TERMINATION OF LABOUR CONTRACTS DUE TO STRUCTURAL OR TECHNOLOGICAL CHANGES, OR ECONOMIC REASONS UNDER VIETNAMESE LABOUR LAW: A COMPARISON WITH THE UNITED STATES

Nguyen Thi Xuan Mai[1*]
[1]Faculty of Law, Ho Chi Minh City University of Economics and Finance (UEF)
*Điện thoại: +84931156892; Email: maintx@uef.edu.vn

The article was published in the Proceedings of Conference on Society Transformation, Linguistics, and Global Governance – CSLG 2024 by Ho Chi Minh City University of Economics and Finance and Agency for Southern Affairs of Ministry of Science and Technology coordinates to organize on May 22, 2024

ABSTRACT

In today's ever-changing economic landscape, businesses often need to adapt quickly, which can result in the termination of employment contracts. This poses a complex challenge for labour laws, particularly when terminating contracts under such circumstances. Article 42 of Vietnamese Labour Law outlines the specific scenarios in which employers must follow legal provisions in the face of structural or technological changes or economic hardships. These regulations are meant to protect workers' rights and ensure workplace fairness. However, the lack of clarity in Article 42 can lead to confusion and potential labour disputes. Given this context, it is crucial to develop pragmatic solutions tailored to Vietnam's unique circumstances, especially considering the divergent interpretations of this issue. Therefore, this article aims to comprehensively examine the legal intricacies surrounding the termination of employment contracts in response to structural or technological changes or economic difficulties and provide recommendations for improving existing labour laws.

Keywords: Termination; Labour contract; Structural or technological changes; Economic reasons.

1. Introduction

In the world of production and business operations, employers often face the tough decision of restructuring their workforce or adopting new technologies due to various reasons, such as economic pressures or subjective considerations. These adjustments often lead to the termination of labour contracts, which can have significant consequences in the labour market.

In Vietnam, the termination of labour contracts due to structural or technological changes or economic reasons has unique legal considerations compared to unilateral termination by employers. The Labour Law of 2019 provides specific definitions for such cases, which were absent in its 2012 predecessor. Structural or technological changes can refer to changes in organisational structure, personnel rearrangements, production processes, technologies, machinery, or equipment related to the employer's industry or business activities. Economic reasons may include financial crises, recessions, or compliance with state policies and laws during economic restructuring or international commitments. These legal provisions provide clear guidelines for addressing labour disputes and

bring coherence to the process, building on the guidelines previously outlined in Decree No.05/2015/2ND-CP on the guidance of the 2012 Labour Code.

However, the termination of employment contracts in Vietnam can be complicated when vague terms, missing explanations, and employer responsibilities regarding changes in production processes, technologies, machinery, or equipment are involved. This can occur regardless of whether the changes are comprehensive or limited to specific components. This article explores the legal and practical aspects of employment contract termination in response to such changes or economic difficulties in Vietnam. It seeks to analyze the current labour laws in Vietnam and compare them to those of the United States, with the aim of providing recommendations for refining and improving the existing legal regulations governing labour termination processes. The following research questions will guide this inquiry:

The purpose of these research inquiries is to delve into the complexities surrounding labour termination protocols in Vietnam in comparison to those in the United States. The goal is to pinpoint any discrepancies between legal mandates and practical applications, and to provide suggestions for enhancements or modifications that may be necessary to facilitate congruence between legal frameworks and actual practices. By examining these issues, this article endeavors to add to the ongoing conversations surrounding labour law and policy in Vietnam and furnish useful guidance for policymakers and other stakeholders engaged in labour relations.

2. Method

To comprehensively address the research questions and achieve the outlined objectives in the introduction regarding termination of labour contracts due to structural or technological changes, or economic reasons under labour law in Vietnam, it is essential to employ methods of synthesis, analysis, and comparison in this study.

The process of synthesis entails the harmonization and consolidation of data from diverse origins, with the aim of building a comprehensive comprehension of the legal and practical elements concerning workforce termination in Vietnam, particularly those resulting from structural or technological changes, or economic causes. The operation will encompass the gathering and scrutiny of pertinent legal literature, including the Labour Law of Vietnam editions 2012 and 2019, relevant statutes, and verdicts related to workforce termination. By means of synthesis, the specific provisions and criteria outlined in the legal framework that regulate workforce termination due to structural or technological changes, or economic reasons will be discerned and assembled.

Moving forward, an analysis method will be utilized to thoroughly examine the synthesized legal information. This will involve a thorough examination of the identified legal provisions, with a focus on evaluating their practical implications within real-world scenarios. Utilizing this analytical approach, the goal is to identify any potential ambiguities, inconsistencies, or gaps within the current legal regulations governing labour termination in Vietnam, specifically in relation to structural or technological changes, as well as economic reasons.

To gain a deeper understanding of labour termination procedures in Vietnam, we will be using the comparative method to analyze and compare legal frameworks and practical implementations with those of other countries, including the United States. Our focus will be on evaluating the levels of rigidity, flexibility, and effectiveness of labour termination laws and practices in both countries. Through this comparative analysis, we hope to uncover opportunities for enhancing Vietnam's labour termination regulations and practices.

In summary, utilizing techniques such as synthesis, analysis, and comparison will allow for a comprehensive investigation of the research queries. This approach will lead to the creation of recommendations grounded in evidence, aimed at tackling the gaps and issues present in Vietnam's labour termination policies and practices.

3. Result and discussion

3.1. Legal framework on the termination of labour contracts due to structural or technological changes, or economic reasons in Viet Nam and the United States

a) In Viet Nam

The present legal framework in Vietnam regulates the termination of labour contracts in the event of significant structural, technological, or competitiveness-driven business changes. Its objective is to provide a fair balance between employers' operational flexibility and job security for affected employees. The Labour Code contains essential provisions that outline the necessary trigger conditions, planning requirements, separation assistance, and procedural guidelines for significant workforce reconfigureations.

Several interlinked articles within the Code form the regulatory scaffolding shaping legally compliant labour adjustments and attendant employee transitions. For example, Article 42 identifies covered scenarios including significant modifications to operations, technologies, equipment or products prompted by economic shifts, compliance upgrades or commercial realignment (Article 42, Labour Code 2019). Article 44 elabourates on planning protocols for workforce utilization when such adjustments substantially threaten jobs or fundamentally alter skill demands (Article 44, Labour Code 2019). The regulation prioritizes internal mobility over layoffs and outlines minimum plan components, including replacement hiring forecasts and separation projections. Article 47 governs resulting terminations through temporary income support requirements (Article 47, Labour Code 2019).

As can be seen, this framework operates in a manner that promotes transparency, prevents arbitrary treatment, and assists staff members who may be affected by organizational changes. The implementation process includes consultation with worker representatives and communication from the competent authority. Impacted employees are provided with minimum severance replacements, adjustment packages, and advanced warning periods to alleviate financial stress during the process of seeking reemployment after displacement.

Despite the provision of a more distinct enumeration of instances related to the ending of employment agreements due to structural or technological changes, or economic factors, certain issues remain inherent in the provisions themselves.

At present, there are still some areas of definition that are unclear. For instance, there is room for interpretation regarding what constitutes "organizational structure" or "changes in processes, technology, equipment associated with the employer's business lines". Identifying changes in organizational structure can be a challenging task, especially when determining the appropriate level of change required to qualify as such. This challenge often stems from a lack of clarity surrounding whether changes to specific roles within the company are sufficient or if changes to an entire department are necessary to meet the criteria (Judgment No. 15/2018/LD-PT, 2018). Consequently, effectively identifying and communicating changes in organizational structure can be confusing.

In addition, the issue of whether changes to processes should be considered as a whole process or just specific steps within that process remains a topic of ongoing debate and confusion. The lack of clarity surrounding this matter has led to situations where employers may terminate labour contracts with employees for reasons that are unrelated to the technological or economic changes outlined in the law. Instead, these terminations may be based on subjective reasons, such as the employee's skill level or personal attributes. This can lead to unfair treatment of employees and can ultimately harm the overall productivity and success of a business. Therefore, companies must establish clear guidelines and policies when it comes to making changes to their processes and ensure that their actions are always in compliance with relevant laws and regulations.

Second, it is undeniable that offering retraining opportunities as an alternative to layoffs or termination is a proactive and equitable approach to workforce development. Through retraining, employees can acquire new skills that support their ongoing employment while also benefiting businesses by retaining experienced workers who are already familiar with the company's culture and operations. This forward-thinking strategy promotes fairness and sustainability in the labour market and underscores the value of investing in one's workforce. The matter at hand pertains to a discrepancy that has arisen regarding the retraining obligations outlined in Article 42, Section 3 of the employment contract. This particular section is concerned with contract terminations that may result from significant structural changes. The provision suggests retraining as a voluntary option for

ongoing employment that is at the discretion of the employer (Vũ Hải, 2019). However, the law does not mandate the affirmative obligation to retrain or retain employees in cases where operational overhauls impact a substantial number of individuals. This raises two main issues that require attention and clarification. Firstly, there is a need for a clear definition of what constitutes "many employees" in such situations. Secondly, there is a need to prioritize the retraining process in a way that ensures the best possible outcome for all affected employees. The existing provisions do not provide a clear definition of what constitutes a "large number of employees" for the purpose of establishing labour utilization plans. This lack of clarity has resulted in confusion among employers who are unsure u the appropriate course of action to take when faced with this situation. Without a clear understanding of the threshold for a "large number of employees," employers may struggle to effectively plan and allocate labour resources, potentially leading to inefficiencies and decreased productivity. In the case of the latter, using imprecise language may lead to misinterpretation of redeployment and skills upgrading as optional rather than mandatory. This lack of clarity puts employees who are undergoing involuntary job transitions at a significant disadvantage, despite having no personal responsibility for the situation. Without clearly defined requirements for retraining, companies can arbitrarily label previously competent workers as unqualified for new roles. As a result, these employees may face the risk of termination, even if they are willing to undertake reskilling (Dạ Thảo, 2023).

Furthermore, in the absence of enforceable preferential rehiring policies for retrained workers, companies can circumvent the spirit of the law by making minimal compliance gestures. Superficial retraining programs that focus on basic competencies without meaningful job continuity commitments technically fulfill voluntary legal expectations. As a result, employers can choose to recruit externally instead of re-employing experienced incumbents who are diligently making transition efforts in good faith. While the language in Article 42 may seem employee-friendly, the loose exhortative retraining language actually provides loopholes that can harm vulnerable workforces during involuntary business model changes.

In conclusion, Vietnam's labour laws aim to balance the employer's operational flexibility with the protection of employee's rights in the event of contract terminations due to major changes. The Labour Code outlines specific conditions, planning requirements, separation support, and procedures for legally compliant labour adjustments and transitions. Although the legal framework prioritizes transparency and provides transition support for displaced staff, there are still some ambiguities and gaps, which could lead to inconsistent interpretations and potential misuse of termination provisions.

b) In the United States

The at-will employment doctrine is a crucial aspect of US labour law regarding contract termination due to economic, technological, or structural changes. This longstanding doctrine permits either party to end the employment contract at any time, with or without reason. Appreciating the implications of this doctrine is vital for managing the intricacies of modern workforce dynamics and the relationship between employers and employees during times of change.

The at-will employment doctrine that governs most private-sector employment relationships in the United States provides employers significant discretion in terminating employees. Under this common law doctrine, employment contracts of indefinite duration can be terminated by either party at any time, for any reason, with limited protections or severance obligations (Muhl, 2001). This confers considerable flexibility but also uncertainty. In the context of workforce restructuring, the at-will employment doctrine, characterized by its flexibility and lack of fixed terms, creates a power dynamic that can impact the security and stability of employees in times of structural or technological changes within organizations. Employees under an at-will contract may find themselves vulnerable to abrupt dismissal as a result of restructuring efforts or technological advancements that render their roles redundant. Undoubtedly, structural, technological, and economic developments compel companies to reorganize operations and staffing models, necessitating workforce reduction. The at-will doctrine grants employers latitude in executing such terminations. However, other state and federal laws overlay protections regarding non-discrimination and advance notification. Employers

must navigate terminating employees amid business transformations while honouring employment laws. To be more specific, there are exceptions to the employment-at-will doctrine as the following:

The first exception, known as the Public Policy Exception (Petermann v. International Brotherhood of Teamsters, 1963), safeguards employees from wrongful termination when the dismissal contravenes a well-established public policy of the state. This exception aims to prevent terminations that violate public policies, such as firing an employee for exercising their rights, like filing a workers' compensation claim or refusing to engage in illegal activities at the employer's behest. Widely recognized, the public policy exception is upheld in 43 out of the 50 states, reflecting a commitment to ensuring fair and just employment practices (Markowitz, 1995).

The second exception, the implied contract exception (Berns, 1987), comes into play when an implied contract is inferred between the employer and employee, even in the absence of a formal written agreement. This exception arises when employer representations regarding job security or procedural guidelines create an implicit employment contract, offering protection against arbitrary or unjust terminations. Acknowledged in 38 states, the implied contract exception underscores the significance of honouring implicit agreements and ensuring fairness in employment relationships (Wals & Schwarz, 1996).

The third major exception, the Implied Covenant of Good Faith and Fair Dealing (O'Byrne, 2007), though less prevalent, introduces an element of ethical conduct into the employment relationship. This exception involves reading an implied covenant of good faith and fair dealing into the employer-employee dynamic, potentially requiring terminations to be based on just cause or prohibiting dismissals made in bad faith or with malicious intent (James, 2011).

Beyond these exceptions, the evolution of employment law in the United States has seen further advancements to modernize the doctrine in response to contemporary realities. State and federal actions, along with judicial decisions, have expanded protections for employees, including laws prohibiting retaliation against whistleblowers and establishing limits on termination based on public policy imperatives. Over forty states have embraced public policy-grounded restrictions that prevent terminations for actions such as taking sick leave, fulfilling jury duty obligations, or refusing directives to violate laws, reflecting a commitment to upholding ethical standards and employee rights in the workplace. It can be said that the exceptions to the employment-at-will doctrine play a crucial role in safeguarding employees from unjust terminations and promoting fairness in the employment relationship. By recognizing and implementing these exceptions, states aim to strike a balance between the rights of employers to manage their workforce efficiently (Judgment No. 08/2018/LD-PT, 2018) and the rights of employees to fair treatment and job security. As the legal landscape continues to evolve, these exceptions serve as pillars of protection, ensuring that employment practices align with ethical standards and public policy objectives.

In the context of terminating labour contracts due to structural, technological, or economic changes, the at-will doctrine's provision of "termination at any time" enables employers to dismiss staff without needing to prove cause. This differs from just-cause employment regimes in other countries, where employers must demonstrate legitimate reasons. As a result, U.S. companies can terminate employees via structural reorganization, even those who are performing their jobs satisfactorily but are soon rendered obsolete due to technology. The at-will doctrine allows employers to separate such employees immediately as machines transform workflows. Similarly, when economic conditions require downsizing to cut costs, at-will employment empowers companies to rapidly reduce staff levels without contractual barriers. Employers can react to shifting market conditions by offloading employees, and the at-will doctrine offers managers flexibility in determining where post-contraction resources get focused. However, it is important to note that the at-will doctrine alone does not confer absolute authority to terminate employees during transitions. Employers must still ensure they follow the exceptions mentioned.

Additionally, employers who have a significant workforce are required by the federal Worker Adjustment and Retraining Notification (WARN) Act to provide a written notice of 60 days in advance if they are planning mass layoffs or closing down a plant. The objective of this act is to give employees ample time to prepare for the impending job loss by exploring new career opportunities,

adjusting their lifestyles, and seeking alternative sources of income (Worker Adjustment and Retraining Notification Act, 1988). Employers who are facing significant mid-contract terminations due to technological, structural, or economic changes must make sure to plan well in advance to adhere to the advance notification requirements of the WARN Act. This means that employers need to be aware of the specific guidelines and regulations outlined in the act and take proactive measures to ensure compliance with the law. This is especially important in situations where large-scale layoffs or plant closings are imminent, as failure to provide adequate notice can result in costly penalties and legal action against the company.

It is clear that the at-will employment doctrine can create a sense of unease for employees amidst workplace changes. This is due to the nature of their contracts which permit sudden termination without reason, leaving them susceptible to job instability. Even if they have consistently performed their duties with excellence, they lack any safeguard from unforeseen dismissals brought on by operational or budgetary shifts that make their position superfluous. Consequently, employees are left to confront the financial and emotional repercussions of workforce reductions. The at-will employment doctrine can create a sense of unease for employees amidst workplace changes. This is due to the nature of their contracts which permit sudden termination without reason, leaving them susceptible to job instability. Even if they have consistently performed their duties with excellence, they lack any safeguard from unforeseen dismissals brought on by operational or budgetary shifts that make their position superfluous. Consequently, employees are left to confront the financial and emotional repercussions of workforce reductions (The Orlando Law Group, 2022).

To summarize, when businesses undergo changes and advancements, it can often lead to changes in their workforce. In the United States, the at-will employment doctrine plays a significant role in how both employees and employers handle mid-contract terminations resulting from structural and economic transformations. While employers have the flexibility to dismiss employees who no longer fit their business models or budgetary constraints, they must also consider legal implications. Meanwhile, employees with at-will contracts face uncertainties and limited protections in the event of potential job loss due to enterprise evolution. The at-will doctrine thus establishes essential guidelines and vulnerabilities regarding workforce restructurings and reductions that employers may undergo during significant structural or economic shifts.

3.2. Comparision between Viet Nam and the United States

The above analysis highlights the fundamental differences that exist in the approaches adopted for termination protocols and employee protections in response to significant economic, technological, or competitive changes. These differences are primarily driven by core factors that set them apart from one another.

First, the legal frameworks governing termination rights and responsibilities in business transformations involving workforce displacement vary between Vietnam and the United States. Vietnam's approach is collectivist, mandating consultative labour adaptation and offering generous transitional support for displaced employees. In contrast, the U.S. has an individualistic approach, giving employers discretion over termination decisions while subjecting them to situational restrictions that prevent discriminatory actions or other violations of public policy. Nonetheless, the U.S. does not provide broad guarantees of job security or assistance rights.

Second, the legal frameworks governing termination rights and responsibilities during business transformations vary significantly between Vietnam and the United States. Vietnam's collectivist compulsory planning model mandates consultative labour adaptation and offers generous transitional support to displaced workers. Conversely, the U.S. prioritizes individualistic employer discretion while implementing situational constraints to prevent discriminatory practices and other narrow public policy violations. The primary objective is to uphold job security and assistance rights, but only in specific situations.

Last but not least, Article 42 of Vietnam's labour laws specifies that workforce adaptation requirements may be triggered by significant business changes resulting from reforms, innovations, or shifting competitive dynamics. Once certain thresholds are met, Article 44 mandates extensive consultation, planning, reskilling investments, and preferential internal mobility efforts to minimize

terminations. Displaced employees are still entitled to tempered financial support and transitional assistance. By contrast, the United States operates under a default framework of "employment at will," which grants employers broad prerogatives around hiring and firing, with limited constraints against particularly egregious mistreatment related to unlawful discrimination. Companies can undertake layoffs and restructuring to advance business interests, with employees expected to bear the risks around market shifts or performance issues. Proactive support planning is not a fixed mandate, but rather a voluntary, optional practice at employer discretion, except in core discriminatory scenarios.

Based on the aforementioned comparisons, it is possible to deduce the following conclusion with a reasonable degree of confidence:

First, there are notable differences in the governance models used to address termination practices in Vietnam and America. Vietnam employs a compulsory collectivist approach, which aims to diffuse risk and provide protections for vulnerable workers. However, this approach may hinder economic dynamism and impede global competitiveness due to additional procedural hurdles. In contrast, the American framework promotes individualistic self-reliance and discretionary application, which allows for greater flexibility. However, this approach may contribute to income volatility and disadvantage working families during cyclical shocks without external mitigations. It is important to consider the advantages and disadvantages of each approach when developing policies to address termination practices..

Second, both models present challenges due to legal ambiguity. In Vietnam, the legislation provides general criteria but lacks specific, enforceable parameters for the timing of obligations. This allows for individual interpretation, but uneven enforcement can result. Similarly, the American framework is a complex mix of federal, state, and court-mandated exemptions that restrict broad employer rights. Consequently, compliance disparities and exposure to litigation risks arise from convoluted standards, hindering the implementation of workforce agility initiatives..

To conclude, institutional contexts require responsive and evidence-based termination protocols that balance workforce mobility with income continuity for equitable and sustainable economic development. This is crucial to ensure a smooth transition during layoffs and downsizing, while also maintaining the financial stability of individuals and organizations.

3.3. Recommendations for Viet Nam

First, after conducting thorough analyses, several recommendations have been identified to improve Vietnam's existing legal framework regarding the termination of labour contracts due to structural or technological changes, or economic reasons. These recommendations are aimed at enhancing the legal framework's effectiveness in addressing the complex issues that arise in such situations, while ensuring that the interests of both employers and employees are protected:

Ensuring clarity and transparency in defining terms such as "changes in the organizational structure, personnel rearrangement", or "changes in processes, technology, equipment associated with the employer's business lines" is crucial to establish a common understanding between employers and employees regarding the circumstances under which employment contracts may be terminated, as outlined in Article 42 of the Labour Code. To achieve this, it is recommended that the law mandates employers to provide precise explanations of these terms within their internal regulations. This proactive step promotes trust and fairness in the employment relationship by enabling employers to effectively communicate the criteria for termination to their employees. By incorporating clear definitions into internal regulations, employees gain clarity on the factors influencing their continued employment, and the risk of misunderstandings or disputes between employers and employees is mitigated. A mutual understanding of the conditions outlined in the Labour Code equips both parties to navigate changes in the workplace that may impact their employment status, fostering a harmonious work environment where conflicts are minimized and disputes are resolved amicably. Moreover, enhancing clarity and transparency in defining termination criteria contributes to legal compliance, demonstrating an employer's commitment to upholding labour laws and safeguarding the rights of employees. This proactive approach not only prevents legal disputes but also cultivates a positive organizational culture based on integrity and accountability.

It is important to recognize that these suggestions are specifically customized to suit Vietnam's distinct socio-economic conditions. Although the at-will employment principle provides advantages in some scenarios, it may not entirely align with Vietnam's developmental stage and societal principles. Thus, modifications to this principle are required to guarantee that termination practices are fair and considerate of employee rights. By finding a harmonious balance between flexibility and protection, Vietnam can establish a legal framework that advances both economic efficiency and social equity.

Second, The termination of labour contracts in Vietnam due to structural or technological changes, or economic reasons, needs to be addressed by enhancing the country's legal framework. One of the recommendations to improve this framework involves providing guidance on the interpretation and quantification of the term "large number of employees" as stated in Article 44 of the current Labour Code. The absence of clear guidelines on this matter may lead to varying interpretations among stakeholders, resulting in unnecessary labour disputes.

To address this issue, the Vietnamese government should issue comprehensive guidance on how to interpret and quantify the term "large number of employees". This term plays a vital role in determining the obligations associated with the development of labour utilization plans, as specified in Article 44 of the Labour Code. However, without a clear understanding of what constitutes a "large number", misunderstandings between employers and employees may arise, leading to disagreements and potential disputes.

One approach to quantifying the term "large number of employees" could involve establishing a fixed percentage of the company's total workforce. This percentage would serve as a threshold, determining when the obligation to develop a labour utilization plan is activated. Importantly, this percentage should be mutually agreed upon by both the employer and the employees' representatives to ensure that the interests of all parties are taken into consideration. This collabourative approach promotes transparency and fairness in the termination process.

Furthermore, any modifications to the agreed-upon percentage must adhere to the rules outlined in the Labour Code, prioritizing the best interests of the employees and ensuring fairness in the decision-making process. This approach allows for adjustments to be made based on changing circumstances or specific needs within the organization while ensuring that the termination process remains transparent and fair..

It should be noted that this suggestion is based on the fundamental principle of Good Faith and Fair Dealing, which holds significant value in US employment law. This principle mandates that parties involved in employment contracts act with honesty and fairness towards each other. By implementing a comparable approach in Vietnam and emphasizing mutual understanding and transparency in the interpretation of phrases like "large number of employees," the government can minimize the likelihood of misunderstandings and conflicts in the employment realm.

Third, to further enhance Vietnam's legal framework on labour contract terminations due to structural or technological changes, or economic reasons, it is highly recommended to establish a clear and concise calculation for redundancy payments, as stipulated in Section 5 of the current Labour Code. The absence of such a quantification method may result in confusion and disparity in determining redundancy payments. To mitigate this issue, it is advised to introduce formulas that factor in an employee's length of service and wages, which would not only provide transparency but also guarantee consistency in redundancy payments..

Redundancy payments are crucial in supporting employees who face termination due to structural or technological changes, or economic difficulties. However, the absence of specific guidelines for calculating these payments can cause disparities and uncertainties, potentially leading to disputes between employers and employees. To address this issue, introducing formulas based on tenure and wages can offer a standardized and transparent method for determining redundancy payments.

One approach to quantifying redundancy payments involves considering the length of an employee's tenure with the company. Employees who have served for longer durations may be entitled to higher redundancy payments to reflect their contributions and loyalty to the organization.

Furthermore, the employee's wages or salary at the time of termination could be taken into account when calculating redundancy payments. Higher-earning employees may receive larger redundancy payments to compensate for the loss of income and to ensure a degree of financial stability during the job search or retraining process.

By incorporating wages and tenure into the calculation formula, the redundancy payments can be tailored to reflect the individual circumstances of each employee, thereby promoting fairness and equity in the termination process. Additionally, introducing standardized formulas based on tenure and wages can contribute to consistency and predictability in redundancy payments across different organizations and industries. This can help employers and employees to have confidence in the fairness and transparency of the calculation method, reducing the likelihood of disputes and litigation.

Clear and quantifiable criteria for redundancy payments can facilitate negotiations and agreements between employers and employees, fostering a cooperative and constructive approach to labour contract terminations. This recommendation aligns with international best practices and principles of fairness and equity in employment relations.

Last but not least, in order to improve Vietnam's legal framework regarding labour contract terminations due to structural or technological changes, or economic reasons, it is recommended to make retraining and redeployment a compulsory priority under Section 3 of the current Labour Code. Currently, this priority is optional and employers can choose whether or not to implement adaptation protocols. Making adaptation protocols enforceable duties can significantly improve the effectiveness of workforce adjustments, better protect cooperative staff, and ensure a smoother transition process. Ensuring that employees are equipped to handle the impact of structural or technological changes and economic challenges is crucial. Retraining and redeployment are key components in this effort. Unfortunately, the current framework lacks the necessary enforcement measures, leading to inconsistent implementation among employers and industries. By making adaptation protocols a mandatory responsibility, employers would be compelled to prioritize retraining and redeployment efforts. This would help safeguard the interests of affected employees and promote a more cooperative and supportive work environment. Employers have a responsibility to address the needs of employees who may be impacted by technological advancements or restructuring within the organization. It is crucial that employers explore options for redeployment within the company before considering termination, ensuring job retention and minimizing workforce disruption. By mandating adaptation protocols, a culture of accountability and responsibility can be fostered among employers, encouraging investment in the long-term development and well-being of their employees. Prioritizing retraining and redeployment demonstrates a commitment to supporting the workforce during periods of change and uncertainty, ultimately enhancing employee loyalty and morale. To help prevent conflicts and disagreements between employers and employees, it can be beneficial to establish enforceable responsibilities for retraining and redeployment. By providing clear and mandatory guidelines, all parties can better understand their rights and obligations during workforce adjustments. This can promote constructive communication and collabouration, fostering trust and cooperation in the workplace. Additionally, implementing mandatory adaptation protocols signals the government's commitment to promoting inclusive and sustainable employment practices. Encouraging employers to invest in retraining and redeployment not only benefits individual employees, but also enhances the overall resilience and competitiveness of the labour market. By equipping workers with the skills and knowledge necessary to adapt to evolving industry trends and technological advancements, Vietnam can position itself for long-term economic growth and development.

In summary, the recommendations proffered are geared towards fortifying Vietnam's legal framework with regards to labour contract terminations triggered by structural, technological changes, or economic exigencies. It is imperative that the country's laws reflect the current realities of the labour market, and the proposed measures are aimed at achieving this objective. By enacting these recommendations, Vietnam will be better equipped to address the challenges that arise from changes in technology, structure or economic conditions, which often lead to the termination of labour contracts. Therefore, it is recommended that these measures be expedited to ensure the protection of the interests of both employers and employees.

4. Conclusion

To summarize, employers can improve workforce adjustments, economic resilience, and social justice in the labour market by prioritizing inclusivity in employment practices and fostering a culture of accountability and responsibility. Implementing such measures in Vietnam can bring significant benefits to the nation by protecting employee rights and promoting their well-being and overall prosperity. Similarly, the United States could benefit from a more nuanced approach to labour contract terminations that balances business needs with worker welfare. In the face of rapid economic and technological changes, policymakers in both countries must explore innovative solutions to strike a delicate balance between workforce flexibility and worker security. This comparative analysis highlights the vital importance of ensuring equitable and sustainable labour market practices that benefit all.

References

1. Berns, B. D. (1987, March 1). *Employers beware: the implied contract exception to the Employment-At-Will doctrine*. LIRA@BC Law. https://lira.bc.edu/work/sc/6b67d47c-375e-4d0f-adbe-54cd81d904db
2. *Case law Petermann v. International Brotherhood of Teamsters*, https://law.justia.com/cases/california/court-of-appeal/2d/214/155.html, accessed on 20 February 2024.
3. James J. Brudney, Reluctance and Remorse: The Covenant of Good Faith and Fair Dealing with American Employment Law Good Faith and Fair Dealing in the Individual Employment Relationship, 32 Comp. Lab. L. & Pol'y J. 773 (2010-2011) Available at: http://ir.lawnet.fordham.edu/faculty_scholarship/127
4. Markowitz, D. L. (1995). The demise of At-Will employment and the public employee conundrum. *The Urban Lawyer*, *27*(2), 305–331. https://www.jstor.org/stable/27894946
5. Muhl, C. J. (2001). The employment-at-will doctrine: three major exceptions. *Monthly Labour Review*. https://www.bls.gov/opub/mlr/2001/01/art1full.pdf
6. O'Byrne, S. K. (2007). *The implied term of good faith and fair dealing: recent developments*. CanLII. https://www.canlii.org/en/commentary/doc/2007CanLIIDocs80#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA
7. The Labour Code No. No. 45/2019/QH14
8. The Orlando Law Group. (2022, March 23). *The At-Will doctrine: What does it mean to be an At-Will employee or employer?* https://www.linkedin.com/pulse/at-will-doctrine-what-does-mean-employee-employer-
9. Walsh, D., & Schwarz, J. L. (1996). State common law wrongful discharge doctrines: up-date, refinement, and rationales. *American Business Law Journal*, *33*(4), 645–690. https://doi.org/10.1111/j.1744-1714.1996.tb00407.x
10. *Worker Adjustment and Retraining Notification Act (WARN) - Preamble to the 1989 final rule*. DOL. https://www.dol.gov/general/topic/training/warn-reg-preamble.
11. Vũ Hải, "Ép Người Lao Động Nghỉ Việc Để Thực Hiện Tái Cơ Cấu" Báo Lao Động (May 7, 2019) <https://laodong.vn/cong-doan/ep-nguoi-lao-dong-nghi-viec-de-thuc-hien-tai-co-cau-731828.ldo>.
12. Thảo D, "Một Ngày Đẹp Trời Bỗng Dưng Bạn Bị Đuổi Việc, Thì Phải Làm Gì?" thanhnien.vn (March 16, 2023) <https://thanhnien.vn/mot-ngay-dep-troi-bong-dung-ban-bi-duoi-viec-thi-phai-lam-gi-185230315160941317.htm>.
13. Judgment No. 15/2018/LD-PT on unilateral termination of labour contracts.
14. Judgment No. 08/2018/LD-PT on the dispute on unilateral termination of labour contract.