

**THE GOVERNMENT**  
No: 41/CP

**SOCIALIST REPUBLIC OF VIET NAM**  
**Independence - Freedom - Happiness**  
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Ha Noi , Day 06 month 07 year 1995

**DECREE No.41-CP ON THE 6TH OF JULY 1995 OF THE GOVERNMENT  
GIVING DETAILED STIPULATIONS AND GUIDANCE ON THE  
IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LABOR  
CODE ON LABOR DISCIPLINE AND MATERIAL RESPONSIBILITY**

**THE GOVERNMENT**

Pursuant to the Law on Organization of the Government on the 30th of September 1992;

Pursuant to the Labor Code on the 23rd of June 1994;

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

**DECREES**

**Chapter I**

**THE PERSONS AND SCOPE OF REGULATION**

Article 1.- The persons and scope regulated by labor discipline and material responsibility under Articles 2 and 3 of the Labor Code are the laborers working in the following enterprises, agencies and organizations (hereunder referred to as units):

1. State-owned enterprises;
2. Enterprises belonging to the other economic sectors, the organizations and individuals hiring and employing labor according to labor contracts;
3. Professional units operating along the self-accounting system;
4. Trading and service organizations belonging to administrative and professional offices, the people's armed forces, the people's security forces, mass organizations, and other political and social organizations, which are permitted to register their trading activities;
5. Foreign invested enterprises, enterprises in export processing zones and industrial parks;
6. Foreign offices and organizations, international organizations based on Vietnamese territory which hire or employ Vietnamese citizens as labor.

Article 2.- The persons and scope not regulated by labor discipline and material responsibility according to Article 4 of the Labor Code are the following:

1. Public employees and officials working in administrative and professional offices of the State;
2. Persons elected, assigned or appointed to positions in State organs;
3. Persons appointed to the positions of Director, Deputy Director, Chief Accountant, and members of the Managing Board in State enterprises;
4. Persons belonging to mass organizations and other political and social organizations regulated by the statutes of such organizations; members of cooperatives;
5. Officers, non-commissioned officers, and soldiers in the people's armed forces and the people's security forces.

## Chapter II LABOR DISCIPLINE

Article 3.- Labor discipline in Item 1, Article 82, of the Labor Code includes stipulations on:

1. Observing work hours and rest hours;
2. Observing orders by the employers in conducting production and business activities;
3. Observing the technological process and the regulations on labor safety and labor hygiene;
4. Protecting the property and technological and business secrets within the scope of activity assigned.

Article 4.- The labor regulations in Item 1, Article 83, of the Labor Code include the following main contents:

1. Work hours and rest hours: Time-table for daily and weekly work hours, rest time in between working shifts, the number of working shifts, the days of rest in a week; holidays, annual leave, leave on private affairs; the number of extra-work hours in a day, a week, a month, and a year.
2. Order in enterprises: the area of work and movement; contacts and other requirements for maintaining general order;
3. Labor safety and labor hygiene at work places: observance of the measures to ensure labor safety, labor hygiene, and to prevent labor accidents and occupational diseases; observing the norms and conditions for labor safety and labor hygiene; the use and protection of equipment for individual safety; industrial hygiene at work places;
4. Protecting the property, technological and business secrets of the unit: different kinds of property, documents, files and data of the unit within the scope of activity assigned;
5. Acts in violation of labor discipline, forms of handling violations of labor discipline and material responsibility: the employers shall have to concertize each kind of violations and the seriousness of a violation; the forms of handling violations of labor discipline; defining kinds of material responsibility, the extent of damage, and the way of compensation suitable to the

characteristics of the unit, with the collective labor agreement (if any), and not at variance with the law.

The labor regulations must be popularized to each laborer, and the main points of the labor regulations must be put up at the work place, the recruitment office and other necessary places of the unit.

Article 5.- The labor regulations must be registered according to Article 82 of the Labor Code as follows:

1. The labor regulations must be registered at the Labor, War Invalids and Social Affairs Service. In registering its labor regulations, the unit concerned must enclose with it concrete conditions concerning labor discipline and material responsibility (if any);

2. The enterprises in export processing zones and industrial parks must send a copy of their labor regulations to the Managing Committee of export processing zones and industrial parks for registration at the Labor, War Invalids and Social Affairs Service in the locality where the Managing Committee is headquartered;

3. The Labor, War Invalids and Social Affairs Service must notify in writing the registration of the labor regulations of the unit concerned within 10 days after it receives the regulations. In case the labor regulations and the enclosed conditions have an article contrary to the law, the Service must single it out and guide the employers to amend it for registration;

4. In case the unit concerned amends its labor regulations and the enclosed conditions, it must register the regulations again.

Article 6.- The forms of handling violations of labor discipline according to Article 84 of the Labor Code are stipulated as follows:

1. Oral or written reprimand shall apply to those laborers who commit a minor mistake for the first time;

2. Transfer of the offender to another work with a lower wage within a maximum period of 6 months shall apply to those laborers who have received a written reprimand, but who have committed a mistake again within the 3 following months or who have violated other stipulations of the labor regulations;

3. Sacking shall apply to those laborers who have violated one of the cases defined in Item 1, Article 85, of the Labor Code, and which has been defined in the labor regulations.

Article 7.- The principles of handling violations of labor discipline:

1. Each violation of labor discipline shall be subject to only one form of discipline. When a laborer commits many acts in violation of labor discipline at a time, he/she is liable to the highest form of discipline corresponding to his/her most serious violation;

2. No labor discipline is imposed on a laborer who infringes on the labor regulations while he/she is suffering from mental disease or another disease

which deprives him/her of the capacity of perception or his/her ability to control his/her behavior;

3. All physical assault or insult to his/her dignity on the laborer when he/she is being disciplined is prohibited.

4. No monetary fine or wage cut shall be imposed in replacement of the application of labor discipline.

5. No labor discipline shall be imposed on strikers.

Article 8.- The handling of violations of labor discipline shall be undertaken within a maximum period of 6 months for the following cases according to Article 86 of the Labor Code:

1. A violation of labor discipline involving complicated circumstances which take time to investigate and confirm the mistake and personal identification of the person concerned;

2. The person concerned is in detention.

Article 9.- Recidivism under Item 1, Article 88, of the Labor Code means the person concerned re-commits the same violation of labor discipline while he/she is still penalized for the previous offence.

Article 10.- The person authorized to handle a violation of labor discipline, including temporary suspension of his/her work under Article 8, Item 1 of Article 87, and Item 1 of Article 92, of the Labor Code is the employer; the person using labor by delegation can handle only a violation of labor discipline by way of reprimand.

Article 11.-

1. Violations of labor discipline under Article 87 of the Labor Code shall be considered and handled as follows:

a/ The employer shall have to prove the mistake of the laborer with evidence or a witness (if any);

b/ A representative of the Executive Committee of the Trade Union at the grassroots unit must take part in the handling of a violation of labor discipline, except when an oral reprimand is given;

c/ The person concerned must be present and has the right to defend himself/herself, or request a lawyer, a people's juror, or another person to defend himself/herself. In case the person concerned is under 15 years old, he/she must be accompanied by his/her father, mother, or legal tutor. If the employer has 3 times given a written notice and the person concerned does not show up, the employer can handle the violation and notify the person concerned of the penalty decision.

2. The minutes of the handling of a violation of labor discipline includes the following main contents:

- The day, month, year, and location where the violation of labor discipline is handled;

- Full names and functions of those present;

- The act in violation of labor discipline, the seriousness of the violation, and the extent of damage caused to the enterprise (if any);

- Opinion of the person concerned, of the juror, or of the witness (if any).

- Opinion of the representative of the Executive Committee of the grassroots Trade Union organization;

- Conclusion on the form of handling the violation of labor discipline, the extent of damage, the level of compensation and the way of compensation (if any);

- The person concerned, the representative of the Executive Committee of the grassroots Trade Union organization, and the person authorized to handle the violation of labor discipline shall sign the minutes. The person concerned and the representative of the Executive Committee of the grassroots Trade Union organization have the right to reserve their own opinion; if they refuse to sign their names, they must write down clearly the reason.

### 3. Decision on handling violations of labor discipline:

a/ The person authorized to handle violations of labor discipline by sacking or transferring the offender to a lower-paid work must issue a written decision specifying clearly the time of discipline. When ordering sacking as discipline, the employer must consult the Executive Committee of the grassroots Trade Union organization. In case of disagreement, the Executive Committee of the grassroots Trade Union organization must report it to the Trade Union organization at the immediate higher level, and the employer must report it to the Labor, War Invalids and Social Affairs Service. Within 30 days after reporting it to the Labor, War Invalids and Social Affairs Service can the employer issue a discipline decision and bear responsibility for his/her decision;

b/ The discipline decision must write clearly the name of the unit where the offender is working; the day, month and year of the decision; the full names and occupation of the offender; the contents of the violation of labor discipline; the form of discipline, the extent of damage, the level of compensation and the form of compensation (if any); the date when the decision begins to apply; the signature, full names and position of the person who issues the decision;

c/ The employer must send copies of his/her discipline decision to the person concerned and the Executive Committee of the grassroots Trade Union organization. In case of sacking, within 10 days after issuing the decision, the employer must send a copy of his/her discipline decision enclosed with the minutes of the handling of labor discipline to the Labor, War Invalids and Social Affairs Service.

Article 12.- The commutation and cancellation of discipline under Article 88 of the Labor Code are stipulated as follows:

1. When deciding to reduce the time of discipline or cancel discipline for the laborer who has been transferred to a lower-paid job for violation of labor

discipline, the employer shall issue a written decision and reinstate him/her in the former job under the labor contract already signed.

2. The discipline decision shall become invalid on expiry of the discipline period.

### Chapter III MATERIAL RESPONSIBILITY

Article 13.- The seriousness of the offense and the actual extent of damage must be the basis for considering and deciding how much the laborer has to compensate for having damaged or lost tools, equipment and other property of the unit. No compensation shall be made for any damage resulting from force majeure.

Article 14.- The extent of damage which is considered not serious under Article 89 of the Labor Code is a damage worth less than 5 million VND.

Article 15.- Compensation at current market prices under Article 90 of the Labor Code and Article 14 of this Decree must be stipulated in the labor regulations. In deciding the level of compensation, it is necessary to take into consideration the actual situation of the family, the personal identification and property of the person concerned.

Article 16.- The procedure of handling the compensation for losses caused by the damage or loss of tools, equipment and other property of the unit under Article 91 of the Labor Code shall be undertaken as stipulated in Items 2, 3, and 4 of Article 7, and Articles 8, 10, and 11 of this Decree.

### Chapter IV IMPLEMENTATION PROVISIONS

Article 17.- The People's Committees at different levels are authorized to settle complaints by the persons who are subject to labor discipline, who are suspended from their work, or who must make compensation under the regime of material responsibility. The local labor offices shall help the People's Committees in considering and settling these complaints.

Those persons who are subject to labor discipline, who are temporarily suspended from their work, or who must make compensation according to the regime of material responsibility, have the right to complain, but pending the settlement of their complaints by the authorized agency, they must still comply with the discipline decision, suspend their work, and make compensation according to the regime of material compensation.

Article 18.-

1. Three months at the latest after this Decree takes effect, any units which have no labor regulations must draft them, and those units which already have labor regulations must amend or supplement them to suit this Decree, and they must register these regulations at the Labor, War Invalids and Social Affairs Service;

2. With regard to newly established units, 6 months after they start operation, the employer must register the labor regulations at the Labor, War Invalids and Social Affairs Service.

Article 19.- This Decree takes effect from the date of its signing.

All stipulations made earlier which are contrary to this Decree are now annulled.

Article 20.- The Ministers, the Heads of the ministerial-level agencies, the Heads of the agencies attached to the Government, the Presidents of the People's Committees of the provinces and cities directly under the Central Government shall have to implement this Decree.

On behalf of the Government  
For the Prime Minister  
Deputy Prime Minister

NGUYEN KHANH  
*(This translation is for reference only)*