

THE GOVERNMENT

Decree No. 44/2013/ND-CP of May 10, 2013, detailing a number of articles of the Labor Code regarding labor contracts

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

Pursuant to the June 18, 2012 Labor Code;

Pursuant to the November 29, 2005 Enterprise Law;

At the proposal of the Minister of Labor, War Invalids and Social Affairs;

The Government promulgates the Decree detailing a number of articles of the Labor Code regarding labor contracts.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree details the Labor Code regarding participation in compulsory social insurance, unemployment insurance and compulsory health insurance in case an employee enters into labor contracts with more than one employer; contents of labor contracts signed with employees hired to work as directors in enterprises with state capital; and the order and procedures for labor inspectorates to declare labor contracts to be invalid and the handling of invalid labor contracts.

Article 2. Subjects of application

1. Employees defined in Clause 1, Article 3 of the Labor Code.
2. Employers defined in Clause 2, Article 3 of the Labor Code.
3. Agencies, organizations and individuals related to the contents prescribed in Article 1 of this Decree.

Article 3. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Enterprises with the state -contributed capital are enterprises operating under the Enterprise Law in which the State holds less than 100% of charter capital.
2. Employees hired to work as directors in enterprises with state capital are Vietnamese or foreigners who satisfy all law-prescribed criteria and conditions (below referred to as person hired to work as director).
3. Inspection team heads are heads of inspection teams performing labor inspection tasks, including heads of inspection teams of provincial-level Labor

War Invalids and Social Affairs Departments; heads of inspection teams of the Ministry of Labor, War Invalids and Social Affairs; and heads of specialized inspection teams of departments or general departments under the Ministry of Labor, War Invalids and Social Affairs.

Chapter II

PARTICIPATION IN COMPULSORY SOCIAL INSURANCE, UNEMPLOYMENT INSURANCE AND COMPULSORY HEALTH INSURANCE IN CASE AN EMPLOYEE ENTERS INTO LABOR CONTRACTS WITH MORE THAN ONE EMPLOYER

Article 4. Employers' and employees' responsibilities to participate in compulsory social insurance, unemployment insurance and compulsory health insurance

1. Employers' and employees' responsibilities to participate in compulsory social insurance and unemployment insurance:

a/ In case an employee enters into labor contracts with more than one employer, if the employee and these employers are all subject to participation in compulsory social insurance and unemployment insurance, the employee and the employer of the first labor contract shall participate in compulsory social insurance and unemployment insurance in accordance with law.

When paying wages to the employee, the employers of remaining labor contracts shall concurrently pay an amount of money equal to the compulsory social insurance premium and unemployment insurance premium payable by employers as prescribed by law.

b/ In case the labor contract between the employee and the employer currently participating in compulsory social insurance and unemployment insurance terminates or is modified due to which the employee and the employer are not subject to participation in compulsory social insurance and unemployment insurance, the employee and the employer subject to participation in compulsory social insurance and unemployment insurance of the subsequent labor contract shall participate in compulsory social insurance and unemployment insurance in accordance with law.

2. Employers' and employees' responsibilities to participate in compulsory health insurance:

a/ In case an employee enters into labor contracts with more than one employer, if the employee and these employers are all subject to participation in compulsory health insurance, the employee and the employer of the labor contract with the highest wage level shall participate in health insurance in accordance with the law on health insurance.

When paying wages to the employee, the employers of remaining labor contracts shall concurrently pay an amount of money equal to the health insurance premium payable by employers as prescribed by the law on health insurance.

b/ If the labor contract between the employee and the employer currently participating in compulsory health insurance terminates or is modified due to which the employee and the employer are not subject to participation in compulsory health insurance, the employee and the employer of the labor contract with the highest wage level among the remaining labor contracts shall participate in health insurance in accordance with law.

3. The change of the responsibility to participate in compulsory social insurance, unemployment insurance and compulsory health insurance prescribed at Point b, Clause 1, and Point b, Clause 2 of this Article is provided as follows:

a/ The employee and employers shall modify and supplement their labor contracts' contents on compulsory social insurance, unemployment insurance and compulsory health insurance in accordance with law;

b/ The employee shall notify and send his/her social insurance book, health insurance card and other relevant papers to the employer of the subsequent labor contract for compliance.

4. The employee shall notify and send copies of labor contracts already concluded, modified or terminated to remaining employers for information.

Article 5. Responsibilities of employers toward employees suffering labor accidents or occupational diseases

1. In case an employee meets with a labor accident or suffers an occupational disease during the performance of jobs or tasks under the labor contract signed with the employer currently participating in compulsory social insurance, such employer and the social insurance organization shall provide benefits for the employee in accordance with law. Within 2 working days after the employee meets with a labor accident or is identified as having suffered an occupational disease, the employer shall notify in writing the employee's health status to the employers of remaining labor contracts.

2. In case an employee meets with a labor accident or suffers an occupational disease during the performance of jobs or tasks under the labor contract signed with an employer that does not participate in compulsory social insurance and compulsory health insurance, such employer shall:

a/ Pay medical expenses incurred from first aid and emergency aid until the employee's health becomes stable under Clause 1, Article 144 of the Labor Code;

b/ Pay full wages under the labor contract to the employee who has to take leave during the medical treatment period;

c/ Pay compensation or allowances to the employee under Clause 3 or 4, Article 145 of the Labor Code;

d/ Notify in writing the employee's health status to the employers of remaining labor contracts.

3. During the medical treatment period of an employee who meets with a labor accident or suffers an occupational disease, the employers may not unilaterally terminate the labor contracts signed with such employee, except the cases specified at Point b, Clause 1, Article 38 of the Labor Code.

When his/her health has recovered, the employee and each employer may agree to continue or modify or terminate the relevant labor contract in accordance with law.

Chapter III

CONTENTS OF LABOR CONTRACTS SIGNED WITH EMPLOYEES HIRED TO WORK AS DIRECTORS IN ENTERPRISES WITH STATE CAPITAL

Article 6. Contents of labor contracts signed with employees hired to work as directors in wholly state-owned enterprises

1. Name and address of the wholly state-owned enterprise; full name, date of birth and ID number of the Members' Council chairman or company president.

2. Full name; date of birth; gender; nationality; professional qualifications; residence address; ID number or serial number of other lawful papers of the person hired to work as director.

3. The term of the labor contract determined by the two parties, which ranges from full 12 months to 36 months.

The time for the employer and the person hired to work as director to negotiate on the termination or extension of the labor contract or conclusion of a new labor contract may be agreed by the two parties but must not exceed 45 days before the labor contract expires. In case of extending the labor contract, the extended term may be agreed by the two parties but must not exceed 12 months.

4. Jobs which the person hired to work as director may do or may not do and his/her responsibilities for performing jobs in accordance with law.

5. Workplace of the person hired to work as director.

6. Contents and time limit of, and responsibilities of the person hired to work as director in, protection of business or technological secrets and handling of violations.
7. Rights and obligations of the employer, including:
 - a/ To assure capital, assets and other resources for the person hired to work as director to perform his/her jobs;
 - b/ To provide information for the person hired to work as director to perform his/her jobs;
 - c/ To examine, supervise and assess the performance of the person hired to work as director;
 - d/ To issue the working regulation of the director;
 - dd/ Other rights and obligations as prescribed by law;
 - e/ Other rights and obligations agreed by the two parties.
8. Rights and obligations of the person hired to work as director, including:
 - a/ To perform jobs under the signed contract;
 - b/ To report on difficulties encountered in the course of performing jobs under the signed contract and propose remedies;
 - c/ To report on the management and use of capital, assets, human resources and other resources;
 - d/ Other rights and obligations as prescribed by law;
 - dd/ Other rights and obligations agreed by the two parties.
9. Benefits of the person hired to work as director, including:
 - a/ Annual wages, advance and payment of wages, wage raise regime;
 - b/ Bonuses, advance and payment of bonuses;
 - c/ Working time, rest time;
 - d/ Social insurance, health insurance and unemployment insurance in accordance with law;
 - dd/ Training, re-training and professional skill improvement serving the performance of jobs under the signed contract;
 - e/ Working equipment, travel, communication and other additional items;
 - g/ Other benefits agreed by the two parties.
10. Conditions, order and procedures for modification and supplementation, or unilateral termination of the labor contract.

11. Rights and responsibilities of the employer and the person hired to work as director upon termination of the labor contract.

12. Labor discipline, material liability and settlement of labor disputes and complaints.

13. Other agreements.

Article 7. Contents of labor contracts signed with employees hired to work as directors in enterprises with state-contributed capital

The contents of the labor contract signed with an employee hired to work as director in an enterprise with state-contributed capital are agreed between the Members' Council or Board of Directors of such enterprise and the person hired to work as director based on the provisions of Article 6 of this Decree.

Chapter IV

ORDER AND PROCEDURES FOR LABOR INSPECTORATES TO DECLARE LABOR CONTRACTS TO BE INVALID AND HANDLING OF INVALID LABOR CONTRACTS

Section 1

ORDER AND PROCEDURES FOR LABOR INSPECTORATES TO DECLARE LABOR CONTRACTS TO BE INVALID

Article 8. Labor inspectorates' competence to declare labor contracts to be invalid

Chief inspectors of provincial-level Labor, War Invalids and Social Affair Departments are competent to declare labor contracts to be invalid.

Article 9. Order and procedures for labor inspectorates to declare labor contracts to be invalid

1. During the inspection or settlement of a labor-related complaint or denunciation, if detecting that a labor contract falls into one the cases specified in Article 50 of the Labor Code, the inspection team head or the independent labor inspector or the person assigned to conduct specialized inspection shall make a record of violation and request the employer and employee concerned to modify or supplement the labor contract.

2. Within 5 working days after receiving the record of violation, the employer and employee concerned shall modify or supplement the labor contract.

3. Past 3 working days after the deadline for modification or supplementation of the labor contract, if the two parties still fail to modify or supplement, the inspection team head or the independent labor inspector or the person assigned to conduct specialized inspection shall send the record of violation, enclosed with a copy of the labor contract, to the chief inspector of the provincial-level

Labor, War Invalids and Social Affairs Department of the locality where the enterprise is headquartered.

4. Within 3 working days after receiving the record of violation, the chief inspector of the provincial-level Labor, War Invalids and Social Affairs Department shall consider and issue a decision to declare the labor contract to be invalid.

5. The decision declaring the labor contract to be invalid must be sent to the employer and the employee concerned, the representative organization of the employees' collective and the state management agency of labor in the locality where the enterprise is headquartered.

Section 2

HANDLING OF INVALID LABOR CONTRACTS

Article 10. Handling of partially invalid labor contracts

1. Within 3 working days after receiving a decision declaring a labor contract to be partially invalid, the employer and employee shall modify or supplement the labor contract by signing an annex to such labor contract or enter into a new labor contract in accordance with law.

2. During the period from the time a labor contract is declared to be partially invalid till the time the two parties modify or supplement the contents declared to be invalid, the rights and benefits of the employee will be settled under the internal labor regulations, collective labor agreement (if any) and labor law.

In case an invalid labor contract provides an wage level lower than those provided by the labor law, internal labor regulations and collective labor agreement that are currently effective, the two parties shall re-agree on the wage level in accordance with Clause 1 of this Article. The employer shall refund the difference between the agreed wage level and the wage level provided in the invalid labor contract according to the employee's actual working period which, however, must not exceed 12 months.

Article 11. Handling of wholly invalid labor contracts

1. Within 15 days after receiving a decision declaring a labor contract to be wholly invalid as such contract is signed ultra vices, the state management agency of labor in the locality where the enterprise concerned is headquartered shall guide the parties to re-sign the labor contract.

2. A labor contract the whole contents of which are contrary to law will be cancelled upon issuance of a decision declaring the labor contract to be wholly invalid.

3. Within 3 working days after receiving a decision declaring a labor contract to be wholly invalid as such contract provides the employee's benefits lower than those provided by the labor law, internal labor regulations or collective labor agreement that are currently effective, the employer and employee shall enter into a new labor contract in accordance with the labor law.

During the period from the time when the labor contract is declared to be wholly invalid till the two parties enter into a new labor contract, the employee's rights and benefits will be settled under Clause 2, Article 10 of this Decree.

4. Within 3 working days after receiving a decision declaring a labor contract to be wholly invalid as the jobs agreed upon in such labor contract are prohibited by law, the employer and employee concerned shall enter into a new labor contract in accordance with the labor law.

In case of failure to enter into a new labor contract, the employer shall pay to the employee an amount of money as agreed by the two parties, which must be at least equal to one region-based monthly minimum wage announced by the Government at the time of issuance of the decision declaring the labor contract to be invalid for each working year.

5. Within 3 working days after receiving a decision declaring a labor contract to be wholly invalid as such labor contract limits or prevents the employee from exercising the right to establish and join a trade union or participate in trade union activities, the employer and employee concerned shall enter into a new labor contract in accordance with the labor law.

Article 12. Initiation of lawsuits against or filing of complaints about decisions declaring labor contracts to be invalid

If disagreeing with a decision declaring the labor contract to be invalid, the employer or employee may initiate a lawsuit at court or file a complaint with a competent state agency in accordance with law.

Chapter V

IMPLEMENTATION PROVISIONS

Article 13. Effect

1. This Decree takes effect on July 1, 2013.

2. The Government's Decree No. 44/2003/ND-CP of May 9, 2003, detailing and guiding a number of articles of the Labor Code regarding labor contracts, and previous provisions contrary to this Decree cease to be effective on the date this Decree takes effect.

Article 14. Implementation responsibility

1. The Minister of Labor, War Invalids and Social Affairs shall guide the implementation of this Decree.
2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and related agencies, enterprises, organizations and individuals shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG