the international community. The development of effective employee organizations has been advocated by the Communist Party of Vietnam through Resolution 06-NQ/TW dated November 5, 2016. Subsection 2.10 of this Resolution pledged to take action in *“Promulgating new legislation, or amending and supplementing the current ones, concerning the allocation of state management responsibilities in order to change and strengthen the effective management of the establishment and operation of the employees’ organizations at enterprise-level in order to protect the legitimate rights and interests of employees, and to facilitate enterprises doing business stably and successfully. Ensuring the establishment and operation of the employees’ organizations at enterprise-level being in line with the process of completion of the legal framework, consolidating administrative means and measures to facilitate these organization’s smooth and healthy operation in accordance with the provisions of Vietnamese law and the principles of the International Labor Organization, while maintaining socio-political stability.”*

Therefore, the most outstanding development of the 2019 Labor Code is the recognition of the existence of two forms of employees’ representative organizations at the grassroots level, comprising: a grassroots trade union and an employees’ organization at enterprise-level. [The 2019 Labor Code](#) codifies the direction of Resolution No. 06-NQ/TW of the Central Committee of the Communist Party of Vietnam aligning the country with international integration on employee representative organizations.

## **Establishment of an "Employees' Organization at Enterprise-level"**

An employees’ organization at enterprise-level is duly established and operated after registration with the competent state authority. These organizations enact their own charter and have financial resources independent of the grassroots trade unions. Their management board are Vietnamese employees who are employed at the enterprise. More importantly, the employees’ organizations at enterprise-level must not comprise both ordinary employees and the employees directly involved in the decision-making process related to working conditions, recruiting employees, disciplining employees, employment termination, or assignment of employees to perform other jobs.

Although the 2019 Labor Code’s provisions for the establishment of employees’ organizations at enterprise-level took effect on January 1, 2021, there have been no such organizations established thus far. This is due to the lack of specific instructions from the government on the establishment, participation in, and operation of these organizations, specifically dossiers, orders, procedures, and competence for registration; state management over financial matters and assets of these organizations; division, separation, consolidation, merger, dissolution, and the right of association of these organizations. It is hoped that the government will expedite issuing the necessary guidance and regulations to enforce the 2019 Labor Code's provisions in order to strongly and effectively protect the interests of employees.

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## Check out additional ACC resources

- [Do “Unconditional Bonds “ Perform as Intended? Solutions to Prevent Bonds from Being Dishonored under Vietnamese Law,”](#) by Stephen Le, Le & Tran
- [“Elevation of Vietnam “s Public Private Partnership Regime: 14 Key Changes for Foreign Investors,”](#) Melissa Keane, Bill Magennis, Giang Nguyen, and Duong Ngyuen, Allens Pte. Ltd., 27 July 2020
- [“Legitimising Electronic Signatures \(Vietnam\).”](#) by Stephen Le, Le & Tran

[For more information about the Commercial Courts resolution and how chapters can use this resolution, please contact ACC’s AGC and Director of Advocacy Initiatives, Amy Chai.](#)

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