

THE GOVERNMENT
Số: 114/2002/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness
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Ha Noi , Day 31 month 12 year 2002

**DECREE No. 114/2002/ND-CP OF DECEMBER 31, 2002 DETAILING
AND GUIDING THE IMPLEMENTATION OF A NUMBER OF the labor codes
articles on wages**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the June 23, 1994 Labor Code and the April 2, 2002 Law Amending
and Supplementing a Number of Articles of the Labor Code;
At the proposal of the Minister of Labor, War Invalids and Social Affairs,*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- This Decree specifies and guides the implementation of a number of articles of the Labor Code and the Law Amending and Supplementing a Number of Articles of the Labor Code (hereinafter called the revised Labor Code for short) on wages.

Article 2.- According to Articles 2 and 3 of the Labor Code, subjects and scope of wage application under the provisions of this Decree are laborers working under labor contracts in the following organizations:

1. Enterprises set up and operating under the State Enterprise Law;
2. Enterprises set up and operating under the Enterprise Law;
3. Enterprises set up and operating under the Law on Foreign Investment in Vietnam;
4. Enterprises of political organizations and socio-political organizations;
5. Non-business units operating according to the economic cost-accounting regime;
6. Cooperatives, farms, households and individuals that employ laborers;
7. Foreign or international agencies and organizations based on the Vietnamese territory and employing Vietnamese laborers, except otherwise provided for by international agreements which the Socialist Republic of Vietnam has signed or acceded to.

The above-mentioned enterprises, agencies, organizations and units are referred to as enterprises and agencies for short.

Article 3.- According to Article 4 of the Labor Code, subjects and scope of non-application of wages under the provisions of this Decree include:

1. Subjects of application of the Ordinance on Public Employees.
2. People belonging to political organizations or socio-political organizations operating under the Regulations of such organizations.
3. Members of cooperatives under the Cooperative Law.
4. Officers, non-commissioned officers, soldiers, professional army men and non-contractual employees in the armed forces.

Chapter II

MINIMUM WAGE, WAGE SCALE, PAYROLL AND LABOR NORMS

Article 4.-

1. The minimum wage level under Article 56 of the Labor Code and Clause 3 of Article 132 of the amended and supplemented Labor Code is the wage level defined on the basis of the labor supply and demand, economic capability and cost-of-living index in each period.

The Ministry of Labor, War Invalids and Social Affairs shall, after consulting Vietnam Confederation of Labor, representatives of employers and concerned ministries and branches, submit to the Government for promulgation a general minimum wage level; the minimum wage level for Vietnamese laborers working in foreign-invested enterprises under the Law on Foreign Investment in Vietnam, and in Vietnam-based foreign or international agencies or organizations.

2. Depending on their conditions and business operation capability, enterprises and agencies may apply a minimum wage level higher than that prescribed by the State, which shall serve as basis for the payment of wages to their laborers.

Article 5.- According to Article 57 of the revised Labor Code, the wage scale, payroll and labor norms are specified as follows:

1. Principles for formulating wage scale and payroll:
 - a/ The wage scale and payroll shall be formulated for laborers involved in managerial, professional or technical work and workers directly involved in production and business activities according to their jobs and occupations they are trained in;
 - b/ The multiple of the wage scale and payroll is the coefficient of the highest wage level for laborers with the highest managerial, technical or professional qualifications as compared to the laborers with the lowest qualifications;
 - c/ The number of grades of the wage scale and payroll depends on the complexity of the management and work requirements. The gap between the consecutive wage grades must ensure encouragement to raise the technical and professional qualifications as well as talents and experience accumulation;
 - d/ The grade 1 of the wage scale and payroll must be higher than the minimum wage level prescribed by the State. The wage level applicable to hazardous and dangerous as well as specially hazardous and dangerous occupations or jobs must be higher than that applicable to occupations or jobs with normal labor conditions.

2. Principles for formulating labor norms:

a/ The labor norms are formulated on the basis of the job ranks and in compatibility with the workers' grades, ensuring the improvement of working conditions, technical and technological renovation, and labor standards;

b/ The prescribed labor norm is the advanced average norm, which ensure that the majority of laborers can attain it without having to excessively prolong the regular working time prescribed by law;

c/ The new or revised labor norm must be applied experimentally for not more than 3 months before being officially promulgated.

3. The employers shall have to formulate wage scales, payrolls and labor norms according to the above-mentioned principles, after consulting the grassroots Trade Union Executive Committees, and must announce them publicly in their respective enterprises or agencies. The wage scales and payrolls must be registered with the State management agencies in charge of labor in the provinces or centrally-run cities where the enterprises or agencies are headquartered.

4. The Ministry of Labor, War Invalids and Social Affairs shall, after consulting Vietnam Confederation of Labor, submit to the Government for promulgation the wage scale and payroll applicable to State enterprises; guide the methods of formulating wage scales, payrolls and labor norms and Regulation on wage payment applicable to enterprises and agencies.

Article 6.- The wage scales and payrolls of enterprises and agencies shall serve as basis for:

1. Reaching agreement on wages upon the conclusion of labor contracts;

2. Determining the wage unit price, implementing the regime of raising wage levels as agreed upon in labor contracts and collective labor agreements;

3. Paying social and health insurance premiums and enjoying social and health insurance regimes under law provisions;

4. Paying job-termination wages and other entitlements under the provisions of the labor legislation;

5. Handling other interests under the two parties' agreement and provisions of the labor legislation.

Chapter III

THE REGIME OF WAGE AND BONUS PAYMENT

Article 7.- The forms of wage payment under Article 58 of the Labor Code are specified as follows:

1. The time-based wage shall be paid to laborers on the basis of their actual working time, concretely:

a/ The monthly wage shall be paid for a working month, determined on the basis of labor contracts;

b/ The weekly wage shall be paid for a working week, determined on the basis of the monthly wage multiplied by 12 months and divided for 52 weeks;

c/ The daily wage shall be paid for a working day, determined on the basis of the monthly wage divided for the standard number of working days in the month as prescribed by law and selected by the concerned enterprises or agencies, which, however, must not exceed 26 days;

d/ The hourly wage shall be paid for a working hour, determined on the basis of the daily wage divided for the standard number of working hours as prescribed in Article 68 of the Labor Code.

2. The piecework wage shall be paid to laborers on the basis of the quantity and quality of their products.

3. The package wage shall be paid to laborers according to the volume and quality of the work, which they must complete.

4. The Ministry of Labor, War Invalids and Social Affairs shall guide the employers to pay wages according to the forms defined at Clauses 1, 2 and 3 of this Article.

Article 8.- For particular cases specified in Clause 1, Article 59 of the Labor Code, i.e. natural calamities, fires or other *force majeure* circumstances defined at Point d, Clause 1, Article 38 of the revised Labor Code, which cannot be overcome though the employers have resorted to every possible measure, the employers may delay wage payment but for not more than one month and must pay compensation to laborers as follows:

1. If the delay lasts for under 15 days, compensation shall not be made.

2. If the delay lasts for 15 days or more, compensation shall be made with an amount being at least equal to the wage arrears multiplied by the interest rate of time-savings deposits announced at the time of wage payment by the commercial banks where the concerned enterprises or agencies open their transaction accounts.

Article 9.- The deduction of wage of laborers under Clause 1 of Article 60 of the Labor Code is prescribed as follows:

Based on the monthly wage amounts received by laborers after paying social and health insurance premiums and income tax for high-income earners (if any), the employers shall make gradual deduction of advances, which have already been made according to the provisions in Articles 12 and 13 of this Decree and compensations for material damage prescribed in Article 89 of the Labor Code.

Article 10.- The wage payment when laborers work overtime and/or during the night-time under Article 61 of the revised Labor Code is specified as follows:

1. If the payment is made according to the working time, the laborers shall be paid for the work done beyond the regular time.

2. If the payment is made according to piecework or package wage, the laborers shall be paid for their overtime work when they are requested by the employers to make an additional quantity of products or undertake an additional volume of work besides the quantity or volume to be achieved during the regular time.

3. Laborers working overtime as mentioned at Clauses 1 and 2 of this Article shall be paid overtime wage according to the wage unit price or wage actually paid for the work being done, which shall be as follows:

a/ At least equal to 150%, for weekdays;

b/ At least equal to 200%, for weekends as defined in Article 72 of the Labor Code;

c/ At least equal to 300%, for paid festive days and holidays as defined in Articles 73, 74, 75 and 78 of the Labor Code.

4. Laborers working in night shifts defined in Article 70 of the Labor Code shall get an additional pay at least equal to 30% of their wage, calculated according to the wage unit price or the wage paid for the daytime work. If they work overtime at night, they shall also be paid overtime wage.

5. The overtime and nighttime wage paid to laborers shall be calculated corresponding to the forms of wage payment specified in Article 7 of this Decree.

Article 11.- The payment of bonuses to laborers working in enterprises under Article 64 of the revised Labor Code is specified as follows:

1. For State enterprises, basing themselves on the annual production and business results and extent of work performance by laborers, the enterprises shall make deduction from the after-tax profits for setting up the reward funds in order to give bonuses to their laborers. The deduction level for setting up the reward fund shall comply with the guidance of the Finance Ministry.

2. For enterprises of other economic sectors, basing themselves on the annual production and business results and extent of work performance by laborers, the employers shall give bonuses to laborers working at their respective enterprises on the basis of the mutually- agreed labor contracts and collective labor agreements.

3. Enterprises shall have to issue regulations on rewards for laborers after consulting the grassroots Trade Union Executive Committees. The reward regulations must be announced publicly within enterprises.

Article 12.- The advance payment of wage to laborers under Clauses 1 and 2 of Article 67 of the Labor Code is specified as follows:

1. When laborers or their families meet with difficulties, the laborers shall be paid an advance of wage, which, however, must be at least equal to one-month wage amount. The mode of advance payment shall be agreed upon by the two parties, but the advance amount must be interest free.

2. When a laborer has to temporarily cease to work to discharge the citizen's duties for one week or longer, he/she shall be paid a wage advance corresponding to the number of his/her days of temporary work cessation, which shall be deducted into his/her wage under the provisions of the Labor Code.

Article 13.- The wage advance payment to laborers kept in custody or detention under Clause 3, Article 67 of the Labor Code is specified as follows:

1. For a laborer kept in custody or detention due to violation related to his/her labor relations with the employer, during the period of temporary custody or detention, every month he/she shall be paid under the labor contract by the employer an advance of 50% of his/her wage of the preceding month, including the rank and position wage and region and position allowances (if any).

2. Upon the expiry of the custody or detention duration, if the laborer is at fault, he/she shall not have to return the wage advance already made under Clause 1 of this Article. If the employer is at fault, such employer shall have to fully pay wage amount under the labor contract and the law-prescribed social insurance premium amount to the laborer for the time the latter is kept in custody or detention. If the legal proceeding agency is at fault, it shall have to return to the employer the wage amount already advanced to the laborer under Clause 1 of this Article and pay the laborer a compensation equal to the latter's remaining wage amount as well as the law-prescribed social insurance premium amount payable for the custody or detention duration according to the wage level inscribed in the labor contract.

3. If the laborer is kept in custody or detention for violations irrelevant to the labor relations, the employer shall not have to pay him/her wage advance.

Article 14.-

1. The wages paid to laborers for their annual paid leave, holidays or paid leave for personal affairs shall be calculated according to the time-based wage and equal to the contractual wage of the preceding month, including the rank and position wages, region and position allowances (if any), divided for the number of regular working days in the month as prescribed by law and selected by the enterprises or agencies, which however, must not exceed 26 days, and multiplied by the prescribed number of days of the paid leave.

2. In a work-shift, if laborers stop their work according to the provisions in Clause 1, Article 62 of the Labor Code for 2 hours or more, they shall be paid work-stoppage wage according to Article 16 of this Decree.

Article 15.- The wage serving as basis for calculation of job severance allowance, job-loss allowance, compensation for unlawful unilateral termination of labor contracts, compensations for labor accidents and occupational diseases is the contractual wage calculated as being equal to the average wage of the 6 preceding consecutive months before the incidents occur, including the rank and position wages, region and position allowances (if any).

Article 16.- The wage paid for the laborers' leave as prescribed in Articles 53, 62 and 92 of the Labor Code is the contractual wage of the preceding month and calculated corresponding to the forms of time-based wage payment defined at Clause 1, Article 7 of this Decree.

Chapter IV

A NUMBER OF OTHER PROVISIONS

Article 17.- Apprentices and job learners prescribed in Clause 2, Article 23 of the Labor Code, if personally turning out products, shall enjoy wage. The wage level shall be agreed upon by the two parties but not lower than 70% of the wage unit price or the wage of laborers doing the same job.

In cases where the apprenticeship or training time is prolonged as compared to the commitments in the apprenticeship or training contracts, the employers shall have to fully pay wage to the apprentices or job learners according to the latter's work.

Article 18.- Female laborers defined in Article 111 of the Labor Code, if doing the same jobs as male laborers shall enjoy the same wage.

Article 19.- Minor laborers defined in Article 121 of the Labor Code, if doing the same jobs as major laborers shall enjoy the same wage.

Article 20.- Aged laborers are entitled to shorter working time prescribed in Article 123 of the Labor Code and receive full wage.

Article 21.- Handicapped laborers defined in Article 125 of the Labor Code, if doing the same jobs as ordinary laborers, shall enjoy the same wage.

Article 22.- Laborers with high professional and technical qualifications as defined in Article 129 of the Labor Code shall be paid wage under agreement according to the levels of their contributions to production and business efficiency of the concerned enterprises or agencies. The employers shall elaborate wage-payment regulations to attract these laborers.

Article 23.- Vietnamese citizens laboring overseas in the forms defined in Article 134a of the revised Labor Code, who are managed and paid wage by Vietnamese enterprises or agencies shall, during their working time overseas, be paid part of their wage in the currencies of the concerned foreign countries or in convertible foreign currencies.

Article 24.- Basing itself on the provisions of Article 36 of the Labor Code, the Ministry of Labor, War Invalids and Social Affairs shall coordinate with the concerned ministries and branches in submitting to the Government for decision a number of wage and wage allowance regimes for persons involved in special occupations or doing special jobs in the field of arts.

Chapter V

IMPLEMENTATION PROVISIONS

Article 25.- The Ministry of Labor, War Invalids and Social Affairs shall have to guide the implementation of this Decree; guide foreign and international agencies

and organizations based in the Vietnamese territory as well as cooperatives, farms, households and individuals employing laborers to appropriately apply a number of the provisions of this Decree.

Article 26.- This Decree takes effect as from January 1, 2003 and replaces the Government's Decree No. 197/CP of December 31, 1994 detailing and guiding the implementation of a number of the Labor Codes articles on wages.

Article 27.- The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the Peoples Committees of the provinces and centrally-run cities shall have to implement this Decree.

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

NGUYEN TAN DUNG

*(This translation is for reference
only)*