

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

No: 44/2013/ND-CP

Hanoi, May 10, 2013

DECREE

DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LABOR CODE REGARDING LABOR CONTRACTS

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the June 18, 2012 Labor Code;

Pursuant to the November 29, 2005 Law on Enterprise;

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

The Government promulgates the Decree detailing the implementation of a number of articles of the labor code regarding labor contracts,

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree details the implementation of the Labor Code regarding participation in compulsory social insurance, unemployment insurance and medical insurance of employees when enter into labor contracts with many employers; content of labor contracts applied to employees who are hired to do as directors in enterprises with capital contributed by the State; the orders of and procedures for announcement of invalid labor contracts of labor inspectorate and handling of invalid labor contracts.

Article 2. Subjects of application

1. Employees as prescribed in clause 1 Article 3 of the Labor Code.
2. Employers as prescribed in clause 2 Article 3 of the Labor Code.
3. The agencies, organizations and individuals relating to contents specified in Article 1 of this Decree.

Article 3. Interpretation of terms

In this Decree, the following terms are construed as follows:

1. *Enterprises with capital contributed by the State* mean enterprises operating in accordance with the Law on enterprises of which the State holds under 100% of the charter capital.

2. *Employees hired to do as directors in enterprises with capital contributed by the State* include Vietnamese persons or foreigners having full standards and conditions as prescribed by law (hereinafter referred to as persons hired to do as directors)

3. *Heads of inspectorate teams* mean the heads of the inspectorate teams implementing the task of labor inspectorate, including: Heads of inspectorate teams of the provincial Departments of Labor, Invalids and Social Affairs, the Ministry of Labor, Invalids and Social Affairs and Heads of specialized inspectorate teams of Departments, General Departments attached to the Ministry of Labor, Invalids and Social Affairs.

Chapter 2.

PARTICIPATION IN COMPULSORY SOCIAL INSURANCE, UNEMPLOYMENT INSURANCE AND MEDICAL INSURANCE OF EMPLOYEES WHEN ENTER INTO LABOR CONTRACTS WITH MANY EMPLOYERS

Article 4. Responsibility for participation in compulsory social insurance, unemployment insurance and medical insurance of employers and employees

1. Responsibility for participation in compulsory social insurance, unemployment insurance and medical insurance of employers and employees:

a. Employees when enter into labor contracts with many employers and employees and employers subject to participation in compulsory social insurance and unemployment insurance, the employees and employers of the first labor contracts shall be responsible for participation in compulsory social insurance and unemployment insurance as prescribed by law.

The employers of remaining labor contracts shall be responsible for paying the amounts equal to the payable levels of compulsory social insurance and unemployment insurance belonging to their responsibility as prescribed by law at the same time with the salary term of employees.

b. When a labor contract which employee and employer participating in the compulsory social insurance and unemployment insurance terminates or changes and the employee and employer not subject to participation in the compulsory social insurance and unemployment insurance, the employee and employer subject to participation in the compulsory social insurance and unemployment insurance of the following labor contract shall participate in the compulsory social insurance and unemployment insurance as prescribed by law.

2. Responsibility for participation in compulsory medical insurance of employers and employees:

a. Employees when enter into labor contracts with many employers and employees and employers subject to participation in compulsory medical insurance, the employees and employers of the labor contracts that have the highest salary level shall be responsible for participation in compulsory medical insurance as prescribed by law on medical insurance.

The employers of remaining labor contracts shall be responsible for paying the amounts equal to the payable levels of medical insurance belonging to their responsibility as prescribed by law on medical insurance at the same time with the salary term of employees.

b. When a labor contract which employee and employer participating in the compulsory medical insurance terminates or changes and the employee and employer not subject to participation in the compulsory medical insurance, the employee and employer subject to participation in the compulsory medical insurance of the labor contract with the highest salary level in the remaining labor contracts shall be responsible for participation in the compulsory medical insurance as prescribed by law.

3. The change of responsibility for participation in compulsory social insurance, unemployment insurance and medical insurance as prescribed in point b, clause 1, point b clause 2 of this Article is provided as follows:

a. Employees and employers shall be responsible for amending and supplementing contents on the compulsory social insurance, unemployment insurance and medical insurance in labor contracts as prescribed by law;

b. Employees shall be responsible for notification and sending of the social insurance books, medical insurance cards and other relevant papers to employers of the following labor contract for implementation.

4. Employees shall be responsible for notification and enclosing copies of labor contracts which have been signed or amended and supplemented or terminated to the remaining employers for information.

Article 5. Responsibilities of employers with respect to employees suffering occupational accidents or occupational illnesses

1. If employees suffer occupational accidents or occupational illnesses during the course of implementation of work, task under labor contract with employers where participating in the compulsory social insurance, employers and social insurance organizations shall solve regimes for employees as prescribed by law. Within 02 working days, after employees suffer occupational accidents or are defined to suffer occupational illness, employers shall notify in writing the employers of the remaining labor contract about health status of employees.

2. If employees suffer occupational accidents or occupational illnesses during the course of implementation of work, task under labor contract with employers which do not participate in the compulsory social insurance and medical insurance for employees, employers shall:

a. Pay expenses from first-aid until employees are treated to be stable as prescribed in clause 1 Article 144 of the Labor Code;

b. Pay full salary under labor contract for employees who suffer occupational accidents or occupational illness and have to stop work in treatment duration;

c. Pay compensation or allowance for employees as prescribed in clause 3 or clause 4 Article 145 of the Labor Code;

d. Notify in writing the employers of remaining labor contracts about the health status of employees.

3. Employers of labor contracts are not entitled to unilaterally terminate the labor contracts with employees suffering occupational accidents, occupational illness in the treatment duration, except case specified in point b clause 1 Article 38 of the Labor Code.

When employees have recovered health, the employers and employees may agree on further implementation of labor contracts or amending and supplementing content of labor contract or termination of the signed labor contracts as prescribed by law.

Chapter 3.

CONTENT OF LABOR CONTRACTS APPLIED TO EMPLOYEES WHO ARE HIRED TO DO AS DIRECTORS IN ENTERPRISES WITH CAPITAL CONTRIBUTED BY THE STATE

Article 6. Content of labor contracts applied to employees who are hired to do as directors in enterprises with entire capital owned by the State

1. Name, address of enterprises with entire capital owned by the State; full name; date of birth; ID number of the Chairperson of Members' Council or the President of Company.

2. Full name; date of birth; gender; nationality; professional qualifications; address of residence; ID number or other lawful papers as prescribed by law of the person who is hired director.

3. Two parties shall define the duration of labor contract that is between full 12 months and 36 months.

Time limit for the employer and the hired director to agree for termination of labor contract or extension of labor contract or concluding a new labor contract shall be agreed by two parties but not exceed 45 days before the expiry day of labor contract. In case of prolonging duration of labor contract, duration of labor contract shall be agreed by parties but not exceed 12 months.

4. Works entitled to do, works not entitled to do and responsibilities for implementation of work of the hired directors shall comply with regulations of law.

5. Working loacation of the hired directors.

6. Content, time limit, responsibilities for protection of business secret, technological secret of the hired directors and handling of offences.

7. Rights and obligations of the employer, including:

a. To assure capital, assets and other force sources for the hired director to implement his/her work.

b. To provide information for the hired director to implement his/her work;

c. To inspect, supervise, assess the efficiency of work implementation of the hired director;

d. To issue the working regulation of director;

dd. Other rights and obligations as prescribed by law;

e. Other rights and obligations agreed by two parties.

8. Rights and obligations of the hired director, including:

a. To implement the works already concluded;

b. To report difficulties during the course of implementation of work already concluded and propose remedial solutions;

c. To report situation of management and use of capital, assets, laborers and other force sources;

d. Other rights and obligations as prescribed by law;

e. Other rights and obligations agreed by two parties.

9. Benefits of the hired director, including:

a. Annual salary, advance amounts and payment of salary, the salary rising regime;

b. Bonus, advance amounts and payment of bonus;

c. The time for work and the time for rest;

d. Social insurance, medical insurance, unemployment insurance as prescribed by law;

dd. Training and improving the qualifications and skills to implement the works already concluded;

e. Equipment for working, means for travelling, information, contact, and other supplementations;

g. Other benefits agreed by two parties.

10. Conditions, process, procedures for amending and supplementing labor contract, unilaterally terminating labor contract.

11. Powers and duties of the employer and the hired director when labor contract is terminated.

12. Labor discipline, material duties, settlement of labor disputes and complaints.

13. Other agreements.

Article 7. Content of labor contracts applied to employees who are hired to do as directors in enterprises with capital contributed by the State

Content of labor contract applied to employees who are hired to do as directors in enterprises with capital contributed by the State shall be agreed by Members' Council or Board of Directors and the hired director for application of provisions in Article 6 of this Decree.

Chapter 4.

THE ORDERS OF AND PROCEDURES FOR ANNOUNCEMENT OF INVALID LABOR CONTRACTS OF LABOR INSPECTORATE AND HANDLING OF INVALID LABOR CONTRACTS

SECTION 1. THE ORDERS OF AND PROCEDURES FOR ANNOUNCEMENT OF INVALID LABOR CONTRACTS OF LABOR INSPECTORATE

Article 8. The competence of announcement of invalid labor contracts of labor inspectorate

The Chief Inspectors of the provincial Departments of Labor, Invalids and Social Affairs have the competence to announce invalid labor contracts.

Article 9. The orders of and procedures for announcement of invalid labor contracts of labor inspectorate

1. During inspection or settlement of complaints, denunciations on labor, if detect content of labor contract to be violated and belong to one of cases specified in Article 50 of the Labor Code, the head of inspectorate team or independent labor inspectors or persons assigned the specialized inspectorate task shall make record on violated cases and suggest employers, employees to amend and supplement the violated labor contracts.

2. Within 05 working days, after receiving the record on violated cases, employers and employees must amend and supplement the violated labor contract.

3. Within 03 working days, after the expiry date of amending and supplementing the violated labor contracts, if two parties fail to amend and supplement, the head of inspectorate team or independent labor inspectors or persons assigned the specialized inspectorate task shall send the record together with copies of violated labor contracts to the Chief Inspectors of the provincial Department of Labor, Invalids and Social Affairs where enterprise locates its head office.

4. Within 03 working days, after receiving the record on violated case, the Chief Inspectors of the provincial Department of Labor, Invalids and Social Affairs shall consider and issue decision on announcement of the invalid labor contracts.

5. Decision on announcement of the invalid labor contracts must be sent to the employer and each employee related to the invalid labor contracts, organization representing labor collective and the labor state management agency where the enterprise located its head office.

SECTION 2. HANDLING OF THE INVALID LABOR CONTRACTS

Article 10. Handling of the partial invalid labor contracts

1. Within 03 working days, after receiving the decision on announcement of the partial invalid labor contracts, the employer and employee must amend and supplement the labor contract by signing Annex of labor contract or concluding new labor contract as prescribed by law.

2. In time since labor contract is announced to be partially invalid until two parties amend and supplement the part already announced to be invalid, rights and interests of employee shall be solved according to labor regulations, collective labor agreement (if any) and law provisions on labor.

If the invalid labor contract has salary lower than law provisions on labor, labor regulations, collective labor agreement that are applying, two parties may re-agree as prescribed in clause 1 of this Article. The employer shall return the difference between the agreed salary and the salary in the invalid labor contract according to the actual working time of employee but not exceed 12 months.

Article 11. Handling of the completely invalid labor contracts

1. Within 15 days, after receiving decision on announcement of the completely invalid labor contracts because the signer of labor contract is not proper with competence, the labor state management agency where the enterprise located its head office shall guide parties to re-sign labor contract.

2. Labor contract of which whole content contrary to law shall be canceled when there is decision on announcement of the completely invalid labor contract.

3. Within 03 working days, after receiving the decision on announcement of the completely invalid labor contract because whole its content provided rights and interests of employee at the levels lower than law provisions on labor, labor regulations, collective labor agreement that are applying, the employer and employee are responsible for concluding new labor contract as prescribed by law on labor.

In time as from labor contract is announced to be completely invalid, until two parties conclude new labor contract, rights and interests of employees shall be solved as prescribed in clause 2 Article 10 of this Decree.

4. Within 03 working days, after receiving the decision on announcement of the completely invalid labor contract because the work already concluded in labor contract by two parties is work prohibited by law, the employer and employee are responsible for concluding new labor contract as prescribed by law on labor.

If failing to conclude new labor contract, the employer will be responsible for paying an amount to employee, this amount is agreed by two parties but at least for each working year it will be one month regional minimum salary which is announced by the Government at time of decision on announcement of the completely invalid labor contract.

5. Within 03 working days, after receiving the decision on announcement of the completely invalid labor contract because its content restrained or prevented the rights to establish,

accede and operate in Trade Union of employees, the employer and employee are responsible for signing new labor contract as prescribed by law on labor.

Article 12. Initiating lawsuits or complaining related to decision on announcement of invalid labor contracts

If the employer or employee does not agree with decision on announcement of the invalid labor contract, the employer or employee may initiate lawsuits at the Court or complain with the competent state agencies as prescribed by law.

Chapter 5.

IMPLEMENTATION PROVISIONS

Article 13. Effect

1. This Decree takes effect on July 01, 2013.
2. The Government's Decree No. 44/2003/ND-CP, of May 09, 2003, detailing and guiding the implementation of a number of articles of the Labor Code regarding labor contracts and all previous documents which are contrary to this Decree hereby cease to be effective on the effective date of this Decree.

Article 14. Responsibility for implementation

1. The Minister of Labor, Invalids and Social Affairs shall guide implementation of this Decree.
2. The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of the provinces and centrally-run cities, the concerned agencies, enterprises, organizations and individuals shall have to implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung

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