

Decree 05 clarifies labour relations

On January 12, 2015, the government of Viet Nam issued Decree No 05/2015/ND-CP (Decree 05), providing for the rights and obligations of employers and employees.

Decree 05, which took effect on March 1, 2015, aims to protect employees by regulating various aspects of labour contracts, wages, labour discipline and the responsibility for and settlement of labour disputes.

Labour Contract



Decree 05 is very clear about labour contracts, covering issues from signing, amendment and supplementation to implementation and termination of a labour contract between two parties. Accordingly, Decree 05 lists the circumstances in which a labour contract can be terminated unilaterally by an employer “due to economic reasons”. These include “economic crisis or recession” and “implementation of the State’s policies when restructuring the economy or implementation of commitments to international treaties”.

In case a labour contract is terminated due to restructuring, technological change or economic reasons, employers must pay only retrenchment allowance (i.e. not both severance allowance and retrenchment).

Decree 05 also gives employees the right to unilaterally terminate the labour contract in case they have to take care of their children, spouses or parents who are sick or suffering because of an accident.

Salary payment obligations of employers

Salaries are recorded in the labour contract between employers and employees, subject to the specific position, and will be worked out by employers based on the monthly salary list in accordance with Chapter IV of Decree 05. Article 24 states if the employer delays payment of salary by more than 15 days from the payment deadline, the employers must pay an extra amount at least equal to the delayed amount of money multiplied by the ceiling interest rate of one-month deposits, as announced by the State Bank of Viet Nam at the time of payment. If the ceiling interest rate is not stipulated, the calculation will be based on the interest rate of one-month deposits announced by commercial banks in which enterprises and agencies have opened transaction accounts at the time of payment.

Decree 05 also regulates that those who participate in strikes following wrong procedures will neither be paid nor given other benefits while they are on strike. Labourers who don’t go on strike, but have to stop working because of the strike, will still be paid and given other benefits under the regulation of the Labour Code.

Regimes of labour discipline

Decree 05 permits employers to temporarily suspend an employee from work if the employer considers the case of indiscipline a complex one, and that any continued work by the employee can cause difficulties for verification, after the employer consults the representative organisation of the

grassroots-level employee collective. During the period of work suspension, the employee is entitled to an advance of 50 per cent of his/her wages prior to the suspension. And if the employee is not disciplined, the employer shall pay the employee the full wage for the period of work suspension.

The procedure of handling labour discipline violations must follow these steps: (i) announcement: the employer must file a written notice of such meeting with the grassroots-level trade union five days prior to the meeting being held to deal with the violation of labour discipline; (ii) meeting to deal with violation of labour discipline: it shall be held in the presence of all participants informed in accordance with the above-mentioned provision, and the contents of this meeting must be recorded in writing and approved by the participants before the meeting ends; and (iii) decision to handle labour discipline violation: the legal representative of the employer is one who has the competence to decide on the form of labour discipline to be imposed on the employee.

This decree took effect from March 1, 2015.

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