

MINISTRY OF LABOR – INVALIDS AND SOCIAL AFFAIRS	SOCIALIST REPUBLIC OF VIETNAM Independence – Freedom – Happiness
No.: 59/2015/TT-BLDTBXH	<i>Hanoi, 29 December 2015</i>

CIRCULAR

DETAILING AND GUIDING THE IMPLEMENTATION OF SOME ARTICLES OF THE LAW ON SOCIAL INSURANCE ON COMPULSORY SOCIAL INSURANCE

Pursuant to the Law on social insurance dated 20/11/2014;

Pursuant to the Decree No. 93/2015/QH13 dated 22/6/2015 of the National Assembly on implementation of policy on entitlement to one-time social insurance for the employees.

Pursuant to Decree No. 106/2012/ND-CP dated 20/12/2012 of the Government defining the functions, duties, power and organizational structure of the Ministry of Labor – Invalids and Social Affairs;

Pursuant to Decree No. 115/2015/ND-CP dated 11/11/2015 of the Government detailing a number of articles of the Law on social insurance on compulsory social insurance;

At the request of the Director General of Department of Social Insurance;

The Minister of Labor – Invalids and Social Affairs issues this Circular detailing and guiding the implementation of some articles of the Law on social insurance on compulsory social insurance;

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Circular details some articles of the Law on social insurance on compulsory social insurance and guides the implementation of Decree No. 115/2015/ND-CP dated 11/11/2015 of the Government detailing some articles of the the Law on social insurance on compulsory social insurance (Hereafter referred to as Decree No. 115/2015/ND-CP).

Article 2. Subjects of application

1. The employees participate in compulsory social insurance specified in Clause 1 and 2, Article 2 of Decree No. 115/2015/ND-CP.

The employees specified under Points a, b, c, d, dd and e, Clause 1, Article 2 of Decree No. 115/2015/ND-CP are appointed to study, take an internship or go for business in the country or abroad but are still entitled to the salary in the country subject to the compulsory social insurance.

2. The employers specified in Clause 3, Article 2 of the Law on social insurance.
3. Bodies, organizations and individuals related to the compulsory social insurance.

Chapter II

BENEFITS OF COMPULSORY SOCIAL INSURANCE

Article 3. Conditions to enjoy the sickness benefits

1. The employees specified under Points a, b, c, d, dd, Clause 1 and Point b, Clause 2, Article 2 of Decree No. 115/2015/ND-CP shall enjoy the sickness benefits in the following cases:
 - a) The employees have disease or accident which is not work accident or treatment of injury or disease recurred due to work accident, occupational disease and must take sick leave with certification from the competent medical facility as regulated by the Ministry of Health.

3. b) The employees must take leave to take care of their sick children under 07 years of age with certification of the competent medical facility.
4. c) Female employees return to their work before the expiration of maternity leave subject to one of the case specified under Point a and b of this Clause.
5. The employees are not entitled to sickness benefits in the following cases::
6. a) The employees have disease or accident and must take sick leave due to self-infliction, drunkenness or abuse of drug or drug precursor under the List issued with Decree No. 82/2013/ND-CP 19/07/ 2013 of the Government issuing the list of drug and drug precursor and Decree No. 126/2015/ND-CP dated 09/12/2015 of the Government amending and adding the list of drug and drug precursor issued with Decree No. 82/2013/ND-CP dated 19/7/2013 of the Government issuing the list of drug and drug precursor.
7. b) The employees take sick leave for the first treatment due to work accident or occupational disease.
8. c) The employees have disease or accident which is not work accident during their annual leave, personal leave, unpaid leave as prescribed by labor law; maternity leave under the law on social insurance.

Article 4. Period of time to enjoy the sickness benefits

1. The maximum period to enjoy the sickness benefits in a year specified in Clause 1, Article 26 of the Law on social insurance is calculated based on the working days, excluding public holidays, New Year holidays and weekends according to the laws on labor. This period of time is calculated from 01/01 to 31/12 of the solar year, regardless of the time of participation in social insurance of the employees.

Ex 1: Mr.D is a garment employee working in shift. He has his weekend as follows: the week from 04/01/2016 to 10/01/2016 on Wednesday on 06/01/2016, the week from 11/01/2016 to 17/01/2016 on Friday on 15/01/2016. Due to his sickness, Mr.D must take sick leave for treatment from 07/01/2016 to 17/01/2016.

The time to enjoy Mr.D's sickness benefits is calculated from 07/01/2016 to 17/01/2016 as 10 days (excluding 01 weekend as Friday of 15/01/2016).

2. The identification of employees' working under heavy, hazardous or dangerous or particularly heavy, hazardous or dangerous occupation or job specified in the list promulgated by the Ministry of Labor, Invalids and Social Affairs and the Ministry of Health or working in regions with regional allowance coefficient of 0.7 or higher to calculate the maximum time to enjoy the sickness benefits in a year is based on the occupation or job and working place of the employees at the point of time they have disease or accident.

Ex 2: Ms A has 13 years of compulsory social insurance payment and work in normal conditions; from 01/2016 to 9/2016, Ms A takes leave and enjoys her sickness benefits for 30 days in full. In 10/2016, Ms A assumed a heavy, hazardous or dangerous occupation. On 25/10/2016, Ms A took sick leave of 07 working days.

At the time of sick leave (10/2016), Ms A's occupation is heavy, hazardous or dangerous, therefore the time of leave to enjoy the maximum sickness benefits of Ms A is 40 days, calculated from 25/10/2016, Ms A took her sick leave to enjoy her sickness benefits of 30 days in 2016, so her sick leave of 07 days due to sickness is entitled to sickness benefits.

Ex 3: Ms B has the social insurance payment for 10 years for her heavy, hazardous or dangerous job; from 01/2016 to 8/2016, she takes leave to enjoy her sickness benefits of 37 days; from 9/2016, Ms B assumed a job in a normal condition. On 26/9/2016, Ms B took sick leave of 03 working days.

At the time of sick leave (9/2016), Ms B worked in normal condition so the time of leave to enjoy the sickness benefits in a year of Ms B is 30 days; at that point of time, Ms B enjoyed her sickness benefits of 37 days in 2016, so Ms B shall not be entitled to sickness benefits from 26/9/2016.

3. The time to enjoy the sickness benefits for the employees who take leave due to their disease included in the List of diseases with required long-term treatment issued by the Ministry of Health specified in Clause 2, Article 26 of the Law on social insurance and is guided as follows:
Where the employees have enjoyed 180 days but continue their treatment, they shall enjoy the further sick benefits with lower level but the time for maximum continued entitlement is equal to the time of compulsory social insurance payment.

Ex 4: Ms Nguyen Thi A has a period of compulsory social insurance payment for 03 months and suffers from a disease specified in the list of diseases with required long-term treatment. The time to enjoy her maximum sickness benefits is as follows:

- A maximum of 180 days including the public holidays, New Year holidays and weekends;
- Where after the duration of 180 days has been enjoyed but still continuing the treatment, the employees shall continue to enjoy the sickness benefits but at lower level but a maximum of entitlement is equal to 03 months.

Therefore, the maximum time of leave to enjoy the sickness benefits of Ms A is 180 days and 03 months.

Ex 5: Mr B has a period of compulsory social insurance payment for 01 year and suffers from a disease specified in the list of diseases with required long-term treatment. Mr. B has enjoyed the first 180 days, then continues his treatment and shall enjoy his sickness benefits at lower level but 01 year at most.

After stable treatment, Mr B returns to his work and has the social insurance payment for 02 years and continues his sick leave for treatment of disease (included in the List of diseases with required long-term treatment). Therefore, the time for leave to enjoy the maximum sickness benefits of this time of treatment of Mr B will be 180 days and 3 years (the time of social insurance payment to calculate the time of maximum entitlement after the end of 180 leave days is the total time of social insurance payment).

4. Where the employees have disease or accident which is not the work accident during the time of annual leave, personal leave or unpaid leave as stipulated by law, then the time of sickness or accident coincided with the time of annual leave, personal leave or unpaid leave shall not be entitled to the sickness benefits; the time of leave due to sickness or accident in addition to the time of annual leave, personal leave or unpaid leave is entitled to the sickness benefits as stipulated.
5. Where the employees have the time of leave to enjoy the sickness benefits from the end of previous year forwarded to the beginning of the next year, the time of leave to enjoy the sickness benefits of any year shall be included in the time of entitlement to sickness benefits of such year.

Article 5. Time to enjoy the benefits upon child's sickness

1. The maximum time to enjoy the benefits upon child's sickness in a year for each child specified in Clause 1, Article 27 of the Law on social insurance is calculated according to the working day

regardless of prescribed public holidays, New Year holidays or weekends. This period of time is calculated from 01/01 to 31/12 of the solar year, regardless of the employees' starting time of participation of social insurance.

2. a) In case of the same time, the employees have 02 children or more under 07 years of age who are sick, the time to enjoy the benefits upon child's sickness is calculated by the actual time the employees leave their work to take care of their children. The maximum time the employees can take their leave for each child is specified in Clause 1, Article 27 of the Law on social insurance.

Ex: Ms A is participating in the compulsory social insurance, having 02 children under 07 years of age being sick with the following time: the first child is sick from 04/01 to 10/01/2016, the second child is sick from 07/01 to 13/01/2016. Ms A has to leave her work to take care of her children. Her weekend is the Sunday. Ms A has to leave her work to take care of her children. Her weekend is the Sunday. The time to enjoy the benefits upon child's sickness of Ms A is calculated from the 4th date to the 13rd date of 2016 is 09 days (excluding 01 weekend as Sunday).

1. b) Where both parents participate in social insurance, depending on the condition of each person to alternate their leave to take care of their children. The maximum time to enjoy the benefits in a year of a father or mother for each child is specified in Clause 1, Article 27 of the Law on social insurance.

Ex 7: The married couple of Ms B are participating in compulsory social insurance. Their weekend is the Sunday. Their child is 5 years of age and is sick and hospitalized 11/01 to 05/02/2016. Due to working conditions, the married couple of Ms B must alternate their leave to take care of their child as follows:

– Ms B takes leave to take care her child from 11/01 to 17/01/2016 and from 25/01 to 05/02/2016;

– Ms B's husband takes leave to take care her child from 18/01 to 24/01/2016.

Therefore, the time to enjoy the benefits upon child's sickness of the married couple of Ms B is calculated as follows:

+ For Ms B: The total days of leave to take care of her child is 19 days, except for 02 weekends on Sundays, the remaining day is 17. However, because her child is 5 years of age so the time of leave to enjoy the benefits upon child's sickness is a maximum of 15 days. Therefore, the time to enjoy the benefits upon child's sickness of Ms B is 15 days.

+ For Ms B's husband: The total number of leave days to take care of his child is 07 days, except for 01 weekend on Sunday, the remaining day is 06 days. Therefore, the time to enjoy the benefits upon child's sickness of Ms B's husband is 06 days.

1. c) Where both parents participate in the compulsory social insurance and take leave to take care of their sick child, both parents shall be entitled to the benefits upon their child's sickness. The maximum time to enjoy the benefits upon child's sickness in a year of a father or mother for each child is specified in Clause 1, Article 27 of the Law on social insurance.

Ex 8: The married couple of Ms T participate in the compulsory social insurance and have a son of 5 years of age who is sick and hospitalized from 07/3/2016 to 11/3/2016. During their child's hospitalization, both married couple of Ms T must take their leave to take care of their child.

In this case, both married couple of Ms T shall enjoy the benefits upon their child's sickness with the time of 05 days.

Article 6. Rate of entitlement to sick benefits

1. The rate of entitlement to sick benefits specified in Clause 1, Article 26 and 27 of the Law on social insurance is calculated as follows:

Rate of entitlement to sickness benefits	=	Monthly salary paid for the social insurance of the preceding month before leave	x 75 (%) x	Number of days of leave entitled to sickness benefits
		24 days		

– The number of days of leave entitled to sickness benefits is calculated according to the working days including the public holidays, New Year holidays and weekends.

2. The rate of entitlement to sickness benefits for the employees taking leave due to disease included in the List of diseases with required long-term treatment as stipulated in Clause 2, Article 26 of the Law on social insurance is calculated as follows:

Rate of entitlement to sickness benefits for disease with required long-term treatment	=	Monthly salary paid for the social insurance of the preceding month before sick leave	x	Rate of entitlement to sickness benefits (%)	x	Number of months of leave entitled to sickness benefits
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In which:

1. a) The rate of entitlement to sickness benefits is calculated by 75% for the time of entitlement to sickness benefits of the employees in the first 180 days. After the end of entitlement to 180 days but still under treatment, the rate of entitlement to sickness benefits for the next period of time is calculated as follows:
- By 65% if the employees have the social insurance payment from full 30 years or more;
 - By 5% if the employees have the social insurance payment between full 15 years and under 30 years;
 - By 50% if the employees have the social insurance payment under 15 years.
1. b) The month of leave to enjoy the sickness leave is calculated from the date of starting the leave to enjoy the sickness leave of such month to the preceding date of the preceding next month. In case of odd day for incomplete month, the calculation of rate of entitlement to sickness benefits for such days is as follows:

Rate of entitlement to sickness benefits for disease with	=	The salary paid for the social insurance of the preceding month before sick leave	x	Rate of entitlement to sickness benefits (%)	x	Number of days of leave entitled to sickness benefits
		24 days				

required long-term treatment					
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In which:

- The rate entitlement to sickness benefits as stipulated under Point a of this Clause.
- The number of days of leave entitled to sickness benefits including public holidays, New Year holidays and weekends.

Ex 9: Ms N is participating in the compulsory social insurance, she has to take sick leave due to suffering from disease included in the List of diseases with required long-term treatment from 28/3/2016 to 05/6/2016.

- The number of month of leave to enjoy the sickness benefits is 02 months (from 28/3 to 27/5/2016);
- The number of odd days for incomplete month is 09 days (from 28/5 to 05/6/2016).

3. Where the employees suffer from disease or accident which is not work accident or take leave to enjoy the benefits upon their child's sickness right in the first month of participation in compulsory social insurance and the time of leave is from 14 working days or more in a month, the rate of entitlement to sickness benefits is calculated on the monthly salary as a basis for social insurance payment of such month.

Ex 10: Ms Ch is recruited to work in a company from 01/6/2016. On 06/6/2016, she has an accident and must take leave for treatment by the end of 6/2016. Ms Ch participate in the social insurance from her company's registration with the monthly salary for social insurance payment as 5 million dong.

Where Ms Ch is entitled to the sickness benefits, the rate of entitlement to sickness benefits is calculated on the monthly salary as 5 million dong.

4. The employees take sick leave from 14 days or more in a month, the employees and the employers do not have to pay the social insurance of such month. This period of time shall not be calculated for entitlement to social insurance.
5. During the time the employees take leave to enjoy their sickness benefits due to suffering from a disease included in the List of diseases with required long-term treatment, the employees shall enjoy the health insurance paid by the social insurance fund for the employees.
6. The rate of entitlement to the sickness benefits shall not be adjusted when the Government adjusts the basic salary and regional minimum salary.

Article 7. Convalescence and recovery after sickness

1. After enjoying a period the sickness benefit from full 30 days or more in a year, even when suffering a disease included in the List of diseases with required long-term treatment issued by the Ministry of Health, the employees return to their work within the first 30 days but their health is still weak, they shall be entitled to take a leave for convalescence and recovery under the provisions of Article 29 the Law on social insurance.

Ex 11: Mr Ph is participating in the social insurance for his heavy occupation, by 7/2016, he took leave to enjoy his sickness benefits (disease not included in the List of diseases with required long-term treatment) for 35 days. After returning to his work, his health is still weak, Mr Ph's company decided

to give him 05 days of leave for health recovery. In 9/2016, Mr Ph had a disease, underwent a surgery and took sick leave to enjoy the sickness benefits for 07 days, he returned to his work but his health has not been restored yet.

In this case, Mr Ph has taken his sick leave to enjoy the benefits of convalescence and recovery after his sickness (his disease is not included in the List of diseases with required long-term treatment) for 05 days. Therefore, when returning to his work after his sick leave for surgery but his health is still weak, Mr Ph shall be entitled to take his sick leave for a maximum of 02 days (a maximum of 07 days for convalescence and recovery due to surgery but Mr Ph has taken 05-day leave for convalescence and recovery after his sickness).

2. The employees are eligible for convalescence and recovery in any year, the time of leave to enjoy the convalescence and recovery shall be calculated for such year.

Ex 12: Ms D had to take her leave for treating her disease included in the List of diseases with required long-term treatment from 01/8/2016 until 10/12/2016 (in 2016, Ms D has not taken her leave for convalescence and recovery after sickness). From 11/12/2016, Ms D returned to her work. On 04/01/2017, due to her unrecovered health, Ms D took her leave for convalescence and recovery in 10 days).

In this case, Ms D has taken her leave for convalescence and recovery in 10 days and this period of time is calculated for the year 2016.

3. Where the employees do not take their leave, they shall not be entitled to the benefits of convalescence and recovery.

Article 8. Dossier for settlement of sickness benefits

1. The dossier for settlement of sickness benefits shall comply with the provisions in Article 100 and 102 of the Law on social insurance.
2. The employees shall submit their dossiers specified in Clause 1 and 2, Article 100 of the Law on social insurance to the employers but not later than 45 days after returning to work.

Section 2: MATERNITY BENEFITS

Article 9. Conditions to enjoy maternity benefits

The conditions to be entitled to maternity benefits of female employee who gives a birth, is a surrogate mother, a mother requesting surrogacy and employee who adopt a child under 06 months of age are specified in Clause 2 and 3, Article 31 of the Law on social insurance; Clause 3, Article 3 and Clause 1, Article 4 of Decree No. 115/2015/ND-CP with the following guidelines:

1. The period of 12 months before giving a birth or adopting a child is defined as follows:
2. a) In case of giving a birth a adopting a child before the 15th date of a month, the month of birth giving or adoption shall not be included in the period of 12 months before birth giving or adoption.
3. b) In case of giving a birth a adopting a child on 15th date onwards of a month and the social insurance is paid for such month, therefore the month of birth giving or adoption shall be included in the period of 12 months before birth giving or adoption. In case the social insurance is not paid for such month, the provisions under Point a of this Clause shall be applied.

Ex 13: Ms A gives a birth on 18/01/2017 and in 01/2017, she participates in social insurance. The period of 12 months before her birth giving is calculated from 02/2016 to 01/2017. If in this period of time, Ms A pays the social insurance from full 06 months or more or from 03 months or more in case

of taking leave for prenatal care as ordered by the competent medical facility, Ms A is entitled to the prescribed maternity benefits.

Ex 14: In 8/2017, Ms B terminates her labor contract and gives a birth on 14/12/2017. The period of 12 months before birth giving is calculated from 12/2016 to 11/2017. If in this period of time, Ms B pays the social insurance for full 06 months or more or 03 months or more in case of taking leave for prenatal care as ordered by the competent medical facility, Ms B is entitled to the prescribed maternity benefits.

2. The conditions to enjoy the one-time subsidys upon birth giving are guided as follows:
3. a) In case only the father participates in the social insurance, the father must pay the social insurance from full 06 month or more within the period of 12 months before birth giving;
4. b) For the husband of the mother requesting surrogacy who must pay the social insurance from full 06 months or more within a period of 12 months to the time of child receipt.
5. During the time of work before the end of maternity leave, the female employees must take leave for pregnancy examination, miscarriage, abortion, stillbirth, pathological abortion, contraceptive measures, they shall be entitled to the maternity benefits as stipulated in Articles 32, 33 and 37 of the Law on social insurance.

Article 10. Period of leave fot the maternity benefits

1. The female employees giving birth shall be entitled to take maternity leave before and after birth giving in accordance with the provisions in Clause 1, Article 34 of the Law on social insurance with the following guidelines:
2. a) During the period of maternity leave before birth giving but the baby is born dead. If the female employees meet the conditions specified in Clause 2, Article 31 of the Law on social insurance, in addition to maternity benefits for the leave to enjoy the maternity benefits before birth giving, the female employees are entitled to take leave to enjoy the benefits specified in Article 33 of the Law on social insurance from the time of stillbirth.

Ex 15: Ms C participates in compulsory social insurance continuously for 03 years and is 8 months pregnant. She takes leave for maternity benefits before leave. One month after her leave, the baby is born dead. Therefore, in addition to the entitlement to maternity benefits until the stillbirth, Ms C is also entitled to take leave for maternity benefits as ordered by the competent medical facility but not more than 50 days including the public holidays, New Year holidays and weekends.

1. b) Where the female employees take leave for maternity benefits before birth giving but the baby is born dead. If the female employees meet the conditions specified in Clause 2, Article 31 of the Law on social insurance, in addition to the maternity benefits for the period of time of leave for maternity benefits before birth giving, the female employees are also entitled to the benefits specified in Clause 3, Article 34 of the Law on social insurance.
2. In case of death of mother after birth giving, the father or the direct nurturer shall enjoy the maternity benefits specified in Clauses 4, 5 and 6, Article 34 of the Law on social insurance and with the following guidelines:
3. a) Where only the mother participates in the social insurance but the mother is dead after giving birth, the father or the direct nurturer shall enjoy the maternity benefits for the remaining period time of the mother. The rate of entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the mother.
4. b) Where both parents participate in the social insurance but the mother is dead after giving a birth, the father can take leave for maternity benefits for the remaining period time of the mother. The rate of

entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the father.

5. c) Where only the mother participates in the social insurance but does not meet the conditions specified in Clause 2 or 3, Article 31 of the Law on social insurance and is dead, the father or the direct nurturer shall enjoy the maternity benefits until the baby is 06 months of age. The rate of entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the mother.
6. d) Where both parents participate in the social insurance but the mother does not meet the conditions specified in Clause 2 or 3, Article 31 of the Law on social insurance and is dead, the father can take leave for maternity benefits until the child is full 06 months of age. The rate of entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the father.
7. dd) Where the father or the direct nurturer specified under Point b and d of this Clause does not take leave, he or she shall enjoy the maternity benefits. The rate of entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the mother.
8. e) Where only the father participates in the social insurance and the mother is dead or encounters risk after giving a birth and not being healthy to take care of the baby as certified by the competent medical facility, the father shall take leave for entitlement of maternity benefits until the child is full 06 months of age. The rate of entitlement to maternity benefits is calculated on the basis of average monthly salary paid for social insurance of the 06 months before leave for maternity benefits of the father.
9. g) For the cases specified under Points b, d and e of this Clause but the father pays the social insurance of less than 06 months, the rate of entitlement to maternity benefits is calculated on the basis of average monthly salary of the months of social insurance payment.
10. Where the female employees have pregnancy of twin or more and when giving a birth, a baby is dead, the mother shall enjoy the maternity benefits for the live baby. The period of time for entitlement to maternity benefits is based on the number of children born, including the dead baby. Where all babies are dead, the period of time for entitlement to maternity benefits shall comply with the provisions in Article 33 of the Law on social insurance for each stillbirth. No overlapping calculation of time of entitlement is done.

Where all babies are born dead, the period of time of leave for entitlement of maternity benefits shall comply with the provisions in Clause 2, Article 34 of the Law on social insurance applicable to the last dead baby.

Article 11. Period of time to enjoy maternity benefits for child adoption

The employees adopting a child under 06 months of age shall be entitled to take leave to enjoy the maternity benefits in accordance with the provisions in Article 36 of the Law on social insurance. Where the employees meet the conditions to enjoy the maternity benefits specified in Clause 2, Article 31 of the Law on social insurance but do not take leave, they shall be entitled to one time benefits specified in Article 38 of the Law on social insurance.

Article 12. Rate of entitlement to maternity benefits

1. The rate of entitlement to maternity benefits shall comply with the provisions in Clause 1, Article 39 of the Law on social insurance with the following guidelines:
2. a) The Average monthly salary paid for social insurance as a basis for entitlement to maternity leave is the average monthly salary paid for social insurance of the last 06 months before leave taking. If the time of social insurance payment is not consecutive, it shall be accrued.

Where the female employees work until the time of birth giving and the month of birth giving or child adoption is included in the period of 12 months prior to birth giving or child adoption, the Average monthly salary paid for social insurance of the last 06 months before taking leave, including the month of birth giving or child adoption.

Ex 16: Ms gives a birth on 16/3/2016 and has a period of time of social assurance payment as follows:

- From 10/2015 to 01/2016 (4 months): paying the social insurance on salary of 5,000,000 dong/ month;
- From 02/2016 to 3/2016 (2 months): paying the social insurance on salary of 6,500,000 dong/ month;

The average monthly salary paid for social insurance of the last 06 months before Ms C takes leave is calculated as follows:

Average monthly salary paid for social insurance of the last 06 months prior to leaving taking	=	$(5,000,000 \times 4) + (6,500,000 \times 2)$
		6
	=	5,500,000 (dong/month)

Therefore, the average monthly salary paid for social insurance of the last 06 months prior to leaving taking as a basis for calculation of Ms C's is 5,500,000/month

Ex 17: Ms D gives a birth on 13/5/2017 (subject to the case of taking leave for prenatal care as ordered by the competent medical facility) and has a period of time of social assurance payment as follows:

- From 5/2014 to 4/2016 (24 months): paying the social insurance on salary of 8,500,000 dong/ month;
- From 5/2016 to 8/2016 (4 months): paying the social insurance on salary of 7,000,000 dong/ month;
- From /2016 to 4/2017 (8 months), taking leave for prenatal care and paying no social insurance.

The average monthly salary paid for social insurance of the last 06 months before Ms D takes leave is calculated as follows:

Average monthly salary paid for social insurance of the last 06 months prior to leaving taking	=	$(7,000,000 \times 4) + (8,500,000 \times 2)$
		6
	=	7,500,000 (dong/month)

Therefore, the average monthly salary paid for social insurance of the last 06 months prior to leaving taking as a basis for calculation of Ms D's is 7,500,000/month

1. b) Where the employees enjoy the maternity benefits in accordance with the provisions in Article 32, 33 and Clauses 2, 4, 5 and 6, Article 34 and 37 of the Law on social insurance right in the first month of participation in social insurance, the rate of entitlement to maternity benefits is calculated on the salary as a basis for social insurance payment of such month.
2. The period of time of leave to enjoy the maternity benefits from 14 working days or more in a month is calculated as the time of social insurance payment in accordance with the provisions in Clause 2, Article 39 of the Law on social insurance with the following guidelines:
3. a) Where the labor contract is expired during the period of time the employees take leave to enjoy the maternity benefits, the period of time to enjoy the maternity benefits from the leave to the expiration of labor contract is calculated as the period of time of social insurance payment. The period of time to enjoy the maternity benefits after the expiration of labor contract shall not be calculated as the period of time of social insurance payment.
4. b) The period of time to enjoy the maternity benefits of the employees who terminates their labor contract, work contract or resign prior to the time of birth giving or adoption of a child under 06 months of age specified in Clause 4, Article 31 of the Law on social insurance shall not be calculated as the period of time of social insurance payment.
5. c) Where the female employees return to work prior to the end of their prescribed maternity leave duration, the period of time to enjoy the maternity benefits from the leave to the time of returning to work prior to the end of their prescribed maternity leave duration is calculated as the period of time of social insurance payment. From the time of returning to work prior to the end of the maternity leave duration, the female employees shall also be entitled to the maternity benefits until the end of duration specified in Clause 1 or 3, Article 34 of the Law on social insurance but the employees and the employers must pay the social insurance and health insurance.
6. d) Where the father or the direct nurturer, the mother and father requesting the surrogacy or the direct nurturer is entitled to the maternity benefits but does not take leave, employees and the employers shall have to pay the social insurance and health insurance.
7. The rate of entitlement to maternity benefits of the employees shall not be adjusted when the Government adjust the increase in base salary and regional minimum salary rate.
8. The period of time of leave to enjoy the maternity benefits is calculated as the period of time of social insurance payment specified in Clause 2 of this Article and is recorded on the basis of salary paid for social insurance of the month prior to the leave to enjoy the maternity benefits. Where during the period of time of leave to enjoy the maternity benefits, the employees receive the pay rise, the social insurance shall be recorded on the basis of the employees' new salary rate from the time of pay rise.
For the employees who are working under heavy, hazardous or dangerous or particularly heavy, hazardous or dangerous occupation or job specified in the list issued by the Ministry of Labour – Invalids and Social Affairs and the Ministry of Health or working in regions with regional allowance coefficient of 0.7 or more take their leave to enjoy their maternity benefits, the period of time of leave to enjoy the maternity leave is calculated as the period of time to work under heavy, hazardous or dangerous or particularly heavy, hazardous or dangerous occupation or job or work in regions with regional allowance coefficient of 0.7 or more

Article 13. Convalescence and recovery after maternity leave

1. The female employees and female employee as surrogate mother shall be entitled to take leave for convalescence and recovery in accordance with the provisions in Article 41 of the Law on social insurance and Point c, Clause 3, Article 3 of Decree No. 115/2015/ND-CP.
2. The female employees are eligible for convalescence and recovery in any year, the period of time of leave to enjoy the convalescence and recovery shall be calculated for such year.

Ex 18: Ms Th is participating in the compulsory social insurance. On 15/12/2016, she returns to her work after a period of time of leave to enjoy her maternity benefits. On 10/01/2017, due to her unrecovered health, she is permitted by her company to take leave for convalescence and recovery in 05 days.

For the case of Ms Th, she is entitled to take leave for convalescence and recovery in 05 days and this period of time is calculated for the year 2016.

Article 14. Dossier for settlement of maternity benefits

1. The dossier for settlement of maternity benefits shall comply with the provisions in Article 101 and 102 of the Law on social insurance and Article 5 of Decree No. 115/2015/ND-CP.
2. The employees shall submit their prescribed dossiers to the employers but not later than 45 days after returning to work.

Where the employees terminate their labor contract, work contract or resign before the time of birth giving, child receipt, child adoption, they should submit their dossier and present their social insurance book to the social insurance body of their residence.

Section 3: RETIREMENT BENEFITS

Article 15. Conditions to enjoy old-age benefits

1. The employees from full 50 years of age or more shall enjoy the old-age benefits when resigning if having the social insurance payment of 20 years or more including full 15 years working in coal pit specified in the Annex issued with this Circular.
2. For the male employees from full 55 to 60 years of age, and female employees from full 50 to 55 years of age who resign their jobs and have the social insurance payment of full 20 years or more in which the total time of working under heavy, hazardous or dangerous or particularly heavy, hazardous or dangerous occupation or job specified in the list issued by the Ministry of Labour – Invalids and Social Affairs and the Ministry of Health or working in regions with regional allowance coefficient of 0.7 or more is full 15 years or more, they shall be entitled to pension.

Ex 19: Mr N has 30 years of social insurance payment, in which from 01/1998 to 12/2007, he works under heavy, hazardous or dangerous occupation or job. From 01/2008 to 3/2016, he is transferred to work at the place with regional allowance coefficient of 0.7 (still works under heavy, hazardous or dangerous occupation or job). Mr N resign in 4/2016 when he is full 57 years of age.

For case of Mr N, he has a total time of working under heavy, hazardous or dangerous occupation or job and the period of time of working at the place with regional allowance coefficient of 0.7 or more is 18 years and 03 months (from 01/1998 to 12/2007 and from 01/2008 to 3/2016). By the time of resignation, Mr N is eligible for pension without having the condition of decrease in working capacity from 61% or more.

3. The conditions to enjoy pension for female employees who work part-time or full-time in communes, wards or town as specified in Clause 3, Article 54 of the Law on social insurance with the following guidelines:
 4. a) The identification of working full-time or part-time in communes, wards or town is based by the time of resignation to enjoy the social insurance benefits;
 5. b) The time of social insurance payment from full 15 to under 20 years is the time of compulsory social insurance payment.

Ex 20: Ms Th has worked from 1/1998 as a primary teacher. In 4/2012, she became a Chairman of Vietnam Women's Union at the communal level. Ms Th is full 55 years of age and shall resign in 4/2016.

For the case of Ms Th, by the time prior or her resignation, she is a full-time official at communal level (Chairman of Vietnam Women's Union at the communal level) and has a period of time of 18 years and 03 months of compulsory social insurance payment. Ms Th is eligible for entitlement to pension as stipulated in Clause 3, Article 54 of the Law on social insurance.

Ex 21: Ms Q works part-time in a commune. By the time of full 55 years of age, Ms Q has 18 years of social insurance payment (including a period of time of 04 years of voluntary social insurance payment).

For the case of Ms Q, she does not have full 15 years of compulsory social insurance payment at the age of full 55 years, therefore she is not entitled to pension as stipulated in the provisions of Clause 3, Article 54 of the Law on social insurance. Ms Q can choose to make one time payment of voluntary social insurance for the missing 02 years to enjoy pension or receive one time social insurance in accordance with regulation.

4. The employees are eligible for pension but the time of compulsory social insurance payment is missing for a maximum of 06 months, the employees can choose to make one-time payment for the number of missing months with the monthly payment equal to the total payment of the employees and employers under the monthly salary rate of social insurance payment before resignation to the pension and death fund for entitlement to pension. The employees shall enjoy their pension in the month eligible for age of pension entitlement and have fully paid the social insurance for the number of missing months.

Ex 22: Mr C was born in 3/1956 and work under normal condition. By the end of 3/2016, Mr C has 19 years and 7 months of social insurance payment. In this case, Mr C can make one-time payment of social insurance for the 05 missing months. In 4/2016, Mr C makes one-time payment for the 05 missing months to the social insurance body. Mr C shall enjoy his pension from 4/2016.

In the above case of Mr C, in 7/2016, he make one-time payment of social insurance for the 05 missing months and is entitled to his pension from 7/2016.

Ex 23: Mr H was born in 3/1963 and has 19 years and 06 months of compulsory social insurance payment; in 3/2016, he is concluded by the medical evaluation Board that his working capacity is reduced by 63%. Therefore, Mr H meets the age condition and reduction level of working capacity to enjoy his pension but still lacks 06 months of compulsory social insurance payment. He can continue to make compulsory social insurance payment for the 06 missing months. The time to enjoy pension of Mr H is from 4/2016.

Article 16. Conditions to enjoy pension upon reduction in working capacity

When resigning, if the employees have full 20 years or more of social insurance payment, they shall enjoy their pension at a lower rate if subject to one of the following cases:

1. Their working capacity is reduced from 61% to 80% and ensure the age conditions according to the following table:

Year of resignation for pension entitlement	Age condition for male employees	Age condition for female employees
2016	Full 51 years of age	Full 46 years of age
2017	Full 52 years of age	Full 47 years of age
2018	Full 53 years of age	Full 48 years of age
2019	Full 54 years of age	Full 49 years of age
From 2020 onwards	Full 55 years of age	Full 50 years of age

2. Their working capacity is reduced from 81% or more and male employees are full 50 years of age, female employees are full 45 years of age.
3. Their working capacity is reduced from 61% or more and have full 15 years or more working under the particularly heavy, hazardous or dangerous occupation or job specified in the list promulgated by the Ministry of Labor, Invalids and Social Affairs and the Ministry of Health.

Article 17. Monthly pension rate

1. The monthly pension rate of the employees meeting the conditions specified in Article 16 of this Circular is calculated in accordance with the provisions in Clause 1 and 2, Article 7 of Decree No. 115/2015/ND-CP and then is reduced by 2% for each year of retirement prior to the prescribed age.
Ex: Ms A is 53 years of age, works under normal conditions. Her working capacity is reduced by 61%. She has 26 years and 04 months of social insurance payment and retires in 06/2016. The percentage of Ms A's pension entitlement is calculated as follows:

– 45% for the first 15 years;

– From the 16th year to the 26th years is 11 years: $11 \times 3\% = 33\%$;

– 04 months is calculated as $\frac{1}{2}$ year: $0.5 \times 3\% = 1.5\%$

– The total of above percentage is $45\% + 33\% + 1.5\% = 79.5\%$ (only calculating up to 75%);

– Ms A retires 02 years prior to the prescribed age of 55, therefore the percentage of calculation of pension is reduced by $2 \times 2\% = 4\%$;

Therefore, the percentage of Ms A's pension entitlement is $75\% - 4\% = 71\%$. In addition, because Ms A's time of social insurance payment is more than the respective number of year by 75% (more than 25 years), she still enjoy the one-time subsidy upon retirement: 1.5 year x 0.5 month of the average monthly salary paid for social insurance.

1. a) Where the retirement age has the odd time up to 06 months, the reduction is 1%, no reduction of percentage if over 06 months due to retirement prior to the age of such year.
Ex 25: Ms K's working capacity is reduced by 61% and she resign to enjoy pension in 01/2019 at the age of 50 years and 01 month. She has 28 years of social insurance payment. The percentage of pension entitlement is calculated as follows:

– 45% for the first 15 years;

– From the 16th year to the 28th years is 13 years: $13 \times 2\% = 26\%$;

– The total of 02 above percentages is: $45\% + 26\% = 71\%$;

– Ms K retires at the age of 50 years and 01 month (retiring 04 years and 11 months prior to the age of 55), therefore the reduction percentage due to retirement prior to the prescribed age is $8\% + 1\% = 9\%$;

Therefore, the percentage of Ms K's monthly pension is $71\% - 9\% = 62\%$.

1. b) The age milestone to calculate the number of years of retirement before the prescribed age as a basis for calculation of reduced percentage of pension entitlement shall comply with the provisions in Clause 3, Article 7 of Decree No. 115/2015/ND-CP.

Ex 26: Mr Q resigns to enjoy pension in 04/2017 at the full age of 49. Mr Q has 27 years of social insurance payment including full 15 years working in coal pit; his working capacity is reduced by 61%. The percentage of Mr Q's pension entitlement is calculated as follows:

– 45% for the first 15 years;

– From the 16th year to the 27th years is 12 years: $12 \times 2\% = 24\%$;

– The total of 02 above percentages is: $45\% + 24\% = 69\%$;

– Mr Q retires 01 year prior to the prescribed age of 50, therefore the reduction percentage due to retirement prior to the prescribed age is 2%.

Therefore, the percentage of Ms K's monthly pension is $69\% - 2\% = 67\%$.

Ex 27: Ms M works under normal conditions. She was born in 1962 as indicated in her dossier, has 25 years of social insurance payment, her working is reduced by 61%. She prepares dossier to request the pension entitlement from 01/3/2016.

The percentage of Ms M's pension entitlement is calculated as follows:

– 45% for the first 15 years;

– From the 16th year to the 25th years is 10 years: $10 \times 3\% = 30\%$;

– The total of 02 above percentages is: $45\% + 30\% = 75\%$;

– Because the dossier indicates Ms M was born in 1962, therefore, take 01/01/1962 as a basis for calculation of year of retirement prior to the prescribed age. Therefore, at the age of pension entitlement, Ms M is 51 years and 01 month of age, therefore the reduction percentage due to retirement prior to the prescribed age is 1%

Therefore, the percentage of Ms A's pension entitlement is $75\% - 1\% = 74\%$.

2. When calculating the percentage of pension entitlement, if the time of social insurance payment has the odd months, then from 01 to 06 months is calculated as a half year; from 07 to 11 months is calculated as 01 year.

Ex 28: Mr G works under normal conditions. His working capacity is reduced by 61%, resigns to enjoy pension in 2018 at the age of 56 years and 07 months of age, has 29 years and 07 months of social insurance payment. The percentage of monthly pension entitlement is calculated as follows:

– The number of years of social insurance payment of Mr G is 29 years and 07 months, the number of odd months of 07 months is calculated as 01 year, therefore the number of years of social insurance payment to calculate his pension entitlement is 30 years.

– 45% for the first 16 years;

– From the 17th year to the 30th years is 14 years: $14 \times 2\% = 28\%$;

– The total of 02 above percentages is: $45\% + 28\% = 73\%$.

– Mr G retires at the age of 56 and 07 months (retires 03 years prior to the prescribed age of 60)

Therefore, the percentage of Mr G's pension entitlement is $73\% - 6\% = 67\%$.

Ex 29: Mr S resigns to enjoy his pension entitlement in 2016 at the age of 51. Mr S has 15 years of working under heavy and hazardous work. His working capacity is reduced by 61% and he has 27 years and 03 months of social insurance payment. The percentage of Mr S's pension entitlement is calculated as follows:

– The number of social insurance payment is 27 years and 03 months. The number of odd month is 03 calculated as 0.5 year. Therefore the number of years of social insurance payment to calculate pension entitlement of Mr S is 27.5 years.

– 45% for the first 15 years;

– From the 16th year to the 27,5th year is 12.5 years: $12,5 \times 2\% = 25\%$;

– The total of 02 above percentages is: $45\% + 25\% = 70\%$.

– Mr S retires 04 years prior to the prescribed age, therefore the percentage of calculation of pension is reduced by 8%;

Therefore, the percentage of Mr S's pension entitlement is $70\% - 8\% = 62\%$.

Article 18. Time for pension entitlement

1. The time to meet the age conditions to enjoy pension is the 1st date of the month succeeding the month of birth of the year the employees are eligible for pension entitlement age. In case the birth month is December, the time for pension entitlement age is the 01st date of January of the year succeeding the year the employees are eligible for pension entitlement age.

Ex 30: Mr A was born on 01/3/1956 and works under normal condition. The time Mr A is eligible for pension entitlement age is 01/4/2016.

Ex 31: Mr M was born on 01/12/1956 and works under normal condition. The time Mr M is eligible for pension entitlement age is 01/01/2017.

2. The time to meet the age conditions to enjoy pension for case of unidentified date and month of birth (only indicated year of birth) is the 1st date of January of the year succeeding the year the employees are eligible for pension entitlement age.

Ex 32: Ms C works under normal condition. Her dossier only indicates her year of birth as 1961. The time Ms C is eligible for pension entitlement age is 01/01/2017.

3. The time to be eligible for pension entitlement age upon the reduction in working capacity for persons who meet the age conditions and the time of social insurance payment is calculated from the 1st date of the month succeeding the month with conclusion of reduction in working capacity according to the cases specified in Article 16 of this Circular.

Ex 33: Ms D was born on 10/5/1965 and has 23 years of compulsory social insurance payment. On 05/7/2016, the medical evaluation Board concludes that Ms D's working capacity is reduced by 61%. The time Ms D is eligible for pension due to reduced working capacity is 01/8/2016.

4. The time to enjoy pension for the employees who are paying the compulsory social insurance or is reserving the time of social insurance payment shall comply with the provisions in clauses 1, 2 and 3, Article 59 of the Law on social insurance.

Where the employers submit dossier late compared with regulation, they must explain in writing stating the reasons and take responsibility before law for the contents of explanation.

5. The time to enjoy pension for cases without original dossier specified in Clause 7, Article 23 of Decree No. 115/2015/ND-CP is the time recorded in the written resolution of the Ministry of Labor – Invalids and Social Affairs.

Article 19. One-time social insurance

1. The one-time social insurance is done under the provisions in Article 60 of the Law on social insurance, the Resolution No. 93/2015/QH13 dated 22/06/2015 of the National Assembly on implementing the policy on entitlement to one-time social insurance for the employees and Article 8 of Decree No. 115/2015/ND-CP.

The average monthly salary for social insurance payment as a basis for calculating the one-time social insurance shall comply with the provisions in Article 62 of the Law on social insurance, Article 9 of Decree No. 115/2015/ND-CP and Article 20 of this Circular. Where the time of social insurance payment under the salary stipulated by the State still misses the number of last years specified in Clause 1, Article 20 of this Circular, the average of monthly salary of the months of social insurance payment.

2. The rate of entitlement to one-time social insurance of the employees having the time of social insurance payment of under 01 year is equal to 22% of the rates of monthly salary of social insurance payment, the maximum rate is equal to 02 months of the average monthly salary of social insurance payment.

3. The rate of entitlement to one-time social insurance for the employees who have both time of voluntary social insurance and time of compulsory social insurance payment excluding the amount of money financed by the State to pay the voluntary social insurance of each period, except for the case specified under Point d, Clause 1, Article 8 of Decree No. 115/2015/ND-CP. The calculation of one-time social insurance is done as the employees are not financed by the state for social insurance payment, then minus the amount financed by the state for compulsory social insurance payment.

The amount financed by the state for compulsory social insurance payment is calculated by the total amount monthly financed by the state paid for compulsory social insurance. The monthly financing rate is calculated by the following formula:

Amount financed by the State for month i	=	0.22	x	Poverty standard in rural area in month i	x	Financing percentage by the state in month i
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4. When calculating the rate of entitlement to one-time social insurance in case the time of social insurance payment has the odd months, then from 01 to 06 months is calculated as a half year; from 07 to 11 months is calculated as 01 year. In case of calculation before 01/01/2014, if the time of social insurance payment has the odd months, such odd months shall be transferred to stage of social insurance payment from 01/01/2014 onwards as a basis for calculation of one-time social insurance.

Ex 34: Mr T has 16 years and 04 months to pay the social insurance (including 10 years and 02 months of social insurance payment before 01/01/2014). Mr T's one-time social insurance is calculated as follows:

- Mr T has 10 years and 02 months of social insurance payment before 2014; the odd 02 months shall be transferred to the stage from 2014. Therefore, the number of months of social insurance payment to calculate Mr T's one-time social insurance as 10 years before 2014 and 06 years and 04 months of social insurance payment for the period from 2014 onwards (calculated as 6.5 years).
- The rate of entitlement to one-time social insurance of Mr T is calculated as follows:

Rate of entitlement to one-time social insurance	=	1.5 months x 10 years + 2 months x 6.5 years	x	Average monthly salary paid for social insurance
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Therefore, the rate of entitlement to one-time social insurance of Mr T is calculated as 28 months of average monthly salary paid for social insurance.

5. The time to calculate the entitlement to one-time social insurance is the time specified in decision of the social insurance body. The adjustment of salary paid for social insurance to calculate the entitlement to one-time social insurance is based on the time specified in the decision of the social insurance body.

Ex 35: Mr V is subject to the social insurance payment under the salary system stipulated by the state from 1996 to the end of 2014. Based on Mr V's request on 20/02/2016, on 01/3/2016, the social insurance body issues the decision on settlement of Mr V's one-time social insurance.

Therefore, Mr V's one-time social insurance is calculated on the base salary at the time of 01/3/2016.

Article 20. Average monthly salary paid for social insurance to calculate the one-time pension and benefits

1. The average monthly salary paid for social insurance of the employees subject to the social insurance payment under the salary system stipulated by the state having the full period of time of social insurance payment under the salary system specified in Clause 1, Article 62 of the Law on social insurance and Clause 1, Article 9 of Decree No. 115/2015/ND-CP guided as follows:

2. a) For the employees starting their social insurance before 01/01/1995:

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 05 years (60 months) before resignation
		60 months

1. b) For the employees starting their social insurance from 01/01/1995 to 31/12/2000:

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 06 years (72 months) before resignation
		72 months

1. c) For the employees starting their social insurance from 01/01/2001 to 31/12/2006:

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 07 years (96 months) before resignation
		96 months

1. d) For the employees starting their social insurance from 01/01/2007 to 31/12/2015

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 10 years (120 months) before resignation
		120 months

1. dd) For the employees starting their social insurance from 01/01/2016 to 31/12/2019”

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 15 years (180 months) before resignation
		180 months

1. e) For the employees starting their social insurance from 01/01/2020 to 31/12/2024:

M_{bqtl}	=	Total monthly salary paid for social insurance of the last 20 years (240 months) before resignation
		240 months

1. g) For the employees starting their social insurance from 01/01/2025 and later:

M_{bqtl}	=	Total monthly salary paid for social insurance of the whole period of time of payment
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		Total months of social insurance payment
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In which:

M_{bqtl} : monthly salary paid for social insurance

The monthly salary paid for social insurance based on scale, grade, rank and position allowances, extra-seniority allowances, vocational seniority allowances (if any). This salary is calculated on the base salary at the time of calculating the average monthly salary paid for social insurance.

- The average monthly salary paid for social insurance for the employees having the full period of time of social insurance payment under the salary system decided by the employers in accordance with the provisions in Clause 2, Article 62 of the Law on social insurance and Clause 2, Article 9 of Decree No. 115/2015/ND-CP with the following guidelines:

		Total monthly salary paid for social insurance of the months of social insurance payment
M_{bqtl}	=	Total months of social insurance payment

In which:

M_{bqtl} : Average monthly salary paid for social insurance

The monthly salary paid for social insurance is the monthly salary paid for social insurance and is adjusted in accordance with the provisions in Clause 2, Article 63 of the Law on social insurance and Clause 2, Article 10 of Decree No. 115/2015/ND-CP.

- The average monthly salary paid for social insurance of the employees who both have the time of social insurance payment subject to the salary system stipulated by the State and have the time of social insurance payment subject to the salary system decided by the employer under Clause 3, Article 62 of the Law on social insurance and Clause 3, Article 9 of Decree No. 115/2015/ND-CP with the following guidelines:

		Total monthly salary paid for social insurance stipulated by the State	+	Total monthly salary paid for social insurance of the months of social insurance payment salary system decided by the employer
M_{bqtl}	=	Total months of social insurance payment		

In which:

- The total monthly salary paid for social insurance under the salary system stipulated by the State is calculated by the product between the total months of social insurance payment under the salary system stipulated by the State and the average monthly salary paid for social insurance. The average monthly salary paid for social insurance is calculated in accordance with the provisions in Clause 1 of this Article.

1. b) Where the employees have 02 stages or more subject to the salary system stipulated by the State is calculated, the total monthly salary paid for social insurance under the salary system stipulated by the State is calculated as stipulated under Point a of this Clause in which the total months of social insurance payment under the salary system stipulated by the State is the total months of social insurance payment under the salary system stipulated by the State of the stages.

Ex 36: Mr Q resigns to enjoy pension at the age of 60. He has 23 years and 09 months of social insurance payment. The development of time of Mr Q's social insurance payment is as follows:

– From 01/1990 to 12/1996 (7 years), he pays the social insurance under the salary system stipulated by the State.

– From 01/1997 to 9/2006 (9 years and 9 months), he pays the social insurance under the salary system decided by his employer.

– From 10/2009 to 9/2016 (7 years), he pays the social insurance under the salary system stipulated by the State.

Mr Q enjoys pension from 10/2016.

Mr Q's total monthly salary under the salary system stipulated by the State is calculated under Point b mentioned above as follows:

– The total months of social insurance payment under the salary system stipulated by the State is 7 years + 7 years =14 years (168 months).

– Mr Q's average monthly salary paid for social insurance under the salary system stipulated by the State is calculated as follows:

		Total monthly salary paid for social insurance of the last 05 years of social insurance payment under the salary system stipulated by the State (from 10/2011 to 9/2016)
M_{bqtl}	=	60 months

– Therefore, Mr Q's total monthly salary paid for social insurance under the salary system stipulated by the State is calculated as 168 months x M_{bqtl}

Ex 37: Mr T resigns to enjoy pension at the full age of 60. He has 22 years of social insurance payment. The development of time of Mr T's social insurance payment is as follows:

– From 01/1996 to 12/2002 (7 years), he pays the social insurance under the salary system stipulated by the State.

– From 01/2003 to 12/2013 (11 years), he pays the social insurance under the salary system decided by his employer.

– From 01/2014 to 12/2017 (4 years), he pays the social insurance under the salary system stipulated by the State.

Mr T shall enjoy his pension from 01/2018.

Mr T's total monthly salary under the salary system stipulated by the State is calculated as follows:

– The total months of social insurance payment under the salary system stipulated by the State is 7 years+ 4 years =11 years (132 months).

– Mr T's average monthly salary paid for social insurance under the salary system stipulated by the State is calculated as follows:

		Total monthly salary paid for social insurance of the last 06 years of social insurance payment under the salary system stipulated by the State (24 months from 01/2001 to 12/2002 equal to 48 months from 01/2014 to 12/2017)
M_{bqtl}	=	72 months

– Therefore, Mr T's total monthly salary paid for social insurance under the salary system stipulated by the State is calculated as 132 months x M_{bqtl}

4. The pension of employees subject to the salary system stipulated by the State who have paid their social insurance insurance including the seniority allowances then shift to another job with or without seniority allowances before retirement shall comply with the provisions in Clause 6, Article 9 of Decree No. 115/2015/ND-CP with the following guidelines:
5. a) Where the employees subject to the salary system stipulated by the State who have paid their social insurance insurance including the seniority allowances then shift to another job without seniority allowances and in the monthly salary paid for social insurance as a basis for calculation of pension, there is no seniority allowance, the average monthly salary is taken as basis for social insurance payment at the time of retirement plus the highest seniority allowances (if enjoyed) based on the time of social insurance payment including the seniority allowances converted under the salary system at the time of retirement as a basis for calculation of pension.

Ex 38: Mr H is the Chief of Ministerial Office, retires and enjoys pension from 01/4/2016. He has 30 years of social insurance payment. Before working as the Chief of Ministerial Office, he was a procurator of the People's Procuracy with 14 years as seniority and his salary coefficient is 5.08. Mr. H has the development of social insurance payment of the last 05 years as follows (assuming that the base salary at the time of 4/2016 is 1.150.000 dong/month).

– From 4/2011 to 3/2014 = 36 months, salary coefficient: 6.2;

1,150,000 dong x 6,2 x 36 months = 256,680,000 dong.

– From 4/2014 to 3/2016 = 24 months, salary coefficient: 6.56:

1.150,000 dong x 6,56 x 24 month = 181,056,000 dong.

– The average monthly salary paid for social insurance of the last 5 years as the basis for calculation of Mr H's pension is:

(256,680,000 dong + 181,056,000 dong)	= 7,295,600 dong/month.
60 months	

– Mr H’s seniority allowances before shifting the Ministry of Labor – Invalids and Social Affairs are added into the average monthly salary as a basis for calculation of pension as follows:

Mr H’s salary coefficient before shifting the Ministry of Labor – Invalids and Social Affairs is 5,08;

$$1,150,000 \text{ dong} \times 5.08 \times 14\% = 817,880 \text{ dong.}$$

– The average monthly salary paid for social insurance as the basis for calculation of pension is:

$$7,295,600 \text{ dong} + 817,880 \text{ dong} = 8,113,480 \text{ dong}$$

– Mr H’s monthly pension is:

$$8,113,480 \text{ dong} \times 75\% = 6.085.110 \text{ dong/month.}$$

1. b) Where the employees subject to the salary system stipulated by the state have paid the social insurance including the seniority allowances then shifted to another job with seniority allowances and in the monthly salary paid for social insurance as a basis for calculation of pension, the seniority allowances are included, the average monthly salary paid for social insurance to calculate the pension shall comply with the provisions in Article 9 of Decree No. 115/2015/ND-CP and Clause 1 of this Article.

Ex 39: Mr M was a former Customs officer and shifted to be a procurator of People’s Procuracy. He resigns to enjoy pension from 01/4/2016. He has 27 years of social insurance payment including 11 years as seniority of teacher and 16 years as seniority of procuracy. Mr M’s development of salary paid for social insurance of the last 5 years is as follows (assuming the base salary in 04/2016 is 1,150,000 dong/month).

– From 4/2011 to 3/2014 = 36 months, salary coefficient: 5.76; seniority: 25%:

$$1,150,000 \text{ dong} \times 5.76 \times 1.25 \times 36 \text{ months} = 298,080,000 \text{ dong}$$

– From 4/2014 to 3/2016 = 24 months, salary coefficient: 6.10, seniority: 27%:

$$1,150,000 \text{ dong} \times 6.10 \times 1.27 \times 24 \text{ months} = 213,817,200 \text{ dong}$$

– The average monthly salary paid for social insurance of the last 5 years as the basis for calculation of Mr M’s pension is:

359,931,600 dong+ 256,365,360 dong	= 8,531.620 dong/month.
60 months	

– Mr M’s monthly pension is

8,531,620 dong/month x 69% = 5,886,818 dong/month.

1. c) Where the employees subject to the salary system stipulated by the state have paid the social insurance including the seniority allowances then shifted to another job without seniority allowances and there is no seniority allowances in the monthly salary paid for social insurance, then the employees shifted to another job with seniority allowances and there is seniority allowances in the monthly salary paid for social insurance or vice versa. In this case, the calculation of pension is based on the last job before retirement (job with or without seniority allowances) in accordance with the provisions under Point a or b of this Clause.
2. d) Where the employees subject to the salary system stipulated by the state have paid the social insurance including the seniority allowances then shifted to another job with or without seniority allowances; upon retirement, in the monthly salary paid for social insurance of the last years to calculate the pension, there is a time of social insurance payment with or without seniority allowances. If the pension rate calculated under Point b of this Clause is lower, the salary paid for social insurance including the preceding seniority allowances corresponding to the number of years specified in Clause 1 of this Article, the monthly salary paid for social insurance is converted to the salary system specified at the time of retirement to calculate the average monthly paid for social insurance.

Ex 40: Mr P was a Customs officer with 27 years as seniority In 4/2013, he shifted to work as a Specialist of the Ministry of Labor – Invalids and Social Affairs. He shall resign to enjoy his retirement benefits from 01/04/2016. He has 30 years of social insurance payment. Mr P’s development of social insurance payment in some last years before retirement is as follows (assuming that the base salary in 4/2016 is 1,150,000 dong/month).

– From 4/2008 to 3/2010 = 24 months, salary coefficient: 6.2; seniority allowances: 24%;

– From 4/2010 to 3/2013 = 36 months, salary coefficient: 6.56; seniority allowances: 27%;

– From 4/2013 to 3/2016 = 36 months, salary coefficient: 6.92; no seniority allowances;

Mr P’s pension calculated by the last years before retirement is lower than compared with the pension calculated by the previous years with seniority allowances. Therefore, the average monthly salary to calculate Mr P’s pension is calculated as follows:

– From 4/2008 to 3/2010 = 24 months, salary coefficient: 6.2; seniority allowances: 24%;

1,150,000 dong x 6.56 x 24 months x 1.24 = 212,188.800 dong.

– From 4/2010 to 3/2013 = 36 months, salary coefficient: 6.56; seniority allowances: 27%;

1,150,000 dong x 6.56 x 36 months x 1.27 = 344.911.680 dong.

– The average monthly salary paid for social insurance as basis for calculation of Mr P’s pension is:

212,188,800 dong + 344,911,680 dong	
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60 months	= 9,285,008 dong/month.
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– Mr P’s monthly pension is:

$$9,285,008 \text{ dong} \times 75\% = 6,963,756 \text{ dong/month.}$$

(If calculating by the number of last years before retirement, Mr P’s pension is 6.455.364 dong/month).

- e) Where the employees do not actually pay the social insurance including the seniority allowances, they shall not be subject to the application of provisions in Clause 6, Article 9 of Decree No. 115/2015/ND-CP and the provisions in this Clause to enjoy their pension.
- The time of social insurance payment of the persons working part-time in communes, wards or towns; the time of social insurance payment according to Decree No. 09/1998/ND-CP dated 23/01/1998 of the Government amending and adding Decree No. 50/CP dated 26/7/1998 of the Government on regulation on benefits of living costs for the officers of communes, wards or towns (referred to as Decree No. 09/1998/ND-CP). The time of work at communal level entitled to social insurance is calculated as the time of social insurance payment under the salary system stipulated by the State as a basis for calculation of average monthly salary paid for social insurance.

Article 21. Benefits of social insurance for persons who are enjoying their monthly pension, benefits of social insurance when such persons go abroad to settle

- The persons who are enjoying their monthly pension, benefits of social insurance go abroad to settle shall receive the one-time subsidys if requesting.
- The one-time subsidy rate for the persons enjoying their pension is calculated as per the time of social insurance in which each year of social insurance payment before 2014 is calculated as 1.5 month of currently enjoyed pension; each year of social insurance payment from 2014 onwards is calculated as 02 months of currently enjoyed pension; then for each month of pension entitlement, the one-time subsidy minus 0.5 month of pension. The lowest level is equal to 03 months of currently enjoyed pension.

Where the persons are enjoying their pension but the time of work is converted to calculate the ratio of pension entitlement, the one-time payment is calculated by their actual time of work.

Ex 41: Ms Th is enjoying her pension. On 01/2017 shall settle down abroad. She has 24 years of social insurance payment (including 02 years of social insurance payment from 2014 onwards); by the time before she goes abroad to settle down, Ms Th has enjoyed her pension for 01 year; her current pension is 4 million dong/month. Ms request the entitlement to one-time subsidy.

Ms Th’s one-time subsidy is calculated as follows:

One-time subsidy rate	=	$(22 \times 1,5 + 2 \times 2) - 12 \times 0.5$	x 4 million dong
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Ms Th’s one-time subsidy rate is 124 million dong

Ex 42: Ms Q has 25 years of social insurance payment and has enjoyed her pension for 10 years. Her currently enjoyed pension is 3.5 million dong/month. In 01/2018, Ms Q shall go abroad to settle and request one-time subsidy.

Ms Q's one-time subsidy is calculated as follows:

One-time subsidy	=	$(25 \times 1.5) - (120 \times 0.5)$	x 3.5 million dong
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One-time subsidy = $- 22,5 \times 3.5$ million dong.

According to the way of calculation of one-time subsidy, Ms Q has enjoyed the excessive amount by the time of social insurance payment. Therefore, Ms Q only enjoys one-time subsidy equal to 03 months of currently enjoyed pension (10.5 million dong).

3. The one-time subsidy rate for the persons who are enjoy their monthly subsidy under the Decree No. 09/1998/ND-CP is calculated as the provisions in Clause 2 of this Article.
4. The one-time subsidy rate for the persons who are enjoying the monthly subsidy of loss of working capacity, work accident, occupational disease, monthly death subsidy, monthly subsidy for rubber workers and monthly subsidy under the Decision No. 91/2000/QD-TTg dated 4/8/2000 of the Prime Minister on subsidy to the persons whose working age at the time of stop of entitlement to monthly subsidy of loss of working capacity (referred to as 91/2000/QD-TTg), the Decision No. 613/QD-TTg dated 06/05/2010 of the Prime Minister on monthly subsidy to the persons having from full 15 to under 20 years of working and their duration of entitlement to subsidy of loss of working capacity is over (referred to as Decision No. 613/QD-TTg) The subsidy is equal to 03 months of currently enjoyed subsidy.

Ex 43: Mr V is the person who is enjoying the monthly subsidy of loss of working capacity with the rate of 2 million dong/month. Mr V go abroad to settle with his children and request to enjoy his one-time subsidy.

Mr V's one-time subsidy rate is calculated by 03 months of currently enjoyed subsidy: 3×2 million dong = 6 million dong.

Article 22. Retirement benefits for the persons having the previous time of voluntary social insurance payment

1. The retirement benefits for the persons having the previous time of voluntary social insurance payment shall comply with the provisions in Article 11 of Decree No. 115/2015/ND-CP and the detailed contents in this Circular.
2. When calculating the average income and the monthly salary paid for social insurance, the monthly income paid for voluntary social insurance is the monthly income paid for voluntary social insurance adjusted on the basis of consumer price index specified in Clause 2, Article 79 of the Law on social insurance.

Where the employees participating the in social insurance of Nghe An farmer can shift to the voluntary social insurance under the Decision No. 41/2009/QD-TTg dated 16/03/2009 of the Prime Minister, the monthly income paid for voluntary social insurance prior to 01/01/2008 is the monthly income paid for voluntary social insurance adjusted according to the adjustment of salary paid for social insurance of the respective year of the persons participating in the compulsory social insurance subject to the salary system decided by the employers.

Article 23. Suspension and continued entitlement to monthly pension and subsidy of social insurance

The suspension and continued entitlement to monthly pension and subsidy of social insurance shall comply with the provisions in Article 64 of the Law on social insurance with the following guidelines:

1. The person whose monthly pension and subsidy of social insurance are suspended due to missing declaration from the Court and such persons shall continue to enjoy their monthly pension and subsidy of social insurance of the months whose monthly pension and subsidy have not yet been received, excluding the interests when the Court invalidates its decision.
2. The persons who are enjoying their monthly pension and subsidy of social insurance but have the interrupted period of time not yet receiving their pension and subsidy shall receive the monthly pension and subsidy of the months whose monthly pension and subsidy have not yet been received, excluding the interests.
3. The persons who are enjoying their monthly pension and subsidy of social insurance but dies during the interrupted period of time not yet receiving their pension and subsidy, in addition to the death benefits, their relatives also receive their pension and subsidy of the months whose pension and subsidy have not yet been received, excluding the interest.
4. The persons who are enjoying their monthly pension or subsidy of social insurance but suspended due to the Court's declaration as missing and then dead, their relatives shall not receive the monthly pension or subsidy of social insurance during the suspension time.

Section 4. DEATH BENEFITS

Article 24. Funeral allowances

1. The Funeral allowance is done under the provisions in Article 66 of the Law on social insurance and Clause 2 and 3, Article 12 of Decree No. 115/2015/ND-CP.

Ex 44: Mr Ch participated in compulsory social insurance for 10 months and died from accident.

In this case, Mr Ch has a period of time of 10 months of compulsory social insurance payment (under 12 months), therefore, the person in charge of funeral shall not receive the funeral benefits. Mr Ch's relatives shall be entitled to the prescribed one-time death benefits.

Ex 45: Ms T participated in the compulsory social insurance but died from disease. Ms T has a period of time of 04 years and 02 months of voluntary social insurance. The period of time of compulsory social insurance is 10 months.

In this case, Ms T has a period of time of 60 months of compulsory social insurance and voluntary social insurance. Therefore, the person in charge of funeral can enjoy the funeral benefits

2. The persons are enjoying the monthly subsidy of work accident or occupational disease without leave and have the period of time of under 12 months of compulsory social insurance or have a total of period of time of compulsory social insurance and voluntary social insurance of under 60 months. When such person die, the person in charge of funeral can enjoy the funeral subsidy specified in Clause 1 of this Article.
3. The persons are enjoying the monthly subsidy of loss of working capacity; the rubber workers are enjoying the monthly subsidy; the persons are enjoying the monthly subsidy under the Decision No. 91/2000/QD-TTg and Decision No. 613/QD-TTg; the persons are enjoying the monthly subsidy under the Decision No. 09/1998/ND-CP. When such person die, the person in charge of funeral can enjoy the funeral subsidy equal to 10 months of base salary.

Article 25. Cases of monthly death subsidy

1. The cases of monthly death subsidy shall comply with the provisions in Article 67 of the Law on social insurance and Clauses 4 and 5, Article 12 of Decree No. 115/2015/ND-CP.

2. For the employees who have the time of social insurance payment of under one year (including the employees reserving the time of social insurance payment) lack no more than 06 months but die. If they have relatives eligible for entitlement of monthly death benefits, such relatives can choose to continue the one-time payment for the number of missing month in the retirement and death fund with the monthly payment rate equal to 22% of monthly salary paid for social insurance of the employees before they die (or before they resign for the employees who are reserving the time of social insurance payment) for settlement of monthly death subsidy. If the relatives of the employees do not pay for the number of missing months, they shall receive the one-time death subsidy.
3. The persons are enjoying the monthly subsidy of loss of working capacity, the persons are enjoying monthly subsidy under Decree No. 09/1998/ND-CP and when they die, if their relatives meet the conditions specified in Clause 2 and 3, Article 67 of the Law on social insurance, they shall enjoy the monthly death subsidy.
4. Within the time limit specified in Clause 4, Article 67 of the Law on social insurance, the employees' relatives can go to be examined their reduction in working capacity as a basis for settlement of monthly death subsidy, except that the employees' relatives whose working capacity are reduced from 81 % or more as concluded by the competent organization or they are issued with certificate of particularly heavy disability.

Article 26. Monthly death subsidy rate

1. The monthly death subsidy rate shall comply with the provisions in Article 68 of the Law on social insurance.
2. In case the relatives do not have the direct nurturers, the monthly death subsidy rate is equal to 70% of base salary.

Ex 46: Ms Tr has 20 years of compulsory social insurance payment. She has a child of 5 years of age. Her husband died in an accident unfortunately. In this case, Ms Tr's child is entitled to the monthly death subsidy equal to 70% of base salary.

Ex 47: Mr P is participating in compulsory social insurance but died in a work accident. His wife is at the age of 56 (she has no income source). They have a child of 13 years of age. The monthly death subsidy for Mr P's relatives is settled as follows:

– Mr P's child is entitled to the monthly death subsidy equal to 50% of base salary;

– Mr P's wife is entitled to the monthly death subsidy equal to 70% of base salary until the child is full 18 years of age, then enjoys the monthly death subsidy equal to 50% of base salary.

Ex 48: Mr V is the only child in his family. His mother died and his father is 62 years of age (she has no income source). Mr V is participating in the compulsory social insurance and died from a work accident.

In this case, Mr V's father is entitled to the monthly death subsidy equal to 70% of base salary.

Ex 49: Ms K is 57 years of age (she has no income source). Her husband died. They have an only daughter who is married (currently died). Ms K's son-in-law has 16 years of compulsory social insurance payment and died in an accident.

In this case, Ms K is entitled to the monthly death subsidy equal to 70% of base salary.

Ex 50: The married couple of Ms T are participating in compulsory social insurance. They have an only child of 06 years of age. Ms T and her husband died from work accident. Therefore, their child shall enjoy 02 times of monthly death subsidy (equal to 70% of base salary).

Article 27. One-time death subsidy rate

1. The one-time death subsidy rate shall comply with the provisions in Article 70 of the Law on social insurance and Clause 6, Article 12 of Decree No. 115/2015/ND-CP.

The persons are enjoying the monthly subsidy under Decree No. 09/1998/ND-CP. When they die without relative who meet the conditions specified in Clause 2 and 3, Article 67 of the Law on social insurance, their relatives shall be settled according to the provisions in Clause 2, Article 70 of the Law on social insurance.

2. For the employees who have resigned to enjoy the one-time social insurance and is enjoying the monthly subsidy of work accident or occupational disease with the reduction rate of working capacity under 61%; the rubber workers are enjoying the monthly subsidy; the persons are enjoying the monthly subsidy under Decision No. 91/2000/QD-TTg, Decision No. 613/QD-TTg and when such persons die, their relatives shall be entitled to the one-time death subsidy equal to 03 months of subsidy the employees are enjoying before they die.
3. For the employees who have resigned to enjoy the one-time social insurance and is enjoying the monthly subsidy of work accident or occupational disease with the reduction rate of working capacity under 61%; the persons are enjoying the monthly subsidy of loss of working capacity and when such persons die, if they do not have their relatives to enjoy the monthly subsidy as stipulated in Clause 2 and 3, Article 67 of the Law on social insurance, their relatives shall enjoy the one-time death subsidy equal to 03 months of subsidy the employees are enjoying before they die.
4. When calculating the one-time death subsidy for the persons who are paying the social insurance or are reserving the time of social insurance payment but die and the time of social insurance payment has the odd months. In this case, from 01 to 06 months is calculated as a half year, from 07 -11 months is calculated as 01 year.

In case of calculation prior to 01/01/2014. If the time of social insurance payment has the odd months, such odd months are transferred to the period from 01/01/2014 onwards as a basis for calculation of one-time death subsidy.

Ex 51: Mr T died from disease. He has a period of time of social insurance payment from 10/2005 to 3/2017. Mr T has the average monthly salary paid for social insurance of 5,000,000 dong/month.

– Mr T has 08 years and 03 months of social insurance payment in the period before 01/01/2014 and 03 years and 03 months of social insurance payment in the period from 01/01/2014 onwards.

– The rate of one-time death subsidy to Mr T's relatives is calculated as follows (08 years of payment prior to 2014 and 03 years and 06 months of payment from 2014 onwards):

$$((8 \times 1.5) + (3.5 \times 2)) \times 5.000.000 \text{ dong} = 95,000,000 \text{ dong.}$$

Chapter III

SOCIAL INSURANCE FUND

Article 28. Suspension of payment to the pension and death fund

1. The suspension of payment to the pension and death fund shall comply with the provisions in Clause 1, Article 88 of the Law on social insurance, the Clauses 1, 2, 3 and 4, Article 16 of Decree No. 115/2015/ND-CP.

2. The authority, order and procedures for identifying the number of employees who participate in the social insurance and temporarily resigns and the value of damaged properties specified in Clause 2, Article 16 of Decree No. 115/2015/ND-CP as follows:

3. a) The authority to identify the number of employees who participate in social insurance and temporarily resign for the bodies, units, organizations and enterprises under the management of local People's Committee is done by the local bodies of Labor – Invalids and Social Affairs and by the Ministries and sectors for the bodies, units, organizations and enterprises under the management of Ministries, sectors of central Government. The number of employees who participate in social insurance and temporarily resign is calculated in comparison with the total employees present before the suspended business and production.

The authority to identify the value of damaged properties for the bodies, units, organizations and enterprises under the management of local People's Committee is done by the local financial bodies and by the financial bodies of the Ministries, sectors or the Ministry of Finance for the bodies, units, organizations and enterprises under the management of Ministries, sectors of central Government. The value of damaged properties is calculated in comparison with the value of properties based on the last property statistics report before the time of damage.

1. b) The employers specified under Point a, Clause 2, Article 16 of Decree No. 115/2015/ND-CP should submit a written request enclosed with the list of employees at the time before the suspended business and production and at the time of request and the list of employees who participate in the social insurance and temporarily resign.

The employers specified under Point b, Clause 2, Article 16 of Decree No. 115/2015/ND-CP should submit a written request enclosed with the last property statistics report before the time of damage; the record of damaged property statistics by natural disaster, fire, epidemics and crop failure.

1. c) Within 15 working days after receiving the request from the employers, the body specified under Point a of this Clause shall review, determine and give a written reply to the employers.

2. The employers must ensure the conditions specified in Clauses 1, 2 and 3, Article 16 of Decree No. 115/2015/ND-CP and request in writing the temporary stop of payment to the retirement and death fund enclosed with document identifying the number of employees who participate in the social insurance and temporarily resign or the document identifying the value of damaged properties to be submitted to the social insurance body.

3. Within 10 working days after receiving the employer's dossier, the social insurance body shall deal with the temporary stop of payment to the retirement and death fund or reply in writing stating the reasons in case of disapproval.

The time of temporary stop of payment to the retirement and death fund is calculated from the month the employers request in writing.

Article 29. Temporary stop of payment to the social insurance fund

1. The temporary stop of payment to the social insurance fund for the employees who are participating in the compulsory social insurance but is temporarily detained shall comply with the provisions in Clause 5, Article 16 of Decree No. 115/2015/ND-CP.

2. If the employees whose work is temporarily suspended, the employers and the employees can stop the social insurance payment.

When the time limit for work suspension is over, if the employees receive adequate salary for the time of work suspension, the employees and the employers shall make compensation payment of social insurance for the time of suspended work. The amount of compensation payment has no interest due to late payment in accordance with the provisions in Clause 3, Article 122 of the Law on social insurance.

Article 30. Monthly salary paid for compulsory social insurance

The monthly salary paid for compulsory social insurance for the employees who pay the social insurance under the salary system decided by the employers is stipulated as follows:

1. From 01/01/2016 to 31/12/2017, the monthly salary paid for the social insurance is the salary rate and salary allowances as stipulated in Clause 1 and Point a, Clause 2, Article 4 of Circular No. 47/2015/TT-BLDTBXH dated 16/11/2015 of the Ministry of Labor – Invalids and Social Affairs guiding the implementation of some articles on labor contract, labor discipline and material responsibility of Decree No. 05/2015/ND-CP dated 12/01/2015 of the Government detailing and guiding the implementation of some contents of the Labor Code (referred to as Circular No. 47/2015/TT-BLDTBXH).
The salary allowances specified under Point a, Clause 2, Article 4 of Circular No. 47/2015/TT-BLDTBXH are the ones to offset the factors of working conditions, the complexity of work, activity conditions, level of labor attraction for which the agreed salary in labor contract is not calculated or incompletely calculated such as allowances of position, title, responsibility, heaviness, hazardousness, dangerousness, seniority, region, mobility, attraction and the like.
2. From 01/01/2018 onwards, the monthly salary paid for social insurance is the salary rate and salary allowances as stipulated in Clause 1 of this Article and other additional payments as stipulated under Point a, Clause 3, Article 4 of Circular No. 47/2015/TT-BLDTBXH.
3. The monthly salary paid for compulsory social insurance does not include the other benefits and welfare such as bonus as stipulated in Article 103 of the Labor Code, initiative bonus, meals between shifts, gasoline, telephone, travel, accommodation and child care allowances; assistance upon the death of employees' relatives, the marriage of employees' relatives, employees' birthday, subsidy to the employees in difficult situation in case of work accident, occupational disease and other allowances and assistance recorded in separate items in the labor contract in accordance with the provisions of Clause 11, Article 4 of Decree No. 05/2015/ND-CP dated 12/01/2015 of the Government detailing and guiding the implementation of some contents of the Labor Code.
4. The monthly salary paid for social insurance for the enterprise manager enjoying salary specified under Point dd, Clause 1, Article 2 of Decree No. 115/2015/ND-CP is the salary decided by the enterprises, except for the full-time manager in one-member limited liability companies owned by the state.
The monthly salary paid for social insurance for the manager and operator of cooperatives enjoying salary specified under Point dd, Clause 1, Article 2 of Decree No. 115/2015/ND-CP is the salary decided by the cooperative member meeting.
5. The monthly salary paid for social insurance for the part-time representatives of state capital in the economic groups and state corporations and companies after equitization, limited liability companies with two members or more (referred to as groups, corporations, companies) is the salary under the salary system of bodys or organizations where such representatives are working before being appointed as representative of state capital.

The monthly salary paid for social insurance for the full-time representatives of state capital in the economic groups and state corporations and companies is the salary under the salary system decided by such groups, corporations and companies.

6. During the time the employees stop working in accordance with regulations of law on labor but still enjoy their salary, the employees and employers shall make the compulsory social insurance payment under the salary rate the employees enjoy during the time of work stop.

Chapter IV

TRANSITIONAL PROVISIONS

Article 31. Regional allowances to the persons entitled to social insurance

1. The regional allowances to the persons entitled to social insurance shall comply with the provisions in Article 21 of Decree No. 115/2015/ND-CP.

Where prior to 01/01/1995, the employees work in the place with regional allowances and from 01/01/2015 onwards, the employees pay the social insurance with the regional allowances excluded and when resigning, they are eligible for entitlement to one-time pension or social insurance or when they die from 01/01/2016, they shall receive the one-time subsidy as stipulated in Article 21 of Decree No. 115/2015/ND-CP.

2. The calculation of one-time subsidy for cases specified under Point a, Clause 2, Article 21 of Decree No. 115/2015/ND-CP is as follows:
3. a) The one-time subsidy to the persons who enjoy their one-time pension or social insurance or when the employees' relatives die is calculated as follows:

$$M = (H_i \times T_j \times 15\%) \times L_{\min}$$

In which:

M: Rate of one-time subsidy for the time of social insurance payment including the regional allowances;

H_i : Regional allowance coefficient i at the place where the employees are paying social insurance. This coefficient is identified in accordance with the provisions in Clause 3, Article 21 of Decree No. 115/2015/ND-CP.

For time of work prior to 01/01/1995, make calculation as per the regional allowance coefficient specified in the Joint Circular No. 11/2005 / TTLT BNV-BTC-CEM BLDTBXH dated 05/01/2005 of the Ministry of Interior, Ministry of Labour – Invalids and Social Affairs, Ministry of Finance and the Committee for Ethnic Minorities.

T_j : Number of months of social insurance payment into the social insurance fund including regional allowance coefficient H_i ;

15%: Percentage of social insurance payment into the retirement and death fund based on the employees' monthly salary paid for social insurance.

L_{\min} : Base salary in the month the employees start enjoying their one-time pension or social insurance or the month when the employees die.

Ex 52: Mr A resigns and enjoys his pension in 3/2016. He has the previous time of social insurance payment including the regional allowances as follows:

Time of social insurance payment including the regional allowances (T _j)	Regional allowance coefficient where the employees participate in social insurance (H _i)
– From 01/1998 to 12/1999 (24 months)	0.5
– From 01/2000 to 12/2005 (72 months)	0.7

The base salary at the time of 3/2016 is 1,150,000 dong.

The one-time subsidy to Mr A is calculated as follows:

$$\{(0,5 \times 24 \times 15\%) + (0.7 \times 72 \times 15\%)\} \times 1,150,000 = 10,764,000 \text{ dong}$$

1. b) Where the employees specified under Point a, Clause 2, Article 21 of Decree No. 115/2015/ND-CP have the time of being non-commissioned officers, soldiers of people's army and people's public security and enjoy their rank allowances, the rate of one-time subsidy for the time of social insurance payment including the regional allowances for such period of time is calculated as follows:

$$N = (0,4 \times H_i \times T_j \times 15\%) \times L_{\min}$$

In which:

N: Rate of one-time subsidy for the time of being non-commissioned officers, soldiers of people's army and people's public security who pay social insurance including the regional allowances;

H_i: Allowance coefficient in the region where the non-commissioned officers, soldiers of people's army and people's public security pay the social insurance subject to the entitlement of rank allowances.

T_j: The number of months of social insurance payment into the social insurance fund including the regional allowances of coefficient H_i for the period of time of being non-commissioned officers, soldiers of people's army and people's public security;

0,4: Allowance coefficient of private rank;

L_{min}: Base salary of the month of starting the entitlement of one-time pension or social insurance or month of employee's death.

Article 32. Benefits for persons who are enjoying their sickness subsidy due to disease with required long-term treatment before 01/01/2016

The employees who take leave due to disease included in the List of diseases with required long-term treatment issued by the Ministry of Health to enjoy their sickness benefits before 01/01/2016 and from 01/01/2016 are still enjoying their sickness benefits can continue to follow their sickness benefits without control of period of entitlement to subsidy as stipulated under Point b, Clause 2, Article 26 of the Law on social insurance.

Where the employees are enjoying their sickness subsidy and have the period of time of social insurance payment under 15 years, the entitlement rate shall not be adjusted as stipulated under Point c, Clause 2, Article 28 of the Law on social insurance.

Ex 53: Ms S has 02 years of compulsory social insurance payment and take leave to enjoy her sickness leave due to disease included in the List of diseases with required long-term treatment from 01/01/2013 to 01/01/2016 she is still enjoying her sickness subsidy and is under treatment.

Ms S is permitted to enjoy her sickness benefits without control of maximum period of entitlement equal to the period of time of social insurance payment as stipulated under Point b, Clause 2, Article 26 of the Law on social insurance, but the rate of entitlement to sickness subsidy shall not be adjusted.

Article 33. Calculating the work time for servicemen, people's policeman who were demobilized or resigned before 01/01/1995 and the employees who had a time working as communal-level officials and were appointed or recruited into people's army, people's public security or working in the state bodies, units or enterprises, political organizations, political – social organizations before 01/01/1998.

1. Calculating the work time for servicemen, people's policeman who were demobilized or resigned before 01/01/1995.

2. a) Calculating the work time for servicemen, people's policeman who were demobilized or resigned before 01/01/1995 to calculate the entitlement to social insurance shall comply with the provisions in Clause 2, Article 23 of Decree No. 115/2015/ND-CP with the following guidelines:

The servicemen and people's policemen are sent abroad to work and are demobilized to localities before 15/12/1993 when return home, then participate in the compulsory social insurance without entitlement to subsidy benefits according to the documents specified under Clause 2, Article 23 of Decree No. 115/2015/ND-CP, the working time before going abroad to work shall be added with the working time with social insurance payment later to calculate the entitlement to social insurance; if the resignation subsidy or oen-time subsidy has not been settled for the time to abroad to work, the entitlement to social insurance shall be calculated.

1. b) The servicemen, people's policeman who were demobilized or resigned before 15/12/1993 and participated in the voluntary social insurance and then compulsory social insurance shall also be entitled to the provisions in Clause 2, Article 23 of Decree No. 115/2015/ND-CP to calculate the entitlement to social insurance.

2. The employees who had the time to assume the titles (including other titles of approved regular personnel under the People's Committee) subject to the social insurance payment in accordance with the provisions in Decree No. 09/1998/ND-CP but were appointed or recruited into the people's army, people's public security or worked in the state bodies, units or enterprises, political organizations, political – social organizations before 01/01/1998. This period of time shall be calculated as the time of social insurance payment for addition with the period of time of social insurance payment after being mobilized or recruited to calculate the entitlement to social insurance.

During the time to assume the above titles, such employees were sent to study the professional skills or politics and continued to hold such titles or were appointed or recruited immediately into the people's army, people's public security or worked in the state bodies, units or enterprises, political organizations, political – social organizations after finishing the course, the period of time of study is calculated for entitlement to social insurance.

During the time to assume the above titles, if there is a period of time of discontinued holding of such titles not exceeding 12 months, then the previous working time shall be added with the later working time to calculate the entitlement to social insurance, except for the interruption time.

Article 34. Calculating the working time for the employees working in state sector resign to wait for another job from 01/11/1987 to before 01/01/1995

1. The employees working in state sector resign to wait for another job from 01/11/1987 to before 01/01/1995 because the enterprise, body or organization does not arrange work for them or has not settled their one-time resignation subsidy or social insurance and by the time of 31/12/1994, their names are still included in the list of employees of such unit. Their working time before resignation for another job shall be calculated for entitlement of social insurance.
2. The dossier for calculation of working time before resignation includes:
3. a) The employee's declaration of participation in social insurance.
4. b) The employee's original résumé and additional résumé (if any), receipt decision, labor contract and other relevant papers such as: salary scale rise decision, appointment decision or work transfer decision, demobilization decision, industry transfer decision, salary stop payment certificate.
5. c) The list of the units with the employees' names by 31/12/1994 or other papers determining the employees' names are included in the list of the units by 31/12/1994.
6. d) Resignation decision to wait for work. In case of no such decision, there must be a written certification of the head of unit at the time of preparation for dossier to request the issue of social insurance book to ensure the employees' names are included in the list of the units by the time of resignation decision to wait for work and their one-time resignation subsidy or social insurance has not been settled.

Where such units are dissolved, their direct superior management body shall certify this.

3. Order and time limit for resolution:
4. a) The employees and the employers should complete the dossier specified in Clause 2 of this Article and send it to the social insurance body;
5. b) Within 15 working days after receiving dossier from the employers, the social insurance body has to deal with it and give a written reply stating the reasons in case of unsettlement.

Article 35. Calculating the working time for the employers going abroad to work before 01/01/1995

Calculating the working time for the employers going abroad to work before 01/01/1995 to calculate the entitlement to retirement and death benefits is specified in Clause 4 and 5, Article 23 of Decree No. 115/2015/ND-CP with the following guidelines:

1. The time to work or study abroad within permitted duration, including:
2. a) The actual time to work or study within the duration specified in the decision of the units which appoint their employees to work or study abroad, including the extended time permitted by the sending unit.
3. b) Where a person has a lot of time going abroad to work or study, the duration of times of going abroad shall be added into the working time in order to calculate the retirement or death benefits.
4. c) The employees who are working in the country and are sent abroad to improve their working skills and then shifted to work under the Agreement of the Government, their time to improve their working skills is added to enjoy the retirement or death benefits.
5. The average monthly salary paid for social insurance
6. a) The average monthly salary paid for social insurance for calculation of one-time pension or subsidy upon retirement, one-time social insurance and death subsidy of the persons specified in Clause 4 and

5, Article 23 of Decree No. 115/2015/ND-CP is calculated under the provisions in Article 62 of the Law on social insurance, Article 9 of Decree No. 115/2015/ND-CP and Article 20 of this Circular.

7. b) In case the employees had the working time in the army or people's public security and then went abroad to work and when returning home, they shifted to work in the state bodies, units or enterprises subject to addition of seniority allowances in their pension, the seniority allowances of army or people's public security which are calculated on the basis of salary rate of non-commissioned officers, professional servicemen of people's army, officers and non-commissioned officers of people's public security by the time before going abroad to work are converted according to the salary system specified by the time of retirement as a basis for calculation of pension.

8. Dossier for calculation of working time

3.1. The dossier of the persons going abroad to work with definite time under the Agreement of the Government and persons working as team leaders, interpreters and regional cadres receiving salary from foreign country, includes:

1995. a) The original résumé and additional résumé (if any), original papers related to the working time and salary of the employees before they went abroad to work; decision on back-to-work acceptance in case the employees returned home and continued their work before 01/01/1995. In case of no decision on back-to-work acceptance, it can be replaced with the résumé declared by the employees when being accepted to work again or the résumé declared by the employees with the certification of the receiving units.

1996. b) The original of "Notice of transfer or payment" "Decision on transfer or payment" issued by the *Department of International Cooperation on Labor (now the Department of Overseas Labour)*. Where the employees no longer have the original of "Notice of transfer or payment" "Decision on transfer or payment", they must have the Certification of working time for settlement of social insurance benefits from the *Department of Overseas Labour based on the employees' request (refer to the Form 01 and 02 attached to this Circular)*.

1. c) The certification of unsettlement of resignation subsidy or one-time subsidy (or one-time subsidy, demobilization subsidy in case of being servicemen or people's policemen who demobilized or resigned from 15/12/1993 to 31/12/1994) after returning home from the bodies or units directly managing the employees before they go abroad to work with definite time. If such bodies or units are dissolved, their direct superior management unit shall make certification.

2. d) Request for calculation of working time to enjoy the retirement and death benefits for the employees who have resigned.

3.2. The dossier of the employees going abroad to work in the form of direct cooperation between the Ministries and localities of our Government with the foreign economic organizations includes:

3. a) The dossier specified under Item a, c and d, Point 3.1, Clause 3 of this Article;

4. b) The original of Decision on sending to work abroad with definite time or the copy of Decision where the employees are sent to work abroad with a common Decision for many persons.

Where the employees no longer have such Decision, they can present in stead the copy of Decision with certification from the Ministry in charge of the employees going abroad to work in the form of cooperation sent by the Ministry or the certification from the local Department of Labor – Invalids and Social Affairs for the employees sent by localities.

Where the employees do not have Decision on sending abroad for work, study or intership with definite time, they must have a written certification of the head of sending body or unit specifying the time the employees were sent abroad for work, study or intership with definite time and the head of such body or unit must take responsibility before law for the certified contents. Where the sending body or unit

no longer operates, the direct superior body shall make certification and take responsibility before law for the certified contents.

3.3. The dossier of employees going abroad for study or internship includes:

3. a) The dossier specified under Item a, c and d, Point 3.1, Clause 3 of this Article;
4. b) The original of Decision on sending abroad for study or internship with definite time or the copy of Decision where the employees are sent abroad for study or internship with a common Decision for many persons.

Where the employees no longer have such Decision, they can present in stead the copy of Decision with certification from the sending unit.

Where the employees do not have Decision on sending abroad for study or internship with definite time, they must have a written certification of the head of sending body or unit specifying the time the employees were sent abroad for work, study or internship with definite time and the head of such body or unit must take responsibility before law for the certified contents. Where the sending body or unit no longer operates, the direct superior body shall make certification and take responsibility before law for the certified contents.

3.4. The dossier of the employees going abroad to work as specialist under the Agreement of the Government includes:

3. a) The dossier specified under Item a, c and d, Point 3.1, Clause 3 of this Article;
4. b) The original of Decision on sending abroad to work as specialist or the copy of Decision where the employees are sent abroad to work as specialists with a common Decision for many persons.

Where the employees no longer have such Decision, they can present in stead the copy of Decision with certification from the sending unit.

Where the employees do not have Decision on sending abroad for study or internship with definite time, they must have a written certification of the head of sending body or unit specifying the time the employees were sent abroad for work, study or internship with definite time and the head of such body or unit must take responsibility before law for the certified contents. Where the sending body or unit no longer operates, the direct superior body shall make certification and take responsibility before law for the certified contents.

1. c) The Certification of specialist managing body on specialist's fulfillment of contribution obligations to the state budget and social insurance payment in accordance with the regulations of state during the time they work abroad.
2. Responsibility for implementation of the employees, the employers and the social insurance bodies:
 - 4.1. Where the employees are resigning:

1. a) The employees shall submit their dossiers specified in Clause 3 of this Article to the last managing unit where the employees worked. Where such unit has dissolved, the employees shall submit their dossier to the direct superior managing unit.
2. b) The employees' last managing unit shall receive the employees' dossiers and transfer them with the written request to the social insurance body to which the unit pays the social insurance.

3. c) The social insurance body shall receive the dossiers and settle the benefits to the employees who meet the conditions to enjoy their retirement benefits with a time limit specified in Clause 4, Article 110 of the Law on social insurance; issue the social insurance book to the employees who have not been issued yet within a time limit specified in Clause 3, Article 99 of the Law on social insurance; additionally record the working time of the employees who have been issued with the social insurance book within 15 working days after fully receiving the prescribed dossier. In case of unsettlement, the social insurance body shall reply in writing and state the reasons.

4.2. Where the employees are paying the social insurance:

1. a) The employees must add their dossier specified in Clause 3 of this Article to the employing unit upon requirement.
2. b) The employing unit shall transfer the employees' dossiers with the written request to the social insurance body to which it pays the social insurance.
3. c) The social insurance body shall receive the dossiers and settle the benefits to the employees as stipulated under Item c, Point 4.1 of this Clause.

4.3. Where the employees die after they return home but their relatives have not enjoyed the death benefits:

1. a) The employees' relatives submit the dossiers as stipulated in Clause 3 of this Article enclosed with the employees' social insurance books (if issued), Certificate of death or Certificate of death and the Declaration of the employees' relatives under the form stipulated by the social insurance body enclosed with the request for settlement of death benefits to the employee's last managing unit (under the Form No. 03 issued with this Circular).
2. b) The employee's last managing unit shall receive and provide instructions to the employee's relatives on completion of dossier and transfer it to the social insurance body where the unit pays the social insurance enclosed with the official letter for settlement of benefits.
3. c) The social insurance body shall receive the dossier and settle the death benefits to the employee's relatives within a time limit specified in Clause 3, Article 112 of the Law on social insurance. In case of unsettlement, the social insurance body shall reply in writing stating the reasons.

Article 36. Rise of salary grade as a basis for calculation of pension for the employees who have the time to work as specialist abroad and return home within a prescribed time limit

The persons who have the time to work as specialists abroad and return home within a prescribed time limit and meet the conditions for rise of salary grade as a basis for calculation of pension as stipulated in Circular No. 02/LDTBXH-TT dated 11/02/1998 of the Ministry of Labor – Invalids and Social Affairs (referred to as 02/LDTBXH-TT), the settlement of rise of salary grade to calculate the pension shall comply with the following provisions:

1. Where the last salary grade in the scale or title has not been arranged yet, it shall be raised to a higher salary grade in the scale or title under the regulation on regular raise of salary grade.
2. Where the last salary grade in the scale or title has been arranged or entitlement to extra-seniority allowances is settled, the extra-seniority allowances is calculated in accordance with the provisions in Circular No. 04/2005/TT-BNV dated 05/01/2005 of the Ministry of Home Affairs guiding the implementation of benefits of extra-seniority allowances for cadres, public servants and officers.

Ex 54: Mr H was a main lecturer of University C, retired in 6/2008. Before retiring, his salary was 8/8 grade, scale of main lecturer, salary coefficient 6.78. The time to calculate Mr H's salary rise under Circular No. 02/LDTBXH-TT is 4 years and 7 month. Therefore, Mr H's extra-seniority allowances are calculated by 5% for the first 03 years and 2% for the remaining 1 year and 7 months. Mr H's salary coefficient after being adjusted is 6.78 plus 7% of extra-seniority allowances.

Mr H can take his salary coefficient 6.78 plus 7% of extra-seniority allowances to calculate the average salary paid for social insurance in the last 03 years and take the salary coefficient 6.78 plus 5% of extra-seniority allowances to calculate the average salary paid for social insurance during the remaining 02 years as a basis for calculating the one-time pension or subsidy upon their retirement.

Ex 55: Ms K was a doctor of Hospital T, retired in 02/2016. Before his retirement, her salary was 9/9, grade, scale of doctor, salary coefficient 4.98 plus 5% of extra-seniority allowances. The time to calculate Mr H's salary rise under Circular No. 02/LDTBXH-TT is 3 years and 2 month. Therefore, Ms K's extra-seniority allowances are additionally calculated by 3% for 03 years 02 months. Ms K's salary coefficient after being adjusted is 4.98 plus 8% of extra-seniority allowances.

Ms K can take her salary coefficient 6.78 plus 7% of extra-seniority allowances to calculate the average salary paid for social insurance in the last 03 years and take the salary coefficient 4.98 plus 5% of extra-seniority allowances to calculate the average salary paid for social insurance during the remaining 02 years as a basis for calculating the one-time pension or subsidy upon their retirement.

Article 37. Benefits to the employees who are enjoying the monthly subsidy and have had the time of social insurance payment but not yet calculated for entitlement to social insurance

1. The employees meet the conditions to enjoy the monthly subsidy under the Decision No. 91/2000/QD-TTg and Decision No. 613/QD-TTg and have the time of social insurance payment (excluding the working time whose subsidy of loss of working capacity has been calculated) specified in Article 24 of Decree No. 115/2015/ND-CP with the following guidelines:
2. a) The employees who have the time of social insurance payment and meet the conditions to enjoy their pension shall be entitled to one benefit with higher entitlement. Where the pension rate is higher, they shall enjoy their pension and stop enjoying their monthly subsidy from the month of pension entitlement.

Where the monthly subsidy rate under the Decision No. 91/2000/QD-TTg and Decision No. 613/QD-TTg is higher the pension rate, the employees shall continue to enjoy the monthly subsidy. The time of social insurance payment (excluding the working time whose subsidy of loss of working capacity has been calculated) shall be settled with one-time social insurance in accordance with the provisions in Article 60 of the Law on social insurance, Article 8 of Decree No. 115/2015/ND-CP and Article 9 of this Circular.

1. b) For the employees who do not meet the conditions of social insurance payment to enjoy their pension, if they wish, they may make payment of compulsory social insurance to enjoy their pension with the higher rate.
If they do not wish to continue the social insurance payment, they shall enjoy their monthly subsidy and shall be entitled to one-time social insurance for the time of social insurance payment.

2. The employees who are enjoying their subsidy of loss of working capacity and have the time of social insurance payment (excluding the working time whose subsidy of loss of working capacity has been calculated), they shall be subject to the provisions in Clause 1 of this Article for settlement.

Article 38. Benefits to the employees who have resignation decision waiting for the settlement of benefits of monthly retirement or subsidy

The benefits to the employees who have resignation decision waiting for the settlement of benefits of monthly retirement or subsidy shall comply with Article 25 of Decree No. 115/2015/ND-CP with the following guidelines:

1. The communal cadres subject to the adjustment of Decree No. 09/1998/ND-CP having the decision or certificate pending the age conditions to enjoy their monthly subsidy from the social insurance body shall be entitled to the monthly subsidy when male employees are full 55 years of age and 50 years of age for female employees. The monthly subsidy rate is calculated in accordance with the provisions in Decree No. 09/1998/ND-CP and is calculated on the average living costs of the last 05 year before resignation and then is adjusted according to the provisions on monthly subsidy of each period. During the time of resignation to enjoy their monthly subsidy but die, the person in charge of funeral shall receive the funeral subsidy equal to 10 months of base salary. The employee's relative shall receive the death benefits in accordance with the Law on social insurance 2014. The one-time death benefit rate is calculated on the average living costs of the last 05 year before resignation is converted based on the base salary in the month of employee's death.
2. In case during the time pending the age conditions to enjoy their monthly pension or subsidy, the employees continue to participate in social insurance, their working time recorded in the decision or certificate pending the eligible age to enjoy their monthly pension or subsidy shall be added with the time of social insurance payment later for calculation of entitlement to social insurance in accordance with the Law on social insurance and the guiding documents.

Article 39. The employees meet the conditions and enjoy the benefits of social insurance before 01/01/2016

1. The employees who suffer from disease or have accident and must take leave before 01/01/2016 shall be entitled to the sickness benefits in accordance with the provisions of the Law on social insurance 2006 and the guiding documents.
2. The maternity benefits for female employees or employees adopting a child under 06 months of age before 01/01/2016 shall comply with the provisions in Clause 1, Article 28 of Decree No. 115/2015/ND-CP with the following guidelines:
 3. a) The female employees giving a birth or the employees adopting a child under 06 months of age before 01/01/2016 shall be entitled to their maternity benefits in accordance with the provisions of the Labor Code 2012, the Law on social insurance 2006 and the guiding documents.
 4. b) The female employees who gives a birth or their child specified under Point a mentioned above dies from 01/01/2016 onwards, the benefits for the father or the direct nurturer or the mother shall comply with the provisions of the Law on social insurance 2014 and the guiding documents.
 5. c) The female employees' benefits of convalescence and recovery after maternity after the time of entitlement to benefits when they give a birth shall be based on the provisions of policy by the time of starting leave for benefits of convalescence and recovery, particularly as follows:

Where the time of starting the convalescence and recovery before 01/01/2016, the provisions of the Law on social insurance 2006 shall be applicable, the entitlement rate is equal to 25% of base salary if the convalescence and recovery are at home; equal to 40% of base salary if at the centralized medical facility.

Where the time of starting the convalescence and recovery from 01/01/2016 onwards, the provisions of the Law on social insurance 2014 shall be applicable, the entitlement rate after maternity for one day is equal to 30% of base salary.

Ex 56: Ms H is participating in the compulsory social insurance and gave a birth on 20/12/2015 (normal delivery). Ms H's maternity benefits are as follows:

1. a) The maternity benefits upon birth giving shall comply with the provisions of the Law on social insurance 2006;

2. b) After the time of entitlement of maternity benefits, within the first 30 working days but her health has not been recovered, Ms H shall be entitled to the convalescence and recovery in accordance with the Law on social insurance 2014.
3. The female employees born from 31/12/1970 and earlier and the male employees born on 31/12/1965 and earlier have the conclusion from the medical evaluation Board of loss of working capacity from 61% or more before 01/01/2016 and request to be entitled to their pension from 01/01/2016, the retirement benefits shall comply with the regulations of law before 01/01/2016 as follows:
4. a) Age conditions to enjoy pension: male from full 50 years of age and 45 years of age for female;
5. b) Each year of retirement prior to the prescribed age, the percentage of employee's pension entitlement shall reduce by 1%.

No application of above provisions to the cases with the conclusion of medical evaluation Board of loss of working capacity from 61% or more from 01/01/2016 onwards.

Ex 57: Ms M was born on 31/12/1970 and works under heavy and hazardous work. She has 25 years of social insurance payment. On 20/12/2015, the medical evaluation Board concludes that she has loss of working capacity by 61%. The body where Ms M is working requests the social insurance body to deal with this case so that Ms M can enjoy her pension from 01/01/2016. The settlement of benefits to Ms M is done as follows:

Where Ms M's retirement benefits are considered and settled in accordance with the Law on social insurance 2006, particularly:

– Ms M is eligible for entitlement to monthly pension (full 45 years of age and full 20 years of age of social insurance payment);

– Ms M's rate of entitlement to pension is calculated as follows:

+ 45% for the first 15 years;

+ From the 16th year to the 25th year is 10 years: $10 \times 3\% = 30\%$;

+ The total of 02 above percentages is: $45\% + 30\% = 75\%$.

+ Ms M retired at the age of 45 (05 years prior to the prescribed age of 50), therefore the reduction percentage due to retirement prior to the prescribed age is 5%;

Therefore, the percentage of Ms M's pension entitlement is $75\% - 5\% = 70\%$.

Ex 58: Mr K was born on 31/12/1965 and has 23 years of compulsory social insurance. On 15/01/2016, the medical evaluation Board concludes that he has loss of working capacity by 61%. The body where Mr K is working requests the social insurance body to deal with this case so that Ms M can enjoy her pension from 01/01/2016.

On 15/01/2016, the medical evaluation Board concludes that Mr K has loss of working capacity by 61%. Therefore, the settlement of retirement benefits to Mr K shall comply with the provisions of the Law on social insurance 2014.

By the time of conclusion of the medical evaluation Board, Mr K is 50 years and 01 month, therefore he is not eligible for pension entitlement due to loss of working capacity in accordance with the Law on social insurance 2014 (retiring in 2016: male employees is full 51 years of age and 46 years of age for female employees).

4. The employees who have full 20 years or more of social insurance payment including 15 years or more working under the particularly heavy, hazardous or dangerous occupation or job specified in the list promulgated by the Ministry of Labor, Invalids and Social Affairs and the Ministry of Health with the conclusion of the medical evaluation Board of loss of working capacity from 61% or more before 01/01/2016 and request the entitlement to pension from 01/01/2016, the retirement benefits shall comply with regulations of law before 01/01/2016.
5. Where the employees die before 01/01/2016, their death benefit shall comply with the regulations of law before 01/01/2016, particularly as follows:
6. a) The person in charge of funeral shall receive the funeral subsidy without the conditions on the time of social insurance payment of full 12 months or more;
7. b) The one-time death benefits to the employee's relatives who are working or the employee is reserving the time of social insurance payment but die shall be calculated by the number of year of social insurance payment. Each year shall be calculated by 1.5 months of average monthly salary paid for social insurance; the lowest level is equal to 03 months of average monthly salary or wage.
8. c) The employees' relatives entitled to the prescribed monthly death subsidy must not choose the one-time death subsidy.
9. d) The employees' relatives under 18 years of age who are enjoying the death subsidy before 01/01/2016 and from this timeline, they shall continue to enjoy their death subsidy until the age of 18 years of age, except for case of loss of working capacity from 81% or more.

Chapter V

IMPLEMENTATION PROVISION

Article 40. Effect

1. This Circular takes effect from 15/02/2016.
2. The benefits in this Circular are implemented from the effective date of Decree No. 115/2015/ND-CP. For the employees who work under labor contract with definite time from 01 month to under 03 months are subject to the provisions in this Circular from 01/01/2018.
3. The following documents shall be invalidated from the effective date of this Circular:
4. a) Circular No. 03/2007/TT-BLDTBXH dated 30/01/2007 of the Ministry of Labor – Invalids and Social Affairs guiding the implementation of some articles of Decree No. 152/2006/ND-CP dated 22/12/2006 of the Government guiding some articles of the Law on social insurance on compulsory social insurance;
5. b) Circular No. 19/2008/TT-BLDTBXH dated 23/09/2008 of the Ministry of Labor – Invalids and Social Affairs amending and adding Circular No. 03/2007/TT-BLDTBXH dated 30/01/2007 on guiding the implementation of some articles of Decree No. 152/2006/ND-CP dated 22/12/2006 of the Government guiding some articles of the Law on social insurance on compulsory social insurance;
6. c) Circular No. 41/2009/TT-BLDTBXH dated 30/12/2009 of the Ministry of Labor – Invalids and Social Affairs guiding the amending and addition of Circular No. 03/2007/TT-BLDTBXH dated 30/01/2007 on guiding the implementation of some articles of Decree No.152/2006/ND-CP dated 22/12/2006 of the Government guiding some articles of the Law on social insurance on compulsory social insurance;
7. d) Circular No. 23/2012/TT-BLDTBXH dated 18/10/2012 of the Ministry of Labor – Invalids and Social Affairs amending and adding some contents of Circular No. 19/2008/TT-BLDTBXH dated

23/09/2008 amending and adding some contents of Circular No. 03/2007/TT-BLDTBXH dated 30/01/2007 guiding the implementation of some articles of Decree No. 152/2006/ND-CP dated 22/12/2006 of the Government guiding some articles of the Law on social insurance on compulsory social insurance;

8. dd) Circular No. 24/2007/TT-BLDTBXH dated 09/11/2007 of the Ministry of Labor – Invalids and Social Affairs guiding the calculation of time to enjoy the benefits of social insurance according to Decision No. 107/2007/QD-TTg dated 13/07/2007 of the Prime Minister;
9. e) Circular No. 26/2010/TT-BLDTBXH dated 13/09/2010 of the Ministry of Labor – Invalids and Social Affairs amending and adding Circular No. 24/2007/TT-BLDTBXH dated 09/11/2007 guiding the calculation of time to enjoy the benefits of social insurance according to Decision No. 107/2007/QD-TTg dated 13/07/2007 of the Prime Minister;
10. g) Circular No. 03/2009/TT-BLDTBXH dated 22/01/2009 of the Ministry of Labor – Invalids and Social Affairs guiding the implementation of regional benefits to each person entitled to the one-time pension and social insurance, monthly subsidy of loss of working capacity and work accident, occupational disease according to Decree No. 122/2008/ND-CP dated 04/12/2008 of the Government.
11. h) Circular No. 24/2013/TT-BLDTBXH dated 17/10/2013 of the Ministry of Labor – Invalids and Social Affairs guiding the Clause 2, Article 1 of Decree No. 29/2013/ND-CP dated 08/04/2013 of the Government amending and adding some articles of Decree No. 92/2009/ND-CP dated 22/10/2009 of the Government on the title, benefits and policies to the cadres, public servants in communes, wards and towns and the persons working part-time at communal level.

Article 41. Implementation organization

1. The People’s Committee of provinces and centrally-run city must direct the Departments of Labor – Invalids and Social Affairs and the relevant bodies to inspect and urge the implementation of this Circular.
2. The Vietnam Social Insurance is liable to execute this Circular.
3. Any problem arising during the implementation of this Circular should be promptly reported to the Ministry of Labor – Invalids and Social Affairs for timely study and settlement./.

	FOR THE MINISTER DEPUTY MINISTER
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Pham Minh Huan