

Hanoi, December 16, 2015

No: 54/2015/TT-BLDTBXH

Circular

guiding the working hours, rest hours applicable to employees on seasonal production work and processing of goods under orders

Pursuant to Article 117 of the Labor Code dated June 18, 2012;

Pursuant to the Government's Decree No. 45/2013/ND-CP dated May 10, 2013 on guidelines for the Labor Code on working hours, rest hours, occupational safety and occupational hygiene;

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

At the request of the Director of the Department of Labor safety,

The Minister of Labor- Invalids and Social Affairs promulgates a Circular guiding the working hours, rest hours applicable to employees on seasonal production work and processing of goods under orders.

Article 1. Scope of adjustment

This Circular provides guidelines for making plan and implementation of working hours, rest hours applicable to employees doing seasonal jobs and processing of goods under orders.

Article 2. Subject of application

1. Laborers working under labor contracts of between 12 and 36 months or labor contracts of an indefinite term for the following jobs:

a) Seasonal production work in the fields of agriculture – forestry – fishery - salt production that require instant harvest or instant processing after harvest without delay;

b) Processing of goods under orders, of which delivery time requested by the goods owners, including the fields of textile and garment, leather and footwear, electronic component installation.

2. Employers of the laborers mentioned in the Clause 1 of this Article are the following enterprises and business entities:

a) Companies and enterprises operating under the Law on Enterprise;

b) Cooperatives and cooperative unions operating under the Law on Cooperatives and employing laborers under labor contracts.

Article 3. Yearly standard working hours

$$TQ = [TN - (Tt + Tp + TL)] \times tn \text{ (hours)}$$

Where:

- TQ: A laborer's standard working hours in a year;

- TN: Number of days in a year, which is 365 in a calendar year, or 366 in a leap year;

- Tt: Total number of weekly days off in a year, determined under Article 110 of the Labor Code;

- Tp: Number of annual leave days, which is 12, 14 or 16 and may be increased depending on working seniority under Articles 111 and 112 of the Labor Code and Article 7 of Decree No. 45/2013/ND-CP dated May 10, 2013 on guidelines for the Labor Code on working hours, rest hours, occupational safety and occupational hygiene;

- TL: Number of official holidays in a year, which is 10;

- tn: Number of daily normal working hours, which is 8; particularly for laborers doing extremely hard, hazardous and dangerous jobs on the list issued by the Ministry of Labor- Invalids and Social Affairs, this number is 6.

Article 4. Making plan for daily standard working hours

Annually, based on the standard working hours in a year (TQ) calculated as prescribed in Article 3 of this Circular, each employer shall make a plan to determine the number of daily standard working hours of each laborer in the following cases:

1. The number of daily normal hours is 8; or 6, for laborers doing extremely hard, hazardous and dangerous jobs;
2. The number of daily working hours may be more than 8 but may not exceed 12; or may be more than 6 but may not exceed 9, for laborers doing extremely hard, hazardous and dangerous jobs;
3. The number of daily working hours may be more than 4 but must be fewer than 8; or may be more than 3 but must be fewer than 6, for laborers doing extremely hard, hazardous and dangerous jobs;
4. A whole day-off is allowed.

Article 5. Using principles of the standard working hours

1. In a year, the total number of standard working hours planned and determined under Clause 4 of this Article (including daily rest hours expressed as working hours) must not exceed the standard working hours in the year (TQ) already determined in Clause 3 of this Article.
2. In case the number of daily standard working hours which is fewer than 8; or fewer than 6, for laborers doing extremely hard, hazardous and dangerous jobs, has been planned and determined under Clauses 3 and 4 of this Circular, job stoppage wage needs not to be paid.
3. Job stoppage wage must be paid for the number of daily standard working hours already planned during which a company actually did not arrange work for its laborers.
4. In case the number of daily standard working hours which is more than 8; or more than 6, for laborers doing extremely hard, hazardous and dangerous jobs, has been determined under the plan mentioned in Clause 2 Article 4 of this Circular, such difference in hours may not be counted as extra working time.

5. The number of actual daily working hours in excess of the number of standard working hours already planned under Article 4 of this Circular may be counted as extra working hours to be added to the total number of extra working hours in a year and, at the same time, overtime pay and other relevant benefits must be provided under current regulations of the Labor Code.

Article 6. Maximum daily standard working hours and extra working hours

1. The total maximum number of standard working hours and extra working hours in a day is 12; or 9, for laborers doing extremely hard, hazardous and dangerous jobs.

2. Maximum weekly and monthly standard working hours and extra working hours:

a) The total maximum number of standard working hours and extra working hours in a week is 64; or 48, for laborers doing extremely hard, hazardous and dangerous jobs.

b) The total maximum number of extra working hours in a month is 32; or 24, for laborers doing extremely hard, hazardous and dangerous jobs.

c) The employer shall apply either maximum weekly standard working hours and extra working hours prescribed in Point a or maximum monthly extra working hours prescribed in Point b of this Clause, and then record it into a plan for annual working hours and rest hours prescribed in Clause 1 Article 8 of this Circular.

If the employer decides to apply the maximum monthly extra working hours prescribed in Point b of this Clause, the total of weekly standard working hours shall do not exceed 56 hours; or 42 hours, laborers doing extremely hard, hazardous and dangerous jobs.

3. Total of extra working hours in a year of each laborer shall not exceed 300 hours.

Article 7. Rest hours

1. Laborers are entitled to at least one day off (24 consecutive hours) a week. In seasonal-work months or when export goods must be urgently processed under orders, if weekly days off cannot be arranged, the employer shall arrange at least 4 days off every month for laborers.

2. During-shift and between-shift breaks for laborers comply with the provisions of the Labor Code. For laborers working 10 or more hours a day, the employer shall allow them to have at least extra 30 minutes off included in working hours besides rest hours during normal working shifts.

3. Enterprises shall allow laborers to take all official holidays, annual leave days and other paid days off or other days off in compensation as prescribed in the Labor Code.

Article 8. Employer's responsibilities

1. Annually, based on their production and business plans, each employer shall take the initiative in formulating and adjusting their plans on working hours and rest hours, using the form provided in Appendix 1 issued herewith. The employer must consult grassroots trade union executive boards of their enterprises. The employer shall refer to the examples in Appendix 2 issued herewith during the formulation and implementation of the plan for working hours and rest hours.

If ascertaining that the number of daily normal working hours is only 8, or 6, for laborers doing extremely hard, hazardous and dangerous jobs, enterprises are not required to formulate plans under the above Appendix 1.

2. The employer shall notify laborers within their enterprises of plans on working hours and rest hours at least 30 days before implementation, and reach agreement with laborers on overtime work under regulations of the Labor Code.

3. The employer shall reach agreement with laborers on either seasonal payment or monthly payment of wages in a year.

4. The employer shall include the report on implementation of this Circular in the annual report on occupational safety and hygiene to Services of Labor- Invalids and Social Affairs.

Article 9. Responsibilities of Services of Labor- Invalids and Social Affairs

1. Coordinate with related agencies in disseminating this Circular to enterprises in provinces.

2. Regularly expedite, supervise, examine and inspect the implementation of regulations on working hours and rest hours at enterprises; and handle violations against legislation on labor.

3. The employer shall send annual report on the implementation of this Circular by enterprises in the provinces to the Ministry of Labor- Invalids and Social Affairs.

Article 10. Implementation effect

1. This Circular takes effect on February 10, 2016.

2. The Circular No. 33/2011/TT-BLDTBXH dated November 18, 2011 of the Ministry of Labor- Invalids and Social Affairs on guidelines for working hours and rest hours applied to laborers doing seasonal jobs and processing export goods under orders.

3. The regulations on working hours at night, overtime work in special cases, unpaid leave applicable to regulated entities in this Circular comply with current provisions on labor.

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

For the Minister

The Deputy Minister

Doan Mau Diep