

**BỘ GIÁO DỤC VÀ ĐÀO TẠO
TRƯỜNG ĐẠI HỌC DÂN LẬP HẢI PHÒNG**



ISO 9001 : 2008

KHÓA LUẬN TỐT NGHIỆP

NGÀNH: NGOẠI NGỮ

HẢI PHÒNG - 2010

**HAIPHONG PRIVATE UNIVERSITY
FOREIGN LANGUAGES DEPARTMENT**

GRADUATION PAPER

**A STUDY ON TRANSLATION OF TYPICAL TERMS
USED IN LABOR LAW
FROM VIETNAMESE INTO ENGLISH**

By:

TRẦN THỊ NGỌC HÀ

Class:

NA 1002

Supervisor:

NGUYỄN THỊ PHI NGÀ, M.A

HAI PHONG – 2010

**BỘ GIÁO DỤC VÀ ĐÀO TẠO
TRƯỜNG ĐẠI HỌC DÂN LẬP HẢI PHÒNG**

Nhiệm vụ đề tài tốt nghiệp

Sinh viên:Mã

số:.....

Lớp:

.....Ngành:.....

Tên đề tài:

.....

.....

.....

.....

.....

.....

.....

Nhiệm vụ đề tài

1. Nội dung và các yêu cầu cần giải quyết trong nhiệm vụ đề tài tốt nghiệp
(về lý luận, thực tiễn, các số liệu cần tính toán và các bản vẽ).

.....

.....

.....

.....

.....

.....

.....

.....

2. Các số liệu cần thiết để thiết kế, tính toán.

.....

.....

.....

.....

.....

.....

.....

.....

.....

3. Địa điểm thực tập tốt nghiệp.

.....

.....

.....

CÁN BỘ HƯỚNG DẪN ĐỀ TÀI

Người hướng dẫn thứ nhất:

Họ và tên:.....

Học hàm, học vị:.....

Cơ quan công tác:.....

Nội dung hướng dẫn:.....

Người hướng dẫn thứ hai:

Họ và tên:.....

Học hàm, học vị:.....

Cơ quan công tác:.....

Nội dung hướng dẫn:.....

Đề tài tốt nghiệp được giao ngày 12 tháng 04 năm 2010

Yêu cầu phải hoàn thành xong trước ngày 10 tháng 07 năm 2010

Đã nhận nhiệm vụ ĐTTN

Sinh viên

Đã giao nhiệm vụ ĐTTN

Người hướng dẫn

Hải Phòng, ngày tháng năm 2010

HIỆU TRƯỞNG

GS.TS. NGUYỄN Trần Hữu Nghị

PHẦN NHẬN XÉT TÓM TẮT CỦA CÁN BỘ HƯỚNG DẪN

1. Tinh thần thái độ của sinh viên trong quá trình làm đề tài tốt nghiệp:

.....
.....
.....
.....
.....
.....
.....
.....
.....

2. Đánh giá chất lượng của khóa luận (so với nội dung yêu cầu đã đề ra trong nhiệm vụ Đ.T. T.N trên các mặt lý luận, thực tiễn, tính toán số liệu...):

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

3. Cho điểm của cán bộ hướng dẫn (ghi bằng cả số và chữ):

.....
.....
.....

Hải Phòng, ngày tháng năm 2010

Cán bộ hướng dẫn
(họ tên và chữ ký)

NHẬN XÉT ĐÁNH GIÁ
CỦA NGƯỜI CHĂM PHẢN BIỆN ĐỀ TÀI TỐT NGHIỆP

1. Đánh giá chất lượng đề tài tốt nghiệp về các mặt thu thập và phân tích tài liệu, số liệu ban đầu, giá trị lí luận và thực tiễn của đề tài.

2. Cho điểm của người chăm phản biện :
(Điểm ghi bằng số và chữ)

Ngày..... tháng..... năm 2010

Người chăm phản biện

ACKNOWLEDGEMENTS

In my process of completing this research paper, I have received a lot of help, assistance, and encouragement from my teachers, friends.

I would like to express my deepest gratitude to Mrs Nguyen Thi Phi Nga, MA, the supervisor, who have generously given me valuable and constructive comments, advices as well as correction of my research paper.

Next, I would like to express my gratitude to Prof, Dr Ho Trong Ngu, MP, Standing member of the Committee for DSC – Member of Central of Vietnam lawyers Association who given me suggestions and valuable advices on how to shape the study.

I also offer my sincere thanks all teachers in Foreign Language Department for their supportive lectures during four years that have provided me with good background to do effectively my Graduation Paper.

Last but not least, my wholehearted thanks are presented to my parents and friends for their encouragement and assistance in the process of doing this research.

Hai Phong, June 2010

Tran Thi Ngoc Ha

TABLE OF CONTENTS

Acknowledgements

Table of contents

PART I: INTRODUCTION	1
1 Rationale of the study	1
2 Scopes of the study	2
3 Aims of the study	2
4 Methods of the study.....	3
5 Design of the study.....	3
PART II: DEVELOPMENT	5
Chapter 1: Theoretical Background	5
1 Translation.....	5
1.1 Concepts of Translation and Equivalence in translation.	5
1.1.1 Concepts of translation.....	5
1.1.2 Concepts of equivalence in translation.....	8
1.2 Types of translation.....	9
1.2.1 Word-to-word translation.....	9
1.2.2 Literal translation.	9
1.2.3 Faithful translation.	9
1.2.4 Semantic translation.	10
1.2.5 Free translation.....	10
1.2.6 Idiomatic translation.	10
1.2.7 Communicative translation.	11
1.3 Types of equivalence.....	11
2 Terms.....	13
2.1 What is a term generally	13

2.2 Types of terms.....	13
2.3 Terms of Labor Law.....	14
Chapter II: Translation of Vietnamese Labor Law into English.....	15
1 Collection of Vietnamese Typical Terms of Labor Law.....	15
1.1 Terms related to work and activities	15
1.2 Terms related to Labor Agreement	27
1.3 Terms related to Labor Organizations.....	31
1.4 Terms related to Labor Allowance.....	35
1.5 Terms related to Labor Insurance	40
1.6 Other kinds of terms in Labor Law Document	43
2 Some problems in translation of Vietnamese.....	45
2.1 Problem in Structure.....	46
2.2 Problem in Culture	47
Chapter 3: Some Suggestions in translation of Vietnamese	49
1 Understanding concepts of terms in Labor Law	49
2 The Importance of Culture in Translation	50
3 The Translation Process	52
PART III: CONCLUSION.....	54
Reference.....	56
Appendix	57

PART I: INTRODUCTION

1. Rationale of the study

Labor is the most important activity of a human being creating both material products and social values. High labor productivity, quality and efficiency are significant factors which determine the level of development of a country. Anyone in the world needs labor to survive. Labor has no boundary; labor has no age and labor for everyone. It is not only a need, but also becomes a social regulation.

The **Labor Law** protects the right to work, benefits, and other rights of worker, at that time, the legal rights and benefits of employers thereby creating conditions for harmonious and stable labor relations. It assists a worker to utilize his creativity and skill through his mind and body, and protect the rights of a labor manager for the purposes of achieving high labor productivity and effective utilization and management of labor, and industrialization and modernization of the country. Generally, **Labor Law** covers:

- Industrial relations – certification of unions, labor-management relations, collective bargaining and unfair labor practices
- Workplace health and safety
- Employment standards, including general holidays, annual vacations, working hours, unjust dismissals, minimum wage, layoff procedures and severance pay

By regulating the rights and obligations of employees and employers, labor standards, labor utilization and management, the **Labor Law** not only contributes increased production but also plays an important role in society

and in the legal system of the nation. According to me, although you do any job, you still need to have a basic knowledge of Labor Law field if you want to do that job better in the present international economic integration. Besides, this field is also my passion and inspiration. It makes me feel highly enthusiastic. That is the reason why I chose this topic for my graduation.

2. Scope of the study

There are many law sectors in Vietnam and the number terms in each is also plentiful. In the limited time, I would like to focus on typical terms of **Labor Law**. In the process of studying English, the researcher find difficult in understanding and translating meanings of term in general. Because a lot of terms are used with connected meanings, others are the same as what has been known in common texts when converted into English. Thus, my study is toward to basic concepts and terms used in Labor Law in Vietnam. Hopefully, my research will partly help readers have a general overview on typical terms of **Labor Law**.

3. Aims of the study

As a matter of fact that students who major translation should choose a sphere as the strong point besides the other basic knowledge because the amount of knowledge is endless especially in the coordination on an information age.

The aims of my study are therefore to:

- Understanding thoroughly about English terms from the viewpoint of translation subject.
- Providing a number of terms in Labor Law.
- Suggesting readers (employees, employers ...) and myself basic knowledge of this field.
- Suggesting some solutions in translating Labor Law terms.

4. Method of the study

At the first time, I began to study English, I myself find that English is the most common used language in society. I have been trying my best to study for further fields of English. Thanks to the knowledge and experiences which I gain from my teachers as well as reference books I had read in the process of learning English and completed my graduation books. These are some helpful sources:

- Internet plays an important role for me to understand definitions of terms in English.
- Survey with questionnaire is also made to find out the feedback from employees and employer in their work in perceiving some difficulties.
- Added more, I found lots of useful information in some books introduction about Labor Law.
- Specially, my study is about terms related to Labor that differ from my major, I had to consult some experts and friends this area to have deeper understanding.

5. Design of the study

The study falls into **three parts** in which the second is the most important, that is:

The first part, INTRODUCTION, writes about rationale, scope, aims, methods and design of the study

The second is DEVELOPMENT consisting of three chapters:

- Chapter I:
Readers are going to approach the issue from the theoretical background angle. In the words, they are some concepts of translation, labor law terms.
- Chapter II:
The researchers studied meanings of word used in common texts, typical terms in Labor Law.
- Chapter III:
 - Some problems and suggested solutions in translating labor law terms.
 - Concluded from the process of finishing the chapter two.

The part three, CONCLUSION, summarizes the study mentioned above and gives some suggestions for further study.

PART II: DEVELOPMENT

CHAPTER I

THEORETICAL OF BACKGROUND

1. TRANSLATION.

1.1. Concepts of Translation and Equivalence in translation.

1.1.1. Concepts of translation.

Translation typically has been used to transfer from written or spoken SL (source language) texts to equivalent written or spoken TL (target language) texts. In general, the purpose of translation is to reproduce various kinds of texts including religious, literary, scientific, and philosophical texts in another language and thus making them available to wider readers.

If language was just a classification for a set of general or universal concepts, it would be easy to translate from a SL to a TL. Furthermore, under the circumstances the process of learning a language would be much easier than it is actually. In this regard, Culler (1976) believes that languages are not nomenclatures and the concepts of one language may differ radically from those of another, since each language articulates or organizes the world differently, and languages do not simply name categories; they articulate their own. The conclusion likely to be drawn from what Culler (1976) wrote is that one of the troublesome problems of translation is the disparity among languages. The bigger the gap between the SL and the TL, the more difficult the transfer of message from the former to the latter will be. Therefore, there are various concepts of translation basing on the individual views. And I have collected and studied some of them.

❖ **Translation** is the interpreting of the meaning of a text and the subsequent production of an equivalent text, likewise called a "**translation**," that communicates the same message in another

language. The text to be translated is called the "source text," and the language that it is to be translated into is called the "target language"; the final product is sometimes called the "target text."

Wikipedia

- ❖ Translation is the expression in another language (or target language) of what has been expressed in another, source language, preserving semantic and stylistic equivalences.

(Dubois, 1973)

- ❖ Kade (1968) defined interpreting as a form of Translation in which:
 - The source-language text is presented only once and thus cannot be reviewed or replayed, and
 - The target-language text is produced under time pressure, with little chance for correction and revision.
 - Translation is the interpretation of the meaning of a written message or text in one language (target language) from another language (source language). The function of translation is to make the readers of the target text able to understand the semantic and stylistic meaning of the source text

- ❖ **Translation** is the process of changing something that is written or spoken into another language.

Advanced Oxford Dictionary

- ❖ **Translation** is a bilingual mediated process of communication which ordinarily aims at the production of a TL text that is functionally equivalent to a SL text.

Reiss, 1971:161

❖ **Translation** is the replacement of text material of this language (source language) with text material of another (target language).

Cartford, 1965 : 20

Translation is the process of finding a Target language equivalent for a Source language utterance.

Pinhhuck, 1977 : 38

❖ **Translation** is a transfer process, which aims at the transformation of a written SL text into an optimally equivalent TL text, and which requires the syntactic, the semantic and the pragmatic understanding and analytical processing of the SL.

_ Wilss (1982: 3)_

❖ **Translation** consists of reproducing in the receptor language the closest natural equivalent of the source language message, first in terms of meaning and secondly in terms of style.

Nida (1984:83)

❖ **Translation** involves the transfer of meaning from a text in one language into a text in another language.

_ Bell (1991:8)_

❖ **Translation** is a process of communication whose objective is to import the knowledge of the original to the foreign reader.

Levy (1967:148)

❖ **Translation** is the act of transferring through which the content of a text is transferred from the SL into the TL.

_ Foster (1958:1)_

❖ **Translation** is to be understood as the process whereby a message expressed in a specific source language is linguistically transformed in order to be understood by readers of the target language"

_ Houbert (1998:1)_

❖ **Translation** is an act of communication which attempts to relay, across cultural and linguistic boundaries, another act of communication.

_ Hatim and Mason (1997:1)_

❖ **Translation** is a text with qualities of equivalence to a prior text in another language, such that the new text is taken as a substitute for the original.

David Frank (Wordpress.com)

1.1.2. Concepts of equivalence in translation.

➤ Equivalence-oriented translation is a procedure which replicates the same situation as in the original, whilst using completely different wording.

Vinay and Darbelnet

➤ Translation equivalence exists between forms in a source language and a target language if their meaning matches. In other words, translation equivalence should answer the question “What do the speakers of this language actually say to express the desired meaning?”

Wayne Leman (Wordpress.com)

➤ Equivalence, when applied to the issue of translation, is an abstract concept and actually refers to the equivalence relationship between the source text and the target text.

Asian social science (CCSE)

1.2. Types of translation.

Translation can be divided into 7 types as below :

1.2.1. Word-to-word translation:

This is often demonstrated as interlinear translation, with the TL immediately below the SL words. The SL word-order is preserved and the words translated singly by their most common meaning, out of context.

E.g: Hanah was presented by her parent.

Hanah được tặng quà bởi bố mẹ cô ấy.

1.2.2. Literal translation:

The SL grammatical construction is converted to the nearest TL equivalents but the lexical words are again translated singly, out of context.

E.g: My father put all whole his life – workings in this company

Cha tôi đã dành cả cuộc đời mình để làm việc trong công ty này.

1.2.3. Faithful translation:

A faithful translation is used when translators want to reproduce the precise contextual meaning of the SL within the restriction of the TL grammatical structures. It converts cultural words but reserves the degree of grammatical and lexical “abnormality” in the translation. It attempts to be completely faithful to the intentions and text-realization of the SL writer.

E.g: Tôi cho rằng bà ta sẽ không mua chiếc túi này

Faithful translation: I think that she won't buy this bag

(It should be “I don't think she will buy this bag”)

1.2.4. Semantic translation:

Semantic translation differs from faithful translation only in as far as it must take more account of the aesthetic value of the SL text, compromising on “meaning” where appropriate so that no assonance, word-play or repetition jars in finished version.

E.g: “I never hear or read the name of Yarmouth but I am reminded of a certain Saturday on the beach...”(extracted from *David Copperfield* by Charles Dickens)

“Tôi không bao giờ nghe hoặc đọc đến tên 'Yarmouth' (tên một thị trấn) mà tôi lại không nhớ đến một sáng thứ bảy nào đó trên bãi biển...” (...không bao giờ...mà lại không...)

1.2.5. Free translation:

Free translation reproduces the matter without the manner, or the content with out of the form of the original.

In free translation, there is a special form called “Adaption”. This is the “freest” form of translation.

E.g: *Outside, the immense sea is a deep blue. In the shade of green coconut trees, the buildings appear like a desert oasis.*

Mặt biển bên ngoài xanh mướt mát, màu xanh thẳm như chính đại dương vẫn xanh từ hàng triệu năm không thay đổi sắc màu, còn bên trong, nép dưới những tán dừa xanh là các khối nhà mơ màng trong nắng.

1.2.6. Idiomatic translation:

Idiomatic translation reproduces the “message” of the original but tends to distort nuances of meaning by preferring colloquialisms and the idiom where these do not exist in the original.

E.g: Man proposes, God disposes

Mưu sự tại nhân, hành sự tại thiên.

1.2.7. Communicative translation:

Communicative translation attempts to render the exact contextual meaning of the original in such a way that both content and language are readily acceptable and comprehensible to the readership.

E.g: **How do you do!**

Xin chào!

1.3. Types of equivalence

Baker explores the notion of equivalence at different levels, in relation to the translation process, including all different aspects of translation and hence putting together the linguistic and the communicative approach. She distinguishes :

- **Equivalence that can appear at word level and above word level**, when translating from one language into another. Baker acknowledges that, in a bottom-up approach to translation, equivalence at word level is the first element to be taken into consideration by the translator. In fact, when the translator starts analyzing the ST s/he looks at the words as single units in order to find a direct 'equivalent' term in the TL. Baker gives a definition of the term *word* since it should be remembered that a single word can sometimes be assigned different meanings in different languages and might be regarded as being a more complex unit or *morpheme*. This means that the translator should pay attention to a number of factors when considering a single word, such as number, gender and tense.
- **Grammatical equivalence**, when referring to the diversity of grammatical categories across languages. She notes that grammatical rules may vary across languages and this may pose some problems in terms of finding a direct correspondence in the TL. In fact, she claims

that different grammatical structures in the SL and TL may cause remarkable changes in the way the information or message is carried across. These changes may induce the translator either to add or to omit information in the TT because of the lack of particular grammatical devices in the TL itself. Amongst these grammatical devices which might cause problems in translation Baker focuses on number, tense and aspects, voice, person and gender.

- **Textual equivalence**, when referring to the equivalence between a SL text and a TL text in terms of information and cohesion. Texture is a very important feature in translation since it provides useful guidelines for the comprehension and analysis of the ST which can help the translator in his or her attempt to produce a cohesive and coherent text for the TC audience in a specific context. It is up to the translator to decide whether or not to maintain the cohesive ties as well as the coherence of the SL text. His or her decision will be guided by three main factors, that is, the target audience, the purpose of the translation and the text type.
- **Pragmatic equivalence**, when referring to implicatures and strategies of avoidance during the translation process. Implicature is not about what is explicitly said but what is implied. Therefore, the translator needs to work out implied meanings in translation in order to get the ST message across. The role of the translator is to recreate the author's intention in another culture in such a way that enables the TC reader to understand it clearly.

2 . Terms

2.1. What is a term generally?

A term, or a terminology unit, is the name or designation of a concept in a particular subject field. It may be a word, an expression, a symbol, a chemical or mathematical formula, a scientific name in Latin. A term in a specialized language distinguished from a word in general language by its single-meaning relationship (called monosemy) with the specialized concept that it designates and by the stability of the relationship between form and content in text dealing with this concept (called lexicalization). Other indications that you are dealing with a term are its frequency of use and its relatively fixed contextual surroundings (its co-occurrences).

A term is a word or expression that has a particular meaning or is used in particular activity, job, profession, etc (Longman Dictionary of Contemporary English, 1991)

2.2. Types of terms

Different types of terms, or terminological units, are used to label specialized concepts. Terms consist of some following types according to structure

+ Simple terms are those that consist of just one word (compound or derived): list, abandon, overvalued, underwriter...

+ Abbreviations

- Initialisms: Abbreviated complex terms or names made up of the first letter of the term elements.
- Acronyms: Abbreviated complex terms made up of letters from the full form of a term strung together into a sequence pronounced only syllabical.

- Complex terms: terms consisting of two or more words and from phrasal terms. The elements in complex terms have a fixed position within the term. It is important to keep in mind that terms are not restricted to nouns or noun phrases but can also be phrase logical units containing verb phrases.

2.3. Terms of Labor Law?

Labor Law arose due to the demands for workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers' many organizations and to keep labor costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labor law at any one time is therefore both the product of, and a component of, struggles between different interests in society.

In Vietnam, the Labor Law (the Code) serves as the principal legal base for all labor-related matters. It applies to both employees and employers, including foreign organizations employing local and foreign staff who work regularly in Vietnam.

There are also a number of implementing regulations, i.e. Decrees, Decisions, and Circulars, which provide detailed guidelines for the Code's implementation. These regulations play useful and important roles in the Vietnamese legal system, as the government authorities would often refer to them in practice.

CHAPTER II

TRANSLATION OF VIETNAMESE LABOR LAW TERMS INTO ENGLISH

1. Collection of Translating Vietnamese Typical Terms into English

1.1. Terms related to work and activities

A. Tai nạn lao động : *Work-related accident*

Work-related accidents are accidents which injure any bodily parts of functions of an employee, or cause the death of the employee during the process of working and while performing the work or labor activity.

E.g: An employee who is injured in a *work-related accident* must be treated immediately and be fully attended to.

Ví dụ: Người bị *tai nạn lao động* phải được cấp cứu kịp thời và điều trị chu đáo.

B. Bệnh nghề nghiệp: *Occupational disease*

- **Occupational disease** is a disease contracted by the employee from working in a harmful environment.

- An **occupational disease** is any chronic ailment that occurs as a result of work or occupational activity. It is an aspect of occupational safety and health. An occupational disease is typically identified when it is shown that it is more prevalent in a given body of workers than in the general population, or in other worker populations. Occupational hazards that are of a traumatic nature (such as falls by roofers) are not considered to be occupational diseases.

(From Wikipedia)

An ***occupational disease*** arises from the conditions to which a specific type of worker is exposed. The disease must be produced as a natural incident of a particular occupation, such as asbestosis from asbestos removal.

A person disabled by a work-related occupational disease receives the same benefits as for an on-the job injury. However, the time limit for filing a claim is the later of two dates:

- *Two years from the date of the disabled worker's disability; or*
- *Two years from the time the disabled worker knew or should have known that the disease was due to the nature of employment.*

(<http://www.wcb.state.ny.us/content/main/onthejob/OccDisease.jsp>)

E.g: A person suffering from an **occupational disease** must be fully treated and have his health examined on a regular basis with separate medical records.

Ví dụ: Người bị **bệnh nghề nghiệp** phải được điều trị chu đáo, khám sức khỏe định kỳ, có hồ sơ sức khỏe riêng biệt.

C. Tập nghề: On-the-job training

“On-the-job training” means apprenticeship in the form of directly learning and working at the enterprise.

D.1. Thỏa ước lao động tập thể (thỏa ước tập thể):

A collective labor agreement (a collective agreement)

A collective labor agreement (hereinafter referred to as a collective agreement) is a written agreement between a body of employees and the

employer in respect of working conditions and utilization of labor, and the rights and obligations of both parties in respect of labor relations.

E.g: The State encourages the parties to sign a **collective agreement** which provide employees with more favorable conditions than those stipulated in labor laws.

Ví dụ: Nhà nước khuyến khích việc ký kết **thỏa ước tập thể** với những quy định có lợi hơn cho người lao động so với quy định của pháp luật lao động.

D.2. Thương lượng tập thể : Collective bargaining

Collective bargaining may be carried out on a regular or irregular manner between representative of the labor collective and the employer's representative in order to:

- ✓ resolve obstacles and difficulties in the execution of rights and performance of by each party in industrial relations;
- ✓ establish new working conditions;
- ✓ settle labor disputes.
- ✓ sign collective labor agreements.

Collective bargaining shall be carried out within an enterprise and within an industry.

E.g: The State encourages **collective bargaining** between labor collective and the employer to establish more favorable conditions for the parties than those stipulated by the laws.

Ví dụ: Nhà nước khuyến khích **thương lượng tập thể** giữa tập thể người lao động và người sử dụng lao động có các thỏa thuận có lợi hơn cho các bên so với quy định của pháp luật.

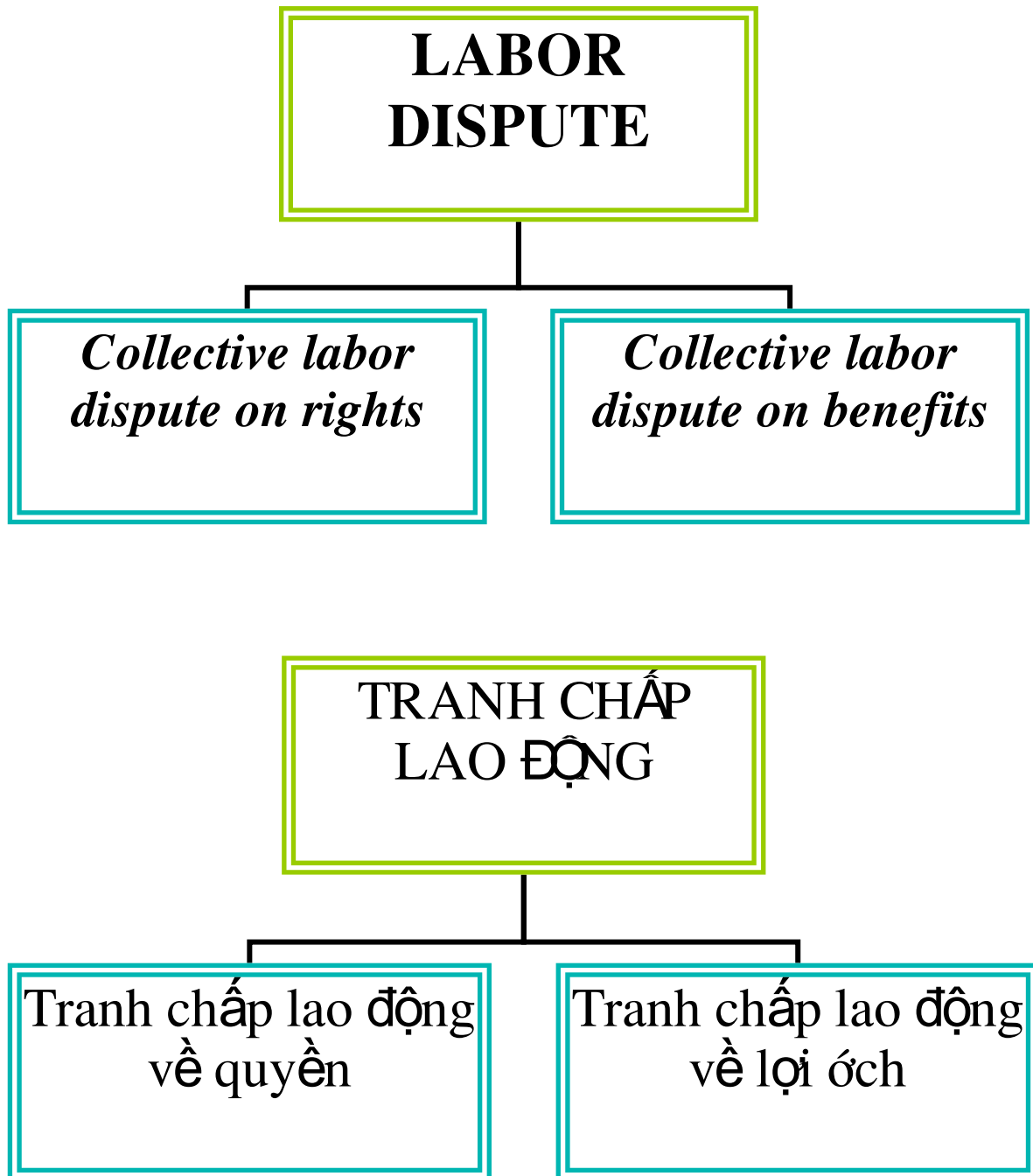
E. Tranh chấp lao động: Labor dispute

- A **labor dispute** is a dispute about rights and benefits in respect of working conditions, salaries, incomes, and other labor conditions; about the performance of the labor contract and the collective agreement; and about issues which arise during a training or apprenticeship period.
- **Labor disputes** means the disputes on rights and benefits arising in the labor relationship between the employees, labor collective and the employer.
- Labor disputes include an individual labor dispute between an employee and an employer, and a collective labor dispute between a labor collective and an employer.

E.g: A labor dispute shall only be resolved by a labor dispute resolution body or organization if either party refuses to negotiate; if both parties fail to resolve the dispute by way of negotiation; or if one or both of the parties lodge a request for resolution of the labor dispute. (Article 159 _ Labor Code).

Ví dụ: Việc giải quyết tranh chấp lao động tại các cơ quan, tổ chức giải quyết tranh chấp lao động được tiến hành khi một bên từ chối thương lượng hoặc hai bên đã thương lượng mà vẫn không giải quyết được và một hoặc hai bên có đơn yêu cầu giải quyết tranh chấp lao động. (Điều 159_ Bộ luật lao động)

❖ Types of Labor dispute



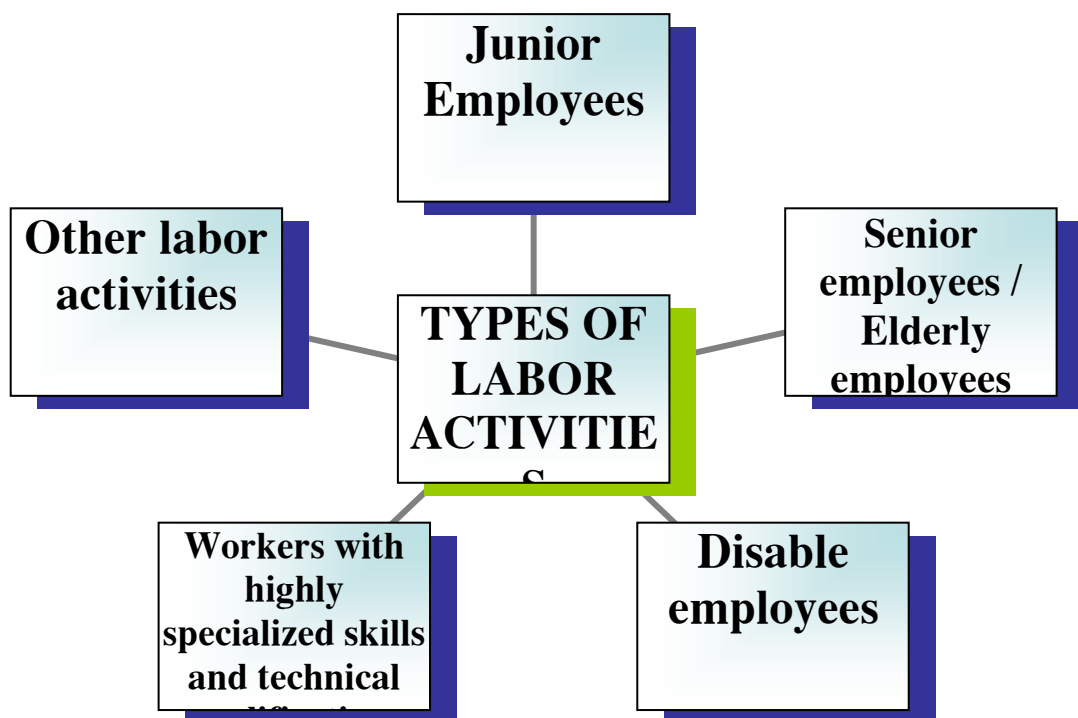
- ✓ “**Collective labor dispute on rights**” means the disputes between the employees and employers on the implementation of the provisions of the laws on labor, the collective labor agreements, or the internal labor

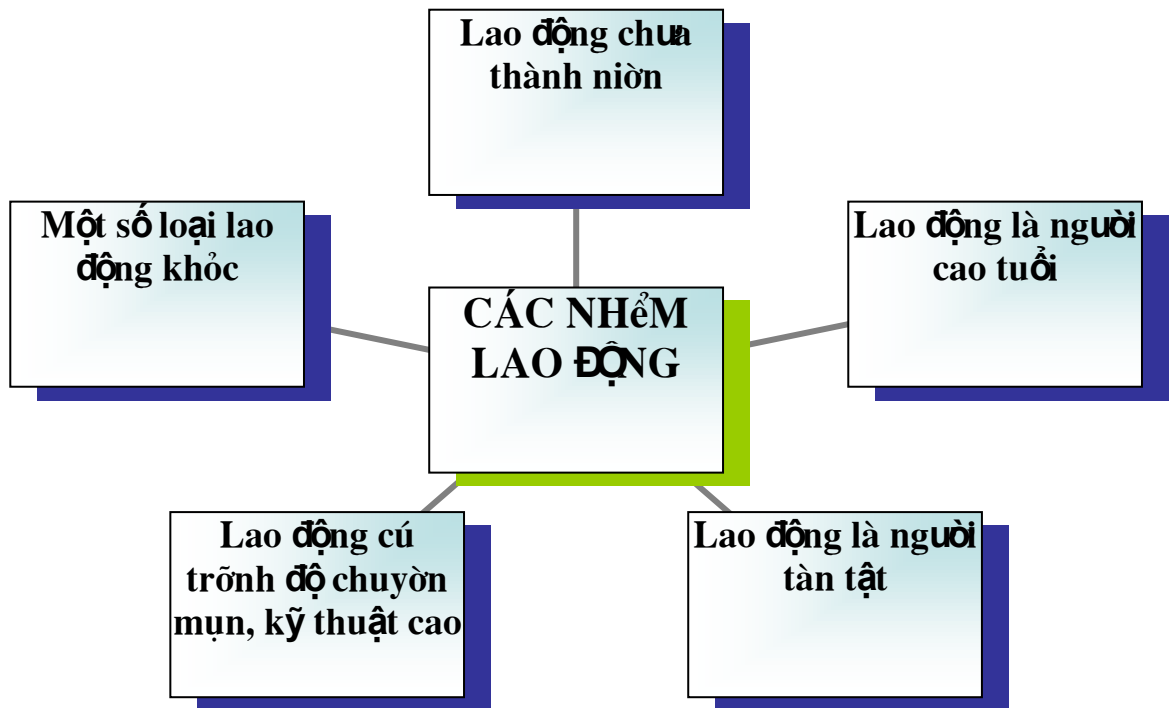
regulations of the enterprise registered with the competent State agencies or other legitimate regulations and agreements.

- ✓ **“Collective labor dispute on benefits”** means disputes that labor collective requests the establishment of new working conditions compared to those of the provisions of the law on labor, collective labor agreements, or the internal labor regulations of the enterprise registered with the competent State agencies or other legitimate regulations and agreements in the process of negotiation between the labor collective and the employer.

F. A number of Labor activities

“Employees” means persons of at least 15 years old, having working capacity and having signed a labor contract





F.1. Lao động chưa thành niên: Junior Employees

Junior employees are workers *between 15 and under 18 years of age*.

E.G: An employer shall only be permitted to employ a *junior employees* in jobs which are suitable to the health of the junior worker to ensure the development and growth of the worker's body, mind, and personality. An employer shall have the responsibility of looking after the interests of the junior worker in respect of labor, wages, health, and training.

An employer shall be prohibited from employing junior employee in heavy, dangerous, or toxic works stated in a list issued by the Ministry of Labor, War Invalids and Social Affairs and the Ministry of Health. (Article 121_ Labor Code)

Ví dụ: Người sử dụng lao động chỉ được sử dụng **lao động chưa thành niên** vào những công việc phù hợp với sức khỏe để đảm bảo sự phát triển thể lực, trí lực, nhân cách và có trách nhiệm quan tâm chăm sóc người lao động chưa thành niên về các mặt lao động, tiền lương, sức khỏe, học tập trong quá trình lao động.

Cấm sử dụng người **lao động chưa thành niên** làm những công việc nặng nhọc, nguy hiểm hoặc tiếp xúc với các chất độc hại theo danh mục do Bộ lao động- Thương binh và Xã hội và Bộ Y tế ban hành. (Điều 121_ Bộ luật lao động)

F.2. Lao động là người cao tuổi: Senior employees/ Elderly employees

Senior employees/ Elderly employees are employees over the age of sixty (60) in respect of males and fifty five (55) in respect of females.

E.g:

- If required, an employer may reach an agreement with a **senior employee** on the extension of the labor contract or the signing of a new labor contract in accordance with the provisions of Chapter IV of this Code.

- An employer shall be responsible for the health of a **senior employee** and shall be prohibited from assigning a senior employee to heavy, dangerous, or toxic work which might have adverse effects on the health of the senior employee. (Article 124_ Labor Code)

Ví dụ:

- Nếu có nhu cầu, người sử dụng lao động có thể thỏa thuận với **người lao động cao tuổi** kéo dài thời hạn hợp đồng hoặc giao kết hợp đồng lao động mới theo quy định tại Chương IV của Bộ luật này.

- Người sử dụng lao động có trách nhiệm quan tâm chăm sóc sức khỏe **người lao động cao tuổi**, không được sử dụng người lao động cao tuổi làm những công việc nặng nhọc, nguy hiểm hoặc tiếp xúc với các chất độc hại có ảnh hưởng xấu tới sức khỏe người cao tuổi (Điều 124_ Bộ luật lao động)

F.3. Lao động là người tàn tật: Disable employees

E.g: The State shall protect the right to work of the disable and encourage the employment of the disabled. The State shall annually set aside funds in the budget in order to assist the disabled to recover from their disability or to regain their ability to work, to train the disable, and shall formulate policies

to provide low interest loans to the disabled for the purposes of creating self employment for the disabled and stabilizing the lives of the disabled.

Ví dụ: Nhà nước bảo hộ quyền làm việc của người tàn tật và khuyến khích thu nhận, tạo việc làm cho người tàn tật. Hằng năm, Nhà nước dành một khoản ngân sách để giúp người tàn tật phục hồi sức khỏe, phục hồi chức năng lao động, học nghề và có chính sách cho vay với lãi suất thấp để người tàn tật tự tạo việc làm và tự ổn định đời sống.

F.4. Lao động có trình độ chuyên môn, kỹ thuật cao: Workers with highly specialized skills and technical qualifications

E.g: *Workers with highly specialized skills and technical qualifications* shall have the right to enter into a number of labor contracts with a number of employers provided that he is able to perform fully all the labor contracts signed and notifies the employer

Ví dụ: Người lao động có trình độ chuyên môn, kỹ thuật cao có quyền kiêm việc hoặc kiêm chức trên cơ sở giao kết nhiều hợp đồng lao động với nhiều người sử dụng lao động, với điều kiện bảo đảm thực hiện đầy đủ các hợp đồng lao động đã giao kết và phải báo cho người sử dụng lao động biết

F.5. Một số loại lao động khác: Other labor activities

Other labor activities are persons who work in trades or special jobs within the artistic field, workers who work at home in a cottage industry, household chores...

E.g: Persons who work in specific works and occupations in the artistic field are entitled to appropriate conditions relating to the vocational training age, retirement age, conclusion of labor contracts, time of work, time of rest, wages, allowances, bonuses, and occupational safety and health in accordance with regulations issued by the Government.

Ví dụ: Người làm nghề hoặc công việc đặc biệt trong lĩnh vực nghệ thuật được áp dụng một số chế độ phù hợp về tuổi học nghề và tuổi nghỉ hưu; về ký kết hợp đồng lao động; về thời giờ làm việc, thời giờ nghỉ ngơi; về tiền lương, phụ cấp lương, tiền thưởng, an toàn lao động, vệ sinh lao động theo quy định của Chính phủ.

G. Cấm cưỡng bức lao động: Prohibition of forced labor

Forced labor means an employee is beaten or abused, or a female employee is forced to do work inappropriate for a female, thereby affecting the health, dignity and honour of such employee.

“Prohibition of forced labor” means employers shall not use forced labor

Labor force means labor imposed on the workers concerned in the absence of their free will. The expression “forced labor” shall not apply to the following:

- The use of labor provided for under law or regulations for the purpose of national defence.
- The use of labor in emergency situations such as a war, a fire, a natural disaster or an epidemic...
- Any work performed in accordance with a court sentence, under the supervision of government officials, although such convicted workers shall not be employed for the personal interests of any individual employer, corporate body or work unit;
- Any work performed in accordance with a resolution adopted by local authorities, organizations or associations of which the workers concerned are members, where such work constitutes an obligation of all citizens in the common interests of the nation.

The mobilization of labor in the above circumstances may be undertaken only by the Government, and no person, corporate body or labor unit may force a worker, either directly or indirectly, to work for them or for any group of persons.

H. Tinh giản biên chế: Reduction of Payroll

This term is used for employees in administrative agencies and public-service units from the central government to the district level; State enterprises undertaking equitization, transfer, sale merger, amalgamation; dissolving and bankruptcy or converting into limited companies; State-owned forestry and agriculture farms being restructured according to Law provisions.

The reduction of payroll shall be conducted at the administrative agencies of the State, the indirect payroll in the public-service units from the central to the district level (including public employees working in the administrative and public-service agencies of the Ministry of Defense and the Ministry of Public Security). The reduction of indirect payroll in the State enterprises shall be conducted according to the plan of rearranging the State-owned enterprises as stipulated by the Government.

E.g: **Reduction of payroll** shall be conducted alongside the revision and clear determination of the functions, tasks and organizational structure of the apparatus aimed at raising the quality of the contingent of officials, public servants and public employees; raising the quality of the activities, effectiveness and efficiency of the apparatus, as prerequisite for the basic renovation of the State administrative system in the coming period.

I. Đình công: Strike

A strike is a temporary, voluntary and organized work stoppage by labor collective as an attempt to resolve *interest-based* collective labor disputes.

E.g: A strike shall be organized and led by executive committee of local level trade union or representative of upper level trade union in non-unionized enterprise.

In non-unionized enterprises, a strike shall be organized and led by representative of labor collective.

Ví dụ: Đình công phải do Ban chấp hành công đoàn cơ sở tổ chức và lãnh đạo. Đối với doanh nghiệp chưa có công đoàn thì phải do đại diện công đoàn cấp trên cơ sở tổ chức và lãnh đạo đình công.

1.2. Terms related to Labor Agreement

1.2.1. Labor contract

A. What is a Labor Contract?

The basic feature of labor law in almost every country is that the rights and obligations of the worker and the employer between one another are mediated through the contract of employment between the two. This has been the case since the collapse of feudalism and is the core reality of modern economic relations. Many terms and conditions of the contract are however implied by legislation or common law, in such a way as to restrict the freedom of people to agree to certain things in order to protect employees, and facilitate a fluid labor market. In the U.S. for example, majority of state laws allow for employment to be “ at will”, meaning the employer can terminate an employee from a position for any reason, so long as the reason is not an illegal reason, including a termination in violation of public policy.

One example in many countries- is the duty to provide written particulars of employment with the *essentialia negotii* (Latin for essential terms) to an

employee. This aims to allow the employee to know concretely what to expect and is expected; in terms of wages, holiday rights, notice in the event of dismissal, job description and so on. An employer may not legally offer a contract in which the employer pays the worker less than a minimum wage. An employee may not for instance agree to a contract which allows an employer to dismiss them unfairly. There are certain categories that people may simply not agree to because they are deemed categorically unfair. However, this depends entirely on the particular legislation of the country in which the work is.

A labor contract is an agreement between the employee and the employer specifying remuneration, working conditions, and the rights and obligations of each party in the labor relationship. (Article 26_Labor Code)

B. The necessary of labor contract

Labor relations enterprises are presently standardized by legal systems and enterprise systems. Labor laws and regulations, labor contracts, collective consultation, collective contracts, employing entities' self-management all regulate labor behaviors and the mutual rights and obligations between employers and employees. This requires both employer and employee in an enterprise to consciously comply with laws and regulations and follow the enterprise's regulatory framework. Practice proves that as long as an enterprise effectively manages the relationship between employer and employees, complies with the laws and regulations on labor behavior and its own corresponding internal rules, the enterprise can maintain harmonious and stable labor relations. Otherwise, the labor relations fall into disorder, giving rise to conflicts and disputes, and resulting in negative impacts to labor relations. An important cause of ineffective implementation of labor security regulations and systems is the lack of consciousness when it comes to legal compliance. Therefore, integrity to legal compliance is an obvious objective requirement for establishing harmonious labor relations.

In an enterprise, labor relations refer to a legal relationship between employer and employees. An enterprise's own rules can be said to be a refinement and extension of laws and regulations. Having only the provided legal and regulatory framework does not provide an enterprise with the complete ability to manage labor relations. Rather, this also depends on self-formulated methods and measures for regulatory implementation. Otherwise, laws and regulations are meaningless. The basic requirement for legal compliance is to remain committed without exception. Enterprises must implement laws and regulations correctly, without any false and deceptive conduct. Therefore, integrity to legal compliance is essential factor to improving harmonious labor relations.

C. Types of labor contract

According to the Labor Law of Socialist Republic of Vietnam, employment in all business entities, including foreign-invested enterprises, should be based on a written labor contract, which contains clauses relating to: the scope of work, working hours, rest/ breaks, recreation time, wages, place of work, terms of contract, occupational safety and hygiene, and social and medical insurance.

Labor contracts in Vietnam are categorized into **three** types:

- Contracts without a definite term, i.e. indefinite term contracts;
- Contracts which are valid from 12 to 36 months, i.e. definite term contracts;
- Contracts for a seasonal job or a specific job to be carried out in less than 12 months, i.e. seasonal/temporary contracts.

C.1. Hợp đồng lao động không xác định thời hạn: An indefinite term labor contract

An indefinite term labor contract is a contract in which the two parties do not determine the term and the time for termination of the validity of the contract.

Indefinite labor contract means a contract in which the expiry of the contract is not fixed. Indefinite labor contract applies for full-time jobs which last for 1 year upwards.

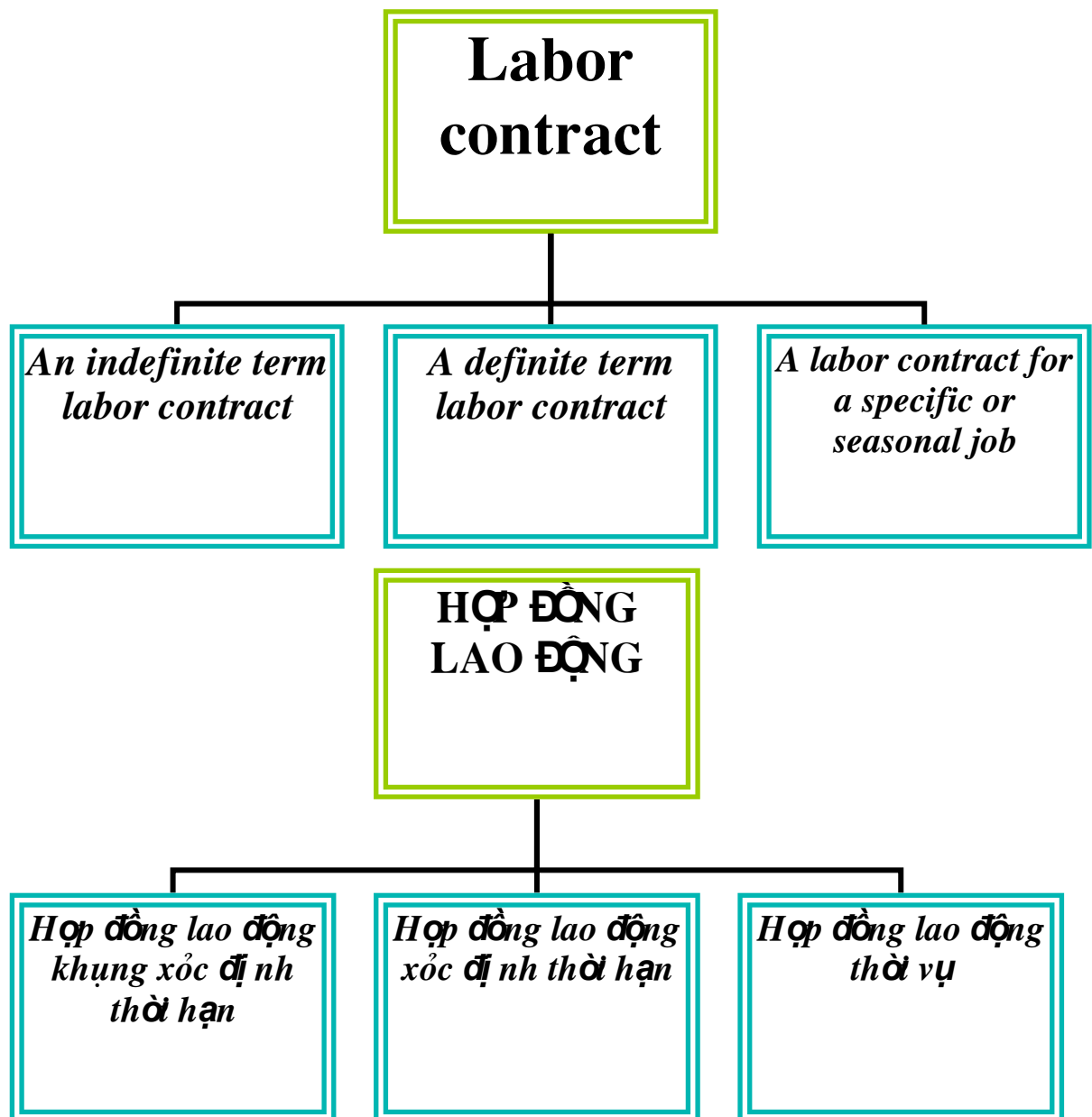
C.2. *Hợp đồng lao động xác định thời hạn: A definite term labor contract*

A definite term labor contract is a contract in which the two parties determine the term and the time for termination of the validity of the contract as a period from twelve (12) months to thirty six (36) months.

Labor contracts with definite time-limit from 1 to 3 years are contracts with a fixed term of either 1, 2 or 3 years. They usually apply to jobs with fixed terms.

C.3. *Hợp đồng lao động thời vụ: Contract of seasonal labor (A labor contract for a specific or seasonal job with a duration of less than one year)*

Contract of seasonal labor or employment for less than a year will be applied to temporary job to be done in a few days, a few months or less than a year or to temporarily replace those who join the army or fulfill other citizen's duties required by law or take maternity leave or are being taken into custody/detention or other cases where a labor contract is temporarily suspended with mutual agreement.



1.3. Terms related to Labor Organizations

Dispute resolution - attaining tacit or contractual agreements - has become increasingly important as parties to a dispute attempt to avoid costly litigation, strikes, or other disruptions. Dispute resolution also has become more complex, involving employees, management, unions, other firms, and government agencies. Specialists involved in dispute resolution must be highly knowledgeable and experienced.

A labor dispute shall be resolved by **The Labor Conciliatory council** and **The provincial labor arbitration council**.

A. Hội đồng hòa giải lao động: The Labor Conciliatory council

A labor conciliatory council of an enterprise shall be established in enterprise which employ ten (10) or more employees and shall consist of an equal number of representatives of the employees and the employer. The number of members in the conciliatory council shall be determined by the parties.

B. Hòa giải viên lao động: The Labor mediator

The Labor mediator is a person who advises and counsel labor and management to prevent and, when necessary, resolve disputes over labor agreements or other labor relation's issues. Arbitrators, sometimes called umpires or referees, decide disputes that bind both labor and management to specific terms and conditions of labor contracts.

The following bodies and organizations are vested with the power to resolve an individual labor dispute:

- **The Labor Conciliatory council**

- **A labor mediator** of a labor office in wards, districts, villages, and cities of provinces (Hereinafter referred to as provincial labor offices) in cases where an enterprise does not have a labor conciliatory council.

C. Hội đồng trọng tài lao động cấp tỉnh: The provincial labor arbitration council

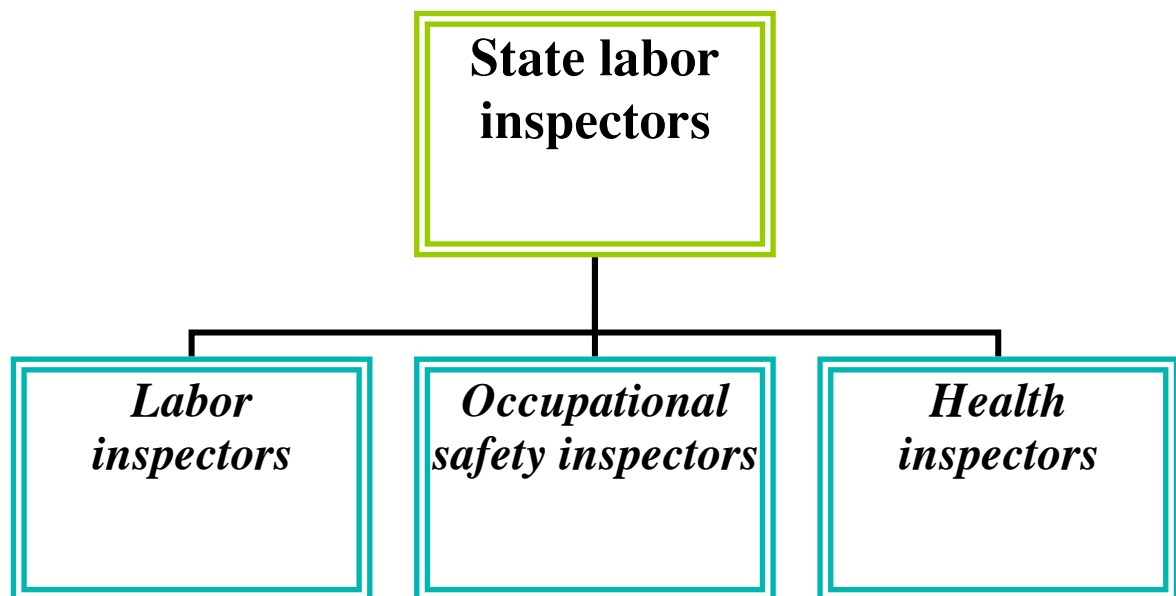
The standing members of the provincial labor arbitration council shall consist of representatives of the labor office, the trade union, the employer, and a number of other respected lawyers, administrators, and social workers of the locality. The number of members in the provincial labor arbitration council shall be an odd number but shall not exceed nine (9) and shall be chaired by the representative of the provincial labor office.

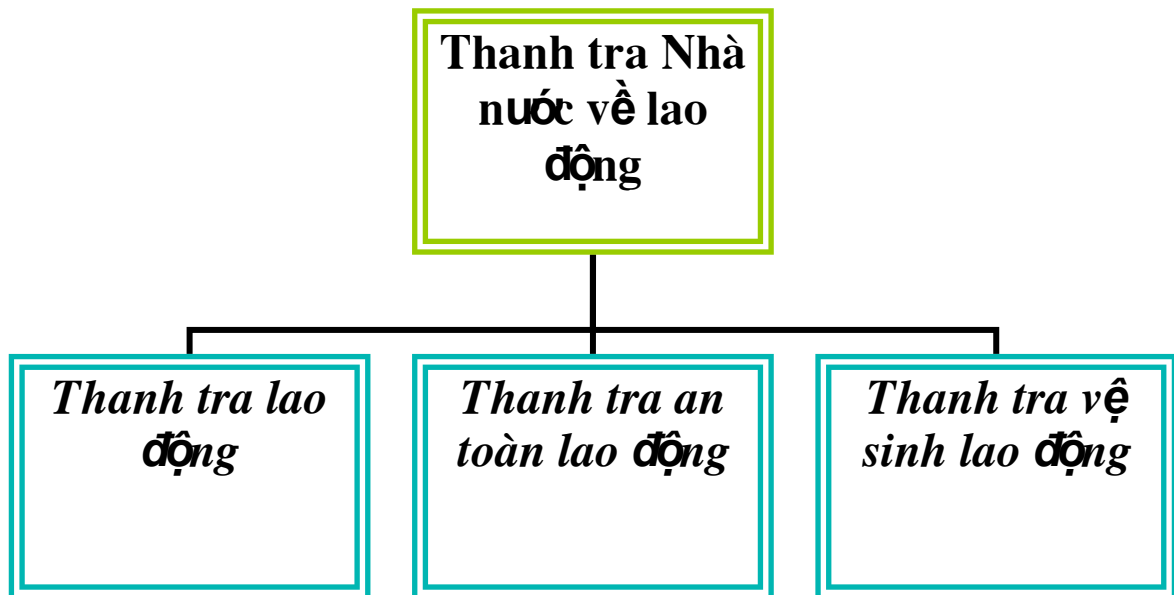
The following bodies and organization shall be vested with the power to resolve a collective labor dispute:

- The Labor conciliatory council of an enterprise, or the labor conciliator of the district labor office in the case of enterprises which do not have a labor conciliatory council
- **The Provincial labor arbitration council**
- The People's Court

D. Thanh tra Nhà nước về lao động: State labor inspectors

State labor inspectors include: *Labor Inspectors, occupational safety inspectors and health inspectors*





The Ministry of Labor, War Invalids and Social Affairs and local labor offices shall carry out inspections of labor and inspections of occupational safety. The Ministry of Health and local medical central shall carry out inspections of occupational hygiene.

State labor inspectors shall have the following duties:

- To inspect compliance with provisions on labor, occupational safety and occupational hygiene.
- To inspect work-related accidents and other violations of occupational health standards
- To appraise and approve occupational safety standards and measures specified in the economic-technical feasibility study and project design; register and authorize the operation or usage of machinery, equipment, and materials which require strict control on respect of occupational safety as stipulated in the list issued by the Ministry of Labor, War Invalids and Social Affairs.
- To participate, appraise, and approve site locations and health measures for the construction, expansion, or renovation of establishments for production, usage, preservation, storage, or

receipt of radioactive, poisonous, or toxic materials in accordance with the list issued by the Ministry of Health

- To resolve any complaints of claims of the employee in respect of breaches of labor laws;
- To deal with breaches of labor law in accordance with the delegated authority and request other competent bodies to deal with breaches which fall under the jurisdiction of those bodies

1.4. Terms related to Labor Allowance

1.4.1. Trợ cấp thôi việc: Severance allowance

A **severance allowance** is pay and benefits an employee receives when they leave employment at a company. In addition to the employee's remaining regular pay, it may include some of the following:

- An additional payment based on months of service
- Payment for unused vacation time or sick leave.
- A payment in lieu of a required notice period.
- Medical, dental or life insurance
- Retirement benefits
- Stock options
- Assistance in searching for new work, such as access to employment services or help in producing a résumé.

Severance allowances are most typically offered for employees who are laid off or retire. Sometimes, they may be offered for people who resign, regardless of the circumstances; or are fired. Policies for severance packages are often found in a company's employee handbook, and in many countries are subject to strict government regulation. Severance contracts often stipulate that the employee will not sue the employer for wrongful

termination or attempt to collect on unemployment insurance, and that if the employee does so, then he must return the severance money.

(http://en.wikipedia.org/wiki/Severance_package)

- ❖ The method of calculation and payment of severance allowances shall be implemented as follows:

The formula for calculation of severance allowances in each enterprise:

Severance allowance	=	Total duration of employment at enterprises	X	Wage used as basic for calculation of severance allowance	X	1/2
---------------------	---	---	---	---	---	-----

- ❖ Cách tính và chi trả tiền trợ cấp thôi việc được thực hiện như sau

Công thức tính trợ cấp thôi việc ở từng doanh nghiệp:

Trợ cấp thôi việc	=	Tổng thời gian làm việc tại doanh nghiệp	X	Tiền lương làm căn cứ trợ cấp thôi việc	X	1/2
-------------------	---	--	---	---	---	-----

1.4.2. Tiền môi giới: Brokerage fees

Brokerage fees are the sum which enterprises have to pay to brokerage parties to conclude and perform contracts to send laborers to work oversea. The laborers have to pay the sum of brokerage fees or partial fees to enterprises.

1.4.3. Tiền dịch vụ: Service charges

Service charges mean laborers who are sent to work overseas shall have to pay to the sending enterprises.

Service charges shall not apply to cases in which employers renew labor contracts after laborers have completed contracts signed with enterprise (including extend labor contracts).

1.4.4. **Tiền ký quỹ: Deposits**

Pursuant to the Law on Vietnamese labor working oversea in accordance with contract dated on November 29, 2006;

Pursuant to the Decree No.126/2007/ND-CP dated on August 01, 2007 on detailing and guiding the implementation of a number of Article of the Law on Vietnamese laborers working overseas in accordance with contract;

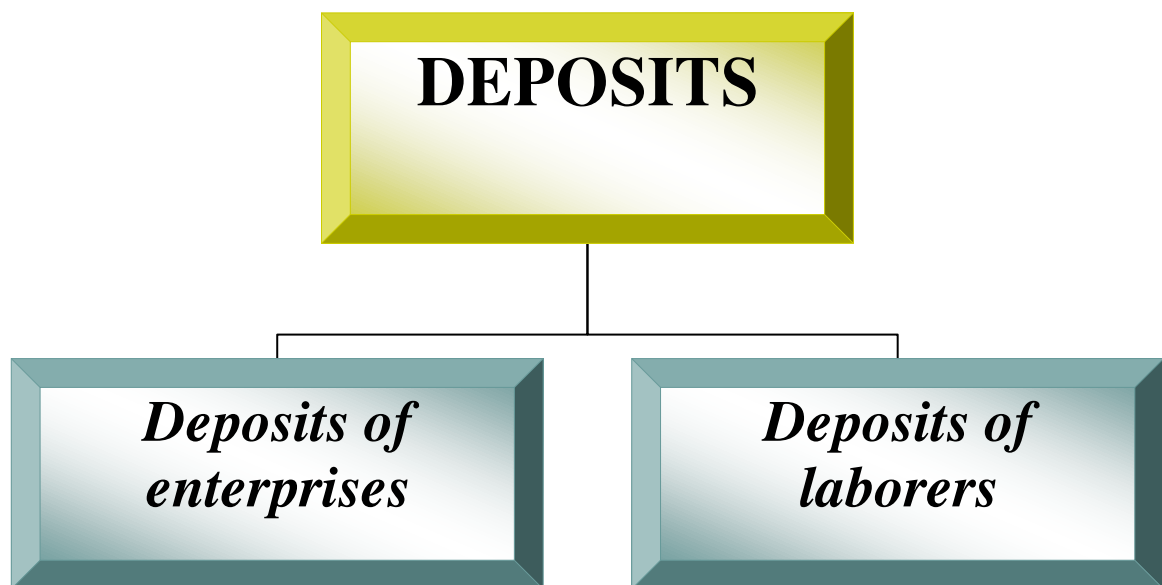
The Ministry of Labor, War Invalids and Social Affairs and State Bank hereby jointly guide the management and the use of deposits of enterprises and deposits of laborers working oversea in accordance with contract.

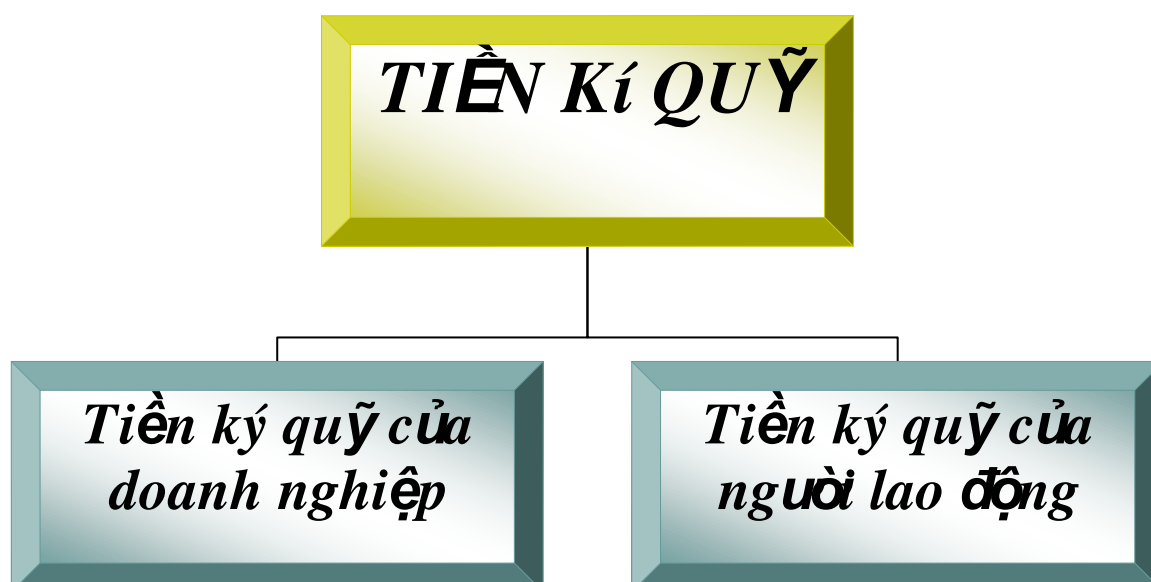
Definitions of deposit

- A "**deposit**" is the right to receive money from a bank. Or it is the obligation of a bank to pay money. Deposit Books And Duplicate Slips. - When a customer opens an account with a bank he is given a deposit book, known also as a "pass book" or "bank book." Every time he makes a deposit (by putting in cash or discounting or in any other way) the total is entered in the pass book. The pass book is the depositor's evidence of deposit, and is in most banks not "balanced," a statement of the account being rendered at regular intervals instead. In a savings bank the book contains the bank's account with the depositor, has debit and credit sides, and withdrawals are entered as well as deposits.

Deposit has two distinct meanings. Meaning one is applied to funds

provided as security or collateral for expected delivery of a good. For instance in a real estate acquisition, a deposit is provided in advance of closing. The exact timing and amount varies depending upon the part of the country. A real estate purchase deposit may be called a good faith deposit, a contract deposit, or simply a deposit. The second meaning of deposit is applied to funds transferred to another party, typically a financial institution, for safekeeping. An account holder who submits money to a credit union or bank for addition to the owner's account balance is said to make a deposit. A direct deposit is a type of payment where the payor transfers funds for the benefit of the payee to the financial institution where the payee has an account





A. Tiền ký quỹ của doanh nghiệp: Deposits of enterprises

Enterprises shall implement deposits for competent State authorities considering and granting Certificate and assure the operation of taking Vietnamese laborers to work overseas or assure the implementation of contract of bringing Vietnamese laborers to work overseas according to forms of skill improvement.

B. Tiền ký quỹ của người lao động: Deposits of laborers

Deposits of laborers have to write obviously in contracts of bringing laborers to work overseas and merely implemented after laborers signed this contract with enterprises and got approval by foreign countries for entering these countries to work or grant visa.

1.5. Terms related to Labor Insurance

1.5.1. Types of main social insurance

The State shall stipulate policies on social insurance in order to expand and improve the material security of an employee, and to stabilize the life of an employee and his family when the employee falls ill, become pregnant,

reties, dies, become injured in an accident, becomes employed, suffers some unexpected crisis, or suffers from other problems.

Forms of *compulsory or voluntary social insurance* shall apply to entities and businesses on a case by case basis in order to ensure employees receive benefits from an appropriate social insurance.

(Article 140_Labor Code)

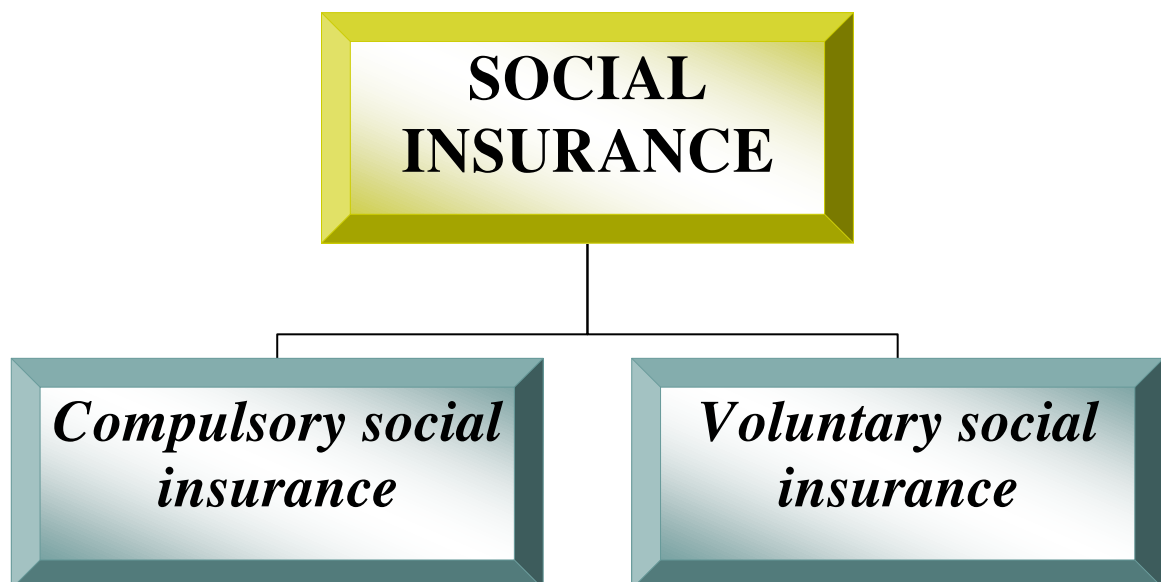
❖ **What is social insurance**

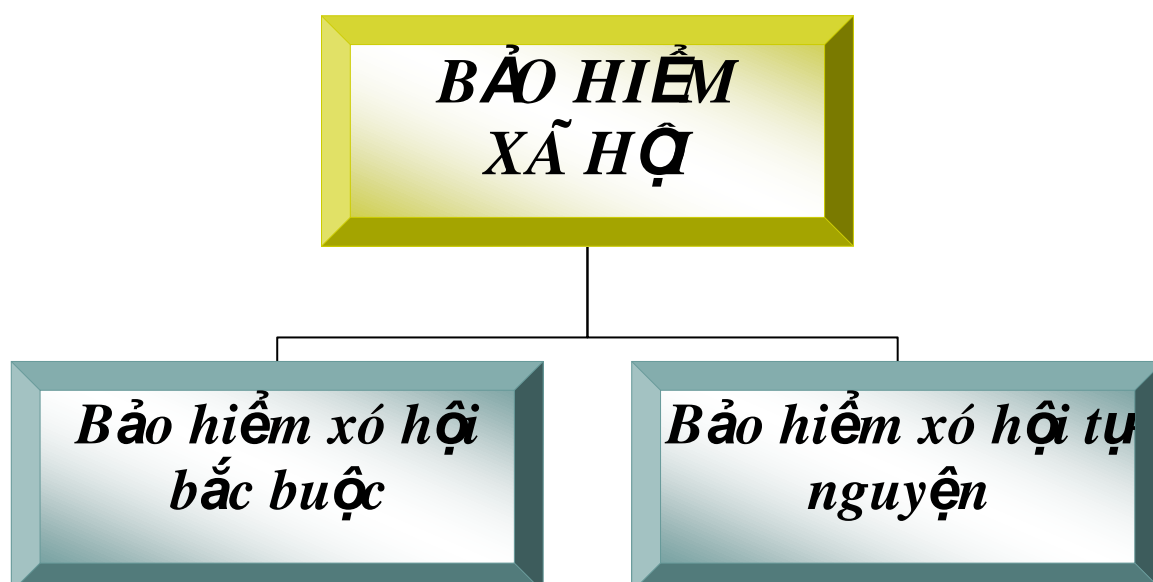
Social insurance means the guarantee to fully or partially offset a employees’

income that is lost or reduced due to his/her sickness, maternity, work-injured,

occupational disease, unemployment, retirement or death, on his/her contributions to the social insurance fund.

❖ **Types of main social insurance**





A. **Bảo hiểm xã hội bắt buộc :Compulsory social insurance**

- Compulsory social insurance means a form of social insurance in which employees and employers must participate.
- Compulsory forms of social insurance shall apply to business enterprises which employ ten (10) or more employees. In these enterprises, the employer and the employees must make contributions in social insurance funds and the employees shall be entitled to social insurance benefits and allowances in the event of illness, work-related accidents and occupational disease, pregnancy, retirement, and death.

B. **Bảo hiểm xã hội tự nguyện: Voluntary social insurance**

- Voluntary social insurance means a form of social insurance in which employees voluntarily participate, may select contribution rates and modes of payment suitable to his/her income in order to enjoy social insurance benefits.
- In respect of an employee who works in an enterprise which employs less than ten (10) employees, in jobs which have a duration of less

than three months, in seasonal jobs, or in jobs which are temporary, social insurance contributions shall be included in the wage paid by the employer to enable the employee to participate in social insurance on a voluntary or self-funding basic.

1.6. Other kinds of terms in Labor Law Document

1.6.1. L_{NN} ; L_{DN}

L_{NN}	Số lượng lao động nước ngoài mà doanh nghiệp được tuyển
L_{DN}	Số lượng lao động hiện tại của doanh nghiệp

L_{NN} : is the number of foreign worker an enterprise is permitted to employ in accordance with regulations, including those whom the employer employs in the form of a labor contract and those whom the foreign party has appointed to come to Vietnam to work at the enterprise. The result L_{NN} shall not exceed fifty (50) persons and it may be a minimum of one person.

Foreign individuals being members of a board of management, general director, deputy general director, director and deputy director of an enterprise established pursuant to the law of Vietnam; heads of representative offices and heads of branches in Vietnam; and foreign individuals who come to Vietnam to work at enterprises in order to perform various types of contracts (except labor contract) shall not be includes in the above number of foreign workers in an enterprise.

L_{DN} is the current number of employees in an enterprise (including Vietnamese and foreign individuals) at the time of recruitment of foreign employees, comprising; the number of employees currently working at the enterprise; the number of employees currently appointed by the enterprise to work or be trained overseas; the number of employees on social insurance leave (sick leave, maternity leave, workplace accidents or occupational illness); the number of employees current being trained by the enterprise;

and the number of employees currently on leave due to postponement of their labor contracts.

Employers shall be permitted to employ foreign employees in accordance with the following provision:

- The number of foreign employees permitted to be employed shall be calculated in accordance with this formula:

$$L_{NN} = L_{DN} \times 0.03$$

Example: 1767 is the current number of employees in Enterprise X at the time of recruitment of foreign employees. The number of foreign employees that Enterprise X is permitted to employ shall be:

$$L_{NN} = \frac{1767}{L_{DN}} \times 0.03 = 53.01$$

So Enterprise X is permitted by the regulations to employ 50 foreign employees.

Ví dụ: Doanh nghiệp X có số lao động tại thời điểm tuyển lao động nước ngoài là 1767 người thì số lao động nước ngoài được tuyển theo quy định là:

$$L_{NN} = 1767 \times 0.03 = 53.01$$

Như vậy, số lao động nước ngoài doanh nghiệp X được tuyển theo quy định là 50 người.

1.6.2. The different between “ **Cho thuê lại lao động**” and “ **Lao động cho thuê lại**”

A .**Cho thuê lại lao động : Labor sub-lease**

“Labor sub-lease” means when an employee recruited by an employer works for another employer under the management of the latter employer but maintains the labor relationship with the former employer.

B. Lao động cho thuê lại : Sub-leased labor

“Sub-leased labor” means the case where the employee(s) are recruited by an employer and then sub-leased.

2 .Some problems in translation of Vietnamese Labor Law into English

Translation, as stated above, is a very diverse field. Some forms of legal translation, especially the translation of Labor Law’s terms of some kinds, do not lend themselves to discussion within the scope of a short paper because of their complexity. We all assume we know roughly what happens in a court of law, which make it easier to write about court interpreting, but when it comes to translation, how much legal knowledge is to be expected of the reader? How is one to convey the precise nature of a legal translation problem in view of the fact that the reader may not know the source language, or alternatively the target language?

Faced with so many differences, it is very difficult to translate legal topics literally. Therefore, careful research of the area of law is necessary to understand those concepts behind the terminology and ensure the translation of the idea and not merely the words.

2.1. Problem in Structure

The English language belongs to the Indo-European language family, and the Vietnamese language belongs to the Austro-Asiatic family. Therefore the two languages have various differences in terms of vocabulary and grammatical rules. It is almost impossible to analyze all the differences in this paper. However, with a view to clarifying one important objective

reason of problem in translation of Vietnamese Labor Law into English, some prominent variances are mentioned below:

The phrasal is peculiar to English, as illustrated by constructions such as "thrash out"(to discuss thoroughly and solve it – a problem), "sign off"(to stop work), "offend against"(to act wrong according to law) or "bring forward"(to cause to be discussed). In other languages, single specific verbs are used in place of the English phrasal verbs. A construction as such is highly problematic because in English, it has numerous meanings.

English grammar is very inflexible compared to other languages. English goes by very strict structures while the Vietnamese language is much more flexible. For instance, the Vietnamese language does not always use articles and the rules are not as clear as those of the English language.

Some English vocabulary is peculiar. A word in English may mean a lot of other words in Vietnamese. For example, you may translate the word "problem" as "*vấn đề*", "*vấn nạn*", "*tệ nạn*", "*khó khăn*", "*trở ngại*", "*trục trặc*", "*biến chứng*", "*thắc mắc*", "*lỗi*", etc. depending on the context.

English, especially American English, has a tendency to convert nouns to verbs. This is problematic for speakers of the Vietnamese language who cannot as easily convert nouns to verbs. Noun combinations such as "State labor inspector", as well as compound nouns, also pose problems for inexperienced translators.

All of these peculiarities of English grammar often make it difficult for non-native English speakers to get a full command of the language. It is also difficult when it comes to translating Vietnamese writing into English. In fact, the size of the text often increases when one translates from Vietnamese to English.

2.2. Problem in Culture

Translation is not simply a linguistic transformation of texts, but it is also a rendering of cultural concepts from one language to another. Asian culture in general and Vietnamese culture in particular has many things in uncommon with Western culture. This phenomenon is almost unavoidable, especially in the case of Vietnamese –English translation because English culture is a Western one and the Vietnamese culture is Oriental. They contain so many differences that cannot be rendered verbally. Besides, due to the differences in geographical features, history, and development level, the Vietnamese language hold concepts that cannot be translated in a way that foreigner can easily comprehend and accept. This makes the practice of translation become a decrease in the meaning of the source text. In such a case, although it is not really a mistranslation of the source language, it cannot be called a good *re-creation* in the target language.

Two cultures which create the big differences in the world are the West - East culture. However, each nation has specific features in geography, history, physical life, spirit, manners and customs... meaning a specific culture and clearly reflected in the language, especially in the vocabulary of that nation. Viet Nam is situated in the monsoon tropical area, complicated terrain, a long-standing agriculture; a long glorious struggle against foreign aggression... which are the main features of Viet Nam culture. Things, facts, phenomenon, notions relating to those features are distinctly reflected in names, work instruments...

The cultural implications for translation may take several forms ranging from lexical content and syntax to ideologies and ways of life in a given culture. The translator also has to decide on the importance given to certain cultural aspects and to what extent it is necessary or desirable to translate

them into the target language. The aims of the source text will also have implications for translation as well as the intended readership for both the source text and the target text.

Considering the cultural implications for a translated text implies recognizing all of these problems and taking into account several possibilities before deciding on the solution which appears the most appropriate in each specific case. The translation process will also be treated using specific examples found in the ST before discussing the success of aforementioned theoretical methods applied to the target text.

CHAPTER 3

SOME SUGGESTION IN TRANSLATION OF VIETNAMESE LABOR LAW TERMS INTO ENGLISH

Due to the writing between languages quite different so we shouldn't interpret the source language literally but see it in the context to find out the suitable English writing and help readers understand easier or better.

1. Understanding concepts of terms in Labor Law

A term is associated with a specialized concept in a particular subject field or a "designation of a defined concept in a special by a linguistic expression" [ISO 1087]. This means that terms in any domain in general and Labor Law in particular are characterized by typical concepts, even words in general English in common dictionaries are also defined. Thus, discovering the definitions of terms is the best choice for translators to transfer new labor contract terms. Especially, dealing with single or multi words that are terminologized by metaphor is usually difficult tasks for inexperienced translators.

Have a basic knowledge of labor law. The translators should search the knowledge about the translation matter in order to, at least, understand the concept of the terms and use them correctly, and decrease all the difficulties stated above

It is vitally important factor to translate Law in general and Labor Law in particular.

- Learn heart the special use of some Labor Law terms
- Pay much attention to the use of Vietnamese and English structures.

Each of the Labor Law term always is attached with its concept; and to comprehensively and exactly name this term, we should base its concept. For

example, the term “Cho thuê lại lao động” is translated as “Labor sub-lease” in English means when an employee recruited by an employer works for another employer under the management of the latter employer but maintains the labor relationship with the former employer. (“Cho thuê lại lao động” là việc người lao động đã được tuyển dụng bởi một người sử dụng lao động sang làm việc cho một người sử dụng lao động khác dưới sự điều hành của người sử dụng lao động sau nhưng vẫn duy trì quan hệ lao động với người sử dụng lao động trước.). Other term ““ Xác lập điều kiện lao động mới ” is translated “Establishment of new working” means to amend and supplement the collective labor agreements, salaries, bonuses, incomes, labor rates, working hours, resting hours and other welfares .(“ Xác lập điều kiện lao động mới ” là việc sửa đổi, bổ sung thoả ước lao động tập thể, tiền lương, tiền thưởng, thu nhập, định mức lao động, thời giờ làm việc, thời giờ nghỉ ngơi và phúc lợi khác.)

Many new terms with the completely new concepts which are produced during the working process such as “Cuỡng bước lao động” is translated as “Forced labor” in English or the term “ Trợ cấp thôi việc” (Severance allowance) , etc. Some of terms have not listed in dictionary yet.

2. The Importance of Culture in Translation

It is no doubt that Law and culture are completely bound up with each other. Culture promotes the change and development of law system. Specially, Vietnam culture plays an important role in Law system in general and Labor Law in particular of the country.

The notion of culture is essential to considering the implications for translation and, despite the differences in opinion as to whether language is part of culture or not, the two notions appear to be inseparable. Discussing the problems of correspondence in translation, Nida confers equal importance to both linguistic

and cultural differences between the source language and the target language and concludes that "differences between cultures may cause more severe complications for the translator than do differences in language structure" (Nida, 1964:130). It is further explained that parallels in culture often provide a common understanding despite significant formal shifts in the translation. The cultural implications for translation are thus of significant importance as well as lexical concerns.

Lotman's theory states that "no language can exist unless it is steeped in the context of culture; and no culture can exist which does not have at its centre, the structure of natural language" (Lotman, 1978:211-32). Bassnett (1980: 13-14) underlines the importance of this double consideration when translating by stating that language is "the heart within the body of culture," the survival of both aspects being interdependent. Linguistic notions of transferring meaning are seen as being only part of the translation process; "a whole set of extra-linguistic criteria" must also be considered.

Because of the different geography, the difference between the cultures of two countries is unavoidable, especially terms related to this field. So translators should understand about the culture, belief, habit, custom of Vietnamese so that they can compare and guess the meaning of terms related to Labor Law. The Vietnamese culture in the language factor is usually a little bit difficult in translating. For example, the term “ Hội đồng hòa giải lao động cấp tỉnh” is translated as “ The Labor Conciliatory council” or this term “ Thỏa ước lao động tập thể” is translated as “ A collective agreement”, etc. When translator translate new terms that reflect the culture features into foreign language, we faced with uncountable difficulties and seemed to be untranslatable because those cultures don't have similar words to describe correctly. It is difficult to

translate these terms from Vietnamese into English if the translator doesn't understand about the culture, custom and habit of Vietnamese.

3. The Translation Process

Translation is an important mean of evaluation the development of society and education of each country... Through the translation work people can understand and learn developed knowledge of human especially in the process of internationalization. Translation plays an important role in cross culture, education and economic development.

It has already been noted that the terms in this case is surely intended for "an educated, middle-class readership" and, more specifically. The problems when translating Labor Law Terms are therefore not only of a purely lexical character but also of an equally fundamental nature - the understanding of a social, economic, political and cultural context as well as connotative aspects of a more semantic character. As with all terms of foreign literature, historical, political and other such cultural references are always of a certain importance and the target text reader is unlikely to have a full understanding of such notions. The extent to which it is necessary for the translator to explain or complete such an information gap should be taken into account; on the basis of conclusions reached concerning the ideal target text reader, the translator should decide how much may be left for the reader to simply infer. The translators also should try to understand the whole content and intention of the text which he is translating. The principal way to reach it is reading all the sentences or the text completely to understand new terms. For example, the term “ Tiền môi giới” is translated as “ Brokerage fees” or term “ Tiền dịch vụ” is translated as “ Service charge” in English . It is not easy to understand and distinguish these meanings if translator do not reading all the guide document of Labor Code.

A variety of different approaches have been examined in relation to the study translation of Labor Law Terms from Vietnamese into English. It is necessary to examine these approaches bearing in mind the inevitability of translation loss. Considering the nature of the terms and the similarities between the ideal source text and target text reader, an important aspect is to determine how much 'missing background' information should be provided by the translator using these methods. It has been recognized that in order to preserve specific cultural references certain additions need to be brought to the target text. This implies that formal equivalence should not be sought as this is not justified when considering the expectations of the ideal target text reader. At the other end of Nida's scale, complete dynamic equivalence does not seem totally desirable either as cultural elements have been kept in order to preserve the original aim of the terms, namely to present one aspect of life in Vietnamese.

Thus the cultural implications for translation of this kind of source text do not justify using either of these two extremes and tend to correspond to the definition of communicative translation, attempting to ensure that content and language present in the source language context is fully acceptable and comprehensible to the target language readership.

PART 3: CONCLUSION

1.Summary

We have covered the study on translating Labor Law terms according to given basic characteristic of terms. The main part of the research paper is divided into three parts, namely theoretical background, collection of Vietnamese Typical terms of Labor Law, some problems and suggestions concluded from the structure and culture. At the first glance, they seem illogical but they are mutual and supplementary together in the process of study. The theoretical background in the chapter one which is presented by the board-to-narrow view provides the basic knowledge of translation. The most important chapter of this study presents collection of Vietnamese typical terms of Labor Law and problems in translation of Vietnamese Labor Law into English are mentioned in the chapter two. Some suggestions in translation for readers to translate in the easy way are mentioned in the chapter three. The final part is conclusion which states overview of the whole study.

2.Suggestions for further study

The fields of Law in general and Labor Law in particular have been receiving much attention of Vietnamese people including the researcher of this paper. Because it connects closely with citizen's right and obligations. The problem raised in the study on Labor Law terms is not adequate and made rather simply so the researcher hopes that further studies on this field are done. The direction to develop may be as same as this paper but deeper analysis and more given Labor Law terms as well. In addition, studying the origin, the creation of Labor Law terms is also useful to translation –major students. I hope that I will have chances to study more about this and I will try my best to do so. Due to my limitation of time and knowledge, mistakes and shortcomings in this graduation paper are unavoidable. Therefore, I'm always willing to receive the contributions, advices

and sympathies from teachers and readers to make my graduation paper much better.

REFERENCES

1. Bassnett, S. 1991. *Translation Studies*. London: Routledge
2. Catford, J.C (1965). *A linguistic theory translation*. London: Oxford
3. Coulthard, M. 1992. "Linguistic Constraints on Translation." Universidade Federal de Santa Catarina, pp. 9-23.
4. Hervey, S., Higgins, I. 1992. *Thinking Translation*. London: Routledge.
5. Lotman, J., Uspensky, B. 1978. "On the Semiotic Mechanism of Culture," *New Literary History*, pp. 211-32.
6. Newmark, P. 1988. *A Textbook of Translation*. New York: Prentice Hall
7. Nida, E. 1964. "Principles of Correspondence." In Venuti, L. *The Translation Studies Reader*. London: Routledge.
8. Nida and Jaber (1974). *Translation studies*. Hanoi Open University
9. Toury, G. 1978, revised 1995. "The Nature and Role of Norms in Translation." . London: Routledge.
10. THE LABOR CODE AND GUIDING DOCUMENTS, Giao thong van tai publisher
11. LABOR CODE DRAFT II – 2009
12. [Http:// En.wikipedia.org/ wiki / language](http://en.wikipedia.org/wiki/language)
13. [Http:// En.wikipedia.org/ wiki/ Translation](http://en.wikipedia.org/wiki/Translation)
14. [Http://www.wcb.state.ny.us/content/main/onthejob/OccDisease.jsp](http://www.wcb.state.ny.us/content/main/onthejob/OccDisease.jsp)
15. [Http://en.wikipedia.org/wiki/Severance_package](http://en.wikipedia.org/wiki/Severance_package)

APPENDIX

SURVEY QUESTIONNAIRE

Aim: These questionnaires provide for graduation paper: “A study on translation of typical terms used in Labor Law from Vietnamese into English”. You fill in blanks (X) that you choose, please. Thank you so much!

1. How many employees work in the company?

Under 100

From 100-300

More than 300

2. How long have you worked in the company?

At least 1 year

From 1-5 years

More than 5 years

3. Does this employer have written personnel policies or procedures?

Yes

No

4. Does this employer have written list of rules and regulations?

Yes

No

5. Did you ever receive an employee handbook?

Yes

No

6. Did you ever attend Labor Law class/meeting in your company?

Yes

No

7. Did you have a written labor contract with your company?

Yes

No

8. How much do you know Labor Law?

Very much

Just a little

Not at all

9. Do you know your rights and obligations when you work in the company?

Yes

No

10. Does the company pay insurance to the employee?

Yes

No

11.Does the company ask for working overtime?

Yes

No

12.Do you get labor training in the company?

Yes

No

13.Did the company pay the minimum wage and benefits based on the labor law?

Yes

No

14.What will you do if your employer doesn't pay you at least the minimum wage?

15.Is there a Union in the company?

Yes

No

16.Does your company pay medical care for all workers?

Yes

No

CÂU HỎI KHẢO SÁT

Mục đích: Câu hỏi khảo sát này nhằm phục vụ cho đề tài nghiên cứu khóa luận “A study on translation of typical terms used in Labor Law from Vietnamese into English”. Anh (chị) xin vui lòng điền dấu (X) vào chỗ trống mà các anh(chị) lựa chọn. Xin chân thành cảm ơn

1. Có bao nhiêu công nhân viên trong công ty?

Dưới 100 người

Từ 100 đến 300 người

Trên 300 người

2. Bạn đã làm tại công ty được bao nhiêu năm?

Dưới 1 năm

Từ 1 năm đến 5 năm

Trên 5 năm

3. Khi vào công ty, chủ lao động có thảo ra các hợp đồng hoặc thủ tục liên quan đến cá nhân bạn hay không?

Có

Không

4. Người chủ lao động có thảo ra các quy tắc, điều lệ không?

Có

Không

5. Bạn có được phát sổ tay hướng dẫn của công nhân viên không?

Có

Không

6. Bạn đã tham dự vào lớp học hay cuộc họp liên quan đến luật lao động chưa?

Có

Không

7. Bạn có ký hợp đồng lao động khi vào công ty không?

Có

Không

8. Bạn có biết gì về luật lao động không?

Rất nhiều

Biết 1 chút

Không biết gì

9. Bạn có biết về quyền và nghĩa vụ của bản thân khi làm việc tại công ty không?

Có

Không

10. Công ty có chế độ bảo hiểm cho công nhân viên hay không?

Có

Không

11. Công ty có yêu cầu làm việc thêm giờ hay không?

Có

Không

Không biết

12. Bạn có được đào tạo về lao động ở công ty hay không?

Có

Không

13. Công ty có trả tiền lương tối thiểu và các khoản phụ cấp theo luật lao động hay không?

Có

Không

14. Bạn sẽ làm gì khi công ty không trả đúng tiền lương tối thiểu do luật lao động quy định?

15. Công ty bạn có công đoàn hay không?

Có

Không

16. Công ty bạn có trả cho các khoản chăm sóc sức khỏe của công nhân viên hay không?

Có

Không