

**Decree No: 05/2015/ND-CP dated January 12, 2015 of the Government defining and providing guidance on the implementation of a number of contents of the Labor Code 1/12/2015**

**GOVERNMENT**  
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**SOCIALIST REPUBLIC OF VIETNAM**  
**Independence - Freedom - Happiness**  
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No: 05/2015/ND-CP

Hanoi, January 12, 2015

**DECREE**

**DEFINING AND PROVIDING GUIDANCE ON THE IMPLEMENTATION OF A NUMBER OF CONTENTS OF THE LABOR CODE**

*Pursuant to the Government's Law on Government Organization dated December 25, 2001;*

*Pursuant to the Labor Code dated June 18, 2012;*

*Pursuant to the opinion of the Standing committee of the National Assembly in Document No. 716 / UBTVQH13-CVDXH dated August 13, 2014, providing guidance on implementation of a number of articles and clauses of the Labor Code;*

*At the request of the Minister of Labor, War Invalids and Social Affairs,*

*The government promulgates the Decree providing guidance on the implementation of a number of the contents of the Labor Code.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope of regulation**

This Decree defines the rights and responsibilities of employers, employees, representative organizations of labor collectives, agencies, organizations and individuals involved in the implementation of some provisions of the Labor Code on employment contracts, collective bargaining, collective bargaining agreements, salaries, labor discipline, material liabilities and labor dispute settlement.

**Article 2. Regulated entities**

The employees; the employer; other agencies, organizations and individuals directly related to labor relation as prescribed in Article 2 of the Labor Code.

**Chapter II**

**EMPLOYMENT CONTRACT**

**Section 1: CONCLUSION OF EMPLOYMENT CONTRACT**

**Article 3: Entities concluding employment contracts**

1. The person concluding employment contracts on the employer side (hereinafter referred to as the employer's authorized signatory) is either:

- a) The legal representative specified in the regulations of the enterprise or cooperative;
- b) The head of the agency, unit or organization as prescribed in law;
- c) The family householder
- d) The individual directly using the employee

If the persons specified at Points a, b and c, Clause 1 of this Article do not directly conclude contracts, they shall legally authorize in writing others to conclude the contracts using the form issued by the Ministry of Labor, War Invalids and Social Affairs.

2. The person concluding employment contracts on the employee side (hereinafter referred to as the employee's authorized signatory) is one of the followings:

- a) The employee from 18 years of age or older;
- b) The underage employee from 15 to under 18 years of age obtaining the written consent from their legal representatives;
- c) The legal representative of persons under 15 years of age obtaining the written consent from those persons.
- d) The employee legally authorized to conclude employment contracts by other employees of the same group.

3. The person authorized to conclude employment contracts as prescribed in Clauses 1 and 2 of this Article shall not be allowed to proceed to authorize others to conclude contracts.

**Article 4: Contents of employment contract**

The main contents of the employment contract in Clause 1 of Article 23 of the Labor Code shall be defined as follows:

1. With regard to name and address of the employer :

a) Name of businesses, agencies, organizations, cooperatives, households, who hire, use the employers under employment contracts, as shown in the Certificate of Enterprise Registration, Certificate of cooperative registration or investment certificate or decision on establishment of agencies and organizations; if individuals hire or use the employees, the full names of such individuals as shown in their identity cards or passports are required;

b) Address of businesses, agencies, organizations, cooperatives, households, individuals, who hire and use the employees, as shown in the Certificate of Enterprise registration, Certificate of cooperative registration or investment certificate or decision on establishment of agencies and organizations in accordance with law;

c) Full name, date of birth, ID or passport number, residence address, title of the employer's authorized signatory at businesses, organizations, cooperatives, households hiring and using the employees under the provisions of Clause 1 of Article 3 hereof.

2. With regard to ID number or other legal documents of employees:

a) The employee's ID or passport number granted by the competent authorities;

b) Number, issuance date and place of work permits granted by the competent authorities to foreign employees working in Vietnam;

c) The written consent to conclusion of the employment contract that the legal representative of the employees from 15 years of age to under 18 years of age keeps;

d) Full name, date of birth, gender, place of residence, ID or passport number of the legal representative of the person under 15 years of age

dd) The written consent of under-15-years-old persons to their legal representatives' conclusion of their employment contracts.

3. With regard to work description and work places:

a) Work description: The details of work that the employee must perform;

b) Workplace of employees: Scope of agreed work and location where the employees work ; if the employees work in many different places, the main workplace shall be provided.

4. The term of the employment contract shall include: The number of months and days of employment contract execution , time of the employment contract commencement and termination (for fixed-term employment contracts or casual employment contract or piece work); time of the employment contract commencement (for indefinite term employment contract).

5. With regard to salary rate, form of payment, payment duration, allowances and other additional payment:

a) Salary rate, allowances and other additional payments shall be determined under the provisions of Clause 1 of Article 21 hereof;

b) Form of payment shall be determined in accordance with the provisions of Article 94 of the Labor Code;

c) Payment duration shall be determined by both parties in accordance with the provisions of Article 95 of the Labor Code.

6. With regard to promotion and wage raise regulations : requirements, schedule, specific time, salary rate that has been raised under the mutual agreement

7. With regard to the working time, rest time :

a) Working hours per a day and a week; shift; start or end of a working day, week or shift ; working days per week; overtime and overtime-related provisions;

b) Start and end of break time; weekly , annual days-off, holidays, personal leaves, unpaid leaves.

8. With regard to personal protective equipment provided for employees : Specific quantity, type, quality and service life of each type of personal protective equipment as prescribed by the employers.

9. With regard to social insurance, unemployment insurance and medical insurance :

a) Percentage of the monthly salary shall be paid for social insurance, unemployment insurance, medical insurance by employers and employees as prescribed in the law on social insurance, unemployment insurance and medical insurance

b) Methods time of payments for social insurance, unemployment insurance and medical insurance, made by employers and employees.

10. With regard to training and refresher courses for employees: The rights and obligations of employers and employees to schedule and budget these courses.

11. Other issues relating to both parties' compliance with contractual terms and conditions.

#### **Article 5: Amendment to the term of employment contracts with the appendix**

The term of the employment contract shall be amended only once in employment contract Appendix and not be changed in the type of the signed contract, except when the term of employment contracts with elderly employees and those who are part-time unionists are extended as specified in Clause 6 of Article 192 of the Labor Code.

#### **Article 6: Employment contract with elderly employees**

1. If the employers have a need and elderly employees are healthy enough in accordance with the conclusions of healthcare establishments established and operated under the provisions of the law, both parties shall agree to extend the term of employment contracts or enter into new employment contracts.

2. If the employers have no need or the elderly employees are not healthy enough, both parties shall terminate the employment contracts.

#### **Article 7. Notice of probation results**

1. Within 03 days before the end of the probation period for the employee whose probation period is stipulated in Clauses 1 and 2 of Article 27 of the Labor Code, the employer must notify the employee of the probation results; if the results meet the requirements, the employer shall immediately conclude the employment contract with the employee at the end of the probation period.

2. At the end of the probation period of employees whose probation period is specified in Clause 3 of Article 27 of the Labor Code, the employer must notify the employee of the probation results; if the results meet the requirements, the employer must immediately conclude a employment contract with the employee.

### **Section 2: IMPLEMENTATION OF EMPLOYMENT CONTRACTS**

#### **Article 8. Temporary job transfer**

Temporary transfer of employees to perform jobs which are not stated in employment contracts in Clause 1, article 31 of the Labor Code shall be prescribed as follows :

1. The employer shall be entitled to temporarily transfer the employee to perform jobs other than those in the employment contract in the following cases:

- a) Natural disasters, conflagration, epidemics;
- b) Application of preventive and remedial measures against occupational accidents and diseases ;
- c) Electricity and water supply failure;
- d) Operating demands.

2. The employer shall specify in the corporate rules that the employer may temporarily transfer the employee to jobs other than those in the employment contract due to production and business demands.

3. If employers have temporarily transferred their employees to perform jobs other than those in the employment contract for 60 cumulative working days in a year, and they continue to temporarily transfer the employees to perform jobs other than those defined in the employment contract, the written consent shall be obtained from the employees.

4. If the employees do not agree to be temporarily transferred to the jobs other than those in the employment contracts as specified in Clause 3 of this Article and quit their jobs, the employers shall pay them salary for such quit as prescribed in Clause 1 of Article 98 of the Labor Code.

#### **Article 9. Agreement on temporary suspension of employment contracts when employees are appointed or assigned as representative of the State contributed capital**

1. The employer and the employee in a state-owned single member limited companies, single member limited companies owned by state-owned economic corporations, state-owned corporations, parent companies in the parent -subsidiary company relationship shall agree to temporarily suspend the employment contracts in the following cases:

- a) The employee is appointed as the member of Member assembly or President, comptroller, General Director (Director), Deputy General Director (Deputy Director) or Chief Accountant of the company by competent authorities ;
- b) The employee is assigned as the representative of the capital and works in an enterprise to which the State or a parent company in parent company-sub subsidiary company relationship contributes their capital by competent authorities.

2. The period of temporary suspension of the employment contract shall be the time when the employee is appointed or assigned as the representative of the capital and works in an enterprise to which the State or the parent company in parent company-sub subsidiary company relationship contributes their capital.

#### **Article 10. Reinstatement of employees upon expiry of the period of temporary suspension of employment contracts**

Reinstatement of employees upon expiry of the period of temporary suspension of employment contracts as prescribed in Article 33 of the Labor Code shall be as follows:

1. Within 15 days after the date of expiration of the employment contract suspension, the employee must be present at the workplace and the employer must reinstate the employee . If the employee can not be present at the workplace in accordance with the regulated time, the employee shall agree with the employer on the time of their presence.

2. The employer shall be responsible for arranging the employee to perform the job defined in the employment contract ; in case the employer fails to arrange the job defined in the employment contract, both parties shall be agreed on a new job and amend, supplement the existing employment contract or conclude a new one.

### **Section 3: CONTRACT AMENDMENT, SUPPLEMENTATION AND TERMINATION**

#### **Article 11: Employee's unilateral termination of employment contracts**

1. The employee shall have the right to unilaterally terminate the employment contract as stipulated at Point c, Clause 1, Article 37 of the Labor Code if they suffer from the employer's illegal acts like violent, aggressive behaviors, disrespect and humiliating acts, acts affecting the employee's health, dignity, honor, and use of coercive measures or sexual harassment in the workplace.

2. The employee shall have the right to unilaterally terminate the employment contract at Point d, Clause 1, Article 37 of the Labor Code in the following cases:

- a) Quit the job to take care of their spouse, father , mother, father-in-law, mother-in-law, natural children and adopted children who are sick or involved in accidents;
- b) Leave for foreign countries to live or work;
- c) Help their families that are in trouble with natural disasters, conflagration, hostility, enemy-inflicted destruction, epidemics or relocation which the employee tries to overcome but can not continue to execute the employment contract.

#### **Article 12. Employer's unilateral termination of the employment contract**

The right to unilaterally terminate the employment contract that the employer is granted at the points a and c, Clause 1, Article 38 of the Labor Code shall be prescribed as follows:

1. The employer must specify the criteria for assessing the work completion under the regulations of enterprises, as a basis for assessing the employees who often do not complete the work according to contract labor. Such assessment regulations shall be issued by the employer after consultation with the representative organizations of labor collectives at the company.

2. Other force majeure in one of the following cases

- a) Hostilities, epidemics
- b) Relocation or narrowing of the production and business sites, at the request of competent State agencies.

#### **Article 13. Change of structure, technology and economic reasons**

1. Changes of structure, technology in clause 1 of Article 44 of the Labor Code shall include the following cases

- a) Changes of organizational structure, re-organization of employments
- b) Changes of products, product structure;
- c) Changes of technology process, machinery, business manufacturing equipment, associated with production, business activities of the employer.

2. The economic reason in clause 2 of Article 44 of the Labor Code shall be one of the following cases:

- a) Economic crisis or recession;
- b) Implementation of the governmental policy on restructuring the economy or implementation of international commitments.

3. If technological, structural changes, or economic reasons affect the jobs or risk the employee losing their jobs, lead to dismissal of 02 or more employees, the employer shall fulfill their obligations as prescribed in Article 44 of the Labor Code.

#### **Article 14. Severance redundancy payments**

1. The employer shall pay employment severance allowance as prescribed in Article 48 of the Labor Code to employees regularly working for 12 months or more if employment contracts are terminated as specified in Clauses 1, 2, 3, 5, 6, 7, 9 of Article 36 and the employers shall unilaterally terminate the employment contract in accordance with the provisions of Article 38 of the Labor Code.

2. The employer shall give redundancy pay as prescribed in Article 49 of the Labor Code to employees regularly working for 12 months or more but losing their jobs due to technological, structural change or economic reasons or a merger, amalgamation, split or separation of enterprises or cooperatives as specified in Clause 10, Article 36, Article 44 and Article 45 of the Labor Code.

3. Working time serving as the basis for calculating severance allowance, redundancy pay shall be the total of actual working time subtracting the time when the employees pay unemployment insurance contributions as prescribed by law, and the working time when severance pay is offered by the employer. Of which:

a) The actual time when employees work for employers shall include the following periods such as time of employee's working for the employer; probation, internship and apprenticeship that take place at the employer's enterprise; time of the employer's sending employees on courses; paid leaves of the insured employees under the provisions of the Law on Social Insurance; weekly days-off in accordance with Article 110, fully paid leaves in accordance with the Articles 111, 112, 115 and Clause 1 of Article 116 of the Labor Code; time of employee's staying away from work to join Trade Union activities in accordance with the law on trade unions; time of employee's quitting or being kept away from work by no fault of the employees; time of employee's being temporarily suspended, detained or jailed away from work after which the employees are permitted to come back to work on account of the competent authority's reaching the conclusion that they are not guilty;

b) The time when employees pay for unemployment insurance shall include: the time when employers have paid for the unemployment insurance in accordance with the law, and the abovementioned time corresponding to the time when employees are paid a sum of salary equal to such unemployment insurance premiums in accordance with laws;

c) Working time serving as the basis for calculating severance redundancy payments to employees shall be in years (full 12 months) and the period from 01 full month to under 06 months shall be rounded to a half of year; the period from full 06 months to 01 year shall be rounded to 1 year.

4. Severance redundancy payments in some special cases shall be prescribed as follows:

a) If the employees who have actually worked for the employers for full 12 months or more are made redundant but working time serving as the basis for calculating the redundancy pay is less than 18 months, the employers shall offer the amount of redundancy pay equal to at least 02 months of salary to the employees ;

b) If employees terminate the employment contract after a merger, amalgamation, split, separation of business or cooperative, employment contract, the employers shall offer severance or redundancy payments for the time when the employees have worked for them and the time when the employees have worked for the previous employers .

5. Within 07 working days after the date of termination of the employment contracts, the employers shall be responsible for making full payment for severance or redundancy benefits to the employers. Payment period shall be extended but restricted to less than 30 days after the date of termination of the employment contract in one of the following circumstances:

a) The employer is not the person who terminates the employment contract;

b) The employer or the employee suffers from natural disasters, conflagration, hostile acts or infectious diseases;

c) The employer changes their technology, organization structure, or is affected by economic reasons as prescribed in Article 13 of this Decree

6. Funding for making severance and redundancy payments shall be accounted for in the production and business costs or operating budget of the employers.

#### **Article 15. Responsibilities for setting up the planning for using employees, calculation and payment of severance and redundancy benefits, assumed by employers, in case of transfer of the right to own or use assets of enterprises**

1. In case of transfer of the right to own or use assets of business, the previous employer shall develop the plans to use employees under the provisions of Article 46 of the Labor Code.

2. The employees must terminate the employment contracts under the plan for to use the employees as specified in Clause 1 of this Article, the employers shall make the severance payments as prescribed in Article 49 of the Labor Code.

3. The employees continuing to work, the employees sent to retraining courses to continue to work, the employees assigned to work part-time at employer's enterprises after the transfer of the right to own and use

assets under the plan to use the employees as specified in clause 1 of this Article, upon termination of the employment contract, the next employers shall be responsible for calculation and payment of severance benefits as prescribed in Article 48 or redundancy benefits under the provisions of Article 49 of the Labor Code for the time when the employees have actually worked for them, and severance pay for the time when the employees actually have worked at these enterprises before the transfer of the right to own and use assets, including the time of working in the state sector and being last recruited into the business before January 01, 1995.

4. If the business' employers continue to transfer the right to own and use a part of assets or the whole enterprises after the transfer of the right to own or use assets of business, the employers shall implement the provisions of Clauses 1, 2 and 3 of this Article before and after the right to own and use the assets .

### **Chapter III**

#### **COLLECTIVE BARGAINING, COLLECTIVE BARGAINING AGREEMENT**

##### **Article 16. Periodic collective bargaining**

Periodic collective bargaining as specified in clause 2 of Article 67 of the Labor Code shall be conducted at least once a year. Time of conducting periodic collective bargaining shall be agreed by both parties

##### **Article 17. Responsibilities of trade unions, organizations representing employers and regulatory agencies in charge of labor issues for attending collective bargaining sessions**

1. On receipt of the written request made by either collective bargaining party, Vietnam General Confederation of Labor, Confederation of Labor of central-affiliated cities and provinces, Trade Union as the immediate superior at grassroots level, central and local organizations representing employers , the Ministry of Labor – War Invalids and Social Affairs, the People's Committee of a province and district shall appoint officials to attend collective bargaining sessions

2. Officials appointed to attend the collective bargaining sessions by agencies, organizations shall provide information related to the negotiation contents, guidance on laws on labor for participants in such collective bargaining process.

##### **Article 18. Signatory of business collective bargaining agreements**

1. Signatory of the business collective bargaining agreement in clause 1 of Article 83 of the Labor Code shall be prescribed as follows

a) Signatory on the collective side shall be the chairman of the trade unions at grassroots level or the chairman of the immediate superior of such trade unions at places where trade unions at grassroots level have not been founded ;

b) Signatory on the employer side shall be legal representatives as prescribed in the regulations of the enterprise, cooperative, the head of the agency, organization or individual using the employees according to the employment contracts.

2. If signatory of the collective bargaining agreement as prescribed in clause 1 of this Article does not directly sign the collective bargaining agreement, he or she shall legally authorize in writing others to conclude such agreement. The authorized person shall not be allowed to authorize another person to conclude the collective bargaining agreement .

##### **Article 19. Responsibilities for receiving the collective bargaining agreement of agencies in charge of State management of labor**

Responsibilities of the agencies in charge of State management of labor for receiving the collective bargaining agreement shall be prescribed as follows:

1. Make management books of collective bargaining agreement in the form provided by the Ministry of Labor, War Invalids and Social Affairs

2. Within 15 days from the receipt of the collective bargaining agreement, if collective bargaining agreements are detected with unlawful contents or ultra vires conclusion, the State management agencies shall request in writing the People's Court to declare the collective bargaining agreement is null and void, and send this request to two contracting parties .

If the collective bargaining agreement is not in effect, the state management agencies shall request in writing the two parties to negotiate the amendments and supplements to the collective bargaining agreement and send this request to the state management agencies as prescribed.

##### **Article 20. Petition for declaring that collective bargaining agreement becomes invalid**

During the time of inspection or settlement of labor complaints and denunciation, if collective bargaining agreement is detected with one of the cases prescribed in Article 78 of the Labor Code, inspection delegation leaders or self-employed inspectors or persons assigned to perform the specialized inspection tasks shall make a report on the invalid collective bargaining agreement, and request in writing the People's Court to declare that collective bargaining agreement becomes invalid.

### **Chapter IV**

#### **SALARY**

##### **Article 21. SALARY**

Salaries in clauses 1 and 2 of Article 90 of the Labor Code shall be prescribed as follows:

1. Salary identified in the employment contract shall be agreed with the employer by the employee to perform certain jobs, including:

a) Work- or position-based salary shall be the salary rates in salary scale, salary table defined by the employer under the provisions of Article 93 of the Labor Code. Salary for the most simple jobs in normal working conditions and business hours (exclusive of extra payments for overtime and overnight work) shall not be less than the region-based minimum salary defined by the Government;

b) Salary allowance shall be the amounts offset against the working conditions, the complexity of jobs, the living conditions, the employee attraction level which is not included or incompletely included in work- and position-based salary ;

c) Other extra payments shall be the sums in addition to salary rates, salary allowances, and shall be related to job performance or working position in the employment contract, excluding bonuses, meal- between- shift allowances, benefits, contributions of employers which are not related to job performance or position in the employment contract.

2. Salary paid to employees shall be based on the contractual salary, productivity, workload and quality of work that the employees have done.

3. The salary in the employment contract and the salary paid to employees shall be specified in Vietnam Dong except salaries and allowances paid to non-residents, foreigner residents under provisions of the law on foreign exchange.

#### **Article 22. Form of payment**

Form of payment under clause 1 of Article 94 of the Labor Code shall be prescribed as follows:

1. The time-based salary paid to employees shall be based on actual working time in specific months, weeks, days, hours:

a) The monthly salary paid for a working month shall be determined on the basis of employment contracts;

b) The weekly salary paid for a working week shall be determined on the basis of the monthly salary multiplied by 12 months and divided by 52 weeks;

c) The daily salary paid for a working day shall be determined on the basis of the monthly wage divided by the number of normal working days in the month under the provisions of the law that businesses choose;

d) The hourly salary paid for a working hour shall be determined on the basis of the daily salary divided by the number of normal working hours in the day as prescribed in Article 104 of the Labor Code.

2. The product-based salary shall be paid with the basis of the degree of completion of the quantity and quality of the product according to the labor requirement and delivered product unit price.

3. Piecework salary shall be paid with reference to the quantity and quality of work and completion time .

#### **Article 23. Salary payment period for employees paid monthly salary**

1. An employee enjoying monthly salary shall be paid on monthly or semi-monthly basis.

2. The payment time shall be agreed by the two parties and fixed at a specific date of a month.

#### **Article 24. Payment principles**

1. The employee shall be paid directly, fully and punctually .

2. In case natural disaster, conflagration or other force majeure events take place, and employers have sought all remedial measures but can not make payment on time as agreed in the employment contract, the payment shall be made within 01 month. The employer shall make additional payment to the employee due to their late payment in the following cases:

a) If such late payment is made within less than 15 days, additional payments are not required;

b) If the late payment is made for 15 days or more, an extra amount shall be at least equal to the arrears of salary multiplied by the ceiling of interest rate for 1-month deposits announced by the State bank of Vietnam at the time when the payment is made. If the State Bank of Vietnam does not specify the ceiling interest rate, 1-month deposit interest rate of commercial banks, where businesses and agencies open trading accounts at the time of payment, shall be applied.

#### **Article 25. Overtime and nightshift salary**

1. The employee paid for their overtime work in accordance with clause 1 of Article 97 of the Labor Code shall be prescribed as follows:

a) Employees paid time-based salary shall be paid for their overtime work if their working hours exceed normal working hours defined by the employers in accordance with the provisions in Article 104 of the Labor Code;

b) Employees paid product-based salary shall be paid for their overtime work if they work overtime to increase the product quantity, volume and their overtime work helps to increase product quantity and volume, work according to requirements agreed with employers.

2. Overtime salary defined in clause 1 of this Article shall be calculated according to the salary unit price or actual salary paid on the basis of the current job as follows:

a) On weekdays, minimum payment equals 150%;

b) On the weekly days-off minimum payment equals 200%;

c) On public holidays, paid days-off, minimum payment equals 300%, which is not included in public holiday pays, paid leave pays under the provisions of the Labor Code with respect to employees paid daily salary.

3. If employees work at night under clause 2 of Article 97 of the Labor Code, they shall be paid at least 30% of the salary calculated in salary unit price or actual salary paid for the work of normal working days .

4. If employees work overnight under clause 3 of Article 97 of the Labor Code, they shall be paid an additional 20% of salary calculated by salary unit price or actual salary paid by the work done on the day of the normal working day or the weekly rest days or holidays.

5. Employees who work overtime on holidays falling on the weekly days-off as prescribed in Article 110 of the Labor Code shall be paid overtime salary. Employees who work overtime on compensation days off for the holidays falling on a weekly rest days under the provisions of clause 3 of Article 115 of the Labor Code shall be paid overtime salary on weekly rest days.

6. Salary paid to workers for overtime work, night work as prescribed in Clauses 2, 3, 4 and 5 of this Article shall be calculated in proportion to the form of payment specified in Article 22 of this Decree .

**Article 26. Salary used as the basis for calculating the pay for employees in work suspension time, annual, public holiday , paid leaves, salary advance and deduction**

1. The salary used as the basis for calculating the pay for employees in work suspension time in clause 1 of Article 98 of the Labor Code shall be the salary in the employment contract when employees have to stop their work, which shall be calculated in proportion to the salary paid according to the form of payment of time-based salary as specified in clause 1 of Article 22 of this Decree.

2. The salary used as the basis for calculating the pay for employees in the annual leave days in Article 111; increased annual leave days according to their seniority in Article 112; public holidays in Article 115 and the paid leave in clause 1 of Article 116 of the Labor Code shall be the salary in the employment contract of the preceding month, divided by the number of normal working days in months defined by employers, multiplied by the number of days employees take annual leave, increased annual leave according to seniority, public holidays, paid leave days.

3. The salary on which employers base to pay for employees in untaken leave days or fully untaken annual leave days in Article 114 of the Labor Code shall be prescribed as follows:

a) If employees have worked for 06 months or more, it shall be the average salary of the employment contract of the preceding 06 months before the employees terminate or lose their jobs. If employees have not taken or fully not taken annual leave due to other reasons, it shall be the average salary of the employment contract of the preceding 06 months before the employers pay annual untaken leave day;

b) If employees have worked less than 06 months, it shall be the average salary under employment contracts of full working time .

4. The salary paid to employees in untaken leave days or fully untaken annual leave days shall be the salary prescribed in clause 3 of this Article divided by the number of normal working days prescribed by employers of the preceding month before the employers pay , and multiplied by the number of annual untaken leave days or fully untaken annual leave days

5. The salary used as the basis for calculating salary advance paid to the employee during the temporary leave to perform civic duties as prescribed in clause 2 of Article 100 or temporary suspension prescribed in Article 129 of the Labor Code shall be the salary in the employment contracts of the preceding month before the employees temporarily cease their jobs or are suspended from work and shall be calculated in proportion to the pay paid in the form of payment specified in clause 1 Article 22 of this Decree.

6. The salary used as the basis for calculating salary deduction paid to indemnify the damage caused by damaging the tools and equipment in clause 1 of Article 130 of the Labor Code shall be the actual salary employees received on the monthly basis after deducting compulsory social insurance, health insurance, unemployment insurance and paying personal income tax (if any) as prescribed

**Chapter V**

**LABOR DISCIPLINE, MATERIAL RESPONSIBILITIES**

**Section: LABOR DISCIPLINE**

**Article 27: Contents of labor regulations**

The main contents of labor regulations under clause 2 of Article 119 of the Labor Code shall be prescribed as follows ::

1. Working time and rest time : regulations on normal working hours in 01 day, 01 week; shift; starting and ending time of the work shift; overtime (if any); overtime in special cases; short breaks beside break time; shift exchange breaks; weekly leave; annual leave, personal leave, unpaid leave .

2. Order at workplace: Regulations on work scope, moving around in work time; behavioral culture, costumes; compliance with assignment, appointment of the employers (unless obvious risk of occupational accidents, occupational diseases, serious threat the lives and health of the employees).

3. Labor safety, labor hygiene at workplace : Responsibilities for mastering the labor hygiene and safety, fire prevention ; compliance with measures to ensure labor hygiene and safety, prevention against occupational accidents and occupational diseases; compliance with rules, procedures, regulations and standards of labor hygiene and safety; use and maintenance of personal safety equipment; hygiene, decontamination, sterilization at work.

4. Protection of assets and technological and business secrets and intellectual property of the employer: List of assets, documents, technological and business secrets and intellectual property that must be protected within the scope of the assigned responsibilities

5. Employees' violations against labor discipline, forms of dealing with violations against labor discipline, and material responsibilities shall include: List of violations, the degree of violation in proportion to the form of handling the labor discipline; extent of the damage, liability for indemnity of damages.

**Article 28. Registration of labor regulations and the effect of labor regulations**

1. Within 10 days after the date of issue of labor regulations, the employers must submit labor regulation registration dossiers to the state management agencies of the province where their business is registered.

2. Upon receipt of full registration dossiers of labor regulations, the provincial agencies in charge of State management of labor shall issue the confirmation of receipt of the registration dossiers to employers.

3. Within 7 working days from the date of receipt of a dossier for registration of the labor regulations, if the labor regulations have contents contrary to law, the provincial agencies in charge of State management of labor shall notify in writing and provide guidance for the employer to make necessary amendments and supplements and the regulations must be re-submitted for registration. .

4. If receiving a written notification of labor working regulations contrary to the law, the employers shall amend and supplement the labor regulations , consult with representatives of the labor collective at the facilities and re-register the labor regulations
5. If amending and supplementing the effective labor regulations, the employers must consult with organizations representing labor collective at the facilities and re-register the labor regulations.
6. The re-registration dossiers of the labor regulations specified in clauses 4 and 5 of this Article shall be made in the same manner as labor regulations dossiers
7. The labor regulation shall take effect after 15 days after the provincial State management agencies receive the registration dossiers or re-registration dossiers of the labor regulations.
8. The employer having branches, units, business production facilities in many central-affiliated cities and provinces shall submit the effective labor regulations to the provincial State management agencies where branches, units, business production facilities are located.
9. The employer hiring less than 10 employees shall not be required to register the labor regulations.

**Article 29. Handling violations against labor discipline imposed on the employees raising children under 12 months of age**

1. The employer shall not handle violations against labor discipline for the employees being the fathers or mothers or legal adoptive fathers or mother raising children under 12 months of age.
2. When the time of raising children under 12 months old has run out, if the statute on limitations to such handling has expired, it shall be prolonged, but not exceeding 60 days after the time of raising children under 12 months of age runs out.

**Article 30. Procedures for handling violations against the labor discipline**

The procedures for handling of violations against labor discipline in Article 123 of the Labor Code shall be prescribed as follows

1. The employer shall give a written notice of the participation in the meeting of handling violations against labor discipline to the executive board of the primary trade unions or trade union at the higher levels of grassroots one at the place where the primary trade union has not been yet established, employees, parents or legal representatives of the employees under 18 years of age at least 5 working days prior to the meeting.
2. The meeting about handling of violations against labor discipline shall be conducted in the presence of sufficient participants notified under the provisions of clause 1 of this Article. If the employer has noticed in writing 03 times, but one of the participants is absent, the employer shall conduct the meeting unless the employee is in time that labor disciplinary measures may not applied as specified in clause 4 of Article 123 of the Labor Code.
3. The meetings for labor discipline must be made in minutes and such minutes must be agreed by the participants before the end of the meeting. The minutes must be signed by all meeting participants prescribed in clause 1 of this Article and the minutes writer. If one of the participants attended the meeting without signing the minutes, the reason for such refusal must be clearly provided.
4. The persons concluding contracts prescribed at Points a, b, c and d, Clause 1, Article 3 of this Decree shall be the persons entitled to make decision on handling violations against labor discipline imposed on employees. Persons authorized to conclude contracts may only handle violations against labor discipline in the form of reprimands.
5. The decision to handle violations of labor discipline to employees must be issued within the statute of limitations of handling violations of labor discipline or prolonged duration of the statute of limitations of handling violations of labor discipline under Article 124 of the Labor Code, such decision must be sent to the participants of meeting of handling violations of labor discipline.

**Article 31. Dismissal imposed on employees being absent from work without permission**

1. Dismissal may be applied by an employer as a form of discipline for an employee who has been absent from work without permission for a total of 5 working days within 1 month or 20 days within 1 year without plausible reasons
2. Dismissal may be applied by an employer as a form of discipline for an employee quitting jobs with the following plausible reasons :
  - a) Natural disasters, conflagration;
  - b) Illness of employees or their mother, father, adoptive mother, adoptive father, mother-in-law, father-in-law, husband, wife, children or adopted children with certification by a health facility founded and operated as prescribed in law
  - c) Other cases defined in the labor regulations.

**Section 2: MATERIAL RESPONSIBILITIES**

**Article 32. Compensation for damage**

Compensation for damage under the provisions of Article 130 of the Labor Code shall be prescribed as follows:

1. In case due to negligence, an employee causes damage to tools and equipment valued at no more than 10 months' regional minimum wage announced by the Government and this damage is applied at the employee's workplace, the employee shall pay compensation of no more than 3 months' wage which is written in the employment contract of the preceding month before the damage that happens and this compensation shall be deducted monthly from his/her wage in accordance with Clause 3, Article 101 of this Code.
2. The employee must pay compensation for damage in whole or in part in accordance with the market price in one of the following cases:
  - a) An employee, due to negligence, causes damage to tools and equipment valued at no more than 10 months' regional minimum wage announced by the Government and this damage amount is applied at the employee's workplace,



An employee causes loss of tools, equipment or assets of the employer or other assets provided by the employer  
c) An employee consumes materials in excess of the permitted level defined by the employer.

3. If the employee causes any damage as prescribed in clause 2 of this Article and has been bound by the liability contract with the employer, such employee must compensate according to the liability contract.

4. In case the damage is caused by a natural disaster, conflagration, hostilities, epidemic diseases, calamity or other objective events which are unforeseeable and irremediable and every necessary measure has been taken to full ability, no compensation is required.

5. The process and effective term of payment for compensation for damages shall be applied in the procedures and statute of limitations of handling violations of labor discipline.

#### **Article 33. Complaints about labor discipline and material responsibilities**

1. If an employee subject to penalties for violations against labor disciplines, work suspension, or pay compensation requirements in accordance with the regulations on material responsibilities does not agree with the handling decision, he/she shall file a appeal against the employer's decision to a competent agency prescribed by law, or request settlement of a labor dispute according to the procedures prescribed by law.

2. The employer must cancel or issue a decision to replace the issued decision and notice to employee in the enterprise when competent authorities who have the authority to hear such appeals draw conclusions which are different from the content of decision on handling violation against labor discipline or decision to temporarily suspend the work or decision on compensation under the regulations of material responsibility of the employer.

3. The employer must restore the violated rights and interests of the employee due to their decision on handling violation against labor discipline or decision on temporarily suspending the work or decision on compensation for damage paid by employers. If disciplinary measures in the form of unlawful dismissal are taken, the employer must implement the provisions of clauses 1, 2, 3 and 4 of Article 42 of the Labor Code.

### **Chapter VI**

#### **SETTLEMENT OF LABOR DISPUTES**

##### **Article 34: Labor arbitration council**

1. Labor arbitration council in article 199 of the Labor Code shall include:

a) A chairperson who is the head of the state management agency of labor

b) A secretary

c) Members who are the representatives of the provincial-level trade union and the employers' representative organization

2. The Chairman and members of the arbitration council shall hold part-time office with 05-year tenure.

3. The Secretary of the council shall be on the payroll of the Services of Labor, War Invalids and Social Affairs and work full time and be entitled to the responsibility allowance equivalent to the position-based allowance paid to the Head of the Department.

4. Chairperson of the labor arbitration council shall define working regulations of the council

##### **Article 35. Handling of labor strikes that does not follow the regulatory procedures**

##### **Handling of strikes that does not follow the regulatory procedures in Article 222 of the Labor Code shall be prescribed as follows**

1. Declaring that a strike violates the regulatory procedures permitted by the provincial People's Committee shall be carried out as follows :

a) Whereas organizing and leading the strike do not comply with the provisions of Articles 212 and 213 of the Labor Code, the employer shall immediately gives notification to the Chairman of the district-level People's Committee and provincial Confederation of Labor or Trade Union of industrial zones, processing and exporting zones, economic zones, hi-tech zones at the places where the strike takes place;

b) Immediately after receiving the notice of the employer, the Chairman of the district People's Committee shall direct the Division of Labor - Invalids and Social Affairs in collaboration with the provincial Confederation of Labor or Trade Union of industrial zones, processing and exporting zones, economic zones, hi-tech zones at the place of the strike, within 24 hours after receiving the direction, The Division of Labor - Invalids and Social Affairs Committee Chairman shall report the Presidents of People's Committees of districts on test results;

c) If the strike does not follow the prescribed procedures, within 12 hours after receiving the report of the Department of Labor - Invalids and Social Affairs, the Chairman of the district –level People's Committee shall request in writing the Chairman of the provincial People's Committee to make decision on declaring that the strike violates the prescribed procedures;

d) Within 12 hours after receiving the request of the Chairman of the district-level People's Committee, the Chairman of the provincial People's Committee shall issue a decision on declaring that the strike violates the prescribed procedures and immediately inform the Chairman of the district-level People's Committee.

2. Within 12 hours after receiving the decision to declare the strike violates the prescribed procedures of the Chairman of the provincial People's Committee, Chairman of the district-level People's Committee shall direct the Division of Labor - Invalids and Social Affairs to take charge and cooperate with the provincial Confederation of Labor or Trade Union of industrial zones, processing and exporting zones, economic zones, hi-tech zones at the place of the strike, involved agencies and organizations shall directly meet the employer, the Executive board of The primary trade unions or the Trade Union as the immediate superior to the grassroots level where the trade unions at grassroots level have not been established to get the opinions from and give support to parties for the purpose of strike settlement.

3. Participants in strikes that do not follow the prescribed procedures shall not be paid salary and other benefits under the provisions of the law in the time of participating in the strike. Employees who do not participate in the

strike but have to stop working because of the strike shall be paid salary for such stop in accordance with clause 2 of Article 98 of the Labor Code and other benefits under the provisions of legislation on labor.

**Article 36. Compensation for damage caused by illegal strikes**

Compensation for damage in case of illegal strikes in clause 1 of Article 233 of the Labor Code shall be prescribed as follows:

1. The employer shall determine the value of the damage caused by the illegal strike, including:
    - a) Damage to machinery, equipment, raw materials, fuel, semi-finished products and finished products damaged after deducting the residual value due to liquidation and recycling (if any);
    - b) Remedial costs due to illegal strike including: Operation of machinery used to meet technology demand ; repair and replacement of damaged machinery and equipment ; recycling of damaged raw materials, fuel, semi-finished products and finished products; preservation of natural materials, fuel, semi-finished products, finished products during the strike; sanitation; customer compensation or handling of contract violations that arise from the strike.
  2. The employer shall request in writing the trade union organization leading the illegal strike to pay damage. A written request shall have some main contents as follows:
    - a) Value of damage due to illegal strike specified in clause 1 of this Article;
    - b) The value of compensation claims;
    - c) The deadline for compensation
  3. Based on the content of the written request for damage compensation from the employer, trade union representatives directly leading the strike shall compensate for damage as prescribed.
- In case of disagreement with the value of damage, compensation value, compensation duration at the request of the employer, within 05 working days from receipt of the written request, the representative of the trade union directly leading the strike shall send a written request to the employer to negotiate the disagreed contents. After negotiation, if agreement is reached, both parties shall have the responsibility to implement the agreed content. If disagreement arises, either of two parties shall in accordance with the law.

**Chapter VII**

**IMPLEMENTATION**

**Article 37. Effect**

1. This Decree takes effect from March 1, 2015.
2. The Government's Decree No. 196 / CP of December 31, 1994, detailing and guiding the implementation of a number of articles of the Labor Code on collective bargaining agreements; the Government's Decree No. 93/2002 / ND-CP of November 11, 2002, amending and supplementing a number of articles of the Government's Decree No. 196 / CP of December 31, 1994, detailing and guiding the implementation of some articles of the Labor Code on collective bargaining agreements; the Government's Decree No. 41 / CP of July 6, 1995, detailing and guiding the implementation of some provisions of the Labor Code on labor discipline and material responsibility; the Government's Decree No. 33/2003 / ND-CP of April 2, 2003, amending and supplementing a number of articles of the Government's Decree No. 41 / CP of July 6, 1995, detailing and guiding the implementation of some articles of the Labor Code on labor discipline and material responsibility; the Government's Decree No. 11/2008 / ND-CP dated January 30, 2008, defining compensation for damages if the illegal strike causes damage or loss suffered by the employer and the previous provisions contrary to the provisions of this Decree shall become ineffective from the effective date of this Decree.

**Article 38. Transitional provisions**

1. If the employment contracts, collective bargaining agreements , labor regulations and regulations of the employer are signed or issued before the effective date of this Decree, the parties involved shall revise, amend, supplement and implement procedures promulgated in accordance with the provisions of this Decree.
2. If 100% state-owned enterprises or enterprises equitized from the state-owned enterprises terminate the employment contract that the employees have the time to work in agencies, organizations, units and business in the state sector and transfer to another work at the enterprise before January 01, 1995 but have not received a severance allowance or redundancy pay, the employer shall pay the severance allowance or redundancy pay for the time when the employee has worked for him/ her and pay severance allowance for the time when the employee has worked for previous agencies, organizations, units and enterprises in the state sector.
3. If employees working in a state-owned single member limited companies are appointed by competent authorities to be the members of the Member assembly or the company president, General Director (Director), Deputy general director (Deputy director), Supervisor, chief Accountant or assigned to be representatives of the contributed capital and work in other businesses before the effective date of this Decree, the period of postponement of the employment contract under the provisions of Article 9 of this Decree shall be counted from the date on which these employees are appointed or assigned to represent the contributed capital

**Article 39. Responsibility for implementation**

1. The Minister of Labor, War Invalids and Social Affairs shall provide the guidance on implementation of this Decree
2. Minister, Heads of ministerial-level agencies, Heads of Governmental agencies, the president of the People's Committee in central-affiliated cities and provinces and agencies, organizations, businesses and individuals involved shall be responsible to implement this Decree

**PP THE GOVERNMENT**  
**PRIME MINISTER**  
*(Signed and sealed)*

**Nguyen Tan Dung**  
*(This translation is for reference only)*