

THE GOVERNMENT

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SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness

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No. 102/2013/NĐ-CP

Hanoi, September 05, 2013

DECREE

ELABORATING SOME ARTICLES OF THE LABOR CODE ON FOREIGN WORKERS IN VIETNAM

*Pursuant to the Law on Government organization dated December 25, 2001;*

*Pursuant to the Labor Code dated June 18, 2012;*

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

*The Government promulgates a Decree on elaborating some Article of the Labor Code on foreign workers in Vietnam,*

**Chapter 1.**

GENERAL PROVISIONS

**Article 1. Scope of regulation**

This Decree elaborates some Articles of the Labor Code on the issuance of work permits to foreign citizens that work in Vietnam, the expulsion of foreign citizens that work in Vietnam without work permits.

**Article 2. Subjects of application**

1. Workers being foreign citizens that work in Vietnam (hereinafter referred to as foreign workers) in one of the forms below:

- a) Working under labor contracts;
- b) Being reassigned within the company;
- c) Implementing contracts or agreements on business, commerce, finance, banking, insurance, inspection plan, culture, sports, education, vocational training, and health;
- d) Providing services under contract;
- dd) Offering services;
- e) Working for foreign non-governmental organizations or international organizations in Vietnam that are allowed to operate within Vietnam's law;
- g) Volunteers;

- h) The person in charge of establishing the commercial presence;
  - i) Managers, executive officer, experts, technicians>
  - k) Participating in the execution of contracts and projects in Vietnam.
2. Employers of foreign workers include:
- a) Enterprises operating within the Law on Enterprises, the Law on Investment, or the International Agreements to which the Socialist Republic of Vietnam is a signatory;
  - b) Foreign or Vietnamese contractors (main contractors, subcontractors);
  - c) Representative offices, branches of enterprises, agencies, organizations, and contractors licensed by competent authorities;
  - d) State agencies;
  - dd) Foreign non-governmental organizations, political organizations, socio-political organizations, socio-political-professional organizations, social organizations, socio-professional organizations, international organizations in Vietnam;
  - e) Public service agencies established within the law;
  - g) Offices of foreign projects or international organizations in Vietnam;
  - h) Operating offices of foreign partners in business cooperation contracts in Vietnam;
  - i) Law-practicing organization in Vietnam;
  - k) Cooperatives and associated cooperatives established and operated within the Law on Cooperatives;
  - l) Public service agencies established within the law;
  - m) Business household and individuals allowed to do business within the law.

### **Article 3. Interpretation of terms**

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

1. Reassigned foreign workers are the managers, executive officers, experts, and technicians of a foreign enterprise that has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to a commercial presence in Vietnam, and has been employed by the foreign enterprise for at least 12 months.
2. Volunteers are unpaid foreign workers that voluntarily work in Vietnam to implement the International Agreements to which the Socialist Republic of Vietnam is a signatory.
3. Experts are foreign workers that are recognized as experts, or foreign engineers, bachelors that have worked at least 05 years in their fields.

4. Technicians are foreign workers that had undergone technical training for at least 01 year and have worked for at least 03 years in their fields.

## **Chapter 2.**

### **ISSUANCE OF WORK PERMIT, REISSUANCE OF WORK PERMIT, EXPULSION OF FOREIGN WORKERS WITHOUT WORK PERMIT**

## **SECTION 1. DETERMINATION OF POSITIONS AVAILABLE FOR FOREIGN WORKERS**

### **Article 4. Demand for foreign workers**

1. Annually, the employer (except for contractors) shall determine the demand for foreign workers for every position in which Vietnamese workers are not competent, and send a report to Presidents of the People's Committees of the province or central-affiliated city (hereinafter referred to as the People's Committee of the province) where the head office of the employee is situated. Trong quá trình thực hiện nếu thay đổi nhu cầu sử dụng người lao động nước ngoài thì người sử dụng lao động phải báo cáo Chủ tịch Ủy ban nhân dân cấp tỉnh.

2. The President of the People's Committee of the province shall issue written approval to the employer for the employment of foreign workers in each position.

### **Article 5. Demand for foreign workers of the contractor**

1. Where the bid package requires competent foreign workers, the invitation to tender must specify the quantity, standards, capacity of foreign workers that are needed for the contract. It is prohibited to employ foreign workers to do the jobs that can be satisfactorily done by Vietnamese workers, especially manual jobs and unskilled jobs.

The assessment and selection of contractors must comply with the regulations on employment in the invitation to tender and other regulations on tendering of Vietnam's law.

2. When the contract is executed, the investor shall carry out supervise and request the contractor to stick to the commitment in the tendering documents in terms of employment of Vietnamese workers and foreign workers.

3. Before recruiting foreign workers, the contractor shall send a written request for the employment of Vietnamese workers in the positions made available for foreign workers (enclosed with a certification of the investor) to the President of the People's Committee of the province where the contract is executed.

Where the contractor wishes to change or increase the number of workers in the tender, the investor shall certify change or increase of workers of the foreign contractor.

4. The President of the People's Committee of the province shall direct local agencies to introduce and supply Vietnamese workers for the contractor. If Vietnamese workers are not provided for the contractor within 02 months from the day on which the written request for 500 Vietnamese workers is received, or within 01 month from the day on which the request for fewer than 500 Vietnamese workers is received, the

President of the People's Committee of the province shall consider allowing the contractor to recruit foreign workers hold the positions in which Vietnamese workers are not competent.

5. The investor shall provide guidance, urge, and inspect the compliance of the regulations on employment of foreign workers in accordance with law; monitor and ensure that foreign workers comply with Vietnam's law; send quarterly reports to Services of Labor, War Invalids and Social Affairs on the contractor's recruitment, employment and management of foreign workers according to regulations of the Ministry of Labor, War Invalids and Social Affairs.

6. Quarterly, Services of Labor, War Invalids and Social Affairs shall cooperate with the police and relevant agencies in inspection the compliance with Vietnam's law of the foreign workers working for local contractors.

#### **Article 6. Report on employment of foreign workers**

Every 06 months and every year, the Service of Labor, War Invalids and Social Affairs shall report the demand for foreign workers to the Ministry of Labor, accepted demand for foreign workers, and the employment of foreign workers working locally.

### **SECTION 2. FOREIGN WORKERS EXEMPT FROM WORK PERMITS**

#### **Article 7. The cases in which the foreign worker is exempt from applying for the work permit**

1. The foreign workers mentioned in Clause 1, Clause 2, Clause 3, Clause 4, Clause 5, Clause 6, Clause 7, and Clause 8 Article 172 of the Labor Code.

2. Other cases in which the work permit is not issued:

a) The workers that are reassigned within the enterprises engaged in within 11 service industries in the commitment on services between Vietnam and WTO, including: business, communication, construction, distribution, education, environment, finance, health, tourism, entertainment, and transportation;

The Ministry of Industry and Trade shall provide guidance on the basis and procedure for identifying reassigned foreign workers within 11 aforesaid service industries.

b) The workers enter Vietnam to technical advisory services or perform other tasks serving the research, development, appraisal, assessment, management, and execution of programs and projects funded by ODA according to the International Agreements on ODA between competent authorities of Vietnam and other countries;

c) The workers are issued with the license for the practice of journalism in Vietnam by the Ministry of Foreign Affairs;

d) The workers are teachers of foreign organizations that are sent to Vietnam by such organizations to teach in international schools under the management of foreign diplomatic missions or international organizations in Vietnam;

dd) The workers are volunteers;

The foreign workers mentioned in Point d and Point dd Clause 2 of this Article must obtain the certification of the foreign diplomatic missions or international organizations in Vietnam.

e) The workers hold master's degrees or higher and provide consultancy, teach or conduct scientific research at institutions of higher education or vocational colleges within 30 days;

The institutions of higher education or vocational colleges must make a written certification of the consultancy, teaching, and scientific research of the foreign workers.

g) The foreign workers enter Vietnam to implement international agreements to which central state agencies, local state agencies, and central socio-political organizations are signatories.

The central state agencies, local state agencies, and central socio-political organizations are signatories shall send written notifications to the agency authorized to issue work permits of the foreign workers' entering Vietnam to implement the international agreements to which they are signatories.

h) Other cases decided by the Prime Minister at the request of the Minister of Labor, War Invalids and Social Affairs.

#### **Article 8. Procedure for certifying foreign workers exempt from work permit**

1. Services of Labor, War Invalids and Social Affairs are authorized to certify the employee exempt from work permit.

2. The employer shall request the Service of Labor, War Invalids and Social Affairs of the province where the foreign workers regularly work to certify that such foreign workers are exempt from work permit at least 07 employees before the day on which they start to work.

3. The application for the certification of exemption from work permit consists of:

a) The written request for the certification that the foreign workers are exempt from work permit;

b) The list of foreign workers, which specifies their full names, ages, genders, nationalities, passport numbers, starting and ending dates, and their positions;

c) Other papers proving that the foreign workers are exempt from the work permit.

The papers proving that the foreign workers are exempt from the work permit is 01 original or 01 copy; the papers that are made in foreign language are exempt from consular legalization but they must be translated into Vietnamese and authenticated in accordance with Vietnam's law.

4. Within 03 working days from the day on which the sufficient application is received, the Service of Labor, War Invalids and Social Affairs shall send a written certification to the employer. A written response and explanation shall be provided if the certification is rejected.

### **SECTION 3. ISSUANCE OF WORK PERMIT**

### **Article 9. Conditions for issuing the work permit**

1. The worker is capable of civil acts as prescribed by law.
2. The worker's health is suitable for his or her job.
3. The worker is a manager, executive officer, expert, or technician.

The foreign workers that provide medical examination, medical treatment in Vietnam, or work in education and vocational training must meet the conditions for provision of medical examination, medical treatment, education and vocational training of Vietnam's law.

4. The worker is not a criminal or liable to criminal prosecution according to Vietnam's law and the foreign country's law.
5. The employment of the foreign worker is approved in writing by a competent authority.

### **Article 10. Application for the work permit**

1. The written request for the work permit made by the employer in accordance with regulations of the Ministry of Labor, War Invalids and Social Affairs.
2. The health certificate issued in the worker's home country or in Vietnam as prescribed by the Ministry of Health.
3. The written certification that the worker is not a criminal or liable to criminal prosecution according to Vietnam's law and the foreign country's law, which is made within the previous 06 months from the day on which the application is submitted.
4. The written certification that the worker is a manager, executive officer, expert, or technician.

For some jobs and works, the written certification of the qualification of the foreign worker shall be replaced with one of the papers below:

- a) The written certification that the worker is an artist in the traditional professions, which is issued by the competent authority of the foreign country;
  - b) The documents proving experience of foreign soccer players;
  - c) The pilot certificate issued by a Vietnam's competent authority to the foreign pilot;
  - d) The license for airplane maintenance issued by a Vietnam's competent authority to the foreign worker that maintains airplanes.
5. The written approval for employment of foreign workers given by the President of the People's Committee of the province.
  6. 02 color pictures ( 4 cm x 6 cm, bareheaded, frontal, clear face, ears, no glasses, white background) that are taken within the previous 06 months from the day on which the application is submitted.

7. The copy of the passport or an equivalent paper, which is unexpired.

The papers mentioned in Clause 2, Clause 3 and Clause 4 of this Article is 01 original or copy; the papers in foreign languages must be consularly legalized, except for the cases in which consular legalization is expired according to the International Agreements to which Vietnam and the foreign country are signatories or following the principle of reciprocity, be translated into Vietnamese, and authenticated in accordance with Vietnam's law.

8. Other papers related to the foreign workers:

a) The foreign workers mentioned in Point b Clause 1 Article 2 of this Decree must have papers of the foreign enterprise showing that they are sent to work at the commercial presence of such foreign enterprise in Vietnam, and the papers proving that they have been employed by such foreign enterprise for at least 12 months before they are sent to work in Vietnam;

b) The foreign workers mentioned in Point c Clause 1 Article 2 of this Decree must have contracts or agreement sign by the Vietnamese partner and the foreign partner, including the agreements on sending foreign workers to Vietnam;

c) The foreign workers mentioned in Point d Clause 1 Article 2 of this Decree must have service contracts signed by the Vietnamese partner and the foreign partner, and the papers proving that the foreign workers have worked for the foreign enterprise without commercial presence for at least 02 years;

d) The foreign workers mentioned in Point dd Clause 1 Article 2 of this Decree must have the paper made by the service provider that sends the foreign workers to Vietnam to negotiate the service provision;

dd) The foreign workers mentioned in Point e Clause 1 Article 2 of this Decree must have the paper proving that the foreign non-governmental organization or international organization is allowed to operate within Vietnam's law;

e) The foreign workers mentioned in Point h Clause 1 Article 2 of this Decree must have the paper made by the service provider that sends the foreign workers to Vietnam to establish its commercial presence;

g) The foreign workers mentioned in Point b Clause 1 Article 2 of this Decree, who participate in the operation of the foreign enterprise that has established its commercial presence in Vietnam, must have papers proving the foreign workers' eligibility to participate in such foreign enterprise.

The papers mentioned in this Clause are 01 original or 01 copy; the papers that are made in foreign language are exempt from consular legalization but they must be translated into Vietnamese and authenticated in accordance with Vietnam's law.

#### **Article 11. Duration of the work permit**

The duration of a work permit shall not exceed 02 years, and is equal to one of the durations below:

1. The duration of the labor contract to be signed;

2. The duration of assignment in Vietnam decided by the foreign partner;
3. The duration of the contract or agreement between the Vietnamese partner and the foreign partner;
4. The duration of the service contract or agreement between the Vietnam partner and the foreign partner;
5. The duration stated in the paper made by the service provider that sends the foreign worker to Vietnam to negotiate the service provision;
6. The duration stated in the certificate of foreign non-governmental organization or international organization operating within Vietnam's law;
7. The duration in the paper made by the service provider that sends the foreign workers to Vietnam to establish its commercial presence;
8. The duration in the paper proving the foreign worker's eligibility to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

#### **Article 12. Procedure for issuing the work permit**

1. At least 15 working days before the day on which the foreign worker intends to start working, the employer shall submit the application for the work permit to the Service of Labor, War Invalids and Social Affairs of the province where the foreign worker works for the employer the whole time.

Where the foreign worker does not work for the employer in the same province the whole time, the application for the work permit shall be submitted at the Service of Labor, War Invalids and Social Affairs of the province where the employer's head office is situated.

2. Within 10 working days from the day on which the sufficient application is received, the Service of Labor, War Invalids and Social Affairs shall issue the work permit to the foreign worker using the form provided by the Ministry of Labor, War Invalids and Social Affairs. A written response and explanation shall be provided if the work permit is not issued.

3. After the foreign worker mentioned in Point a Clause 1 Article 2 of this Decree is issued with the work permit, the employer and the foreign worker shall sign a written labor contract in accordance with Vietnam's law before the intended workday. The labor contract contents must be consistent with the contents of the work permit issued.

Within 05 working days from the day on which the labor contract is signed, the employer shall send a copy of the signed labor contract and a copy of the work permit issued to the Service of Labor, War Invalids and Social Affairs that issued such work permit.

#### **SECTION 4. ISSUANCE OF WORK PERMIT**

##### **Article 13. The cases in which the work permit is reissued**



1. The work permit is lost, damaged, or the contents of the work permit such as name, date of birth, nationality, passport number, or workplace is changed;
2. The work permit expires.

#### **Article 14. Application for reissuance of the work permit**

1. The written request for reissuance of the work permit made by the employer in accordance with regulations of the Ministry of Labor, War Invalids and Social Affairs.
2. 02 color pictures ( 4 cm x 6 cm, bareheaded, frontal, clear face, ears, no glasses, white background) that are taken within the previous 06 months from the day on which the application is submitted.
3. Other papers related to the foreign workers:
  - a) A copy of the unexpired passport or an equivalent paper and the work permit issued (unless it is lost) must be presented in the case defined in Clause 1 Article 13 of this Decree;
  - b) In the case defined in Clause 2 Article 13 of this Decree, the work permit that is still valid for 05 - 15 more days must be presented (unless it is lost), the health certificate mentioned in Clause 2 Article 10 of this Article, the written approval for employment of the foreign workers given by the President of the People's Committee of the province, and one of the papers below:
    - The paper made by the foreign partner that sends the foreign workers to Vietnam;
    - The contract or agreement sign by the Vietnam and the foreign partner, including the agreements on sending foreign workers to Vietnam;
    - The service contract signed by the Vietnam and the foreign partner, or the paper proving that the foreign worker keeps negotiating the service provision in Vietnam;
    - The certificate of foreign non-governmental organization or international organization operating within Vietnam's law;
    - The paper proving that the foreign worker keeps working at a foreign non-governmental organization or international organizations in Vietnam;
    - The paper of made by a service provider that sends the employee to Vietnam to establish its commercial presence;
    - The paper proving the foreign worker's eligibility to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

The papers mentioned in this Clause are be translated into Vietnamese and authenticated in accordance with Vietnam's law.

#### **Article 15. Procedure for reissuing the work permit**

1. For the cases prescribed in Clause 1 Article 13 of this Decree:

- a) The foreign worker shall notify the employer within 03 days from the day on which the foreign worker discovers that his or her work permit is lost, damaged or the contents of the work permit are changed;
- b) The employer shall submit an application for the reissuance of the work permit to the Service of Labor, War Invalids and Social Affairs that issued it within 05 working days from the day on which the employer is notified by the foreign worker.

2. For the cases prescribed in Clause 2 Article 13 of this Decree:

05 - 15 days before the work permit expires, the employer shall submit an application for the reissuance of the work permit to the Service of Labor, War Invalids and Social Affairs that issued it.

3. Within 03 working days from the day on which the sufficient application for the reissuance of the work permit is received, the Service of Labor, War Invalids and Social Affairs shall reissue the work permit. A written response and explanation shall be provided if the work permit is not reissued.

4. After the foreign worker mentioned in Point a Clause 1 Article 2 of this Decree is reissued with the work permit, the employer and the foreign worker shall sign a written labor contract in accordance with Vietnam's law before the day on which the employee intends to return to work. The labor contract contents must be consistent with the contents of the work permit reissued.

Within 05 working days from the day on which the labor contract is signed, the employer shall send a copy of the signed labor contract and a copy of the work permit reissued to the Service of Labor, War Invalids and Social Affairs that reissued it.

#### **Article 16. Duration of the reissued work permit**

1. The duration of the work permit reissued in the cases in Clause 1 Article 13 of this Article is equal to the duration of the issued work permit minus the period of time the foreign worker has worked up to the day the application for the reissuance of the work permit is submitted.

2. The duration of the work permit reissued in the cases in Clause 2 Article 13 of this Decree does not exceed 02 years, and is equal to one of the following durations:

- a) The duration of the labor contract to be signed;
- b) The duration of assignment in Vietnam decided by the foreign partner;
- c) The duration of the contract or agreement between the Vietnamese party and the foreign party;
- d) The duration of the service contract or agreement between the Vietnam partner and the foreign partner;
- dd) The duration stated in the paper made by the service provider that sends the foreign worker to Vietnam to negotiate the service provision;
- e) The duration stated in the certificate of foreign non-governmental organization or international organization operating within Vietnam's law;

g) The duration in the paper made by the service provider that sends the foreign workers to Vietnam to establish its commercial presence;

h) The duration in the paper proving the foreign worker's eligibility to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

## **SECTION 5. REVOCATION OF WORK PERMIT, EXPULSION OF FOREIGN WORKERS**

### **Article 17. Revocation of the work permit**

1. The cases in which the work permit is revoked:

a) The contents of the application for the issuance or reissuance of the work permit is found bogus;

b) The work permit expires;

c) The foreign worker or employer fails to comply with the work permit issued;

d) The labor contract is terminated;

dd) The labor contract contents are not consistent with the contents of the work permit issued;

e) The contract or agreement on business, commerce, finance, banking, insurance, science and technology, culture, sports, education and vocational training, or health is expired or terminated;

g) The foreign partner makes a written notification that the foreign worker is no longer on assignment in Vietnam;

h) The employer shuts down;

i) The foreign worker is imprisoned, dead, or missing as declared by the court;

k) A competent authority makes a written request for the revocation of the work permit due to the violations against Vietnam's law committed by the foreign worker.

2. The Service of Labor, War Invalids and Social Affairs is entitled to revoke the work permits they issued.

### **Article 18. Expelling foreign workers**

1. The foreigners that work in Vietnam without the work permit and do not fall into the cases in Article 7 of this Decree shall be expelled in accordance with Vietnam's law.

2. Services of Labor, War Invalids and Social Affairs shall request the police to expel the foreigners that work in Vietnam without the work permit.

Organizations and individuals shall report the foreigners working in Vietnam without the work permit to Services of Labor, War Invalids and Social Affairs upon discovery.

3. Within 15 working days from the day on which the foreign worker is pronounced working in Vietnam without the work permit, the Service of Labor, War Invalids and Social Affairs shall request the police to expel that foreign worker.

4. The Ministry of Industry and Trade shall:

- a) Provide guidance on the power and procedure for expelling the foreigners working in Vietnam without the work permit;
- b) Provide guidance on the issuance of visas to foreign workers after they are issued or reissued with the work permits, or the application for the issuance or reissuance of work permit is submitted;
- c) Take charge and cooperate with the Ministry of Labor, War Invalids and Social Affairs in providing guidance on the procedure for sending the list of foreign workers issued and reissued with work permits to immigration agencies.

### **Chapter 3.**

#### **IMPLEMENTATION**

#### **Article 19. Effects**

- 1. This Decree takes effect on November 01, 2013.
- 2. The Government's Decree No. 34/2008/NĐ-CP dated March 25, 2008 on recruitment and management of foreign workers in Vietnam; the Government's Decree No. 46/2011/NĐ-CP dated June 17, 2011 on amendments to the Government's Decree No. 34/2008/NĐ-CP dated March 25, 2008 on recruitment and management of foreign workers in Vietnam are annulled from the effective date of this Decree.
- 3. The work permits that are still unexpired up to the effective date of this Decree might not be renewed.

#### **Article 20. Responsibility for the implementation**

- 1. The Minister of Labor, War Invalids and Social Affairs, the Minister of Public Security, the Minister of Industry and Trade, and the Minister of Health shall provide guidance on the implementation of this Decree.
- 2. Other Ministers, Heads of ministerial agencies, Heads of Governmental agencies, Presidents of the People's Committees of central-affiliated cities and provinces are responsible for the implementation of this Decree./.

**FOR THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Tan Dung**