
No.03/2014/TT-BLĐTBXH

Hanoi, January 20, 2014

CIRCULAR

**ON GUIDING IMPLEMENTATION OF A NUMBER OF ARTICLES OF
DECREE NO. 102/2013/NĐ-CP DATED SEPTEMBER 05, 2013 BY THE
GOVERNMENT ON DETAILING IMPLEMENTATION OF A NUMBER OF
ARTICLES OF LABOUR CODE ON FOREIGN WORKERS IN VIETNAM**

*Pursuant to Decree No. 106/2012/ND-CP dated December 20, 2012, of
Government on defining the functions, duties, authorizations and organizational
structure of the Ministry of Labour - Invalids and Social Affairs;*

*Pursuant to Decree No. 102/2013/NĐ-CP dated September 05, 2013 of the
Government on detailing implementation of a number of Articles of The Labour
Code on foreign workers in Vietnam*

At the proposal of Director General of the Department of Employment;

*The Minister of Labour - Invalids and Social Affairs promulgates the Circular on
guiding implementation of a number of Articles of Government's Decree No.
102/2013/NĐ-CP dated September 05, 2013 on detailing implementation of a
number of Articles of the Labour Code on foreign workers in Vietnam (hereinafter
abbreviated to Decree No. 102/2013/NĐ-CP).*

Chapter I

GENERAL PROVISIONS

Article 1. Scope and subjects of application

Scope and subjects of application of this Circular is the Scope and subjects of application prescribed in Article 1 and Article 2 of Decree No. 102/2013/NĐ-CP.

Article 2. Terms Interpretation

1. Providers of contractual services prescribed at point d Clause 1 Article 2 of Decree No. 102/2013/NĐ-CP are foreign labourers worked for at least 02 years (24 months) in a foreign enterprise with no commercial presence in Vietnam and must satisfy conditions for “experts” as prescribed at Clause 3 Article 3 of Decree No. 102/2013/NĐ-CP.

2. Foreign labourers working under form of service sale offer specified at point dd Clause 1, Article 2 of Decree No. 102/2013/NĐ-CP are foreign employees not living in Vietnam and not receiving remuneration from any source in Vietnam, participate in activities related to the act as representative for a service provider to negotiate for service consumption of that providers, with the requirement of not sell directly that service to public and not directly participate in service supply.

3. Managers, executive directors defined at point i Clause 1 Article 2 of Decree No. 102/2013/NĐ-CP are foreign employees directly participating in management in organizations and enterprises including the work of directing organizations and enterprises or organization and enterprises-affiliated units; supervising and controlling the work of specialized staffs, managers or other superiors.

Chapter II

DETERMINATION OF WORK POSITION PERMITTED USING FOREIGN EMPLOYEES

Article 3. Demand in using foreign labourers

1. Before at least 30 days after the employers (except for contractor) estimate the recruitment of foreign labourers, the employers must report and explain as prescribed at Clause 1 Article 4 of Decree No. 102/2013/NĐ-CP on demand for using foreign labourers, including: Position of work, quantity, professional qualification, experiences, salary rate, working time and submit directly to the of provincial and centrally-affiliated cities Departments of Labour - Invalids and Social Affairs (hereinafter abbreviated to the provincial/municipal Departments of Labour - Invalids and Social Affairs) where the employers locate head office according to **form No. 1** promulgated together with this Circular.

2. The employers who have been accepted for using foreign employees but have changes of demand for using foreign employees must directly submit report to explain adjustment and supplementation before at least 30 days from the expected date of new recruitment, additional recruitment or recruitment for replacing foreign employees to the provincial Departments of Labour - Invalids and Social Affairs where the employers locate head offices according to **form no. 2** promulgated together with this Circular.

3. The provincial Department of Labour - Invalids and Social Affairs shall notify the acceptance for using foreign employees to each employer according to **Form No.3** promulgated together with this Circular within 15 days after receiving report on explanation or report on explanation for adjustment and supplementation of demand for using foreign employees of the employers.

Article 4. Demand in using foreign labourers of contractors

Request of recruiting Vietnamese labourers for positions expected to recruit foreign labourers as prescribed at Clause 3 Article 5 of Decree No. 102/2013/NĐ-CP must be performed before at least 02 months for request of recruiting 500 Vietnamese employees or more and before at least 01 month for request of recruiting less than 500 Vietnamese employees, contractors shall send the request directly or via post to Chairperson of the Provincial People's Committees where contractors are performing bidding packages after getting confirmation of investors about the acceptance of using foreign employees according to **form No.4** promulgated together with this Circular.

In case of a contractor have the demand of adjusting, supplementing number of foreign employees defined in bid dossier, dossier of proposals, the investor must confirm on acceptance of the plan adjusted and supplemented demand of necessary foreign employees for using of contractor according to **Form No. 5** promulgated together with this Circular and before recruiting foreign employees as the plan adjusted and supplemented the contractors shall request Vietnamese workers in work positions that expected to recruit foreign employees as prescribed in this Article.

Chapter III

GRANT OF WORK PERMIT

Article 5. Dossier of request for grant of work permit

Papers specified at Clause 1, Clause 3, Clause 4, Clause 5 and Clause 8 Article 10 of Decree No. 102/2013/NĐ-CP, guiding implementation as follows:

1. A written request for a work permit of the employers as prescribed in Clause 1 Article 10 of Decree No. 102/2013/NĐ-CP made according to **Form No.6** promulgated together with this Circular.

2. A written confirmation for not being offenders or liable to criminal prosecution specified at Clause 3 Article 10 of Decree No. 102/2013/NĐ-CP, guiding implementation as follows:

a) If foreign labourers have resided in Vietnam, they must have a justice record granted by the national justice record center or cases of residing in Vietnam, they must have justice record granted by Departments of Justice in provinces and central-affiliated cities and written confirmation for not being offenders or liable to criminal prosecution as prescribed by foreign law granted by foreign competent agencies;

b) In the case of foreign labourers have not yet resided in Vietnam, they must have written confirmation for not being offenders or liable to criminal prosecution as prescribed by foreign law granted by competent agencies of foreign countries.

3. Written confirmation of being managers, executive directors, experts or technical workers as prescribed at Clause 4 Article 10 of Decree No. 102/2013/NĐ-CP, shall implement as follows:

a) For foreign labourers being managers, executive directors, they must have one of the following papers:

- Documentary evidence of being managers, executive directors, consisting of: Work permit or labour contract or decision on appointment defining that foreign labourer having been worked at position of managers or executive directors;

- Written confirmation of being managers, executive directors made by agencies, organizations or enterprises where that foreign labourers have ever worked.

b) For foreign labourers being experts must have one of the following papers:

- Documentary evidence for foreign labourers who have qualification of engineers, Bachelors or higher or equivalent qualification and have at least of 05 working years in the specialized line as trained and suitable with the work position which foreign labourer expected to work in Vietnam;

- Written confirmation for being expert, which is recognized by competent agencies and organizations or foreign enterprises.

c) For foreign labourers being technical labourers, they must have one of the following papers:

- Documentary evidence or written confirmation of competent agencies and organizations or enterprises in foreign countries showing that they have been trained technical specialized line with duration of not less than 01 year;

- Documentary evidence for foreign labourers to have at least 03 working years in the specialized line as trained and suitable with the work position which foreign labourer is expected to work in Vietnam;

4. Written acceptance of using foreign labourers as prescribed at Clause 5 Article 10 of Decree No. 102/2013/NĐ-CP is notification of the Provincial Department of Labour - Invalids and Social Affairs about work positions accepted by Chairpersons of the Provincial People's Committees for using foreign labourers or documents of Chairpersons of the Provincial People's Committees deciding to allow contractors to recruit foreign labourers in the work positions that fail to recruit Vietnamese labourers.

5. Documents to prove as prescribed at point a point c and point g Clause 8 Article 10 of Decree No. 102/2013/NĐ-CP, are one of the following papers:

- Labour contract;
- Written confirmation of the employer;
- Decision on recruiting foreign labourers;
- Certificate of tax or insurance payment of foreign labourer.

Article 6. Work permit

1. Form of work permit as prescribed at Clause 2 Article 12 of Decree No. 102/2013/NĐ-CP is guided for implementation as follows:

a) Form of work permit:

Work permit has size of A4 (21 cm x 29.7 cm), includes 2 pages: Page 1 is blue, coated with plastic; page 2 has white background, blue pattern, image of a star in the middle.

b) Content of work permit made according to **Form No. 7** promulgated together with this Circular.

2. Work permit shall be printed and issued uniformly by the Department on Employment of Ministry of Labour - Invalids and Social Affairs.

Article 7. Cases of re-issuing of work permit

1. Work permit is lost, damaged.

2. Change of contents stated on the issued work permit: Full name; date of birth; nationality; passport number, working places.

Working place in work permit is address where foreign employees work. Change of working address stated on work permit are foreign labourers in case of assigning, moving, sending to branches, representative offices or other facilities of the employer at the same province, central-affiliated city for full-time work.

Article 8. Dossier of request for re-issuing work permit

Papers specified at Clause 1, Clause 3 Article 14 of Decree No. 102/2013/NĐ-CP, guiding implementation as follows:

1. A written request for re-issuing a work permit of the employer as prescribed at Clause 1 Article 14 of Decree No. 102/2013/NĐ-CP made according to **Form No.8** promulgated together with this Circular.

2. Papers in dossier of request for re-issuing a work permit for foreign employees working under labour contracts as prescribed at point b Clause 3 Article 14 of Decree No. 102/2013/NĐ-CP include: The issued work permit (except for case of lost) still be valid at least 05 days but not exceeding 15 days, before the expired date of the issued work permit; certificate of health as prescribed at Clause 2 Article 10 of Decree No. 102/2013/NĐ-CP; notification of Department of Labour - Invalids and Social Affairs about work positions accepted by Chairpersons of the Provincial People's Committees for using foreign labourers or documents of Chairpersons of the Provincial People's Committees deciding to allow contractors to recruit foreign labourers in the work positions that fail to recruit Vietnamese labourers.

3. For case of lost work permit as prescribed at Clause 3 Article 14 of Decree No. 102/2013/NĐ-CP, foreign employees must provide a written explanation certified by the employers.

Article 9. Time limit of the issued, re-issued work permits

Time limit of the issued work permits shall comply with Article 11 of Decree No. 102/2013/NĐ-CP, time limit of the re-issued work permits shall comply with Article 16 of Decree No. 102/2013/NĐ-CP but not exceeding time limit in written acceptance of Chairpersons of the Provincial People's Committees about using foreign employees or not exceeding time limit in documents of Chairpersons of the Provincial People's Committees deciding on recruitment of foreign employees by contractors to work in each position which fails to recruit Vietnamese labourers.

Article 10. The written reply on refusal for issuing or re-issuing work permit

In case of refusal for issuing work permit as prescribed at Clause 2 Article 12 of Decree No. 102/2013/NĐ-CP, refusal for re-issuing work permits as prescribed at Clause 3 Article 15 of Decree No. 102/2013/NĐ-CP, the provincial Departments of Labour - Invalids and Social Affairs shall reply the employer according to **Form No.9** promulgated together with this Circular.

Article 11. Confirmation for foreign labourers not required to grant Work permit

Confirmation for foreign labourers not required to grant Work permit as prescribed at Clause 2 Article 8 of Decree No. 102/2013/NĐ-CP, guiding implementation as follows:

1. The employer send documents directly to the provincial Departments of Labour - Invalids and Social Affairs to request for confirmation for foreign labourers not required work permit according to **Form No.10** promulgated together with this Circular.

2. The provincial Departments of Labour - Invalids and Social Affairs shall confirm for foreign labourers required or not required work permit according to **Form No.11** promulgated together with this Circular.

Chapter IV

ORGANIZATION OF IMPLEMENTATION

Article 12. Responsibilities of Chairpersons of the Provincial People's Committees

1. To direct the local functional agencies to organize the propagation, dissemination of law; examination, inspection; and handling of violations as prescribed by law on the recruitment and management of foreigners working in their areas.

2. To direct local agencies and organizations to introduce and supply the Vietnamese employees to the contractors.

3. To accept the work positions that the employer may recruit foreign labourers; assign the Provincial Departments of Labour - Invalids and Social Affairs to receive, sum up and appraise to submit to Chairpersons of the Provincial People's Committees about demand of using foreign labourers and notify about the acceptance of Chairpersons of the Provincial People's Committees to each employer.

4. To decide the permission of foreign contractors to be recruited foreigners into the jobs that fail to recruit Vietnamese employees.

Article 13. Responsibilities of the provincial Department of Labour - Invalids and Social Affairs

1. To organize the propagation and dissemination of the provisions of Vietnam labour law and guide the order of, procedures for and dossiers of issuing or re-issuing work permit to the enterprises, organizations, investors, contractors and foreign workers in the area.

2. To implement the introduction and supply of labour for the employers or contractors as prescribed by law.

3. To receive, sum up, appraise demand of using foreign labourers in each work position in localities and submit to Chairpersons of the Provincial People's Committees for acceptance and notify in writing about each work positions permitted using foreign labourers to each employer according to the consent of Chairpersons of the Provincial People's Committees.

4. To issue, re-issue work permits, confirm cases not required work permits. When receiving dossier of request for work permit issue/ re-issue, confirmation of cases not required work permit, they must record in logbook according to **Form No.12** promulgated together with this Circular and issue a receipt to the employer. In the receipt must clearly state date of receiving dossiers, papers included in dossier and time limit for reply. To keep dossiers of request for work permit issue/ re-issue as prescribed by law.

5. To check and inspect implementation of legislations on the recruitment and management of foreigners working in Vietnam of employers in their localities.

6. To withdraw work permits as prescribed at Clause 2 Article 17 of Decree No. 102/2013/NĐ-CP.

7. Periodically report:

a) Before the fifth day of each month, to notify the provincial Departments of Public Security about the issuing of work permit according to **Form No.13** promulgated together with this Circular.

b) Quarterly report to the Ministry of Labour - Invalids and Social Affairs about foreign labourers working in their provinces and cities according to **form No. 14** promulgated together with this Circular before the tenth day of first month of next quarter.

c) Biannually, before July 15 and every year, before January 15 of year following report year, the Ministry of Labour - Invalids and Social Affairs about situation of foreigners working at enterprises, agencies and organizations in areas under their management according to **form No. 15** promulgated together with this Circular;

8. To apply information technology in management and work permit issue/re-issue to foreign employees working in Vietnam.

Article 14. Responsibilities of the employers

1. Strictly comply with the provisions of Vietnamese law on foreign labourers working in Vietnam.

2. To guide, supply to foreign labourers with Vietnamese legislations on foreign labourers working in Vietnam.

3. To conduct the procedures for issuing work permits, re-issuing work permits and confirmations for case not required work permit for foreigners working in Vietnam.

For foreign labourers issued work permit but in case of assigning, moving, or sending to a province or city other than province or city where they are working for full-time work or do at other position for the employer, to conduct issuing work permit as prescribed at Section 3 of Decree No. 102/2013/NĐ-CP.

4. To pay fee for issuing/ re-issuing work permit as prescribed by law.

5. To fulfill labour contracts signed with foreigner working in enterprises and organizations as stipulated by law provisions; to send a notification of signing labour contract enclosed with copy of labour contract had been signed to the Provincial Department of Labour - Invalids and Social Affairs where issued work permit for such foreigner.

6. To manage dossiers and regularly update, supplement papers related to foreign labourers working in enterprises and organizations.

7. To manage foreign labourers working at enterprises and organizations.

8. Within 03 days, after withdrawing work permit for cases specified at Clause 1 Article 17 of Decree No. 102/2013/NĐ-CP of foreign employees, the employers shall submit directly to the provincial Department of Labour - Invalids and Social Affairs where issued that work permit. In case of failing to withdraw work permit, they must report in writing and clearly stating reason thereof.

9. Periodically report:

- a) The employer shall perform the reporting regime biannually, before July 5 and every year, before January 5 of year following report year to the provincial Department of Labour - Invalids and Social Affairs where the employer locates head office, performs project, implement bidding package about situation of using foreign workers according to **form no. 16** promulgated together with this Circular;
- b) Foreign labourers issued work permits but in case of assigning, moving, or sending to a branch, representative office or other facility of that employer in and out province or city with duration of at least 10 days in 01 month or at least 30 accumulate days in 01 year, the employer must notify in writing about working time, position of work of such foreign workers and enclosed with copy of the issued work permit to the provincial Department of Labour-Invalids and Social Affairs where foreigners arrive for work.

Article 15. Responsibilities of investors

1. To organize supervision, request contractor to comply with contents committed in bid dossiers, dossier of proposals involving use of Vietnamese and foreign labourers when performing contracts.
2. To guide, urge, check contractors in implementing regulations on recruitment and use of foreign labourers to work for contractors as prescribed by law; to monitor and manage foreign labourers in implementation of Vietnamese law; to report quarterly to the provincial Department of Labour-Invalids and Social Affairs about use of foreign labourers of contractors according to **Form No. 16** promulgated together with this Circular before the fifth day of first month of the next quarter.

Article 16. Responsibilities of foreign employees

1. To research provisions of the law of Vietnam provided for by the foreign employers working in Vietnam, and to prepare the necessary papers in dossiers of request for work permit, dossiers of request for re-issuing work permit.
2. To implement the provisions of the law on the recruitment and management of foreigners working in Vietnam and other relevant provisions.
3. Within 02 days, after a foreign employee is withdrawn work permit as prescribed at Clause 1 Article 17 of Decree No. 102/2013/NĐ-CP, foreign employee must submit that work permit to the employer.

Article 17. Effective

1. This Circular takes effect on March 10, 2014.
2. This Circular replaces Circular No. 31/2011/TT-BLĐTBXH dated 03/11/2011 of the Ministry of Labour - Invalids and Social Affairs, guiding implementation of a number of Articles of Government's Decree No. 34/2008/ND-CP dated March 25, 2008 and Government's Decree No. 46/2011/ND-CP dated June 17, 2011, amending and supplementing a number of Articles of Government's Decree No. 34/2008/ND-CP dated March 25, 2008, on the recruitment and management of foreign workers in Vietnam.
3. The employers who registered demand of recruitment and use of foreign labourers in 2014 as prescribed at Clause 7 Article 19 of Government's Decree No. 34/2008/ND-CP dated March 25, 2008 amended and supplemented and Clause 10 Article 14 of Circular No. 31/2011/TT-BLĐTBXH dated 03/11/2011, of the Ministry of Labour - Invalids and Social Affairs before November 01, 2013, the provincial Departments of Labour - Invalids and Social Affairs shall sum up,

appraise and report to Chairpersons of the Provincial People's Committees for consideration and decision.

In the course of implementation, any arising problems should be reported to the Ministry of Labour - Invalids and Social Affairs for timely guide and supplementation.

**PP.THE MINISTER
DEPUTY MINISTER**

Nguyen Thanh Hoa

** Note: All the forms mentioned in this Circular are not printed herein*