

Hanoi, November 16, 2015

No. 47/2015/TT-BLDTBXH

Circular

guiding the labor contracts, labor disciplines and material responsibilities prescribed in the Decree No. 05/2015/ND-CP dated January 12, 2015 of the Government guiding the implementation of a number of the Labor Code's contents

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

Pursuant to the Government's Decree No. 05/2015/ND-CP dated January 12, 2015 providing guidance on the Labor Code;

At the request of Director of the Department of Labor and Wage;

The Minister of Labor- Invalids and Social Affairs promulgates a Circular on guidelines for labor contracts, labor discipline and material responsibility prescribed in Decree No. 05/2015/ND-CP dated January 12, 2015 of the Government providing guidance on the Labor Code.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of adjustment

This Circular provides guidelines for labor contracts, labor discipline and material responsibility prescribed in Decree No. 05/2015/ND-CP dated January 12, 2015 of the Government providing guidance on the Labor Code (hereinafter referred to as the Decree No. 05/2015/ND-CP).

Article 2. Subject of application

Employees, employers, trade unions, other relevant agencies, organizations, and individuals prescribed in Article 2 of the Decree No. 05/2015/ND-THE GOVERNMENT.

Chapter II

LABOR CONTRACTS

Article 3. Authorization to conclude labor contracts

1. When a person prescribed in Points a, b and c Clause 1 Article 3 of the Decree No. 05/2015/ND-CP does not directly conclude a labor contract, he/she shall authorize another person in writing to conclude the labor contract using the form No. 1 in the Appendix issued herewith.

2. When a group of employees authorizes an employee to conclude their labor contracts prescribed in Point d Clause 2 Article 3 of the Decree No. 05/2015/ND-CP, they must make a written authorization. A written authorization to conclude labor contract(s) must contain:

a) Full name, date of birth, gender, permanent residence, occupation, signature of the authorized employee;

b) Full name, date of birth, gender, permanent residence, occupation, signature of each employee in the authorizing group;

c) Content of authorization, term of authorization.

Article 4. Salaries and other benefits in labor contracts

Salary, allowances and other extra payments determined in the labor contract prescribed in Point a Clause 5 Article 4 of the Decree No. 05/2015/ND-CP include:

1. The time-based salary or position-based salary shall be the salary rate in salary scale and salary table defined by the employer under law on labor. Employees paid product-based salary or piecework salary, the time-based salary rates shall be used to determine the product unit price or the piecework salary.

2. Allowances, specifying contractual allowances, in particular:

- a) The allowances that are amounts offset against the working conditions, the complexity of jobs, the living conditions, and the employee attraction level which is not included or incompletely included in the contractual salary.
 - b) The allowances concerning the working progress and output of the employee.
3. Other extra payments, specifying other contractual extra payments, in particular:
- a) Measured extra payments and the contractual salary mentioned in the labor contract that are to be paid regularly in each period of salary payment.
 - b) Unmeasured extra payments and the contractual salary mentioned in the labor contract that are paid regularly or irregularly in each period of salary payment concerning the working progress and output of the employee.

The following benefits shall be specified in a separate item in the labor contract prescribed in Clause 11 Article 4 of the Decree No. 05/2015/ND-CP: bonuses prescribed in Article 103 of the Labor Code, initiative bonuses; food expenses between shifts; subsidies on petrol, telephone, transportation, housing, child care, raising children; allowances for employees having dead relative(s), employees having relatives married relatives, employees' birthday, benefits for employees facing difficulties due to their labor accidents and occupational diseases and other allowances and benefits.

Article 5. Labor contracts concluded with elderly employees

- 1. Elderly employee is a person who continues to work after the age defined in Article 187 of this Code.
- 2. The elderly employee and the employer shall agree to amend the labor contract in accordance with legislation on labor applicable to elderly employees.
- 3. The labor contract concluded with the elderly employee must conform to regulations in Clauses 2 and 3 of Article 166 and Clauses 2, 3 and 4 Article 167 of the Labor Code.

Article 6. Agreement on temporary suspension of labor contracts when employees are appointed or assigned as representative of the State contributed capital

When an employee is appointed or assigned as representative of the State contributed capital, his/her labor contract shall be suspended temporarily as follows:

1. The temporary suspension of the labor contract shall be made in an agreement which at least contains:

- a) Name and address of the employer and its legal representative;
- b) Full name, date of birth, gender, residence, ID number or passport number of the employee;
- c) Details of the suspended labor contract: number; date of conclusion;
- d) Period of suspension: the start time and the end time of the suspension period;
- dd) Reasons for the suspension;
- e) Rights and obligations of the parties in and after the period of suspension.

2. If the employee is still appointed or assigned as representative of the State contributed capital, upon expiry of period of suspension, the employee shall request the employer to give another suspension of the labor contract. The second written suspension of the labor contract shall have the same contents with the first written suspension of the labor contract.

Article 7. Notification of changes of structure, technology and economic reasons sent to labor authorities

1. If an employer dismisses 2 employees or more as prescribed in Clause 3 Article 13 of the Decree No. 05/2015/ND-CP, it must notify them in writing within 30 days before a notification of dismissal is sent to a labor authority.

2. The notification of dismissal prescribed in Clause 1 of this Article must contain the following information:

- a) Name and address of the employer and its legal representative;
- b) Number of employees; number of laid off employees;
- c) Reasons for layoffs; time of layoffs;

d) Expected budget for redundancy pay.

3. The labor authority of province shall receive, monitor, and inspect the layoffs imposed on multiple employees.

Article 8. Severance pay and redundancy pay

1. The salary as the basis for determination of severance pay or redundancy pay is the average salary specified in the labor contract prescribed in Clause 1 Point a Clause 2 and Point a Clause 3 Article 4 of this Circular of the 6 continuous months before the employee is laid off or

2. With respect to each employee concluding multiple continuous labor contracts prescribed in Clause 2 Article 22 of the Labor Code, his/her total working time under such labor contracts shall be considered to determine the severance pay or redundancy pay, upon the termination time of the last labor contract. If the last labor contract is terminated because the employee unilaterally and unlawfully terminates labor contract or the employee is be disciplined in the form of dismissal, the working time of the last labor contract shall not be included in the total working time as the basis for determination of severance pay. The salary as the basis for determination of severance pay or redundancy pay is the average salary determined as prescribed in Clause 1 of this Article before the termination time of the last labor contract.

Example 1: Ms. A works for Company B under 3 continuous labor contracts; the first labor contract is a 12-month contract which is executed from January 1, 2014 to December 31, 2014 (1 year); the second labor contract is a 36-month contract which is executed from January 1, 2015 to December 31, 2017 (3 years); the third labor contract is an indefinite-term contract which is executed from January 1, 2018 to December 31, 2025 (8 years), then Ms. A terminates the third labor contract unilaterally and unlawfully. Ms. A's employer pays unemployment insurance for her continuously from January 1, 2019 to December 31, 2025 (7 years). The average monthly salary determined as prescribed in Clause 1 of this Article before her termination time of the third labor contract is VND 4.5 million.

Because Ms. A terminates the third labor contract unilaterally and unlawfully, her working time under the third labor contract (8 years) shall not be included in the

working time as the basis for determination of severance pay. Ms. A's severance pay shall be calculated as follows:

- Her working time in the first and the second labor contract as the basis for severance pay is: $1 + 3 = 4$ years (from January 1, 2004 to December 31, 2007);
- Severance pay paid to Ms. A by Company B is: 4 (years) \times VND 4.5 million $\times \frac{1}{2}$ = VND 9 million.

3. If wholly state-owned enterprises or enterprises equitized from the state-owned enterprises terminate the labor contract that the employees have the time to work in agencies, organizations, units and business in the state sector and transfer to another work at the enterprise before January 01, 1995 but have not received a severance pay or redundancy pay, the employer shall pay the severance allowance or redundancy pay for the time when the employee has worked for him/ her and pay severance allowance for the time when the employee has worked for previous agencies, organizations, units and enterprises in the state sector as prescribed in Clause 3 Article 38 of the Decree No. 05/2015/ND-CP.

The working time at agencies, organizations, units and enterprises in the state sector before January 1, 1995 includes: actual working time in State administrative agencies, public service providers, political organizations, socio-political organizations, the armed forces whose salaries/wages funded by government budget and other state-owned enterprises.

4. If an employee has worked for 12 months or longer, then he/she is laid off, but his/her working time as the basis for determination of redundancy pay is under 18 months, his/her redundancy pay is at least 2-month salary.

Example 2: Mr. C worked for Company D from September 1, 2007 to December 31. Then, due to changes of company's production technology, the company has no more work available for him. Accordingly, Company D terminates his labor contract. Mr. C's employer pays unemployment insurance for him continuously from January 1, 2009 to December 31, 2015 (7 years). His average monthly salary prescribed in Clause 1 of this Article before he loses his job is VND 4.5 million. Mr. C's redundancy pay shall be calculated as follows:

- The working time as the basis for determination of redundancy pay is: 8 years 4 months – 7 years = 1 year 4 months (16 months).

- His redundancy pay paid by Company D is at least 2-month salary: (VND 4.5 million x 2 = VND 9 million).

5. When an enterprise or a cooperative is acquired, consolidated or divided, if an employee terminates his/her labor contract concluded with the transferor enterprise/cooperative, the transferee enterprise/cooperative must pay severance pay or redundancy pay to the employee for his/her working time in both enterprise/cooperative.

Example 3: Mr. Nguyen Thanh H worked for Company P from June 1, 2002. In 2006, Company P and Company Q are consolidated into Company PQ which operates officially from October 1, 2006; Mr. H keeps working at Company PQ until December 31, 2015 before he is laid off due to the changes of organizational structure of the Company PQ. Mr. H's employer pays unemployment insurance for him continuously from January 1, 2009 to December 31, 2015 (7 years). His average monthly salary prescribed in Clause 1 of this Article before he loses his job is VND 5.4 million per month. Mr. H's redundancy pay shall be calculated as follows:

- His actual working time at Company P is 4 years 4 months; his actual working time at Company PQ is 9 years 3 months. Total actual working time is 13 years 7 months;

- The working time as the basis for determination of redundancy pay is: 13 years 7 months – 7 years = 6 year 7 months, which rounds up to 7 years;

- Severance pay paid to Mr. H by Company PQ is: 7 (years) x VND 5.4 million per month = VND 37.8 million.

Article 9. Responsibilities of transferee employees upon the transfer of ownership or rights to use of enterprise's assets

1. Each employee kept being employed, employee kept being employed after retraining, and employee working under a part-time job at the transferee enterprise shall have his/her labor contract amended or have a new labor contract concluded.

2. The severance pay prescribed in Article 48 or redundancy pay prescribed in Article 49 of the Labor Code shall be paid for the total actual working time

Example 4: Mr. Dao Xuan K worked for the People's Committee of district T (State administrative agencies) from September 1, 1990 to November 1, 1993. Then, he moves to Company S (state-owned enterprise). On September 1, 2007, Company S is equitized into Joint-stock company S', Mr. K keep working at Joint-stock company S' until December 1, 2015 before he terminate his labor contract lawfully. Mr. K's employer pays unemployment insurance for him continuously from January 1, 2009 to December 1, 2015. His average monthly salary prescribed in Clause 1 of this Article before he is laid off at Joint-stock company S' is VND 5.5 million per month. Ms. K's severance pay shall be calculated as follows:

- His actual working time in the State sector before January 1, 1995 is 3 years 2 months;
- His actual working time at Company S (before equitization) is 13 years 10 months;
- His actual working time at Joint stock company S' is 08 years 03 months;
- His participation time of unemployment insurance is 6 years 11 months;
- His working time as the basis for severance pay is: 3 years 2 months + 13 years 10 months + 8 years 3 months - 6 years 11 months = 18 years 4 months, which rounds up to 18.5 years;

Severance pay paid to Mr. K by Joint stock S' is: 18.5 (years) x VND 5.5 million x $\frac{1}{2}$ = VND 50,875 million.

Chapter III

LABOR DISCIPLINE AND MATERIAL LIABILITY

Article 10. Registration of labor regulations and the effect of labor regulations

1. The document certifying the receipt of the registration dossier of labor regulations issued by a labor authority of province prescribed in Clause 2 Article

28 of the Decree No. 05/2015/ND-CP must contain at least the following information:

- a) Name of the labor authority of province;
- b) Full name and position of the person receiving the registration dossier of labor regulations;
- c) Name and address of the enterprise, agency, organize, cooperative, household or individual registering labor regulations; the household or individual is also required to specify the full name and ID number of the householder or individual;
- d) Hour and date of receipt of adequate registration dossier of labor regulations;
- dd) Signature of the person receiving the registration dossier of labor regulations.

2. The labor authority of province must make a register of labor regulations using the form No. 2 of Appendix issued herewith.

3. The document notifying labor regulations contrary to regulations of law issued by the labor authority of each province prescribed in Clause 3 Article 28 of the Decree No. 05/2015/ND-CP must contain at least the following information:

- a) Name of the labor authority of province;
- b) Name and address of the enterprise, agency, organize, cooperative, household or individual registering labor regulations; the household or individual is also required to specify the full name and ID number of the householder or individual;
- c) Contents of labor regulations contrary to regulations of law required necessary amendments and supplements (specific contents prescribed in particular Point, Clause, Article and legislative document and amended contents);
- d) Signature, full name and position of the competent person of the labor authority of province.

4. The employer hiring less than 10 employees shall not be required to register the labor regulations; if the employee issues labor regulations in writing, its effect shall be specified in such written labor regulations; if the written labor regulations are

not issued, the employer and the employee shall agree the contents of labor discipline and material responsibility that are included in the labor contract.

Article 11. Actions against breaches of labor discipline imposed on the employees raising children under 12 months of age

Each employer may not handle violations against labor discipline committed by an employee raising children under 12 months of age prescribed in Article 29 of the Decree No. 05/2015/ND-CP in any of the following cases:

1. Raising a natural child under 12 months of age;
2. Raising an adopted child as prescribed in law on marriage and families;
3. Raising a surrogacy child under 12 months of age by a surrogate mother as prescribed in law on marriage and families.

Article 12. Organizing meetings about handling of violations against labor discipline

1. The meeting about handling of violations against labor discipline shall be organized as prescribed in Clause 2 Article 30 of the Decree No. 05/2015/ND-CP in the presence of sufficient participants notified under the provisions of clause 1 of Article 30 of the Decree No. 05/2015/ND-CP.
2. In case the employer has sent written notification of participation in the meeting of handling of violations against labor discipline, but one of the participants is absent, the employer shall send another written notification to such person.
3. If the employer has noticed in writing 03 times, but one of the participants is absent (excluding the case that the meeting is postponed or cancelled or the meeting's place is changed, the employer shall conduct the meeting unless the employee is in time that labor disciplinary measures may not applied as specified in clause 4 of Article 123 of the Labor Code.
4. If the person in charge of concluding contract of the employer authorizes another person to conclude the labor contract in writing lawfully as prescribed in Clause 1 Article 3 of the Decree No. 05/2015/ND-CP, the authorized person shall

be entitled to convene and preside over the meeting about actions against breaches of labor discipline.

The authorized person may issue a decision on actions against breaches of labor discipline in the form of reprimands. Regarding other forms of actions against breaches of labor discipline, the authorized person must complete the documents on actions against breaches of labor discipline, and then request the employer to decide the forms of actions and implement the effective decision.

Article 13. Employees absent from work with plausible reasons

An employee absent from work with the following reasons shall be considered plausible reasons as prescribed in Clause 2 Article 31 of the Decree No. 05/2015/ND-CP:

1. A natural disaster or conflagration occurs that the employee is unable to present herself/himself at work regardless of every remedial measure adopted;
2. Illness of the employee or his/her mother, father, adoptive mother, adoptive father, mother-in-law, father-in-law, husband, wife, natural child or lawfully adopted child, surrogacy child with certification by a health facility founded and operated as prescribed in law.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 14. Implementation effect

1. This Circular takes effect on January 1, 2016.
2. The Circular No. 19/2003/TT-BLDTBXH dated September 22, 2003 on guidelines for the Decree No. 41/CP dated July 6, 1995 on guidelines for the Labor Code in terms of labor discipline and material responsibility that is amended by the Decree No. 33/2003/ND-CP dated April 2, 2003 of the Government shall be annulled from the effective date of this Circular.
3. The salary as the basis for calculating the pay for an employee in work suspension time, annual leave, public holiday leave, paid leaves or salary advance prescribed in Article 26 of the Decree No. 05/2015/ND-CP is the salary specified

in his/her labor contract prescribed in Clause 1, Point a Clause 2 and Point a Clause 3 Article 4 of this Circular.

4. A number of Articles and Clauses of Circular No. 23/2015/TT-BLDTBXH dated June 23, 2015 of the Minister of Labor- Invalids and Social Affairs on guidelines for some Articles on wages of the Decree No. 05/2015/ND-CP dated January 12, 2015 of the Government on guidelines for some contents of the Labor Code shall be amended as follows:

a) Point c Clause 1 of Article 4 shall be amended as follows:

“c) Daily wage is paid for one working day which equals (=) a monthly wage divided by (:) number of working days in the under regulations of law as selected by the enterprise, provided that it does not exceed 26 days”.

b) Clause 1 of Article 5 shall be amended as follows:

“1. Monthly wage shall be paid once or twice a month at the time of wage payment determined by the employer”.

c) Point a Clause 1 of Article 6 shall be amended as follows:

“a) Actual hourly wage on a normal working day equals (=) the actual wage for the current job of the month in which the employee works overtime divided by (:) actual number of working hours in the month (not exceeding 208 hours for jobs with normal labor and environment conditions and exclusive of overtime hours). If the employee receives a daily or weekly wage, the overtime pay equals (=) the actual wage of that working day or week (minus overtime pay and extra pay for night work) divided by (:) actual number of working hours in the day or week (not exceeding 8 hours per day and exclusive of overtime hours).

The aforesaid wage is exclusive of work overtime pay, extra pay for night work, the wage of public holiday leave, paid leave prescribed in the Labor Code; bonuses prescribed in Article 103 of the Labor Code, initiative bonuses; food expenses between shifts; subsidies on petrol, telephone, transportation, housing, child care, raising children; allowances for employees having dead relative(s), employees having relatives married relatives, employees' birthday, benefits for employees facing difficulties due to their labor accidents and occupational diseases and other

allowances and benefits not related to their jobs or positions mentioned in the labor contracts”.

d) Clause 2 of Article 9 shall be annulled.

Article 15. Transitional regulations

If the employment contracts, collective bargaining agreements, labor regulations and other lawful regulations or agreements of the employer that are signed or issued before the effective date of this Decree are more beneficial to employees than regulations in this Circular, they shall be still effective; if those regulations are contrary to the regulations of this Circular, the parties involved shall revise, amend, supplement and implement procedures promulgated in accordance with the provisions of this Circular.

Any difficulties arising during the implementation of this Circular should be reported to the Ministry of Labor- Invalids and Social Affairs for consideration./.

For the Minister

The Deputy Minister

Pham Minh Huan

APPENDIX

(Issued together with Circular No. 47/2015/TT-BLDTBXH dated November 16, 2015 of the Minister of Labor- Invalids and Social Affairs)

Form No. 1

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

AUTHORIZATION

To conclude labor contract

Pursuant to the Civil Code 2005;

Pursuant to (1)..... ;
....., [date].....; We are:

1. AUTHORIZING PARTY:

Full name:

Date of birth:

Address:

Position:

ID number:, Date of issue, Place of issue
.....

Passport number (if any):

Nationality:

2. AUTHORIZED PARTY (2):

Full name:

Date of birth:

Address:

Position (if any):

ID number:, Date of issue, Place of issue
.....

Passport number (if any):

Nationality:

3. CONTENT OF AUTHORIZATION:

The authorized party shall, on behalf of the authorizing party, by this written authorization, perform the following tasks:

Article 1. The authorized party is entitled to conclude a labor contract with
.....[employer] (3) on behalf of the authorizing party as prescribed in
legislation on labor.

Article 2. Authorization duration:

Authorization duration: fromto.....

Article 3. Other agreements (if any).

4. COMMITMENTS OF PARTIES:

- The two Parties shall take full legal responsibility for the accuracy and truthfulness of the above declaration;
- Every dispute arising between the authorizing party and the authorized party shall be resolved themselves.

The above written authorization shall be made in[number] copies, each party shall hold[number] copy/copies./.

AUTHORIZING PARTY

(Signature and full name) **AUTHORIZED PARTY (4)**

(Signature and full name)

Notes:

(1) Relevant Laws, Charter and Regulations (if any) for agencies, organizations or enterprises;

(2) In case the legal representative of the enterprise authorizes the head of its branch or business facility to conclude a labor contract directly with the employee, the authorized party shall be the head (director, etc.) of such branch or business entity according to the list of authorized parties issued herewith.

(3) Limits of scope of authorization of labor contract, for example: The Director of the branch of bank X in Hanoi city will conclude labor contracts with employees on behalf of Director General of the bank X in order for the employees to work at the branch of bank X.

(4) In case the legal representative of the enterprise authorizes the head of its branch or business entity directly concluding a labor contract with the employee, the authorized party's signature shall be borne in the list of authorized persons issued herewith.

Form No. 2

SUPERIOR AGENCY

(if any)

NAME OF AGENCY IN CHARGE OF STATE MANAGEMENT OF LABOR
SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

LABOR REGULATIONS MANAGEMENT BOOK

Year: 20.....

No. Enterprise's name Enterprise's type Enterprise's address Certificate
of Enterprise registration Primary business lines Registration of labor
regulations Amended labor regulations Re-registration of labor regulations
Notes

Receipt date of labor regulations

Effective date of labor regulations At the request from labor authority
due to unlawful contents of internal regulations Enterprise changes contents of
the labor regulations (including duration) Receipt date of labor regulations
Effective date of labor regulations

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13)

Prepared by

(signature and full name) [Location].....,[date].....

Head of agency

(Signature, full name and seal)

Instructions:

- Column (2): according to Certificate of Enterprise registration
- Column (3) according to classification: state-owned enterprises, non-state-owned enterprises or foreign-invested enterprises.
- Column (6): the line of business employing the highest number of employees in the enterprise (level 2) as mentioned in the System of industries issued together with Decision No. 10/2007/QD-TTg dated January 23, 2007 of the Prime Minister.
- Column (7) and (11): according to the document of management of regulatory agencies.
- Column (8): after 15 days from the date mentioned in the column (7), unless the labor regulations are not in accordance with regulations of law.
- Columns (9) and (10): mark X in the equivalent box according to the inspection result.
- Column (12): after 15 days from the date mentioned in the column (11).