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LEGAL UPDATE

No. 2 – September 2023

(15 Sep 2023 – 30 Sep 2023)



News in focus

New Decree on foreign employees working in Vietnam

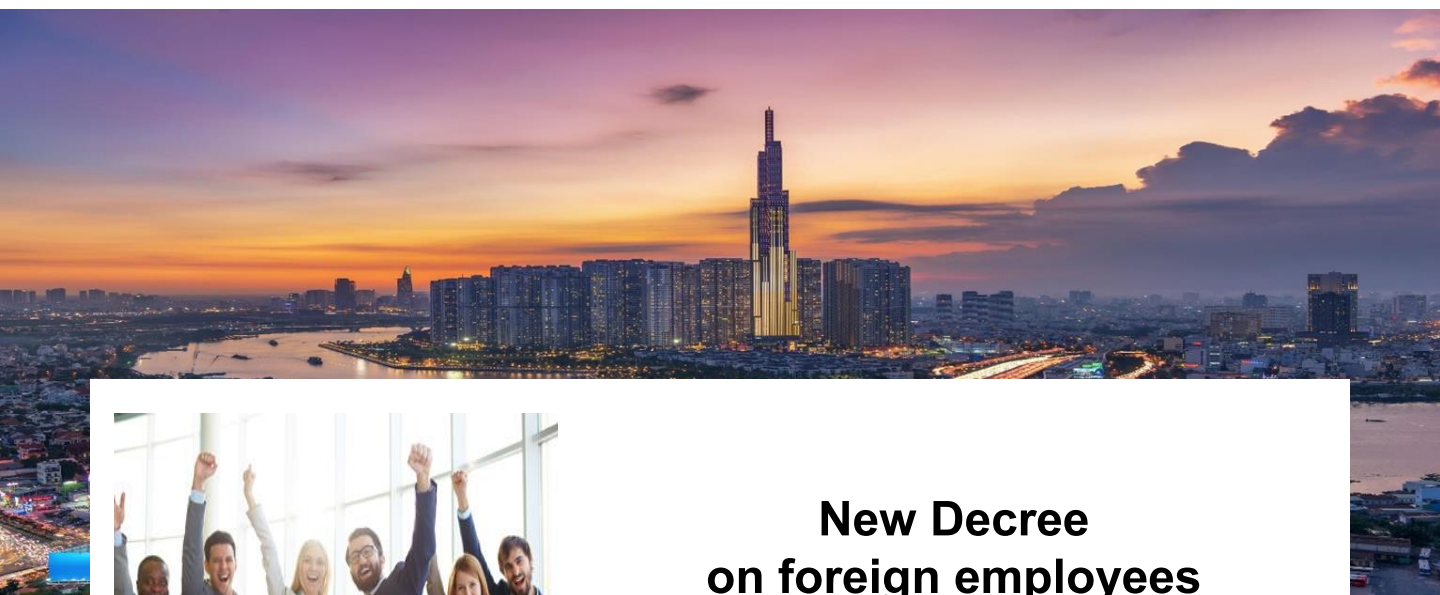


New legal documents

Remarkable among documents:

The Minister of Science and Technology's Circular 19/2023/TT-BKHHCN guiding Decree 107/2013/ND-CP on sanctioning administrative violations in the field of atomic energy, amended in Decree 126/2021/ND-CP

A – News in focus



New Decree on foreign employees working in Vietnam

On Sep 18, 2023, the Government issued Decree 70/2023/ND-CP amending Decree 152/2020/ND-CP which regulates foreign employees working in Vietnam, and recruits, manages Vietnamese employees working for foreign organizations and individuals in Vietnam. This new Decree took effect on the same day of its enactment date.

In this legal update, we reveal several remarkable points on foreign employees working in Vietnam in accordance with Decree 70/2023/ND-CP.

1. Expanding requirements for experts, chief executive officers, foreign technical employees

From 18 Sep 2023, experts only need to have graduated from university or higher or equivalent qualifications and have at least 03 years of work experience suitable to the expected job position in Vietnam (instead of stipulating that experts must have a university degree in the expected job position as before).

Foreign technical employees are not required to do the right major, but instead, only need to be trained for at least 01 year and have at least 03 years of work experience suitable to the expected job position in Vietnam.

According to the new regulations, the chief executive officer is not only the head and directly runs the unit under the agency, organization or enterprise, but is regulated with a broader scope, including:

- The head of a branch, representative office or business location of the enterprise;
- The head and directly administers at least 01 field of the agency, organization or enterprise and is under the direct direction and administration of the head of the agency, organization, enterprise.

2. Shorten the reporting period of the demand for using foreign employees

According to the new Decree, before using foreign employees, the employers (except contractors) must:

- (i) Perform procedures for determining the demand for foreign employees for each job position that Vietnamese employees have not yet met; and
- (ii) Report to the Ministry or Department of Labor, Invalids and Social Affairs where the foreign employee is expected to work.

The deadline set for this procedure under the new regulations is at least 15

days in advance from the expected date of employing foreign employees (the old regulations required 30 days of advance reporting).

Within the implementation process, if the demand for position, title, working form, number and working location changes, the employer must report to the Ministry or the Department of Labor, Invalids and Social Affairs at least 15 days in advance from the expected date of employing foreign employees (the old regulation was 30 days).

3. Change in authority to issue written consent to use foreign employees

According to the new Decree, the Ministry or the Department of Labor, Invalids and Social Affairs are the competent authorities to issue written approval or disapproval of the employment of foreign employees for each job position reported by the employer (formerly was the Ministry of Labor, Invalids and Social Affairs or the Provincial People's Committee).

These competent authorities shall issue the written approval within 10 business days from the receipt date of the explanatory report or the explanatory report on the change in demand for using foreign employees.

Accordingly, there is the following hierarchy:

- The Ministry of Labor, Invalids and Social Affairs shall perform state management of the recruitment and foreign employees' administration throughout the country, as well as the management of Vietnamese employees working for foreign organizations, individuals in Vietnam;
- The Department of Labor, Invalids and Social Affairs manages foreign employees, including the issuance of work permit for foreign employees in the locality.

4. Additional cases that foreign employees do not have to apply for a work permit

The new Decree adds some cases in which foreign employees working in Vietnam do not need to apply for a work permit, including:

- (i) Foreigners sent to Vietnam by that country's competent agencies or organizations to work as teachers or managers or executives at educational institutions proposed to establish in Vietnam by foreign diplomatic missions or inter-governmental organizations; and
- (ii) Foreigners who are certified by the Ministry of Education and Training as foreign employees to enter Vietnam to work as managers, managing directors, principals or vice principals of educational institutions proposed to establish in Vietnam by foreign diplomatic missions or inter-governmental organizations.

5. Employers must report the competent authority when foreign employees work in more than one province or city

In case a foreign employee works for one employer in more than one province or city, the employer must report to the Ministry and the Department of Labor, Invalids and Social Affairs where that foreign employee comes to work.

Implementation duration: Within 03 business days from the date the foreign employee starts working.

Implementation form: Online.

The dossier includes Form No. 17/PLI regarding the Report on the situation of foreign employees coming to work.

6. The competent authority allows foreign employees to apply for the issuance of online work permits

According to the new Decree, the Ministry or the Department of Labor, Invalids and Social Affairs where the foreign employee is expected to work has the authority to issue work permits to foreign employees.

In addition to the original work permit in paper according to the current form, the new Decree allows the issuance of online work permits but must ensure compliance with relevant laws and meet the content following Form No. 12/PLI stipulating the Work Permit Form.

7. Additional cases of re-issuance of work permits

When having the changes as follows, employers need to carry out procedures to change work permits for foreign employees working for them:

- (i) Full name of the employee;
- (ii) Employee's nationality;
- (iii) Employee's passport number;
- (iv) Work location;
- (v) The change of enterprise's name without changing the enterprise code (new regulation).

B – New legal documents



Remarkable new legal documents (Enacted from 15 Sep 2023 – 30 Sep 2023)

No.	Legal documents
TRAFFIC – CONSTRUCTION	
1	The Minister of Transport's Circular 25/2023/TT-BGTVT amending Circular 11/2021/TT-BGTVT guiding the method of pricing and price management of public career services in the field of management and maintenance of national railway infrastructure in compliance with the ordering method which uses the State budget from recurrent expenditures
	Enactment Date: 15 Sep 2023
2	Decree 72/2023/ND-CP stipulating standards and norms for using cars
	Enactment Date: 26 Sep 2023
LABOR	
3	Decree 70/2023/ND-CP amending Decree 152/2020/ND-CP which regulates foreign employees working in Vietnam, and recruits, manages Vietnamese employees working for foreign organizations and individuals in Vietnam
	Enactment Date: 18 Sep 2023

No.	Legal documents	
ADMINISTRATIVE		
4	Decree 71/2023/ND-CP amending Decree 112/2020/ND-CP on disciplinary actions against cadres, civil servants and public employees	
	Enactment Date: 20 Sep 2023	Effective Date: 20 Sep 2023
5	The Minister of Science and Technology's Circular 19/2023/TT-BKHCHN guiding Decree 107/2013/ND-CP on sanctioning administrative violations in the field of atomic energy, amended in Decree 126/2021/ND-CP	
	Enactment Date: 20 Sep 2023	Effective Date: 05 Nov 2023
EXPORT – IMPORT		
6	The Minister of Industry and Trade's Consolidated document 24/VBHN-BCT in 2023 consolidating the Joint Circular on the management of import, export and temporary import and re-export of ozone-depleting substances in accordance with the Montreal Protocol on ozone-depleting substances	
	Enactment Date: 20 Sep 2023	Effective Date: 20 Sep 2023
INVESTMENT		
7	The Minister of Transport's Decision 1182/QD-BGTVT in 2023 on the Regulation on expenditure for the verification and approval of the settlement of completed projects	
	Enactment Date: 19 Sep 2023	Effective Date: 25 Aug 2023
HEALTH		
8	The Minister of Health's Circular 17/2023/TT-BYT amending, supplementing and abolishing several legal documents on food safety	
	Enactment Date: 25 Sep 2023	Effective Date: 09 Nov 2023
9	The Prime Minister's Decision 24/2023/QD-TTg on conditions for identifying people exposed to HIV and people infected with HIV due to occupational accidents	
	Enactment Date: 22 Sep 2023	Effective Date: 10 Dec 2023