

DECREE No. 81/2000/ND-CP OF DECEMBER 29, 2000 DETAILING AND GUIDING THE IMPLEMENTATION OF THE ORDINANCE ON PUBLIC-LABOR OBLIGATION

THE GOVERNMENT

Pursuant to the September 30, 1992 Law on Organization of the Government;

Pursuant to the September 3, 1999 Ordinance on Public-Labor Obligation;

Pursuant to the July 6, 1995 Ordinance on the Handling of Administrative Violations;

At the proposal of the Ministry of Labor, War Invalids and Social Affairs,

DECREES:

Chapter I

ANNUAL PUBLIC-LABOR OBLIGATION

Article 1.- The duty to perform the annual public-labor obligation under Article 7 of the Ordinance on Public-Labor Obligation is prescribed as follows:

Vietnamese citizens, aged between full 18 and 45 years for men and between full 18 and 35 years for women, shall have to perform the annual public-labor obligation in localities where they regularly reside and have registered for permanent residence or have registered for temporary residence for 6 or more consecutive months.

Article 2.- The number of annual public-labor obligation workdays under Article 8 of the Ordinance on Public-Labor Obligation is prescribed as follows:

1. The number of the annual public-labor obligation workdays is 10 days for every citizen. Where the work site is far away from the obligation-performing place prescribed in Article 1 of this Decree and conditions do not permit daily traveling, the time for one round trip may be included in the number of the annual public-labor obligation workdays;
2. The public-labor obligation workdays of a year shall be only mobilized and used in such year. Particularly for the public-labor fund in cash, if it is not used up in the year, it may be carried forward to the subsequent year.

Article 3.- The jobs to be performed with the annual public labor under Article 9 of the Ordinance on Public-Labor Obligation shall include:

1. Building and renovation of roads in villages or hamlets, roads leading to rice fields, paths in residential quarters, and roads under the management of the commune, district and provincial levels;
2. Building and renovation of inter-rice field irrigation networks and irrigation works under the management of the commune, district and provincial levels (except dykes and embankments);
3. Building and renovation of health stations, crèches, kindergarten schools and classes, general education schools;
4. Building and renovation of fallen heroes' cemeteries and monuments, steles for inscription of fallen heroes' names;

5. Building and renovation of public-utility facilities of social nature such as historical relics, cultural relics, and recreation and entertainment, sport and physical training works not for commercial purposes.

Article 4.- Citizens exempt from the annual public-labor obligation under Article 10 of the Ordinance on Public-Labor Obligation shall include:

1. Officers and men of the people's army and the people's police.
2. Defense workers and employees, workers and employees of the people's police working in border communes and districts, deep-lying areas and islands; in communes, districts and provinces recognized as mountainous and highland ones; defense workers and employees of itinerant professional repair teams;
3. Demobilized army men who are currently registered as first-grade reserves;
4. War invalids, sick soldiers and those who are enjoying preferential policies like war invalids;
5. Parents and spouses of fallen heroes, those who had brought up fallen heroes;
6. Career religious dignitaries as prescribed by the Government's Religion Committee;
7. Persons who suffer from mental illnesses, epilepsy or physical defects who are certified as having lost their working capacity by specialized doctors of hospitals of rural or urban districts, provincial cities (hereinafter collectively called district level), hospitals of provinces and centrally-run cities (hereinafter collectively called provincial level), central hospitals or branches' hospitals;
8. Those who suffer a loss of 21% or higher of their working capacity.

Article 5.- Those who are temporarily exempt from the annual public-labor obligation under Article 11 of the Ordinance on Public-Labor Obligation shall include:

1. Those who are currently under medical treatment at medical stations, hospitals or licensed medical establishments or outpatient treatment under physicians' prescriptions; those who are currently under treatment in convalescence; those who are the only ones in their respective families, personally taking care of their relatives who are seriously ill;
2. Parents and spouses of army men in active service, whose families are actually facing difficulties as certified by the People's Committees of communes, wards or townships (hereinafter collectively called commune level);
3. Pregnant women, women being on leaves due to miscarriages, stillbirths, post-natal death of newborns, or women who are nursing their under-36 month children;
4. Widowed or divorced husbands who are personally nursing their under-36 month children;
5. Those who are personally rearing or serving seriously wounded or sick soldiers or disabled persons who suffer a loss of 81% or higher of their working capacity, at infirmaries. Where the subjects specified in this Clause are living with their families, one of their families' members shall enjoy temporary exemption;
6. Persons who are participating in the key militia or self-defense forces prescribed in the Ordinance on Militia and Self-defense Force;
7. State officials and employees mobilized to work for a definite term in communes, districts or provinces recognized as mountainous or highland ones; in border communes or districts; islands or deep-lying areas;

8. Young volunteers who are performing tasks assigned by competent State bodies;
9. Persons who are the only bread earners in their families and personally rearing other persons who have lost their working capacity or not yet reached the working age;
10. Members of households certified by the commune-level People's Committees as hungry households according to the standards set by the Ministry of Labor, War Invalids and Social Affairs;
11. Heads and deputy heads of the commune polices, commune policemen; village or hamlet chiefs or equivalent posts;
12. Doctoral students, master's students, practicing students, students and trainees enrolled in full-time long-term courses at universities, academies, colleges, professional intermediate schools and vocational schools belonging to the national education system, training schools of different religious sects, general education pupils, literacy teachers and learners;
13. Those who are working, studying or laboring abroad.

Article 6.- Forms of annual public-labor obligation performance under Article 15 of the Ordinance on Public-Labor Obligation are prescribed as follows:

Any person who is mobilized to perform the annual public-labor obligation but does not personally render his/her labor must get his/her obligation performed by another person or pay a sum of money therefor. Where a person with the labor obligation wishes to perform his/her obligation by paying money or getting it performed by another person, he/she shall have to report such to the People's Committee of the commune where he/she is expected to perform the obligation as prescribed in Article 1 of this Decree at least 3 days before the date of performing the obligation.

For the days of performing the annual public-labor obligation by paying money or getting it performed by another person, if the persons with the obligation are salaried employees, they may take an unpaid leave but the leave time shall be decided by the heads of their agencies or units or by their employers.

The amount of money paid for each workday and the conditions required for persons who perform the obligation on other persons' behalf shall comply with the provisions in Article 15 of the Ordinance on Public-Labor Obligation.

Article 7.- The annual public-labor workday funds prescribed in Article 17 of the Ordinance on Public-Labor Obligation shall be used concretely as follows:

1. The provincial-level administrations may use a maximum of 10% of their respective public-labor workday fund. The specific levels shall be decided by the provincial-level People's Councils for use as:
 - a/ Support for the building and renovation of the provinces' key public-utility works which are managed by the district level;
 - b/ Support for the building and renovation of public-utility works of rural and urban districts facing many difficulties;
 - c/ Contributions to the building and renovation of public-utility works under the provincial-level management.

2. The district-level administrations may use a maximum of 20% of their respective public-labor workday funds. The specific levels shall be decided by the district-level People's Councils for use as:

- a/ Support for the building and renovation of the districts' key public-utility works which are managed by the commune level;
- b/ Support for the building and renovation of public-utility works of communes facing many difficulties;
- c/ Contribution to the building and renovation of public-utility works under the district-level management.

In special cases where a public-labor workday fund needs to be supplemented, they must make a plan thereon and propose it to the provincial-level administrations for consideration and decision.

3. The commune-level administrations may use the remainder of their public-labor workday funds, after subtracting the proportions reserved for the provincial level and the district level, for:

- a/ Building and renovating the public-utility works of villages, hamlets, street population groups or equivalent units;
- b/ Making contributions to the building and renovation of public-utility works managed by the commune level.

In special cases where a public-labor workday fund needs to be supplemented, they must make a plan thereon and propose it to the district-level administrations for consideration and decision.

4. The People's Committees of various levels may use their respective public-labor workday funds in cash to pay for different entitlements enjoyed by those who render their labor to perform the annual public-labor obligation as prescribed in Chapter IV of the Ordinance on Public-Labor Obligation as well as the entitlements enjoyed by labor accident victims as prescribed in Article 12 of this Decree.

Article 8.- The management and use of the public-labor workday funds under Article 18 of the Ordinance on Public-Labor Obligation are prescribed as follows:

The management of the public-labor workday funds shall comply with the Regulation on management and use of the public-labor workday funds issued by the Ministry of Finance.

The funding for the mobilization organization as well as the management of the annual public-labor workday funds, which covers expenses for management, propaganda, professional fostering, preliminary and sum-up reviews, rewards and other directly related expenses, shall be allocated from the local budgets according to the provisions of the State Budget Law.

Chapter II

THE PUBLIC-LABOR OBLIGATION IN EMERGENCY CASES

Article 9.- Emergency cases where public labor may be mobilized under Article 23 of the Ordinance on Public-Labor Obligation are prescribed as follows:

Emergency cases where public labor may be mobilized are unexpected circumstances which need to be promptly dealt with in service of the prevention, fight or overcoming of

consequences caused by storms, floods, earthquakes, epidemics, fires and other emergency cases caused by natural calamities.

Article 10.- The competence to issue decisions to mobilize the obligatory public labor in emergency cases shall comply with the provisions in Article 24 of the Ordinance on Public-Labor Obligation.

Upon receiving mobilization orders from the competent persons, the mobilized persons shall be obliged to render timely labor so as to prevent, fight or overcome consequences with a view to minimizing possible damage.

Article 11.- The duration of public-labor mobilization in emergency cases under Article 25 of the Ordinance on Public-Labor Obligation is prescribed as follows:

The duration of each public-labor mobilization in emergency cases shall not exceed 5 workdays, including the traveling time. In special cases, for those who have to work for more than 8 hours a day, the extra-time hours shall be converted into workdays for incorporation into the work volume such persons have done to perform their obligation.

If, upon the expiry of the duration of each emergency mobilization, the work has not yet finished, another force must be mobilized to replace the current force, it is forbidden to prolong the duration of each mobilization, except cases of citizens' voluntariness.

Chapter III

REGIMES FOR PERSONS WHO GET LABOR ACCIDENTS WHILE PERFORMING THE PUBLIC-LABOR OBLIGATION

Article 12.- Regimes for persons who get labor accidents while performing the public-labor obligation under Article 28 of the Ordinance on the Public-Labor Obligation are prescribed as follows:

1. Persons who perform the public-labor obligation and get labor accidents in the following cases shall be entitled to the labor incident regimes:

a/ Getting accidents while performing jobs specified in Article 9 and Article 23 of the Ordinance on Public-Labor Obligation assigned by the persons competent to manage and use public labor;

b/ Getting accidents en route while traveling between the residential place to the working place to perform the public-labor obligation.

2. Where a labor accident occurs at the work site, the work owner shall have to:

a/ Provide first-aid treatment on the spot, then immediately transfer the victim(s) to a medical establishment;

b/ Make a written record fully describing the accident, the victim's injury, the extent of damage, the accident's cause, affixed with the signatures of the representative of the work-constructing unit or the local administration of the commune where the accident occurs and the representative of the collective of the public-labor obligation performers at the work site. Where an accident occurs en route, such a record must be affixed with the stamp and signature of the police or the representative of the administration of the commune where the accident occurs;

c/ Where a labor accident causes death to or inflicts serious injuries on many persons, the scene of the labor accident must be kept intact and the accident must be immediately reported

to the labor safety State inspectorate and the local police for investigation according to the provisions of the Labor Code and documents guiding the investigation of labor accidents.

3. Those who get labor accidents while performing the public-labor obligation shall enjoy the following regimes:

a/ Receiving payment for medical expenses incurring during the first-aid and emergency treatment till the time when their injuries become stable and they are discharged from hospital;

b/ After being hospitalized, be recommended by the labor agency for evaluation of their working capacity at the Medical Evaluation Council according to the regulations of the Ministry of Health.

For those who have not yet participated in social insurance and suffer from a 10% or higher decrease in their working capacity, they shall enjoy a lump-sum allowance. The allowance amount for persons suffering from a 10% decrease in their working capacity shall be equal to two months' minimum salary; if they suffer from a decrease of over 10% in their working capacity, for every extra 1% they shall enjoy an additional half of the minimum monthly salary. If they suffer from an 81% or higher decrease in their working capacity, apart from the lump-sum allowance, they shall also enjoy the regular allowance regime as prescribed in the Government's Decree No. 07/2000/ND-CP of March 9, 2000.

For those who have participated in social insurance, they shall enjoy a lump-sum or monthly allowance as prescribed in the Social Insurance Charter issued together with the Government's Decree No. 12/CP of January 26, 1995.

c/ Labor accident victims who have lost one or several bodily parts or functions, demonstrated in different forms of disability, thus reducing their mobility and causing difficulties to their labor, daily life and study, shall enjoy preferential treatment regimes as prescribed by law for the disabled.

d/ In cases where labor accident victims die, including those who die during the first-time treatment period, if they have not yet participated in social insurance, the persons who personally organize their funeral shall receive a funeral allowance equal to eight months' minimum salary and the dead victims' families shall receive a lump-sum allowance equal to five months' minimum salary; if they have participated in social insurance, the provisions of the Social Insurance Charter issued together with the Government's Decree No. 12/CP of January 26, 1995 shall be complied with.

Article 13.- The funding to cover various regimes for labor accident victims prescribed at Points a, b and d, Clause 3, Article 12 of this Decree shall be effected as follows:

1. Where labor accidents occur while the victims are performing the annual public-labor obligation, the funding shall be allocated from the work-managing level's public-labor sources in cash, if such sources are not enough, the deficit shall be offset with the local budget of the same level;

2. Where labor accidents occur while the victims are performing the public-labor obligation in emergency cases, the funding shall be allocated from the budget of the level that has issued mobilization decisions; particularly for emergency cases due to storms and floods, the storm and flood prevention and fight fund shall be used.

3. For those victims who have participated in social insurance, the death regime and the lump-sum or monthly allowance regime shall be paid with the social insurance fund.

Chapter IV

RESPONSIBILITIES OF THE MINISTRIES AND THE PEOPLE'S COMMITTEES OF DIFFERENT LEVELS

Article 14.- Responsibilities of the ministries, the ministerial-level agencies, the agencies attached to the Government under Article 33 of the Ordinance on Public-Labor Obligation are prescribed as follows:

1. The Ministry of Labor, War Invalids and Social Affairs shall have to:
 - a/ Elaborate and submit to the competent bodies for promulgation or promulgate by itself legal documents on public labor;
 - b/ Guide localities in working out plans on the use of the public-labor workday funds, reporting results of the use of such funds, reporting results achieved after each mobilization of the obligatory public labor in emergency cases and making annual reports on the implementation of the Ordinance on Public-Labor Obligation;
 - c/ Inspect, supervise and direct the local administration of different levels to inspect and supervise the observance of the public-labor legislation.
2. The Ministry of Finance shall have to:
 - a/ Promulgate the Regulation on the management and use of the public-labor workday funds;
 - b/ Direct the issuance and management of money receipts prescribed in Article 15 of the Ordinance on Public-Labor Obligation;
 - c/ Guide, supervise and inspect the management and use of the public-labor workday funds in localities.
3. The Ministry of Health shall have to guide, direct, inspect and supervise the organization of medical examination and treatment, and first aid for labor accident victims at works allowed to use public labor.
4. The Government's Religion Committee shall have to specify career religious dignitaries who are exempt from the annual public-labor obligation.

Article 15.- Responsibilities of the People's Committees of different levels under Article 36 of the Ordinance on Public-Labor Obligation are prescribed as follows:

1. To work out plans on the use of the public-labor workday funds of their own levels and submit them to the People's Council of the same level for decision;
2. Basing themselves on the plans already decided by the People's Council of the same level and the requests of the superior People's Committee to issue decisions to mobilize the annual obligatory public labor;
3. To open books for closely monitoring and managing the public-labor workday funds in their respective localities and the fund's portion that each level is allowed to use;
4. To observe the regulations on the management of the annual public-labor workday funds;
5. To direct project and work owners under their management to use the annual public labor, ensuring the close management and effective use of the public-labor workday funds and the timely materialization of all regimes for laborers;

6. To issue, according to their competence, decisions to mobilize the obligatory public labor if emergency cases occur in their respective localities, use it for the right purposes and materialize in time all regimes for laborers;

7. To inspect and supervise the situation on the performance of the public-labor obligation in their respective localities. To commend and reward in time units and individuals that have well fulfilled the obligation, strictly handle violations in the course of performance;

8. To report the results of each mobilization of the obligatory public labor in emergency cases to the immediate superior bodies. Annually, to report the results of the public-labor obligation performance to the People's Council of the same level and the immediate superior People's Committee according to schedule set by the provincial-level People's Committees; The provincial-level People's Committees shall make sum-up reports and send them to the Government through the Ministry of Labor, War Invalids and Social Affairs in January of the subsequent year.

Chapter V

SANCTIONING OF ADMINISTRATIVE VIOLATIONS OF THE PUBLIC-LABOR OBLIGATION

Article 16.- The sanctioning of administrative violations prescribed in Chapter V of this Decree shall apply to individuals and organizations that violate the legislation on public-labor obligation but not so seriously enough to be examined for penal liability.

Article 17.- The forms of sanctioning the administrative violations of the public-labor obligation shall include warning and fine.

Article 18.- The principles of sanctioning, the statute of limitations of sanctioning, extenuating circumstances, aggravating circumstances and the time limit for being considered as not having ever been sanctioned for administrative violations of the public-labor obligation shall comply with the provisions of the legislation on sanctioning of administrative violations.

Article 19.- Acts of violation, the sanctioning forms and fine levels are prescribed as follows:

1. Warning shall apply to acts of failing to correctly abide by mobilization decisions regarding the time to perform the annual public-labor obligation in the form of paying money therefor.

2. A fine of between VND 30,000 and VND 70,000 shall be imposed for one of the following acts:

a/ Failing to fulfill the number of the annual obligatory public-labor workdays without plausible reasons;

b/ Abandoning the assigned tasks without permission before the expiry of the time limit for performance of the public-labor obligation in emergency cases.

c/ Making false declarations so as to be temporarily exempt from the annual public-labor obligation;

d/ Failing to keep to the time to perform the annual public-labor obligation in the form of paying money as indicated in the second notice. Repeated violations shall be handled as prescribed for acts committed in aggravating circumstances;

3. A fine of between VND 70,000 and VND 100,000 shall be imposed for acts of shirking the performance of annual public-labor obligation.

4. A fine of between VND 100,000 and VND 200,000 for one of the following acts:

- a/ Making false declarations so as to be exempt from the annual public-labor obligation;
- b/ Shirking the performance of annual public-labor obligation in emergency cases.

Article 20.- Acts of threatening or resorting to violence to resist people on official duty, which are not so serious enough to be examined for penal liability, words and acts of reviling and hurting the honor of people on official duty, shall be handled according to the provisions at Points a and b, Clause 2; Point c, Clause 3, Article 5 of Decree No. 49/CP of August 15, 1996 on the sanctioning of administrative violations in the field of security and order.

Article 21.- The competence to sanction administrative violations of the public-labor obligation shall be as follows:

1. The presidents of the commune-level People's Committees, specialized labor inspectors on official duty shall be entitled to:

- a/ Serve warnings;
- b/ Impose fines of up to VND 200,000.

2. The presidents of the district-level People's Committees, labor chief inspectors of the provincial/municipal departmental level shall be entitled to:

- a/ Serve warnings;
- b/ Impose fines of up to VND 10,000,000.

Article 22.- The procedures for sanctioning administrative violations of the public-labor obligation shall comply with the provisions of the Ordinance on Sanctioning Administrative Violations.

Article 23.- The method of fine payment and fine receipts shall comply with the provisions of the legislation on the handling of administrative violations.

Article 24.- Persons who are competent to sanction administrative violations of the public-labor obligation but cover up, tolerate violating individuals, organizations, fail to impose sanctions or impose untimely or improper sanctions; impose sanctions ultra vires; and persons who have no sanctioning competence but arbitrarily impose sanctions, shall, depending on the seriousness and nature of their violations, be disciplined or examined for penal liability, and, if causing material damage, they shall have to make compensation therefor according to law provisions.

Article 25.- Organizations, individuals that are sanctioned for administrative violations according to the provisions of this Decree or their lawful representatives may lodge complaints about sanctioning decisions with the immediate superior authorities of the issuers of such sanctioning decisions.

The rights and obligations of the complainant and the complained, the complaining procedures, the competence to settle complaints about decisions to sanction administrative violations of the public-labor obligation shall comply with the provisions of the legislation on complaints and denunciations.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 26.- This Decree takes effect 15 days after its signing.

Article 27.- This Decree replaces Decree No. 56/NDBT of May 30, 1989 of the Council of Ministers (now the Government).

The previous provisions contrary to this Decree are all annulled.

Article 28.- The Minister of Labor, War Invalids and Social Affairs and the concerned ministers shall have to guide the implementation of this Decree.

Article 29.- The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI