



Burden Of Proof and Evidence Governance in Employment Termination Disputes: Implications from Ho Chi Minh City, Vietnam

Tran Ly Thang*

Ho Chi Minh City University of Technology (HUTECH), Ho Chi Minh City, Vietnam

Article DOI: 10.55677/SSHRB/2026-3050-1001

DOI URL: <https://doi.org/10.55677/SSHRB/2026-3050-1001>

KEYWORDS: burden of proof; evidence governance, employment termination, transaction costs, electronic evidence, Ho Chi Minh City.

ABSTRACT: This study examines the burden of proof and evidence governance in employment termination disputes through an integrated perspective combining transaction-cost economics, information asymmetry, and the reliability of electronic evidence. The research adopts a qualitative case-study design that combines doctrinal legal analysis with a comparative reading of First-Instance Labor Judgment No. 36/2025/LĐ-ST, Appellate Labor Judgment No. 50/2026/LĐ-PT, and the related enforcement decision in Ho Chi Minh City. Labor-market indicators are used only to establish context and are not treated as evidence of dispute prevalence. The findings show that evidentiary responsibility follows the structure of information control: the employee must establish the initiating facts and the rights for which protection is sought, while the employer must explain managerial records that it creates, controls, or retains when those records are necessary to assess the contested facts. For electronic evidence, probative value depends on a verification chain covering data source, attribution, integrity, and contextual consistency. The study proposes standardized termination dossiers, evidence-control mapping, targeted data preservation, and a structured review process for digital evidence. These measures may reduce verification costs, mitigate information asymmetry, and strengthen the governance of employment relations.

Corresponding Author
Tran Ly Thang

Published: October 05, 2026

License: This is an open access article under the CC BY 4.0 license:
<https://creativecommons.org/licenses/by/4.0/>

I. INTRODUCTION

Employment relationships are increasingly formed, managed, and terminated within hybrid information environments. Employment contracts, salary appendices, attendance data, work assignments, performance assessments, leave requests, emails, and messaging-platform exchanges may exist simultaneously in paper and digital form. When an employment termination dispute arises, the central issue is therefore not only which legal rule applies, but also which party controls the relevant information, which records can be reconstructed, and what costs are involved in verifying the sequence of events. The burden of proof and evidence governance are thus closely connected to the quality of employment-relations management within organizations.

The context of Ho Chi Minh City illustrates the practical significance of this issue. In 2024, labor-market data cited from the city's labor forecasting agency recorded more than 64,000 employer recruitment instances and nearly 320,000 job positions, with services accounting for 67.86% and industry and construction for 31.51% (Pham Thu Ngan, 2024). During the first two months of 2025, the city's employment portal recorded nearly 8,500 vacancies and more than 6,200 job seekers (Thanh Vu, 2025). Following the administrative expansion of the city, labor demand for 2026 was forecast at more than 313,000 positions (Ho Chi Minh City Press Center, 2026). These figures do not measure the incidence of labor disputes, but they demonstrate the scale of recruitment, mobility, and employment transitions, thereby increasing the practical value of human-resource records that remain traceable and reviewable. From a legal perspective, individual labor disputes concerning termination commonly raise three interrelated questions. First, which party must prove the initiating facts, such as the existence of the employment relationship, the termination act, and the rights allegedly affected? Second, how should the responsibility to produce documents be allocated when attendance records, performance assessments, disciplinary materials, or leave approvals are stored in systems controlled by the employer? Third, what criteria should

be used to assess emails, messaging-platform records, and other digital data so that they can be reliably linked to a particular person, time, and communication context? These questions are often addressed separately in discussions of substantive grounds for termination, legal consequences, or electronic evidence, even though they operate together in actual disputes.

The research gap addressed in this article concerns the relationship among information control, the shifting burden of proof, and the costs generated when managerial records are incomplete or unclear. Rather than treating the burden of proof as a static obligation placed entirely on one party, this study approaches it as a dynamic structure: the claimant must first establish the foundational events, after which the explanatory burden may shift toward the party that controls the data necessary to verify or rebut those events. This approach links doctrinal legal analysis with transaction-cost economics and information asymmetry.

Based on a labor dispute adjudicated at both first-instance and appellate levels in Ho Chi Minh City, the study pursues three objectives: (i) to develop an analytical framework for the burden of proof based on control over information; (ii) to clarify the roles of paper and electronic evidence in reconstructing the termination event; and (iii) to derive implications for employment-record governance and digital-evidence review. The study does not generalize a single case into a city-wide judicial trend. Instead, the case is used to identify a mechanism that can be examined across a larger body of judgments in future research.

II. THEORETICAL BACKGROUND AND RESEARCH METHODS

2.1. Theoretical foundations and analytical framework

Transaction-cost economics provides the first theoretical foundation. Coase (1960) argued that the establishment and enforcement of rights involve information, negotiation, and enforcement costs. Williamson (1985) extended this approach to contractual relationships, emphasizing contractual incompleteness and the need for adaptation when circumstances arise that cannot be fully specified *ex ante*. Employment contracts cannot anticipate every situation involving performance, working time, leave, discipline, or termination. Consequently, managerial records created during contract performance become part of the institutional mechanism through which rights and obligations are later verified and enforced.

The second foundation is information asymmetry. Employers typically control internal regulations, attendance systems, performance criteria, leave approvals, managerial notices, and multiple internal databases, whereas employees primarily retain documents that have been delivered to them or communications in which they directly participated. Article 91 of the current Vietnamese Civil Procedure Code provides that where an employee cannot submit evidence because the relevant materials are managed or retained by the employer, the employer is responsible for providing them to the court (Office of the National Assembly, 2025). This rule can be understood as reducing evidence-access costs for the party that does not control the information, while preserving the claimant's responsibility to establish the foundational facts of the claim.

The third foundation concerns the reliability of electronic evidence. Vietnam's 2023 Law on Electronic Transactions recognizes that data messages may be used as evidence and links their evidentiary value to the reliability of the methods used to initiate, send, receive, and store them, the assurance of integrity, and the ability to identify relevant actors (National Assembly of Vietnam, 2023). On this basis, the study employs a four-layer framework: the initiating facts that must be established; control over the relevant data; reliability assessed through source, attribution, integrity, and context; and the costs generated when records are incomplete, fragmented, or no longer retrievable.

2.2. Research design and data sources

The study adopts a qualitative case-study design combining doctrinal legal analysis with a comparative examination of judicial records. The legal sources include the 2019 Labor Code, the Civil Procedure Code as consolidated in Document No. 99/VBHN-VPQH dated August 26, 2025, the 2023 Law on Electronic Transactions, and Guidance No. 33/HD-VKSTC of 2022. The case materials include First-Instance Labor Judgment No. 36/2025/LĐ-ST dated September 26, 2025, Appellate Labor Judgment No. 50/2026/LĐ-PT dated March 18, 2026, and Enforcement Decision No. 96854/QĐ-THADS dated July 16, 2026. The employee and employer are anonymized as Employee A and Company B so that the analysis remains focused on evidentiary mechanisms rather than party identification.

Labor-market data are drawn from public sources to describe the economic and employment setting of Ho Chi Minh City. These indicators are contextual only and are not used to infer the frequency of disputes or the prevalence of a particular termination practice. The 2024 data refer to Ho Chi Minh City under its former administrative boundaries, while the 2026 forecast reflects the expanded city. This difference in geographic scope is retained explicitly in the interpretation.

2.3. Analytical procedure and interpretive scope

The two judgments are compared across five issues: the employment relationship and salary level; the act alleged to constitute termination; the grounds invoked by the employer; the periods of leave and related documentation; and the financial consequences determined after adjudication. Evidence is classified according to the party that created it, the party that controlled it, its storage form, and its evidentiary function. Electronic data are assessed through four criteria: source, attribution, integrity, and consistency with the surrounding documentary context.

This approach does not attempt to estimate a causal effect of record quality on litigation outcomes. Instead, the case is used to identify a sequence of mechanisms: who creates and controls a particular record; which party can produce it at lower cost; how its

reliability can be assessed; and how incomplete or inaccessible records increase verification, litigation, or enforcement costs. The resulting conclusions are therefore analytical and managerial implications rather than general rules applicable to all employment disputes.

III. RESEARCH FINDINGS

3.1. Context and development of the case

Ho Chi Minh City has a large and dynamic labor market. Table 1 summarizes three contextual indicators and one directly quantifiable cost indicator from the case. The labor-market indicators do not measure disputes; their relevance lies in illustrating the large number of recruitment, retention, and termination decisions that must be supported by employment records capable of later verification.

Table 1. Selected labor-market indicators and direct costs in the case study

Indicator	Value	Relevance to the study
Labor demand in Ho Chi Minh City in 2024 (former boundaries)	Nearly 320,000 positions; services 67.86%; industry and construction 31.51%	A large volume of employment transactions increases the need for traceable personnel records.
Supply and demand on the city employment portal, first two months of 2025	Nearly 8,500 vacancies; more than 6,200 job seekers	Illustrates labor mobility and matching frictions, highlighting the economic value of stable employment governance.
Labor demand in 2026 after administrative expansion	More than 313,000 positions; 136,340 in former Ho Chi Minh City, 105,080 in former Binh Duong, and 72,261 in former Ba Ria-Vung Tau	The employment-governance environment is larger and more geographically diverse after administrative restructuring.
Monetary obligation under the appellate judgment in the case study	VND 120.25 million = 9.25 months at VND 13 million per month	A directly measurable dispute cost; excludes management time, advisory expenses, and litigation costs.

Source: Compiled from Pham Thu Ngan (2024), Thanh Vu (2025), Ho Chi Minh City Press Center (2026), Appellate Labor Judgment No. 50/2026/LĐ-PT, and the author's calculations.

In the case study, Employee A entered into a 12-month employment contract commencing on March 10, 2024. A salary appendix dated June 1, 2024 increased monthly income to VND 13 million. On July 2, 2024, Employee A received Notice No. 08-2024/TB-GĐ by email, stating that the employment contract would terminate from July 31, 2024 and referring to issues concerning obligations, internal rules, and working time. Following the appellate proceedings, Company B was ordered to pay VND 120.25 million, comprising VND 94.25 million in salary and VND 26 million equivalent to two months' salary. The total amount equaled 9.25 months of the salary stated in the appendix. Nearly 20 months elapsed between the termination date and the appellate judgment, indicating that the monetary award captured only part of the broader management, verification, and litigation costs generated by the dispute.

3.2. Allocation of evidentiary responsibility according to information control

The comparative reading of the judicial records indicates that the burden of proof did not operate as a fixed responsibility resting entirely on one party. Employee A first had to establish the employment relationship, the salary level, the document alleged to express the employer's intention to terminate, and the rights claimed to have been affected. Once these initiating facts were presented, the center of explanation shifted to matters over which Company B had superior control of information. If the company characterized the notice as only a warning rather than a termination decision, it had to explain the wording, effective date, and intended managerial function of the document. If it relied on unauthorized absence or failure to complete assigned work, attendance records, leave approvals, performance criteria, warning records, and other operational documents became directly relevant.

Table 2. Evidence chain and allocation of explanatory responsibility in the case

Issue	Principal evidence	Main party controlling / explaining the evidence	Assessment
Employment relationship and salary	Employment contract dated March 10, 2024; salary appendix dated June 1, 2024	Both parties possessed relevant documents	Established the contract term and the salary of VND 13 million per month.
Whether a termination act occurred	Notice No. 08-2024/TB-GĐ; email transmitting the notice	Created by Company B; received by Employee A	Both judicial levels treated the content and effective date as expressing an intention to terminate.

Whether Employee A abandoned work without authorization	Sick-leave request; unpaid-leave request; Zalo exchanges	Company B controlled leave approval and managerial records	The unauthorized-absence argument was rejected because the relevant leave had been approved.
Failure to perform work / breach of internal rules	Witness statements; internal records	Primarily Company B	General assessments did not substitute for specific criteria, records, and operational data.
Financial consequences	Salary appendix; period during which the employee did not work	Both parties; court calculation	The appellate court determined an obligation of VND 120.25 million.

Source: Author's synthesis of First-Instance Labor Judgment No. 36/2025/LĐ-ST and Appellate Labor Judgment No. 50/2026/LĐ-PT.

Table 2 shows that the common feature across the contested issues is unequal access to information. The employment contract and salary appendix were documents that both parties could retain, whereas leave approvals, performance criteria, attendance records, and other internal records were primarily stored within the employer's systems. This helps explain why the responsibility to produce and explain evidence may shift according to actual control over the information. Such a shift does not remove Employee A's responsibility to allege and support the initiating facts, but it prevents the employee from being required to prove matters that cannot be lawfully or reasonably accessed outside the employer's systems.

3.3. Role and reliability of electronic evidence

Email and Zalo performed different evidentiary functions in the case. Email was relevant to the transmission of the notice, whereas the Zalo exchanges provided contextual information concerning the employer's communication that the employee had been dismissed and the approval of unpaid leave. Neither form of electronic data was assessed in isolation from paper records. Instead, the courts considered them alongside the notice, leave documents, and the parties' conduct. This approach is consistent with the 2023 Law on Electronic Transactions, under which the evidentiary value of a data message depends on the reliability of the methods used to initiate, send, receive, and store it, as well as its integrity and the ability to identify relevant actors (National Assembly of Vietnam, 2023).

The case permits a four-layer review process for electronic evidence to be systematized. The first layer identifies the data source and the location of the original or backup copy. The second attributes the communication to a person through accounts, telephone numbers, email addresses, and communication history. The third examines integrity through message sequences, timestamps, original files, and indicators of alteration. The fourth places the electronic record within the context of other documents and conduct to test consistency. Tuong Duy Luong (2025) similarly emphasizes the need to distinguish a source of evidence from the evidentiary content derived from that source. A screenshot should therefore not be automatically accepted or rejected merely because of the form in which it is submitted.

Table 3. Four-layer framework for reviewing electronic evidence derived from the case study

Review layer	Core question	Data to examine	Governance implication
1. Data source	Where did the data originate, and where are the original or backup copies located?	Original email, device, storage system, backup copy	Identifies retrieval points and the party able to preserve the data.
2. Attribution	To whom can the communication reasonably be attributed?	Account, telephone number, email address, communication history	Reduces the risk of misidentifying the creator or sender.
3. Integrity	Does the record show signs of editing, deletion, fragmentation, or missing segments?	Timestamps, message sequence, original file, metadata where available	Improves the ability to verify and explain authenticity.
4. Contextual consistency	Is the electronic content consistent with other documents and conduct?	Termination notice, leave documents, attendance records, actual conduct	Prevents isolated interpretation of a screenshot or message outside its context.

Source: Author's framework based on the 2023 Law on Electronic Transactions and the case analysis.

A significant risk arises because the life cycle of electronic data may be shorter than the life cycle of a dispute. Workplace accounts may be disabled after an employee leaves, system logs may be overwritten, and messages may be deleted. If the information disappears before a dispute-resolution body requests it, verification costs rise and the ability of both parties to substantiate their positions declines. The timing of data-preservation measures therefore becomes an important governance decision. Preservation

should nevertheless remain targeted and proportionate, and it must respect applicable rules on personal data, trade secrets, and privacy.

IV. DISCUSSION

4.1. The burden of proof as a mechanism for allocating information costs

The case suggests that the burden of proof can be understood not only as a procedural rule but also as a mechanism for allocating information costs between the parties. Requiring an employee to prove facts contained exclusively in an employer's internal systems can raise evidence-access costs to a level that weakens the practical ability to protect rights. Conversely, automatically shifting every evidentiary responsibility to the employer would obscure the claimant's obligation to establish the initiating facts. Article 91 of the Civil Procedure Code provides a balancing mechanism by linking the responsibility to produce documents to the party that manages or retains them when the employee cannot provide those materials (Office of the National Assembly, 2025).

From the perspectives of Coase (1960) and Williamson (1985), this structure matters because the party controlling the information will often face lower search and production costs. A structured human-resource record system reduces the cost of reconstructing events after a dispute has arisen, whereas fragmented records or communications stored only in personal channels increase verification costs and create room for conflicting interpretations. Evidence governance should therefore not be understood as an activity that begins only after litigation has commenced; it is the cumulative result of how employment processes are designed, documented, retained, and linked over time.

A related concern appears in other areas of organizational governance in Vietnam. In a different substantive context, Le and Tran (2025) examine financial-statement transparency and independent auditing in relation to FDI attraction in a provincial startup ecosystem. Although that study does not address labor disputes, it illustrates a broader governance interest in information that can be independently checked and relied upon by external decision makers. The present case extends the same general concern with verifiability into employment relations, where the relevant records are contracts, attendance data, leave approvals, performance materials, notices, and digital communications.

4.2. Electronic evidence and the move from screenshots to a verification chain

The case also shows that the label attached to an information carrier is insufficient to determine evidentiary value. A screenshot may provide a useful entry point, but the probative value of its content depends on whether source, attribution, integrity, and context can be assessed. Conversely, electronic data should not be treated as inherently less reliable merely because no paper equivalent exists. A verification-chain approach shifts attention from the physical form of the evidence to the ability to examine how the information was created, stored, transmitted, and connected with other events.

This is particularly important in employment relations because managerial decisions are increasingly formed across multiple channels. A formal notice may be transmitted by email, work schedules may be stored in software, approvals may be communicated through messaging platforms, and implementation may appear in attendance and payroll systems. If each item is governed separately, both employers and employees may face difficulty reconstructing a coherent chronology. The ability to link records by time, actor, and managerial function is therefore part of evidence quality rather than a purely technical archiving issue.

4.3. Value and limitations of the case-study approach

The principal value of the case lies in clarifying an analytical mechanism: beginning with the initiating facts, identifying which data are necessary, determining who controls those data, specifying how reliability can be examined, and showing how missing records increase verification costs. However, a single case cannot establish that all employment termination disputes in Ho Chi Minh City share the same evidence structure or that courts consistently allocate evidentiary responsibility in the same manner. The findings should therefore be treated as propositions for further examination using a larger body of judgments classified by termination ground, evidence type, and adjudicative outcome.

V. MANAGEMENT AND POLICY IMPLICATIONS

5.1. For employers

First, employers should govern a termination dossier rather than merely retain a termination letter. At a minimum, the dossier should connect the legal ground, factual basis, applicable performance criteria, relevant communications, approving authority, time of dispatch and receipt, salary data, and working-time records. Where termination is based on failure to perform assigned duties, specific criteria and evidence of their application are necessary; generalized managerial assessments should not substitute for operational records.

Second, employers should develop an evidence-control map for important categories of employment data. The map should identify whether a record is held by human resources, a direct manager, an attendance system, email, or another platform; the retention period; extraction authority; and the condition that triggers preservation. When a dispute can reasonably be anticipated, preservation should be targeted to the relevant accounts, time periods, and data types. This approach reduces the risk of evidence loss while avoiding unnecessary collection beyond the scope of the dispute.

5.2. For employees

Employees should lawfully retain documents that have been provided to them and communication chains in which they directly participated, particularly employment contracts, salary appendices, notices, leave confirmations, work-related communications, and data directly connected to the termination. Preservation should respect access boundaries and must not be extended into unauthorized access, copying of trade secrets, or collection of unrelated personal or corporate information. This approach supports the employee's ability to establish initiating facts while reducing the risk that evidence collection itself creates a separate legal conflict.

5.3. For dispute-resolution bodies

Dispute-resolution bodies may improve efficiency by identifying at an early stage which materials are under the control of each party and by prioritizing data at risk of rapid loss. For electronic evidence, reasons for acceptance, requests for supplementation, or decisions not to rely on particular material should be linked to source, attribution, integrity, and contextual consistency rather than merely to whether a screenshot has been submitted. A structured explanation can improve predictability for the parties, reduce information asymmetry, and limit unnecessary litigation costs.

VI. CONCLUSION

This study shows that the burden of proof in employment termination disputes can be explained through the information structure of the employment relationship. The employee must establish the relationship, the termination act, and the rights for which protection is sought; the employer must explain the grounds and records under its control when those records are necessary to assess the contested facts. In the case study, Notice No. 08-2024/TB-GĐ, the email transmitting the notice, Zalo exchanges, leave records, and the absence of specific documents supporting the allegation of non-performance formed an evidentiary chain used by both judicial levels to assess the termination. The appellate monetary obligation was VND 120.25 million, equivalent to 9.25 months of the salary stated in the appendix.

From an economic perspective, record quality affects the costs of creating, controlling, retrieving, and checking information. Clear records, retrievable data, and timely preservation mechanisms can reduce verification costs and the risk of inference from incomplete information. For electronic evidence, attention should focus not on the label of a screenshot or message but on the ability to test source, attribution, integrity, and context. The practical implications are to standardize termination dossiers, map control over evidence, preserve relevant data in a targeted manner, and identify early which party controls each category of record. Because the study is based on a single case, future research should expand the sample of judgments to assess the prevalence of this mechanism and compare evidentiary costs across different types of employment disputes.

REFERENCES

1. Coase, R. H. (1960). The problem of social cost. *The Journal of Law and Economics*, 3, 1-44. <https://doi.org/10.1086/466560>
2. Ho Chi Minh City Civil Judgment Enforcement Administration. (2026). Enforcement Decision No. 96854/QĐ-THADS dated July 16, 2026.
3. Ho Chi Minh City Press Center. (2026). Summary of press information relating to Ho Chi Minh City, February 24, 2026. <https://ttbc-hcm.gov.vn/tong-hop-thong-tin-bao-chi-lien-quan-den-tp-ho-chi-minh-ngay-24-2-2026-1020717.html> (accessed September 18, 2026).
4. Le, D. T., & Tran, D. L. (2025). Financial statement transparency, independent auditing, and FDI attraction into the startup ecosystem of Thanh Hoa Province. *Accounting and Auditing Journal*, (264), 76-81. <https://doi.org/10.59006/vnfajaa.09202510>
5. National Assembly of Vietnam. (2019). Labor Code No. 45/2019/QH14 dated November 20, 2019.
6. National Assembly of Vietnam. (2023). Law on Electronic Transactions No. 20/2023/QH15 dated June 22, 2023.
7. Office of the National Assembly. (2025). Consolidated Document No. 99/VBHN-VPQH dated August 26, 2025, consolidating the Civil Procedure Code.
8. People's Court of Ho Chi Minh City. (2026). Appellate Labor Judgment No. 50/2026/LĐ-PT dated March 18, 2026.
9. People's Court of Region 4, Ho Chi Minh City. (2025). First-Instance Labor Judgment No. 36/2025/LĐ-ST dated September 26, 2025.
10. Pham Thu Ngan. (2024, December 25). Ho Chi Minh City will need up to 330,000 job positions in 2025. *Thanh Nien*. <https://thanhnien.vn/nam-2025-tphcm-can-toi-330000-vi-tri-viec-lam-18524122423561442.htm> (accessed September 18, 2026).
11. Supreme People's Procuracy of Vietnam. (2022). Guidance No. 33/HD-VKSTC dated November 8, 2022, on selected issues in supervising the resolution of individual labor disputes.
12. Thanh Vu. (2025, March 11). Ho Chi Minh City faces a shortage of thousands of general workers. *VietnamPlus*. <https://www.vietnamplus.vn/thanh-pho-ho-chi-minh-dang-thieu-hut-hang-nghin-lao-dong-pho-thong-post1019876.vnp> (accessed September 18, 2026).

13. Tuong Duy Luong. (2025, July 1). Clarifying whether Article 95 of the 2015 Civil Procedure Code defines evidence or merely sources of evidence. People's Court Magazine Online. <https://tapchitoaan.vn/can-lam-ro-quy-dinh-tai-dieu-95-bo-luat-to-tung-dan-su-nam-2015-la-xac-dinh-chung-cu-hay-do-chi-la-nguon-chung-cu13653.html> (accessed September 18, 2026).
14. Williamson, O. E. (1985). The economic institutions of capitalism: Firms, markets, relational contracting. Free Press.