

WHEN IS A SERVICE CONTRACT WITH AN APP DRIVER AN EMPLOYMENT CONTRACT?

For ride-hailing platforms, delivery platforms and transport businesses

Legal basis: Labour Code 2019 · Civil Code 2015 · Law on Social Insurance 2024 · Decree 158/2024/ND-CP

NATURE OF THE CONTRACT

Is naming it a “service contract” enough to stay outside an employment relationship?

SERVICE CONTRACT

One party performs the work, the other pays the service fee

VERBATIM

“A service contract is an agreement between the parties whereby the service provider performs work for the service user, and the service user must pay a service fee to the service provider.”

(Article 513, Civil Code No. 91/2015/QH13)

EMPLOYMENT CONTRACT

Another name is still an employment contract if the elements are present

VERBATIM

“Where the two parties agree on the contract under another name but its contents show paid work, wages and the management, direction and supervision by one party, it shall be deemed an employment contract.”

(Article 13.1, Labour Code No. 45/2019/QH14)

IDENTIFYING ELEMENTS

Which three elements turn a contract with a driver into an employment contract?



THE LAW ON SOCIAL INSURANCE USES EXACTLY THESE CRITERIA TO IDENTIFY WHO MUST PAY COMPULSORY INSURANCE

“...including the case where the employee and the employer agree under another name but the contents show paid work, wages and the management, direction and supervision by one party”

(Article 2.1.a, Law on Social Insurance No. 41/2024/QH15)

Car-hailing apps: when is it only software, and when must transport business conditions be met?

Does the app directly direct the vehicles or drivers, or set the fares?

NO: CONNECTING SOFTWARE ONLY

Main obligations:

- Serve only transport units holding a transport business licence with badged vehicles
- Keep transaction history for at least 02 years

(Article 75.1, Decree 158/2024/ND-CP)

YES, EVEN JUST ONE OF THEM

Must comply with the rules on transport business by automobile and its business conditions.

(Article 75.2, Decree 158/2024/ND-CP)

SOCIAL INSURANCE CONSEQUENCES

Deemed an employment contract: when does non-payment of social insurance become evasion?

30 days

Deadline to declare and file the compulsory social insurance participation dossier for the driver.
(Article 28.1, Law on Social Insurance)

+ 60 days

A further 60 days past the deadline without full registration: treated as evasion of payment.
(Article 39.1.a, Law on Social Insurance)

CONSEQUENCES OF EVASION

- (i) Pay the full evaded amount;
 - (ii) Pay an additional 0.03% per day on the evaded amount;
 - (iii) Administrative penalty or criminal prosecution;
 - (iv) Ineligible for commendation and reward consideration.
- (Article 41, Law on Social Insurance)*

Applies where: the driver is a Vietnamese citizen and the contract runs for 01 month or more (Article 2.1.a, Law on Social Insurance). With thousands of drivers, the back payment plus 0.03% per day can be very large.

LIABILITY FOR COMPENSATION

A driver causes an accident during a trip: who must compensate?

IF THE DRIVER IS AN EMPLOYED WORKER

The business compensates, then claims reimbursement from the driver at fault

VERBATIM

“An individual or legal entity must compensate for damage caused by its employees or apprentices while performing the work assigned to them, and has the right to require the employee or apprentice at fault in causing the damage to reimburse a sum of money as prescribed by law.”

(Article 600, Civil Code No. 91/2015/QH13)

A VEHICLE IS A SOURCE OF EXTREME DANGER

The owner, or the person given the vehicle to use, compensates even without fault

VERBATIM

“The owner of a source of extreme danger must compensate for damage caused by that source; if the owner has handed it over to another person for possession and use, that person must compensate, unless otherwise agreed.”

(Article 601.2, Civil Code. Compensation applies even without fault under Article 601.3, except where the damage is caused entirely by the injured party's wilful fault, force majeure or necessity)

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