

THE MINISTRY OF LABOR,
WAR INVALIDS AND SOCIAL AFFAIRS

No: 07/TT-BLDTBXH

SOCIALIST REPUBLIC OF VIET NAM

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Ha Noi , Day 11 month 04 year 1995

Circular No. 07/LDTBXH-TT Date 11, April 1995 of The Ministry of Labour War Invalids and Social Affairs guiding the implementation of a number of Articles of the Labour Code dated 23 June 1994 and Government's Decree No-195-CP dated 31 December 1994 relating to working hours and rest time

Pursuant to the Labour Code dated 23 June 1994 and Decree No.195/CP dated 31 December 1994 stipulating in detail and guiding the implementation of a number of Articles of the Labour Code relating to working hours and rest time, the Ministry of Labour, War Invalids and Social Affairs herein provides guidance on the implementation of a number of relevant questions as follows :

I.WORKING HOURS

Working hours under Clause I, Article 3 of Decree No.195/CP means the normal working hours applied to all employees.

The daily working hours which shall be reduced by one or two hours for employees performing extremely heavy, toxic or dangerous jobs as stipulated in clause 2, Article 3 of Decree No.195/CP shall be determined or agreed upon by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health.

II. REST TIME

1. Breaks

Breaks under Article 7 of Decree No.195/CP shall be included in the working hours for an employee working continuously four eight hour in normal conditions or for seven or six hours in case his daily working hours are allowed to be reduced. Time for breaks depends on the labour organization of the relevant unit or enterprise, all employees are not required to break at the same time.

2. Annual leaves

a) Annual leaves shall be calculated according to the Gregorian calendar.

- An employee who works for 12 months including the time considered working hours as stipulated in Clause I, Article 9 of Decree No.195/CP, shall be entitled to full annual leave as provided for in Article 74 of the Labour Code.

- In case an employee works less than 12 months a year, he/she will be entitled to annual leave in which the number of days shall be in proportion with the months he/she works in that year.

- In a year, if the total number of day-offs due to labour accident or occupational disease of an employee exceeds six months (144 working days) or the total time of sick

leave exceeds three months (72 working days), that period of time shall not be calculated for entitlement to annual leave of that year.

b) Annual leave.

Annual leaves of 12, 14 or 16 working days to which an employee is entitled and during which he/she receives full pay are stipulated as follows :

- 12 days for an employee working in normal conditions.

- 14 days for : .

- + an employee doing heavy, toxic or dangerous jobs ; or

- + an employee under 18 years of age ; or

- + an employee working in normal conditions in places residents of which are entitled to subsidy rates of 0.70 upwards as stipulated in Circular No.15/LDTBXH-TT dated 2 June 1993 by the Ministry of Labour, War Invalids and Social Affairs and relevant supplement documents.

For example : Worker A doing a job under normal working conditions is entitled to annual leaves of 12 days. In 1995, his company delegated him to work in the area with its subsidy rate of 0.70, he will be entitled to an annual leave of 14 days for 1995.

16 days for :

- + an employee performing extremely heavy, toxic or dangerous jobs ; or

- + an employee performing heavy; toxic or dangerous jobs in the area with its subsidy rates of 0.70 upwards. For example : Engineers A and B are working for a Hanoi Research Institute and are entitled to 12-day annual leaves. In 1995, Engineer A is delegated to work for five months and Engineer B for seven months at one of the Institute's subsidiary whose employees are entitled to 16-day annual leaves. Therefore, Engineer A will be in 1995 entitled to a 12-day annual leave and Engineer B, 16-day leave. If in a year an employee works for all the 12 months during which he/she will spend from six months and more on performing heavy,- toxic or dangerous jobs, or extremely heavy, toxic or dangerous jobs, or working in the area with subsidy rate mentioned above, he/she will be annually entitled to 14 or 16 days of fully-paid leave as the case may be.

c) Travelling time.

Travelling time added to annual leave as stipulated in Clause 3, Article 9 of Decree No.195/CP shall be determined once a year although an employee may take his/her annual leave at different times.

During such travelling time or at the place where an employee is taking leave, an employee who becomes sick, or is stranded due to natural calamities (storms, floods, fires etc) or compelled to carry out urgent works relating to security or national defence and subject to certifications of the authorities at the place of event, that period of time shall be considered legal leave. Payment for that period of time shall be agreed upon between the employee and the employer and pursuant to the relevant labour contract or the collective labour agreement.

In case of sickness, applicable social insurance policy shall apply for such period.

d) Payment of travelling expenses and wages during travel.

Employees working in remote areas (mountain, off-shore islands in accordance with the list made by the Commission for Mountain Regions and Ethnic Affairs attached to Decision No.21/UB-QD dated 26 January 1993 and other relevant supplement decisions) shall be paid by their employers for travelling expenses and salaries during travelling time of their annual leave taken in Vietnam to visit their spouses, children, or parents (including spouses' parents) .

Number of days in an annual leave increasing proportionally with period of employment

a) Period of employment.

Period of employment to calculate the additional days in an annual leave means the total number of years in which an employee actually works for an employer or an enterprise in accordance with Article 75 of the Labour code, including the time for training and probation at the relevant enterprise. In case of interruption, period of employment means the total

number of years an employee actually works with an employer or enterprise. Such period of employment shall be calculated as follows :

_ - Period of employment of an employee working for a State agency or enterprise shall include the years he actually works for the relevant agency or enterprise or the armed forces (for demobilized officers) less the time entitled to retirement scheme in accordance with Decision No. 176/HDBT dated 9 October 1989 or Decision No.111/HDBT dated 12 April 1991 by the Council of Ministers (now the Government) and Circular No.88/TTg dated 1 October 1964 by the Prime Minister ; or the demobilization support scheme ; or the pension scheme ; and other rest time unentitled to salaries and social insurance scheme.

For example : Official A worked at a State enterprise from January 1975 to January 1990 when he moved to a private enterprise. In January 1994, he returned to a State agency. The length of employment of official A shall be calculated as follows :

From Jan 1975 - Jan. 1990 : = 15 years

From Jan.1994 - Dec. 1995 : = 02 years

Total number of Official A's years of employment for calculation of additional days in annual leave is 17 years.

- For employees working for State agencies or enterprises and moving to establishments or enterprises of other economic sectors, private organizations recruiting employees, enterprises with foreign investment capital, or international or foreign organizations, the time they actually work for the State agencies or enterprises may be added to their period of employment of work for additional days in annual leave subject to approval by their employers and stipulations in the relevant collective labour agreements or labour contracts.

- Period of employment of employees at non-state economic sector means the total number of years they actually work at the relevant establishments, enterprises or individuals.

- As regard's employees at enterprises with foreign invested capital, enterprises operating in export processing zones or industrial estates, foreign or international agencies or organizations in Vietnam, their period of employment of work means the total number or years they actually work for the relevant enterprises, agencies, or organizations.

For example : Employee B worked at a State agency from 1975 to 1994 and thereafter worked for a joint-venture enterprise, his period of employment of work either commences from 1994 or from 1975 subject to the relevant employer's consents.

b) Additional days in annual leave in proportion with period of employment are calculated as follows :

Employees with five years working far an employer or an enterprise are entitled to one full-paid additional day in his/her annual leave ; the number of additional days depends on the number of actual working years. Specifically :

- With less than five years of employment, employees are entitled to annual leave stipulated in Article 74 of the Civil Code ;

- With full five years to under 10 years of employment, they are entitled to one additional day ;

- With full 10 years to less than 15 years of employment, they are entitled to two additional days ;

- With full 15 years to less than 20 years of employment, they are entitled to three additional days ;

- With full 20 years to less than 25 years of employment, they are entitled to four additional days ;

- With full 25 years to less than 30 years of employment, they are entitled to five additional days ;

- With full 30 years to less than 35 years of employment, they are entitled to six additional days ; and so on.

4. Number of days in annual leave in accordance with Article II of the Decree are calculated as follows :

Number of paid days of annual leave = (Stipulated annual leave 12,14 or 16 days) + (Additional days in proportion with period of employment) /12 * (Number of working months in the year)

The result will be without decimals. (If the decimals exceed or be equal to 0,5, one unit will be added. If the decimals are smaller than 0,5, they will not be added).

For example : Worker A is entitled to annual leave of 14 days as stipulated by Article 74 of the Labour Code, He has worked for- the enterprise since January 1972. In

July 1995, he will be retired. Annual leave for 1995 Worker A is entitled to is calculated as follows :

Annual days in proportion with period of employment from 1972 to 1995 is 4 days. Total number of days in annual leave :

$$[(14 + 4) : 12] \times 7 \text{ months} = 10.5 \text{ days}$$

So he is entitled to 11 paid holidays.

This Circular takes effect as from 1 January 1995. Previous stipulations contrary to this Circular are all repealed.

Ministries, branches of activities, and localities are requested to inform the Ministry of Labour, War Invalids and Social Affairs of any difficulties arising from the execution of this Circular.

THE MINISTER

THE MINISTRY OF LABOUR, WAR INVALIDS

AND SOCIAL AFFAIRS

TRAN DINH HOAN