

THE GOVERNMENT

No: 49/2013/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, May 14, 2013

DECREE

DETAILING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LABOUR CODE ON WAGES

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

Pursuant to the Labour Code, of June 18, 2012;

At the proposal of Minister of Labour - Invalids and Social Affairs;

The Government promulgates the Decree detailing the implementation of a number of articles of the Labour Code on wages,

Chapter 1.

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree provides the functions, tasks and organizational structure of the National wage Council as prescribed in clause 2 Article 92; principles for formulation of wage scales, payroll and labour norms as prescribed in clause 1 Article 93 of the Labour Code.

Article 2. Subjects of application

1. Members of the National Wage Council as prescribed in clause 1 Article 92 of the Labour Code.

2. The employees working under the regime of labour contract specified in clause 1 Article 3 of the Labour Code.
3. The employers as prescribed in clause 2 Article 3 of the Labour Code (hereinafter referred to as enterprises).
4. Agencies, organizations and individuals relating to regulation and implementation of the functions, tasks and organizational structure of the National wage Council and formulation of wage scales, payroll and labour norms as prescribed in this Decree.

Chapter 2.

THE NATIONAL WAGE COUNCIL

Article 3. The functions of the National Wage Council

1. The National Wage Council implements the advisory function for the Government about adjustment, announcement of the region-based minimum wages.
2. The Prime Minister shall decide establishment of the National Wage Council.

Article 4. The tasks of the National Wage Council

1. Analyzing socio-economic situation, the residential living level to define, forecast the minimum living demand of employees and their family; assessing the implementation of the region-based minimum wages, the wage levels on the labour market and the payment capacity of enterprises in order to formulate and advise the Government about the annual plans on region-based minimum wages and plans in each period.
2. Researching, advising the Government about minimum wages based on hour applicable to some irregular careers, jobs or part-time affairs.

3. Reviewing, assessing about the regional division in applying the region-based minimum wages in order to advise the Government in adjustment, supplementation of the regional division when applying the region-based minimum wages.
4. Surveying actuality, studying foreign experiences in order to enhance capability and efficiency of advisory on the minimum wages.
5. Studying, advising other matters relating to the wage regimes at the request of the Government, the Prime Minister.

Article 5. The organizational structure of the National Wage Council

1. The National Wage Council includes 15 members: 05 members representing for the Ministry of Labour - Invalids and Social Affairs, 05 members representing for the Vietnam General Confederation of Labour and 05 members representing for organizations representing for the employers at the central level, in which:
 - a. Chairperson of the Council is a Deputy Minister of Labour - Invalids and Social Affairs;
 - b. Three Deputy Chairpersons include: A Deputy Chairperson is Deputy Chairperson of the Vietnam General Confederation of Labour, a Deputy Chairperson is Deputy Chairperson of the Vietnam Chamber of Commerce and Industry and a Deputy Chairperson is Deputy Chairperson of the Vietnam cooperative Union;
 - c. Members of the Council include: Four members of the Council are representatives of the Ministry of Labour - Invalids and Social Affairs; four members of the Council are representatives of the Vietnam General Confederation of Labour; a members of the Council is representative of the Vietnam Association

of medium and small enterprises; two members of the Council are representatives of two Trade Associations employing many labourers at central level.

2. The Prime Minister shall appoint the Chairperson and Deputy Chairpersons of the National Wage Council at the proposal of the Minister of Labour - Invalids and Social Affairs and authorize for the Minister of Labour - Invalids and Social Affairs in appointing members of the National Wage Council.

3. Chairperson, Deputy Chairpersons and Members of the National Wage Council are persons specialized and having experiences in the field of labour, wages; having qualification and capacity to consider, propose requirements of agencies that are represented by them and having conditions to participate in activities of the National Wage Council. Chairperson, Deputy Chairpersons and Members of the National Wage Council work under the part-time regime, with 05-year term.

4. The National Wage Council has a technical division and a permanent division assisting the Council in studying, surveying, summing, formulation the plan on region-based minimum wages, regional division in applying the minimum wages in order to give out for discussion at the Council and implement the administrative mission of the Council.

5. Operational fund of the National Wage Council is ensured by the State budget, included in the annual budget estimates of the Ministry of Labour - Invalids and Social Affairs and other legally-mobilized sources in accordance with law.

Article 6. The working regulation of the National Wage Council

1. The Chairperson of the National Wage Council shall provide the working regulation of the National Wage Council, the technical division and permanent division.

2. The Chairperson of the National Wage Council may invite experts, scientists, researchers of Ministries, sectors, Study Institutions, universities for consulting or participating in meetings of the Council.

Chapter 3.

PRINCIPLES FOR FORMULATION OF WAGE SCALES, PAYROLL AND LABOUR NORMS

Article 7. Principles for formulation of wage scales, payroll

1. Based on the production organization, labour organization, enterprises may formulate and decide the wage scale, payroll for labourers involved in managerial, professional or technical work and workers directly involved in production, business and service activities.

2. The multiple of the wage scale is the different coefficient of the wage level for work or title requiring the highest technical qualifications as compared to the work or title requiring the lowest technical qualifications, the number of grades of the wage scale and payroll depends on the complexity of the management and work or title requirements. The gap between two consecutive wage grades must ensure encouragement to labourers to raise the technical and professional qualifications as well as experience accumulation and talent development but at least equal to 5%.

3. Companies shall define the lowest wage level (the start level) of work or title in the wage scale and payroll on the basis of the complexity of work or title corresponding to the qualifications, skills, duties, experiences to implement work or title, of which:

a. The lowest wage level of the simplest work or title in normal labour conditions shall be not lower than the region-based minimum wage level prescribed by the Government;

b. The lowest wage level of the work or title requiring labourers to have to be received vocational training (including labourers trained by enterprises themselves) must be at least 7% higher than the region-based minimum wage levels prescribed by the Government;

c. The wage level of work or title with the heavy, hazardous and dangerous labour conditions must be at least 5% higher; work or title with the special heavy, hazardous and dangerous labour conditions must be at least 7% higher than the wage level of work or title having the equivalent complexity but working in normal labour conditions.

4. When formulating and applying the wage scale, payroll must ensure equality, non-discrimination on gender, ethnicity, skin colour, social class, marriage status, credence, religion, HIV infection, disability or due to reason of establishment, acceding and operation of the Trade Union for labourers, and must formulate standards to rank wage, conditions to raise the wage grade.

5. The wage scale, payroll must be periodically reviewed to amend and supplement in conformity with the actual conditions on the technological renovation, production organization, labour organization, wage floor on the labour market and ensure regulations of labour law.

6. When formulating or amending and supplementing wage scales, payroll, enterprises must consult organizations representing for labour collectives at enterprises and publicly at the working places of labourers before implementation, and send to the labour state management agencies at district level where enterprises

located their production facilities. For State-owned one-member limited liability companies, when formulating or amending and supplementing wage scales, payroll, they must report owners to be consulted before implementation; for mother companies – State-owned economy Group, mother companies of special-rank corporations, they shall send to the Ministry of Labour - Invalids and Social Affairs for monitoring and supervision.

Article 8. Principles for formulation of Labour norms

1. The labour norms are implemented for each step of work, each stage and entire process of producing products and providing services on the basis of organizing scientific labour and reasonable production.
2. The labour norms are formulated on the basis of the job or title ranks and in compatibility with the grades and trained qualifications of labourers, technological process, and technical standards of machines, equipment and ensuring the labour standards.
3. The labour norms must be the advanced average norm, which ensure that the majority of labourers can attain it without having to excessively prolong the regular working time of enterprises as prescribed by law.
4. The new labour norm must be applied experimentally before being officially promulgated. Enterprises must notify labourers at least 15 days before applying experimentally. Duration of experimentally applying shall depend on nature of work, but not more than 3 months and must assess the implementation of the norm.

In case where during the standard working time, the actual implemented level of calculation under productivity is lower 5% or higher 10% than the assigned norm,

or the actual implemented level of calculation under the time is higher 5% or lower 10% than the assigned norm, enterprises must adjust the labour norm.

5. The labour norm must be periodically reviewed, assessed to amend, supplement, and adjust for conformity. When formulating or amending and supplementing, adjusting the labour norms, enterprises must consult organizations representing for labour collectives at enterprises and publicly at the working places of labourers before implementation, and send to the labour state management agencies at district level where enterprises located their production facilities.

Chapter 4.

IMPLEMENTATION PROVISIONS

Article 9. Effect

1. This Decree takes effect on July 01, 2013. Provisions in this Decree shall be applied from May 01, 2013.
2. The Government's Decree No. 114/2002/ND-CP, of December 31, 2002, detailing and guiding the implementation of a number of the Labour Code's articles on wages, the Government's Decree No. 205/2004/ND-CP, of December 14, 2004, providing the system of wage scales, payroll and allowance regimes in State-owned companies cease to be effective on the effective date of this Decree.

Article 10. Responsibility for implementation organization

1. Responsibility for implementation organization of regulations on functions, tasks and organizational structure of the National Wage Council:
 - a. Heads of agencies, organizations specified in clause 1 Article 5 of this Decree shall appoint representatives to participate in the National Wage Council and send the list to the Ministry of Labour - Invalids and Social Affairs for summarization;

b. Chairperson of the Vietnam Chamber of Commerce and Industry shall select and suggest heads of two Central Trade Associations that use many labourers to appoint representatives for participation in the National Wage Council;

c. The Minister of Labour - Invalids and Social Affairs shall sum up and propose the Prime Minister for appointment of Chairperson, Deputy Chairpersons of the National Wage Council; and decide the appointment of members of the National Wage Council.

2. Responsibilities for implementation organization of the formulation of wage scales, payroll and labour norms.

a. Enterprises shall formulate or review to amend, supplement their wage scales, payroll, labour norms and send them to the labour state management agencies at district level where enterprises located their production and business facilities for monitoring and inspection as prescribed in this Decree. If a enterprise has many units, branches operating in various localities, after formulating and deciding wage scales, payroll and labour norms, it shall send to the labour state management agencies at district level where it located its units, branches for monitoring and inspection;

b. The labour state management agencies at district level where enterprises located their production and business facilities shall receive the wage scales, payroll, labour norms of enterprises as prescribed in clause 2 Article 93 of the Labour Code; clause 6 Article 7 and clause 5 Article 8 of this Decree for reviewing and inspection. If detecting content not consistent with regulation, the labour state management agencies must have written request to enterprises for amendment, adjustment, supplementation in accordance with labour law;

c. People's Committees of central-affiliated cities and provinces shall direct the provincial Departments of Labour - Invalids and Social Affairs in coordinating with Confederation of Labour and relevant agencies to organize propagation, guidance, inspection, examination for the formulation of wage scale, payroll, labour norms of enterprises in their areas as prescribed in this Decree.

d. Agencies, organizations that are assigned, decentralized in implementation of rights and obligations of owners to State-owned one-member limited liability companies shall receive, examine, supervise the formulation of wage scales, payroll of one-member limited liability companies owned by them.

e. The Ministry of Labour - Invalids and Social Affairs shall guide State-owned one-member limited liability companies, organizations, units of State, joint-stock companies and limited liability companies with two or more members owned by State that are arranging wages under the wage scale, payroll promulgated together with the Government's Decree No. 205/2004/ND-CP, of December 14, 2004, to implement this Decree, ensure the rational relationship on wage among labour types in companies and trades; transferring and ranking wage for labourers from the wage scales, payroll promulgated together with the Decree No. 205/2004/ND-CP, of December 14, 2004, by the Government to the wage scales, payroll promulgated by companies.

3. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, Presidents of provincial/municipal Peoples Committees and relevant agencies, organizations, enterprises and individuals shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung

This translation for reference only, if any inconsistency occurs between The English version and the Original Vietnamese version, the latter shall prevail