

THE GOVERNMENT
No: 44/2003/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

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Ha Noi , Day 09 month 5 year 2003

**DECREE No. 44/2003/ND-CP OF MAY 9, 2003 DETAILING AND
GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE
LABOR CODE REGARDING LABOR CONTRACTS**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the June 23, 1994 Labor Code; 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 details 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 referred collectively to as the amended, supplemented Labor Code) regarding labor contracts.

Article 2.-

1. The following organizations and individuals, when employing labor, must enter into labor contracts:

- a) Enterprises set up and operating under the Law on State Enterprises, the Law on Enterprises, the Law on Foreign Investment in Vietnam;
- b) Enterprises of political organizations, socio-political organizations;
- c) Administrative, non-business agencies employing laborers other than State officials and employees;
- d) Economic organizations of the people's army, the people's police, which employ laborers other than officers, non-commissioned officers, soldiers;
- e) Cooperatives (for laborers other than cooperative members), households and individuals, that employ laborers;
- f) Non-public educational, medical, cultural or sport establishments set up under the Government's Decree No.73/1999/ND-CP of August 19, 1999 on policies to encourage the socialization of activities in the educational, medical, cultural and sport domains.

g) Foreign or international agencies, organizations or individuals, that are based in the Vietnamese territory and employ laborers being Vietnamese except for cases otherwise provided for by international treaties which the Socialist Republic of Vietnam has signed or acceded to;

h) Vietnamese enterprises, agencies, organizations and individuals, that employ foreign laborers, except for cases otherwise provided for by international treaties which the Socialist Republic of Vietnam has signed or acceded to.

2. Cases of non-application of labor contracts prescribed in Article 4 of the Labor Code are prescribed as follows:

a) People being subjects governed by the Ordinance on Public Officials and Employees;

b) Deputies to the National Assembly, deputies to the People's Councils of all levels, who work on a full-time basis; persons holding various positions in the agencies of the National Assembly, the Government, the People's Committees at all levels, the People's Courts and the People's Procuracies, who are elected or appointed by the National Assembly or the People's Councils at all levels according to terms of office;

c) Persons appointed by competent bodies to the posts of general director, deputy-general director, director, deputy-director and chief accountant in the State enterprises;

d) Members of the Managing Boards of enterprises;

e) Persons of political organizations, socio-political organizations, operating under the statutes of such organizations;

f) Full-time officials performing the works of the Party, Trade Union or Youth organizations in enterprises but not salaried by the enterprises;

g) Cooperative members under the Law on Cooperatives, who do not enjoy salaries, remuneration;

h) Officers, non-commissioned officers, soldiers, career army men and public employees in the people's army and the people's police forces.

Chapter II

FORMS, CONTENTS, TYPES OF LABOR CONTRACTS

Article 3.- Forms and contents of entering into labor contracts prescribed in Articles 28 and 29 of the Labor Code are stipulated as follows:

1. Labor contracts concluded in writing shall comply with the forms set by the Ministry of Labor, War Invalids and Social Affairs.

2. Labor contracts concluded in writing or verbally entered into must ensure the contents prescribed in Article 29 of the amended and supplemented Labor Code.

In case of verbal conclusion, if witnesses are needed, the two parties shall reach agreement thereon.

Article 4.- The application of types of labor contracts prescribed in Article 27 of the amended and supplemented Labor Code is stipulated as follows:

1. The labor contracts with indefinite terms shall apply to jobs with undeterminable time of termination or jobs with a term of over 36 months.
2. The labor contracts with definite terms shall apply to jobs with determined termination time of between full 12 months and full 36 months;
3. The labor contracts based on seasons or certain jobs with a term of under 12 months shall apply to jobs which can be completed within a period of less than 12 months or to cases of temporary replacement of disciplined laborers who have been transferred to other jobs for given periods of time, laborers subject to temporary postponement of the performance of contracts, laborers who leave their jobs for other reasons and to pensioners.
4. When the labor contracts prescribed in Clauses 2 and 3 of this Article expire while the laborers keep working, within 30 days as from the date the labor contracts expire, the two parties must sign new labor contracts. Pending the signing of new labor contracts, the two parties must abide by the signed labor contracts. If past the 30 day-time limit, new labor contracts are not signed, the already concluded labor contracts shall become labor contracts with indefinite terms. In cases where newly signed labor contracts are those with definite terms, they can be signed only for an additional period of no more than 36 months; then if the laborers continue to work, the labor contracts with indefinite term shall be signed; if no signing is made, they shall naturally become the labor contracts with indefinite term.

Chapter III

CONCLUSION, CHANGE, POSTPONEMENT AND TERMINATION OF LABOR CONTRACTS

Article 5.- The conclusion of labor contracts, prescribed in Articles 30 and 120 of the Labor Code is stipulated as follows:

1. Labor contracts shall be concluded directly between laborers and employers or can be concluded between employers and lawfully authorized persons representing groups of laborers. In cases where labor contracts are signed by lawfully authorized persons, the lists of laborers with their full names, ages, residence addresses, professions and signatures must be enclosed therewith. These contracts shall be valid as those signed with laborers separately and shall apply only to cases where employers need laborers to do a certain seasonal job which shall be completed within a period of less than 12 months or jobs which shall be completed within a definite period of between full 12 months and 36 months.
2. A laborer can enter into many contracts with many employers if they are capable of performing many contracts and must ensure the time for working and the time for rest as prescribed by law. For labor contracts signed with pensioners, with persons doing jobs for a period of less than 3 months, the social insurance and medical insurance premiums, travel fares and annual leave pay shall be included in the salaries or remuneration of the laborers.

3. For production and business lines and jobs where under-15 children can be employed as provided for in Article 120 of the Labor Code, the conclusion of labor contracts must be consented in writing by such children's fathers, mothers or lawful guardians in order to be valid.

Article 6.- The employment plans prescribed in Article 31 of the amended and supplemented Labor Code are stipulated as follows:

In case of merger, consolidation, separation of enterprises, transfer of rights to own, manage or to use property of, enterprises, where the existing number of laborers are not used up, the employment plans must be worked out to cover the following major contents:

1. The number of laborers continued to be employed;
2. The number of laborers to be re-trained for continued employment;
3. The number of laborers who retire;
4. The number of laborers who must terminate their labor contracts;
5. The previous employers and the succeeding employers shall have to settle the interests of the laborers, clearly identifying the responsibility for the re-training funding, job-loss allowance funding for laborers who have to terminate their labor contracts.

The elaboration of the employment plans must be participated by the grassroots trade union organizations and the implementation thereof must be notified to the provincial-level State management agencies in charge of labor.

Article 7.- The provision that employers and the laborers shall reach agreement on job probation prescribed in Article 32 of the Labor Code, is stipulated as follows:

1. The probation period must not exceed 60 days for jobs requiring the professional and technical qualifications of collegial or higher level.
2. The probation period must not exceed 30 days for jobs requiring the intermediate level, technical workers, professional personnel.
3. The probation period must not exceed 6 days for other laborers.
4. Upon the expiry of the probation periods, the employers shall notify the probationary results to the laborers. If the requirements are met, the two sides shall proceed with the conclusion of labor contracts or if the laborers are not notified thereof but continue working, they shall naturally be officially employed.

Article 8.- Effect and change of contents of labor contracts, prescribed in Article 33 of the amended and supplemented Labor Code, are stipulated as follows:

1. Upon the conclusion of labor contracts, the two parties must reach agreement in detail on the effective dates of the labor contracts and the dates on which the laborers start working. In cases where laborers go to work immediately after the conclusion of the labor contracts, the effective dates shall be the dates of conclusion of contracts. In cases where laborers have started working for a period before the written

or verbal labor contracts are concluded, the effective dates shall be the dates on which the laborers have started working.

2. If in the course of performance of labor contracts either party requests the change of contents of the labor contracts, it/he/she must notify the other party thereof at least three days in advance. If such is agreed upon, the two parties must proceed with the amendment and supplementation of the contents according to the procedures guided by the Ministry of Labor, War Invalids and Social Affairs or sign new labor contracts. During the period of negotiation thereon, the two parties must still abide by the already signed contracts. In cases where the two parties fail to reach agreement, they shall continue with the already concluded labor contracts or agree to terminate the labor contracts according to Clause 3, Article 36 of the Labor Code.

Article 9.- The temporary transfer of laborers to other jobs which they are not accustomed to, as provided for in Article 34 of the Labor Code is stipulated as follows:

1. When employers meet with unexpected difficulties due to natural calamities, fires, epidemics; the application of measures to prevent, overcome labor accidents, occupational diseases; power and/or water supply failure or due to production and business demands, they may temporarily transfer laborers to other jobs which they are not accustomed to, but for not more than 60 days (gradually added up) in a year. During this period, if the laborers refuse to abide by the employers' decisions, they may be subject to labor discipline and shall not be paid for their work interruption as provided for in Clause 2, Article 62 of the Labor Code, and shall, depending on the seriousness of their violations, be disciplined under the provisions in Article 84 of the amended and supplemented Labor Code.

2. Where employers temporarily transfer laborers to other jobs which they are not accustomed to for more 60 days (added up) in a year, there must be the laborers' consents; if the laborers refuse to accept and have to stop working, they shall enjoy salaries as provided for in Clause 1, Article 62 of the Labor Code.

Article 10.- The temporary postponement of contract performance under the provisions in Article 35 of the Labor Code is stipulated as follows:

1. Upon the expiry of the period of contract performance postponement prescribed at Points a and c of Clause 1, Article 35 of the Labor Code, the laborers must be present at the workplace; the employers shall have to arrange jobs for the laborers; if the laborers come to work at the right time as prescribed and have to wait for work, they shall enjoy salaries as provided for in Clause 1, Article 62 of the Labor Code.

In cases where past five working days as from the date of expiry of the temporary postponement of the labor contracts, the laborers fail to come to the workplaces without plausible reasons, they shall be handled according to the provisions at Point c, Clause 1, Article 85 of the amended and supplemented Labor Code.

2. Laborers kept in criminal custody, detention shall, upon the expiry of the temporary postponement of labor contracts, be handled as follows:

a) Regarding the criminal custody or detention related directly to the labor relations, when the custody or detention expires or when the court concludes that the laborers are victims of injustice, the employers must reinstate them to their former jobs, fully pay their salaries and other interests for the duration they were held in custody or detention under the provisions in the Government's Decree No.114/2002/ND-CP of December 31, 2002 detailing and guiding the implementation of a number of articles of the Labor Code regarding salaries and wages.

Where the laborers are law offenders, but adjudicated by courts to exemption of prosecution, non-imprisonment or not banned by courts from doing their former jobs, depending on the nature and seriousness of their violations, the employers shall arrange them to their former jobs or new jobs.

b) Where laborers are criminally held in custody or detention without relating directly to the labor relations, upon the expiry of the custody or detention period, the employers shall arrange them to their former jobs or to new jobs.

Article 11.- The laborers working under labor contracts with definite terms, or doing seasonal or certain jobs with terms of less than 12 months are entitled to unilaterally terminate the labor contracts ahead of time for cases prescribed at Points c and d, Clause 1, Article 37 of the amended and supplemented Labor Code is stipulated as follows:

1. They are ill-treated or forced to work, being the cases where the laborers are beaten, insulted or forced to do jobs not suitable to their genres, affecting their health, dignity and honor.

2. They or their families are really in plight, thus being unable to continue with the labor contracts for the following reasons:

a) Changing their permanent residence to other places, which cause numerous difficulties in travel and working;

b) Being allowed to go abroad for residence;

c) Having to stop working in order to look after their wives (husbands); fathers and/or mothers, including their in-law parents, or children, who get sick for 3 months or more;

d) Their families meet with other difficult circumstances with certification by the commune-level administrations of the localities where they reside, which render them unable to continue with the performance of their labor contracts.

Article 12.- The provision that employers are entitled to unilaterally terminate their labor contracts in cases prescribed at Points a and d, Clause 1, Article 38 of the amended and supplemented Labor Code is stipulated as follows:

1. Laborers constantly fail to fulfill their tasks under labor contracts, meaning that they fail to fulfill the labor norms or assigned tasks due to subjective reasons, and

are booked or warned in writing at least twice in a month, but later still fail to redress their shortcomings.

The extent of failure to fulfill the work shall be inscribed in labor contracts, collective labor agreements or labor regulations of the units.

2. Force majeure reasons mean the cases where due to the requests of competent State bodies of the provincial or higher level, to enemy sabotage or epidemics which cannot be overcome, the production and/or business are subject to change or shrink.

Article 13.- The compensation for training costs prescribed in Clause 3, Article 41 of the amended and supplemented Labor Code, is stipulated as follows:

Laborers who unilaterally terminate their labor contracts shall have to reimburse the training costs as prescribed at Clause 4, Article 32 of the Government's Decree No.02/2001/ND-CP of January 9, 2001, detailing the implementation of the Labor Code and the Education Law regarding the job training, except for cases where the termination of labor contracts strictly and fully comply with the provisions in Article 37 of the amended and supplemented Labor Code.

Article 14.- The severance allowance upon termination of labor contracts, prescribed in Article 42 of the Labor Code is stipulated as follows:

1. The employers shall have the responsibility to pay severance allowances to the laborers who have worked for full 12 months or more, as prescribed in Clause 1, Article 42 of the Labor Code, in cases of terminating the labor contracts under Article 36 of the Labor Code; Article 37, Points a, c, d and e, Clause 1, Article 38, Clause 1 of Article 41; Point c, Clause 1, Article 85 of the amended and supplemented Labor Code.

In cases where labor contracts are terminated under the provisions at Points a and b of Clause 1, Article 85 and laborers retire and enjoy the monthly pension regime prescribed in Article 145 of the amended and supplemented Labor Code, the laborers shall not be provided with severance allowances.

In cases where labor contracts are terminated under the provisions in Clause 1, Article 17 of the Labor Code and Article 31 of the amended and supplemented Labor Code, the laborers shall not enjoy the severance allowances prescribed in Clause 1, Article 42, but the job-loss allowances prescribed in Clause 1, Article 17 of the Labor Code.

In cases where laborers terminate their labor contracts in contravention of law, as prescribed in Clause 2, Article 41 of the amended and supplemented Labor Code, which means they terminate the labor contracts not for the right reasons prescribed in Clause 1 or without advance notices as provided for in Clauses 2 and 3 of Article 37 of the amended and supplemented Labor Code, they shall not be paid with the severance allowances.

2. Funding sources for payment of severance allowances:

a) For enterprises, the sources of funding for payment of severance allowances shall be accounted into their production costs or circulation charges;

b) For administrative and/or non-business agencies enjoying salaries and wages from the State budget and employing contractual laborers, the sources of budget for payment of severance allowances shall be provided by the State budget in such agencies' regular expenditures;

c) For other agencies, organizations, units and individuals employing laborers under labor contracts, they have to pay severance allowances by themselves.

3. Working seniority for calculation of severance allowances:

a) The working seniority for calculation of severance allowance means the total time amount for working under concluded labor contracts (including orally concluded contracts), during which the laborers have actually worked for the employers;

b) Laborers who were once workers or State employees and now still work in their units, the working seniority for calculation of severance allowances is the total amount of time working in such units;

c) Where laborers, before working for State enterprises, once worked for other units in the State sector, but have not yet enjoyed the severance allowances, the enterprises where the laborers terminate their labor contracts shall have to pay severance allowances to such laborers according to law provisions. The units employing such former laborers shall have to make payment to the enterprises which paid the severance allowance; if the previous enterprises have already terminated their operation, the State budget shall make the reimbursement.

In cases where after the merger, consolidation, division and separation of enterprises, the transfer of the rights to own, manage or use the assets of, enterprises as provided for in Article 31 of the amended and supplemented Labor Code, the laborers terminate the labor contracts, the succeeding employers shall have to pay the severance allowances to laborers, including the duration the laborers worked for the preceding employers.

d) Apart from the above-mentioned duration, the following duration, if any, shall also be counted as working duration for employers:

- The period of apprentice or probation (if any) at enterprises, agencies or organizations;

- The duration when enterprises, agencies or organizations raise the laborers' professional qualifications or send them for job training;

- The duration the laborers take leave according to the social insurance regime, the duration of rest under the provisions of the Labor Code;

- The duration of waiting for work assignment upon the expiry of the period of labor contract postponement or laborers' paid work stoppage;

- The duration of apprentice, practice at enterprises, agencies or organizations;

- The duration of labor contract postponement agreed upon by both parties;

- The duration of being wrongly handled with dismissal from jobs or unilateral termination of labor contracts;

- The duration the laborers are suspended from work under the provisions in Article 92 of the Labor Code.

4. The wage levels plus wage allowances (if any) for calculation of severance allowances shall comply with the provisions in the Government's Decree No.114/2002/ND-CP of December 31, 2002 detailing and guiding the implementation of a number of articles of the Labor Code regarding wages.

5. The working duration with odd months for laborers working for more than 12 months shall be rounded up as followed:

- From full 1 month to under 6 months, it shall be rounded up to 6 working months;

- From full 6 months to 12 months, it shall be rounded up to 1 working year.

6. The laborers enjoying severance allowances at the levels prescribed in Clause 1, Article 42 of the Labor Code, shall be paid directly in lumpsum at their workplaces and within the time limits prescribed in Article 43 of the Labor Code.

Article 15.- Responsibility of each party upon the termination of labor contracts as provided for in Article 43 of the Labor Code:

The time limits for payment of amounts related to the interests of each party shall comply with the provisions in Article 43 of the Labor Code.

For the following special cases: payment of severance allowances to laborers who have worked at various enterprises as provided for at Point c, Clause 3, Article 14 of this Decree; termination of operation by enterprises or meeting with natural calamities or fires by either party, for which the severance allowances, compensations and other amounts must be paid, the payment thereof must not prolong for more than 30 days as from the date of termination of labor contracts.

Article 16.- The rights, obligations and interests of the parties, inscribed in the labor contracts which are declared invalid as provided for in Clause 3, Article 29 and Clause 4 of Article 166 of the amended and supplemented Labor Code shall be settled as follows: For any contents declared invalid, the rights, obligations and interests of the parties shall be handled according to the corresponding contents prescribed in the current legislation and the lawful agreements in collective labor agreements (if any) as from the time the labor contracts are concluded and take effect.

Chapter IV IMPLEMENTATION PROVISION

Article 17.- If the labor contracts concluded before the effective date of this Decree contain contents not compatible with the amended and supplemented Labor Code, they must be amended and supplemented; any articles and clauses beneficial to laborers as compared to the provisions in the amended and supplemented Labor Code shall still be implemented until the expiry of the labor contracts. The amendment and

supplementation of labor contracts must be done within 6 months as from the date this Decree takes implementation effect; if past the above time limit, no amendments and/or supplements are made, such failure shall be regarded as acts of violating the labor legislation and the labor contracts can be declared invalid by competent bodies under the provisions in Clause 3, Article 29 and Clause 4 of Article 166 of the amended and supplemented Labor Code.

Workers and employees working regularly in the State enterprises shall shift to conclude the labor contracts with indefinite terms.

Article 18.-

1. This Decree takes effect 15 days after its publication in the Official Gazette and replaces Decree No.198/CP of December 31, 1994 of the Government, detailing and guiding the implementation of a number of articles of the Labor Code on labor contracts.

2. The Ministry of Labor, War Invalids and Social Affairs and the Ministry of Finance shall base themselves on their respective functions and assigned tasks to guide the implementation of this Decree.

Article 19.- 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 centrally-run cities, the concerned agencies, organizations, enterprises and individuals shall have to implement this Decree.

**On behalf of the Government
Prime Minister**

PHAN VAN KHAI

(This translation is for reference only)