



# HIGHLIGHTS IN THE PRE- PROCEDURE STAGE WHEN RESOLVING A LABOR DISPUTE AT A COURT

*The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.*

*The article concentrates on highlights in the pre-procedures stage when resolving a labor dispute at a court.*

Pursuant to the Labor Code 2019<sup>[1]</sup>, an individual labor dispute means a dispute between the employee and the employer; or between the employee and the organization that sends the employee to work overseas under a contract; or between an outsourced worker and the client enterprise pertaining to their rights, obligations and interests during the establishment, execution or termination of a labor relationship (*the “Labor Disputes”*).

After no amicable settlement could be reached by relevant parties, the Labor Dispute could be referred to and final settled at the competent court (or some rare cases, at arbitration). In general, the process for the settlement of the Labor Dispute still follows a general procedures as prescribed in the Civil Procedure Code 2015<sup>[2]</sup>. The Court will issue a decision to settle the case and ensure its enforcement through State coercive measures. However, it is imperative to be cognizant of the following pertinent matters during the pre-procedure stage.

Primarily, in principle, most Labor Disputes, whether individual or collective labor disputes, shall be conciliated by a conciliator prior to seeking the Court’s intervention for resolution<sup>[3]</sup>. This is a prerequisite condition for the Court to consider, accept, and settle the case according to the proceedings, otherwise the Court will return the petition and request a litigant to bring the dispute to be passed conciliation procedures by the conciliator.

According to the Labor Code 2019<sup>[4]</sup>, labor conciliators are persons assigned by the head of provincial-level People's Committees to mediate Labor Disputes, disputes over vocational training contracts, support the development of labor relations. They will act as intermediary and advise all involved parties in a labor relations dispute with the goal of reaching a fair and amicable resolution that satisfies the needs of all parties involved. The procedures<sup>[5]</sup> of conciliation are summarized below:

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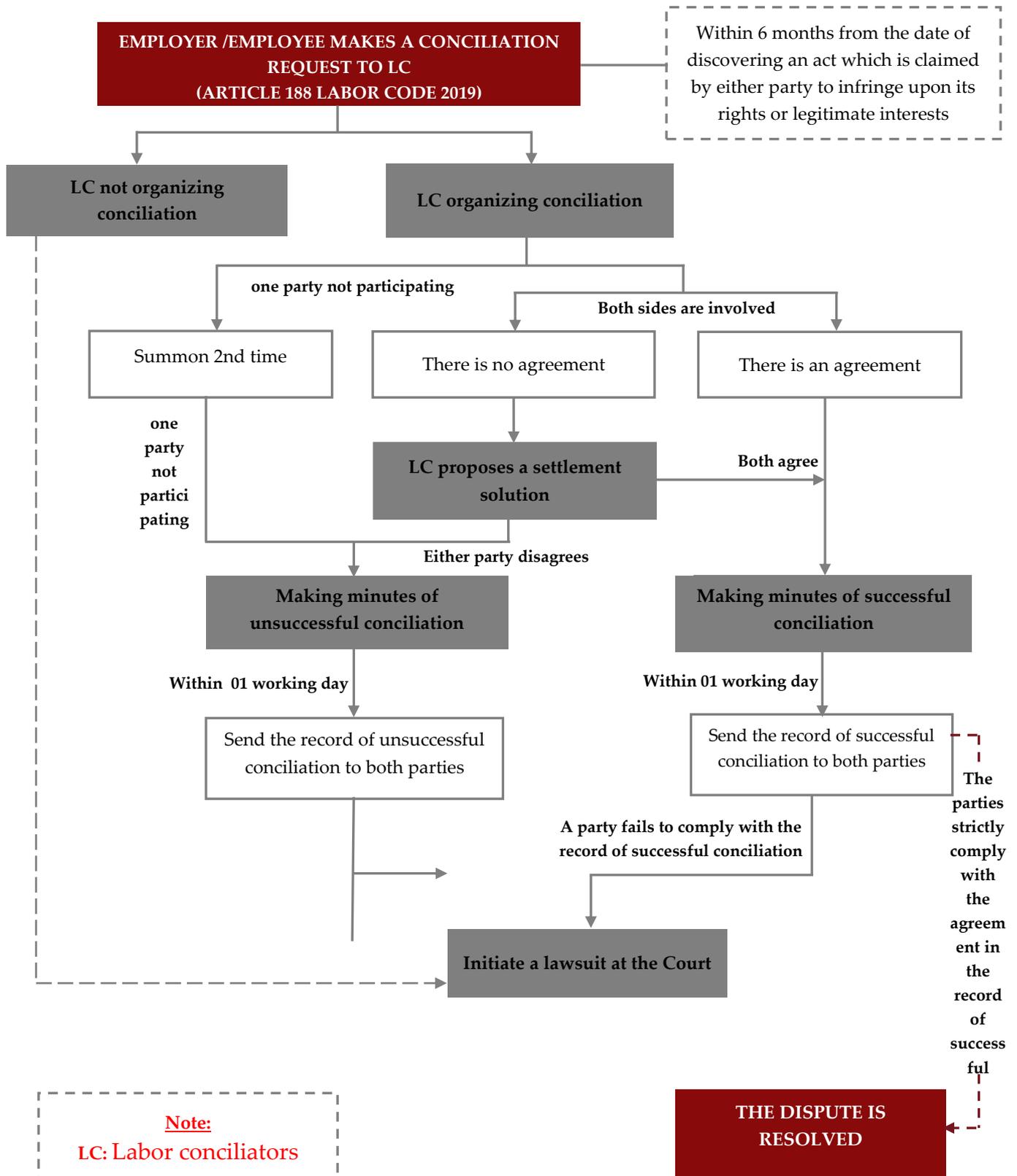
[1] Clause 1 Article 187, Clause 1 Article 191 and Clause 1 Article 195 Labor Code 2019

[2] Please refer to our legal summary with the topic "**Time frame to settle a civil dispute at a first-instance court, from regulations to practice in Vietnam**" at the link <https://bizlegalgroup.com/time-frame-to-settle-a-civil-dispute-at-a-first-instance-court-from-regulations-to-practice-in-vietnam.html>

[3] Clause 1, Article 32 of the Civil Procedure Code 2015 and point a, clause 2, Clause 1, Article 188 of the Labor Code 2019

[4] Clause 1, Article 184 of the Labor Code 2019

[5] Article 188 of the Labor Code 2019



All in all, the Court only accepts the case and conducts Labor Disputes resolution in the event of: (i) an unsuccessful conciliation, or (ii) either parties fails to execute the agreement in the minutes of successful conciliation, or (iii) the deadline for conciliation has expired without the conciliation is initiated by the conciliator. In the scenario (i) and (ii) above, it is noticeable that the involved parties should submit the minutes of successful or unsuccessful conciliation issued by the conciliator in the litigation dossier to satisfy the prerequisites. Nonetheless, the conciliation procedures by the conciliator are not obligatory in certain specific Labor Disputes<sup>[6]</sup> below:

- (i) A dispute arising from disciplinary measure of dismissal or unilateral termination of a labor contract;
- (ii) A dispute relating to the payment of compensation for loss and damage or allowances payable upon the termination of a labor contract;
- (iii) A dispute between a domestic servant and the employer;
- (iv) A dispute relating to social insurance in accordance with the legislation on social insurance, or health insurance as per law on health insurance, or job loss insurance in accordance with the law on employment, or relating to insurance covering a labor accident or occupational disease in accordance with the law on occupational safety and hygiene;
- (v) A dispute concerning the payment of compensation for loss and damage between an employee and an enterprise or organization sending a worker abroad pursuant to a contract; and
- (vi) A dispute between a sub-leasing employer and the sub-leased employee.

Subsequently, the parties should give due consideration to the statutory time limitation for the settlement of Labor Disputes. According to the Labor Code 2019<sup>[7]</sup>, there are 06 months from the date on which a party discovers the act of infringement of their lawful rights and interests to request the conciliator to settle the individual labor disputes and right-based collective labor disputes. As for dispute resolution through the Court, it is 01 year from the day on which a party discovers the act of infringement of their lawful rights.

It is noted that upon the expiration of the above-mentioned time limitation, the involved parties are lose the right to request the conciliator to conduct conciliation procedures, thereby failing to meet the prerequisites for initiating a lawsuit as prescribed in Clause 1, Article 32 of the Civil Procedure Code 2015 and point a, clause

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<sup>[6]</sup> Clause 1, Article 32 of the Civil Procedure Code 2015 and Clause 1, Article 188 of the Labor Code 2019

<sup>[7]</sup> Article 190 and Article 190 Labor Code 2019

2, Clause 1, Article 188 of the Labor Code 2019 as mentioned above. As a result, the Courts shall return the lawsuit petitions under Point b, Clause 1, Article 192 the Civil Procedure Code 2015.

In short, judicial procedures often take time, effort and expense. Therefore, it would be better if the dispute was resolved and terminated at conciliation procedure by the conciliator. However, if settlement by the court becomes inevitable, please pay attention to following the necessary procedures during the preliminary stage for the most appropriate and optimal resolution when the Labor Disputes occur:

**Firstly**, it is not necessary to carry out conciliation proceedings by the conciliator for Labor Disputes that do not require this condition to ensure statute of limitations for requesting settlement of labor disputes.

**Secondly**, in case the above statute of limitations cannot be duly observed due to a force majeure event, it shall be extended for a period equal to the duration of such event. Therefore, the involved parties need to collect evidence to prove this issue. It is the basis for the Court to reconsider the statute of limitations for initiating lawsuits.

**Thirdly**, when a labor dispute has many matters, some of which require conciliation proceedings by the conciliator while others do not, the involved parties may request the conciliation procedure in respect of the relevant cases or all matters in dispute.

**Finally**, the conciliation procedure by the conciliator is only a pre-litigation proceeding and condition for initiating lawsuits prescribed by law. In the process of settlement, the Court may create conditions for the parties to continue conciliation as per proceedings.

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