

DECREE

Detailing the Law on Social Insurance and the Law on Occupational Safety and Health regarding compulsory social insurance for employees being foreign citizens working in Vietnam¹

Pursuant to the June 19, 2015 Law on Organization of the Government;

Pursuant to the November 20, 2014 Law on Social Insurance;

Pursuant to the June 25, 2015 Law on Occupational Safety and Health;

At the proposal of the Minister of Labor, War Invalids and Social Affairs;

The Government promulgates the Decree detailing the Law on Social Insurance and the Law on Occupational Safety and Health regarding compulsory social insurance for employees being foreign citizens working in Vietnam.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree details the Law on Social Insurance and the Law on Occupational Safety and Health regarding compulsory social insurance for employees being foreign citizens working in Vietnam.

Article 2. Subjects of application

1. Employees being foreign citizens working in Vietnam who possess a work permit or practice certificate or practice license granted by a competent Vietnamese agency and sign an indefinite-term contract

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or a contract with a term of at least 1 year with an employer in Vietnam are subject to compulsory social insurance.

2. The employees defined in Clause 1 of this Article are not subject to compulsory social insurance prescribed in this Decree if they fall into one of the following cases:

a/ They are transferred within an enterprise under Clause 1, Article 3 of the Government's Decree No. 11/2016/ND-CP of February 3, 2016, detailing a number of articles of the Labor Code regarding foreign workers in Vietnam;

b/ They reach the retirement age prescribed in Clause 1, Article 187 of the Labor Code.

3. Employers covered by compulsory social insurance include state agencies, non-business units, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, and other social organizations; foreign agencies and organizations and international organizations operating in Vietnam's territory; enterprises, cooperatives, individual business households, cooperative groups, other organizations, and individuals licensed to do business under law that hire or employ employees under labor contracts.

4. This Decree also applies to agencies, organizations and individuals related to compulsory social insurance for employees being foreign citizens.

Article 3. Rights and responsibilities of employees and employers

The employees and employers defined in this Decree have all the rights and responsibilities prescribed in the Law on Social Insurance and the Law on Occupational Safety and Health.

Article 4. Complaints and denunciations about, and handing of violations related to, social insurance

The lodging of complaints and denunciations about, and handing of violations related to, social insurance for the entities defined in Article 2 of this Decree must comply with Chapter VIII of the Law on Social Insurance.

Chapter II

COMPULSORY SOCIAL INSURANCE REGIMES

Article 5. Compulsory social insurance regimes

1. The employees defined in Clause 1, Article 2 of this Decree shall comply with the following compulsory social insurance regimes: sickness; maternity; occupational accident or occupational disease; and retirement and survivorship.

2. Compulsory social insurance regimes for the employees defined in Clause 1, Article 2 of this Decree shall be determined based on the employees' period of social insurance premium payment in accordance with this Decree.

Article 6. Sickness regime

1. Conditions for enjoying the sickness regime must comply with Article 25 of the Law on Social Insurance.

2. Period of enjoying the sickness regime

a/ The period of enjoying the sickness regime must comply with Article 26 of the Law on Social Insurance;

b/ The period of leave taken upon sickness of children must comply with Article 27 of the Law on Social Insurance.

3. Allowance levels under the sickness regime must comply with Article 28 of the Law on Social Insurance.

4. Convalescence and health rehabilitation after sickness must comply with Article 29 of the Law on Social Insurance.

Article 7. Maternity regime

1. Conditions for enjoying the maternity regime must comply with Article 31 of the Law on Social Insurance.

2. Period of enjoying the maternity regime

a/ The period of leave for prenatal checkups must comply with Article 32 of the Law on Social Insurance;

b/ The period of leave upon miscarriage, abortion, stillbirth or pathological abortion must comply with Article 33 of the Law on Social Insurance;

c/ The period of leave for childbirth must comply with Article 34 of the Law on Social Insurance;

d/ The period of leave for child adoption must comply with Article 36 of the Law on Social Insurance;

dd/ The period of leave when taking contraceptive measures must comply with Article 37 of the Law on Social Insurance.

3. Allowance levels under the maternity regime

a/ Female employees giving birth or employees adopting children are entitled to a lump-sum allowance under Article 38 of the Law on Social Insurance;

b/ Allowance levels under the maternity regime must comply with Article 39 of the Law on Social Insurance.

4. Female employees going to work before the expiration of the maternity leave period shall comply with Article 40 of the Law on Social Insurance.

5. The maternity regime applicable to female employees as surrogate mothers and intended mothers must comply with Article 35 of the Law on Social Insurance and Articles 3 and 4 of the Government's Decree No. 115/2015/ND-CP of November 11, 2015, detailing a number of articles of the Law on Social Insurance regarding compulsory social insurance (below referred to as Decree No. 115/2015/ND-CP).

6. Convalescence and health rehabilitation after the maternity leave period must comply with Article 41 of the Law on Social Insurance.

Article 8. Occupational accident or occupational disease insurance regime

1. Conditions for enjoying the regime

a/ The conditions for enjoying the occupational accident regime must comply with Article 45 of the Law on Occupational Safety and Health;

b/ The conditions for enjoying the occupational disease regime must comply with Clause 1, Article 46 of the Law on Occupational Safety and Health.

2. The assessment of working capacity decrease must comply with Article 47 of the Law on Occupational Safety and Health.

3. Allowance levels under the occupational accident or occupational disease regime

a/ Lump-sum allowance must comply with Article 48 of the Law on Occupational Safety and Health;

b/ Monthly allowance must comply with Clauses 1, 2, 3, 4 and 6, Article 49 of the Law on Occupational Safety and Health.

4. Daily-life aid equipment and orthopedic devices must comply with Article 51 of the Law on Occupational Safety and Health.

5. Attendance allowance must comply with Article 52 of the Law on Occupational Safety and Health.

6. The time for allowance enjoyment must comply with Article 50 of the Law on Occupational Safety and Health.

7. Allowance upon death due to occupational accidents or occupational diseases must comply with Article 53 of the Law on Occupational Safety and Health and Article 10 of this Decree.

8. Convalescence and health rehabilitation after medical treatment of injuries and diseases must comply with Article 54 of the Law on Occupational Safety and Health.

9. The occupational accident or occupational disease regime for an employee who signs labor contracts with more than one employer must comply with Article 5 of the Government's Decree No. 37/2016/ND-CP of May 15, 2016, detailing and guiding the implementation of a number of articles of the Law on Occupational Safety and Health regarding compulsory occupational accident or occupational disease insurance (below referred to as Decree No. 37/2016/ND-CP).

10. Support for occupational accident or occupational disease victims to change occupations when they return to work must comply with Article 55 of the Law on Occupational Safety and Health and Articles 7 and 8 of Decree No. 37/2016/ND-CP.

11. Support for the prevention and sharing of risks of occupational accidents and occupational diseases must comply with Clause 1, Points a, b and d of Clause 2, and Clause 3, Article 56 of the Law on Occupational Safety and Health, and Articles 11, 12, 15, 16, 19, 20, 23 and 24 of Decree No. 37/2016/ND-CP.

Article 9. Retirement regime

1. The employees defined in Clause 1, Article 2 of this Decree are entitled to pension when meeting the conditions for pension enjoyment specified in Clause 1, Article 54 of the Law on Social Insurance and Article 6 of Decree No. 115/2015/ND-CP.

2. Pension and allowance levels

a/ Monthly pension must comply with Clause 2, Article 56 of the Law on Social Insurance and Clauses 1 and 2, Article 7 of Decree No. 115/2015/ND-CP;

b/ Lump-sum allowance upon retirement must comply with Article 58 of the Law on Social Insurance;

c/ The average monthly salary on which social insurance premiums are based for calculating pension or lump-sum allowance must comply with Clause 2, Article 62 of the Law on Social Insurance.

3. The adjustment of salaries for which social insurance premiums have been paid must comply with Clause 2, Article 63 of the Law on Social Insurance.

4. The adjustment of pension must comply with Article 57 of the Law on Social Insurance and Clause 2, Article 10 of Decree No. 115/2015/ND-CP.

5. The time for pension enjoyment must comply with Clauses 1 and 3, Article 59 of the Law on Social Insurance.

6. Cases of eligibility for lump-sum social insurance allowance

The employees defined in Clause 1, Article 2 of this Decree may enjoy a lump-sum social insurance allowance if they so request and fall into one of the following cases:

a/ They reach the prescribed age for pension enjoyment as prescribed in Clause 1 of this Article but have paid social insurance premiums for less than 20 years;

b/ They suffer a fatal disease, such as cancer, poliomyelitis, cirrhosis, leprosy, serious tuberculosis, HIV infection progressing into AIDS, or another disease as prescribed by the Ministry of Health;

c/ They fully satisfy the conditions for pension enjoyment as specified in Clause 1 of this Article but no longer reside in Vietnam;

d/ Their labor contracts, work permits, practice certificates or practice licenses expire without being permitted to be extended.

7. The lump-sum social insurance allowance level must comply with Point b, Clause 2, Article 60 of the Law on Social Insurance.

8. The time for calculating the lump-sum social insurance allowance is the time stated in the social insurance agency's decision. The adjustment of salaries for which social insurance premiums have been paid for calculating the lump-sum social insurance allowance shall be based on the time stated in the social insurance agency's decision.

9. Reserving the period of social insurance premium payment

Employees who, upon their retirement, do not fully satisfy the conditions for pension enjoyment as specified in Clause 1 of this Article or have not received the lump-sum social insurance allowance under Clause 6 of this Article are entitled to have their period of social insurance premium payment reserved.

10. Suspension from or continuation of enjoyment of pension or monthly social insurance allowance

a/ Cases of suspension from or continuation of enjoyment of pension or monthly social insurance allowance must comply with Clause 1, Article 64 of the Law on Social Insurance;

b/ Pension or monthly social insurance allowance will continue to be paid to emigrants who return to and reside in Vietnam. In case there is a court's legally effective decision annulling the decision to declare an employee as missing, he/she will be entitled not only to continue enjoying such pension or allowance but also to have his/her pension or monthly social insurance allowance retrospectively paid since the time they are suspended from enjoying such pension or allowance;

c/ The social insurance agency shall, when deciding on suspension from enjoyment of pension or social insurance allowance under Point a of this Clause, notify such in writing and clearly state the reason. Within 30 days from the date of suspension from enjoyment of pension or allowance, the social insurance agency shall issue a decision permitting the enjoyment of pension or allowance; if deciding on termination of enjoyment of pension or social insurance allowance, it shall state the reason.

Article 10. Survivorship allowance regime

1. Funeral allowance must comply with Article 66 of the Law on Social Insurance.

2. Monthly survivorship allowance

a/ Cases of eligibility for monthly survivorship allowance must comply with Article 67 of the Law on Social Insurance;

b/ Levels of monthly survivorship allowance must comply with Article 68 of the Law on Social Insurance.

3. Lump-sum survivorship allowance

a/ Cases of eligibility for lump-sum survivorship allowance must comply with Article 69 of the Law on Social Insurance;

b/ For an employee who dies and whose relative is eligible for monthly allowance but does not reside in Vietnam, a lump-sum survivorship allowance shall be paid;

c/ Lump-sum survivorship allowance levels must comply with Article 70 of the Law on Social Insurance.

Article 11. Transfer of social insurance allowance for persons on pension or monthly social insurance allowance who no longer reside in Vietnam

1. Persons on pension or monthly social insurance allowance who no longer reside in Vietnam may authorize others to receive such pension or allowance, or they may receive lump-sum allowance if they so wish.

2. Lump-sum allowance levels for employees as prescribed in Clause 1 of this Article must comply with Clauses 2 and 3, Article 65 of the Law on Social Insurance.

Chapter III

THE SOCIAL INSURANCE FUND

Article 12. Levels and payment methods of social insurance premiums for employees

1. From January 1, 2022, the employees defined in Clause 1, Article 2 of this Decree shall monthly pay an amount equal to 8% of their monthly salary to the retirement and survivorship allowance fund.

2. An employee who has neither worked nor received salary for 14 working days or more in a month is not required to pay social insurance premiums for that month. This period shall not be included in the period eligible for social insurance allowance, except the case of maternity leave.

Article 13. Levels and payment methods of social insurance premiums for employers

1. The employers defined in Clause 3, Article 2 of this Decree shall monthly make payments based on employees' monthly salary on which social insurance premiums are based, specifically as follows:

a/ 3% to the sickness and maternity allowance fund;

b/ 0.5% to the occupational accident or disease insurance fund;

c/ 14% to the retirement and survivorship allowance fund, from January 1, 2022.

2. Employers are not required to pay social insurance premiums for the employees defined in Clause 2, Article 12 of this Decree.

3. Based on the balancing capacity of the occupational accident or disease insurance fund, the Government shall consider adjusting the payment level specified at Point b, Clause 1 of this Article from January 1, 2020.

4. In case an employee signs labor contracts with different employers and is subject to compulsory social insurance, the employee

and employer shall pay social insurance premiums only for the labor contract signed first. However, the employers shall make payments to the occupational accident or disease insurance fund for every contract signed.

Article 14. Monthly salary on which social insurance premiums are based

The monthly salary on which social insurance premiums are based referred to in Clause 1, Article 12, or Clause 1, Article 13, of this Decree must comply with Clause 2 or 3, Article 89 of the Law on Social Insurance, and Clause 2 or 3, Article 17 of Decree No. 115/2015/ND-CP.

Chapter IV

ORDER AND PROCEDURES FOR IMPLEMENTATION OF SOCIAL INSURANCE

Article 15. Order and procedures for participation in social insurance and for settlement of social insurance regimes

1. The order and procedures for participation in social insurance and for settlement of social insurance regimes for the employees defined in Clause 1, Article 2 of this Decree must comply with the order and procedures applicable to Vietnamese employees and Chapter VII of the Law on Social Insurance; Articles 57 thru 62 of the Law on Occupational Safety and Health; Article 5 of Decree No. 115/2015/ND-CP; and Articles 9, 10, 13, 14, 17, 18, 21, 22, 25 and 26 of Decree No. 37/2016/ND-CP, except Clause 3 of this Article and Article 16 of this Decree.

2. Documents in dossiers for participation in social insurance and for settlement of social insurance regimes for employees as prescribed in Clause 1 of this Article which are issued by foreign authorities shall be translated into Vietnamese and certified in accordance with Vietnam's law.

3. Settlement of lump-sum social insurance allowance

Within 10 days counting to the date of termination of a labor contract or the date of expiration of a work permit, practice certificate or practice license (whichever comes first), if an employee no longer works under the labor contract or his/her permit/certificate/license cannot be extended, he/she may request lump-sum social insurance allowance and shall submit a dossier made under regulations to the social insurance agency.

Within 5 working days after receiving a complete dossier as prescribed, the social insurance agency shall pay the social insurance allowance to the employee; if refusing to pay the allowance, this agency shall issue a written reply stating the reason.

Article 16. Procedures for transfer of social insurance allowance for persons on pension or monthly social insurance allowance who no longer reside in Vietnam

1. Persons on pension or monthly social insurance allowance who no longer reside in Vietnam shall, if wishing to receive lump-sum allowance, submit a written request to the social insurance agency.

2. Within 5 working days after receiving the request, the social insurance agency shall pay the allowance to the employee concerned; if refusing to pay the allowance, this agency shall issue a written reply stating the reason.

Chapter V

IMPLEMENTATION PROVISIONS

Article 17. Effect

1. This Decree takes effect on December 1, 2018.

2. The regimes prescribed in Articles 9 and 10 of this Decree will be implemented from January 1, 2022.

3. In case of any difference in the provisions of this Decree and those of a treaty to which the Socialist Republic of Vietnam is a contracting party concerning the same issue, the provisions of such treaty shall prevail.

Article 18. Organization of implementation

1. The Minister of Labor, War Invalids and Social Affairs shall organize and supervise the implementation of this Decree and assume the prime responsibility for, and coordinate with related ministries and sectors in, proposing the negotiation and conclusion of bilateral and multilateral agreements on social insurance.

2. The Director General of the Vietnam Social Security shall review and issue forms in Vietnamese and English guiding the participation in social insurance and settlement of social insurance regimes for foreign employees.

3. The Minister of Health shall review and issue forms of hospital discharge, extracted copy of medical records, certificate of leave from work, certificate of leave for pregnancy care, certificate of a mother not

physically fit for postnatal care, and certificate of assessment of working capacity decrease, for settlement of social insurance regimes for the employees defined in Clause 1, Article 2 of this Decree.

4. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government
Prime Minister
NGUYEN XUAN PHUC