

No: 40/2016/TT-BLDTBXH

*Hanoi, October 25, 2016*

## **CIRCULAR**

### **GUIDANCE ON IMPLEMENTATION OF A NUMBER OF ARTICLES OF DECREE NO.11/2016/ND-CP DATED FEBRUARY 03, 2016 DETAILING A NUMBER OF ARTICLES OF THE LABOR CODE IN RESPECT OF FOREIGN WORKERS IN VIETNAM**

*Pursuant to the Government's Decree No. 106/2012/ND-CP dated December 20, 2012, defining the functions, rights, responsibilities and organizational structure of the Ministry of Labor, War Invalids and Social Affairs;*

*Pursuant to the Government's Decree No. 11/2016/ND-CP dated February 03, 2016 detailing a number of articles of the Labor Code in respect of foreign workers in Vietnam;*

*Upon request by the director of the Department of Employment;*

*The Minister of Labor, War Invalids and Social Affairs hereby issues this Circular providing guidance on implementation of a number of articles of decree no.11/2016/ND-CP dated February 03, 2016 detailing a number of articles of the Labor Code in respect of foreign workers in Vietnam (hereinafter referred to as "Decree No.11/2016/ND-CP").*

## **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1. Scope and subject of application**

1. This Circular provides guideline for implementation of a number of Articles of the Decree No.11/2016/ND-CP concerning issuance of work permits to foreign workers in Vietnam.
2. This Circular applies to entities specified in Article 2 of Decree No.11/2016/ND-CP and other relevant entities.

#### **Article 2. Contractual service suppliers, business sellers and employers in specific cases**

1. Contractual service supplier stipulated in point d clause 1 Article 2 of the Decree No.11/2016/ND-CP refers to a foreign worker working at least 02 years (24 months) for a foreign enterprise without commercial presence in Vietnam and meeting regulatory eligibility

requirements regarding specialists as stipulated in clause 3 Article 3 of the Decree No.11/2016/ND-CP.

2. Business seller prescribed in point dd clause 1 Article 2 of the Decree No.11/2016/ND-CP refers to a foreign worker who neither lives in Vietnam nor receives salaries from any sources of finance in Vietnam, playing a role as a representative of a service supplier to negotiate consumption of that supplier's service on condition that (s)he neither directly sells service to the public nor directly provides services.

3. Employers in particular cases:

a) Employers of foreign workers specified in point a and point d clause 1 Article 2 of the Decree No.11/2016/ND-CP shall be partners in Vietnam for whom those foreign workers work to execute contracts of various types.

b) Employers of foreign workers specified in point dd and point h clause 1 Article 2 of the Decree No.11/2016/ND-CP shall be foreign business sellers and persons taking charge of establishment of commercial presence.

### **Article 3. Work permit issuers**

1. The Ministry of Labor, War Invalids and Social Affairs shall agree to demand for utilization of foreign workers, certify foreign workers eligible for exemption from work permits, issue and re-issue work permits; revoke and confirm completed revocation of work permits and request police authorities to exile foreign workers who work for the following employers but fail to obtain work permits from Vietnam:

a) Central state authorities; central authorities of political organizations, social-political organizations, social-professional organizations, social organizations and social-political-professional organizations;

b) Foreign non-governmental organizations, international organizations in Vietnam;

c) Organizations specified in point a, b and c clause 1 Article 2 of the Decree No.55/2012/ND-CP dated June 28, 2012 on establishment, restructuring and dissolution of public service suppliers including affiliates of Ministries, ministerial-level agencies, governmental agencies; organizations, other than public service suppliers, established by the Government, Prime Minister; National Universities of Hanoi and Ho Chi Minh;

d) Offices of international organizations or foreign projects in Vietnam;

dd) Enterprise Associations lawfully incorporated

2. The Department of Labor, War Invalids and Social Affairs shall certify foreign workers eligible for exemption from work permits, issue and re-issue work permits; revoke and confirm

completed revocation of work permits and request police authorities to exile foreign workers who work for the following employers but fail to obtain work permits from Vietnam:

- a) Employers specified in point a, b, c, h, I, k and m clause 2 Article 2 of the Decree No.11/2016/ND-CP;
- b) Local authorities;
- c) Political organizations, social—political organizations, social-professional organizations, social organizations and social-political-professional organizations within the administration;
- d) Organizations specified in point d, dd and e clause 1 Article 2 of the Decree No.55/2012/ND-CP dated June 28, 2012 on establishment, restructuring and dissolution of public service suppliers including those affiliated to the People’s Committees of provinces, professional organizations of the People’s Committees of provinces and People’s Committees of districts.

#### **Article 4. Utilization of foreign workers**

1. The employer (other than contractors) shall submit a written explanation about demand for utilization of foreign workers using Form 1 attached hereto to the Ministry of Labor, War Invalids and Social Affairs or President of the People’s Committee of provinces (hereinafter referred to as “approving authority”) at least 30 days ahead of the expected date of recruitment.

In case of changes in demands for utilization of foreign workers, the employer shall submit a written explanation using Form 2 attached hereto to the approving authority at least 30 days ahead of the expected date of recruitment.

2. The approving authority shall inform the employer of whether or not utilization of foreign workers is approved in writing using form 3 attached hereto within 15 days from the date of receipt of the explanation or explanation about changes in demand for utilization of foreign workers.

#### **Article 5. Utilization of foreign workers by contractors**

1. A contractor shall submit a written request for utilization of foreign workers for specific job vacancies as stipulated in clause 1 Article 5 of the Decree No.11/2016/ND-CP using form 4 attached hereto to the Presidents of the People’s Committee of the province where the contractor executes his/her contract.

In case of adjustments and supplementation to the number of foreign workers, the contractor shall submit a document using form 5 attached hereto to the President of the People’s Committee of the province where the contractor executes his/her contract.

2. The Presidents of People’s Committees of province shall direct local authorities to recommend and supply Vietnamese workers to contractors. In case of failure to recommend and supply Vietnamese workers for job vacancies, the president of the People’s Committee of the province

shall give the contractor permission to recruit foreign workers for such vacancies in writing using form 6 attached hereto.

## **Chapter II**

### **ISSUE, RE-ISSUE AND REVOCATION OF WORK PERMITS**

#### **Article 6. Application for work permits**

Application package prescribed in clause 1, 4 and 7 Article 10 of the Decree No.11/2016/ND-CP shall be specified as follows:

1. The employer shall submit an application form for work permit using form No.7 attached hereto as stipulated in clause 1 Article 10 of the Decree No.11/2016/ND-CP
2. One of the following written documents certifying that the foreign worker is a specialist as stipulated in clause 4 Article 10 of the Decree No.11/2016/ND-CP shall include :
  - a) A certificate of specialist which specifies the name of certificate issuer; specialist information including name, date of birth, nationality and major relevant to job position expected to be taken in Vietnam;
  - b) Proofs specified in point b clause 3 Article 3 of the Decree No.11/2016/ND-CP.
3. Written documents certifying that the foreign worker is a technician as stipulated in clause 4 Article 10 of the Decree No.11/2016/ND-CP include:
  - a) Certificates or documents certifying that such foreign worker has been trained for at least 01 year or his/her major is relevant to the job(s)he is expected to taken in Vietnam.
  - b) Documents certifying that the foreign worker has at least 03 years of experience in relevant majors.
4. Documents certifying that the foreign worker has been employed by the foreign enterprise for at least 12 months as stipulated in point a clause 7 Article 10 of Decree No.11/2016/ND-CP shall be listed as follows:
  - a) Documents certifying the foreign worker are employed by the employer.
  - b) An employment contract;
  - c) Decision on recruitment;
  - d) Certificates of tax payment or insurance of that foreign worker.

5. Documents certifying that the foreign worker has been working for the foreign enterprise without commercial presence in Vietnam for at least 02 months as stipulated in point c clause 7 Article 10 of Decree No.11/2016/ND-CP

### **Article 7. Work permits**

1. The work permit under clause 2 Article 12 of the Decree No.11/2016/ND-CP shall be made as follows:

a) A work permit shall be made in A4 (21 cm x 29.7 cm) including 02 pages: page 01: in blue color, coated with plastic; page 02: in white color decorated with blue patterns and a star in the center.

b) The contents of a work permit shall be conformable to form 8 attached hereto.

2. Work permits shall be issued by the Ministry of Labor, War Invalids and Social Affairs.

### **Article 8. Application for re-issue of work permits**

The employer shall submit an application form for re-issue of work permit using form No.7 attached hereto as stipulated in clause 1 Article 14 of the Decree No.11/2016/ND-CP .

### **Article 9. Accumulative work period of 01 year**

The accumulative work period of 01 year stipulated in point e clause 2 Article 7 of the Decree No.11/2016/ND-CP refers to a consecutive 12 months of work from the first date on which a foreign worker starts working in Vietnam.

### **Article 10. Submission and receipt of applications for issue, re-issue of work permits; certification of exemption from work permits**

1. The employer shall submit applications for issue, re-issue of work permit to the issuer.

2. Employers shall submit applications for certification of foreign workers eligible for exemption from work permits using form 9 attached hereto to the issuer.

3. After receipt of applications of applicants, the issuer shall update the logbook using form 10 attached hereto and issue receipts to applicants. A receipt shall specify the date of receipt, application package and date of response.

4. The issuer shall retain applications for issue, re-issued of work permits and certification of foreign workers eligible for exemption from work permits in accordance with regulations of laws.

### **Article 11. Rejection of issue, re-issue of work permits; certification of foreign workers eligible for exemption from work permits**

1. In case of rejection of issue of work permits as stipulated in clause 2 Article 12 of the Decree No.11/2016/ND-CP, rejection of re-issue of work permits as stipulated in clause 2 Article 15 of the Decree No.11/2016/ND-CP , the issuer shall inform applicants in writing using form 11 attached hereto.

2. The issuer shall send applicants written certificate of exemption from work permit using Form 12 attached hereto as stipulated in clause 4 Article 8 of the Decree No.11/2016/ND-CP . In case of rejection, the issuer shall inform the applicant in writing in which reasons for rejection shall be specified.

### **Article 12. Revocation of work permits**

1. Revocation of work permits shall be conducted in accordance with clause 1 Article 17 of the Decree No.11/2016/ND-CP:

a) Within 15 days from the expiration date of a work permit, the employer shall submit the foreign worker's existing work permit to the issuer enclosed with an explanation about reasons for revocation and explanation about failures to revoke work permits that shall be revoked;

b) Within 05 working days from the date of receipt of revoked work permits and explanation from employers as stipulated in point a of this clause, the issuer shall release written confirmation of receipt of such revoked work permits to employers.

2. The decision on revocation of work permit stipulated in point b clause 3 Article 17 of the Decree No.11/2016/ND-CP shall be using form 12 attached hereto.

### **Article 13. Reporting regime**

1. An investor shall submit a quarter reports on utilization of foreign workers using form 14 attached hereto to the Department of Labor, War Invalids and Social Affairs by 05<sup>th</sup> of the first month of the immediately preceding quarter.

2. Every Department of Labor, War Invalids and Social Affairs shall submit reports on utilization of foreign workers within the province using form 15 attached hereto to the Ministry of Labor, War Invalids and Social Affairs by 10<sup>th</sup> of the first month of the quarter and by 15<sup>th</sup> of July and 15<sup>th</sup> of January of every year.

## **Chapter III**

### **IMPLEMENTATION**

#### **Article 14. Responsibilities of Departments of Employment**

Every Department of Employment shall:

1. Disseminate and provide training courses in regulations of laws regarding foreign workers in Vietnam.
2. Take delivery of information on foreign workers as stipulated in point c clause 2 Article 20 of the Decree No.11/2016/ND-CP.
3. Manage, inspect and provide instructions on implementation of regulations of laws on foreign workers in Vietnam.
4. Aggregate and submit report on foreign workers in Vietnam.
5. Take on responsibilities as the Ministry of Labor, War Invalids and Social Affairs as stipulated in clause 1 Article 3 and clause 2 Article 7 hereof.

#### **Article 15. Responsibilities of the Presidents of People's Committee of provinces**

Every President of the People's Committee of the province shall:

1. Direct local authorities to disseminate regulations of laws; inspect and deal with violations in accordance with regulations on recruitment and management of foreign workers within the province.
2. Direct local authorities to recommend and supply Vietnamese workers to contractors.
3. Make decisions giving contractors permissions to employ foreign workers to job positions where there is none of Vietnamese workers in the province recruited.
4. Consider approving utilization of foreign workers to take up job vacancies assign authorized authorities to consider approving.

#### **Article 6. Responsibilities of Departments of Labor, War Invalids and Social Affairs**

Every Department of Labor, War Invalids and Social Affairs shall:

1. Disseminate and provide education on Vietnam's Labor Code for enterprises within the administration.
2. Take delivery of, aggregate, assess, consider approving and inform of demands for foreign worker recruitment as authorized by the President of the People's Committee of the province.
3. Recommend and supply Vietnamese workers to contractors in the province under regulations of laws.
4. Inspect and submit reports on compliance with regulations of laws on recruitment and management of foreign workers within the province.

5. Apply information technology to management activities, issue and reissue work permits and certify whether or not a foreign worker is eligible for exemption from work permits.

### **Article 17. Responsibilities of employers**

Every employer shall:

1. Comply with regulations of laws on foreign workers in Vietnam.
2. Provide foreign workers with instructions and knowledge of regulations of laws on foreign worker in Vietnam.
3. Go through procedures for issue and re-issue of work permits to foreign workers in Vietnam, and certify whether or not foreign workers are legible for exemption from work permits.
4. Duly implement employment contracts signed with foreign workers in accordance with regulations of laws; submit notification of employment contracts and copies of such contracts to the issuer.
5. Retain and update records and documents related to foreign workers working thereof.
6. Submit reports on utilization of foreign workers upon request of State authorities.

## **Chapter IV**

### **IMPLEMENTATION**

#### **Article 18. Effect**

1. This Circular enters into force from December 12, 2016 and replaces the Circular No. 03/2014/TT-BLDTBXH dated January 20, 2014 by the Ministry of Labor, War Invalids and Social Affairs providing guideline for implementation of a number of Articles of the Government's Decree No.102/2013/ND-CP dated September 05, 2013 detailing a number of Articles of the Labor Code regarding foreign workers in Vietnam.
2. In case a foreign worker already granted a work permit which has yet to expire is designated and dispatched to take up the same job position in a province other than where (s)he is now working for at least 10 consecutive days, (s)he shall be exempted from application for a new work permit. However, that foreign worker's employer shall submit a certified true copy of the existing work permit and inform the Department of Labor, War Invalids and Social Affairs of the province where the foreign worker's new workplace is located in writing which specifies the enterprise name, address of the new workplace, job position, title and working period.
3. An unexpired work permit which is granted to a foreign specialist or technician shall be considered as a proof of fulfillment of requirements prescribed in point d clause 8 Article 10 and point d clause 3 Article 14 of the Decree No.11/2016/ND-CP.

Any issue arising in connection with implementation of this Circular should be promptly reported to the Ministry of Labor, War Invalids and Social Affairs.

**PP. MINISTER  
DEPUTY MINISTER**

**Doan Mau Diep**

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