

Circular No.24/2005/TT-BLDTBXH

Circular No. 24/2005/TT-BLDTBXH of September 26th, 2005, amending and supplementing a number of points of circular No. 04/2004/TT-BLDTBXH of March 10, 2004, of the ministry of labor, war invalids and social affairs, which guides the implementation of a number of articles of the government's decree No. 105/2003/ND-CP of September 17, 2003, detailing and guiding the implementation of a number of articles of the labor code regarding the recruitment and management of foreign laborers working in Vietnam

In furtherance of the Government's Decree No. 93/2005/ND-CP of July 13, 2005, amending and supplementing a number of articles of the Government's Decree No. 105/2003/ND-CP of September 17, 2003, which details and guides the implementation of a number of articles of the Labor Code regarding the recruitment and management of foreign laborers working in Vietnam, the Ministry of Labor, War Invalids and Social Affairs hereby amends and supplements a number of points of its Circular No. 04/2004/TT-BLDTBXH of March 10, 2004, guiding the implementation of a number of articles of the Government's Decree No. 105/2003/ND-CP of September 17, 2003, on the recruitment and management of foreign laborers working in Vietnam, as follows:

1. Point 1 of Section I is amended and supplemented as follows:

“1. Enterprises, agencies and organizations defined in Article 1 of amended and supplemented Decree No. 105/2003/ND-CP (hereinafter referred collectively to as labor users), including:

a/ Enterprises operating under the State Enterprise Law, the Enterprise Law or the Law on Foreign Investment in Vietnam;

b/ Foreign contractors (principal contractors, sub-contractors) performing contracts in Vietnam;

c/ Representative offices and branches of economic, trade, financial, banking, insurance, scientific-technical, cultural, sport, education, training, and medical organizations;

d/ Socio-professional organizations;

e/ Non-business units of the State;

f/ Medical, cultural, educational, training, and sports establishments (including those set up under the Enterprise Law, the State Enterprise Law or the Law on Foreign Investment in Vietnam), including:

- Sport establishments set up and operating under the provisions of law on physical training and sports;

- Educational, training and job-training schools, centers and establishments, set up and operating under the provisions of law on education and training or labor;
- Hospitals, institutes with patient beds, medical centers, health stations, centers for prevention and control of social diseases, preventive medicine centers, medical treatment camps, and medical establishments, set up and operating under the provisions of Vietnamese law;
- Cultural establishments set up and operating under the provisions of Vietnamese law.

g/ Vietnam-based offices of foreign or international projects;

h/ Vietnam-based management offices of foreign parties to business cooperation contracts;

i/ Vietnam-based organizations practicing law under the provisions of Vietnamese law;

j/ Cooperatives set up and operating under the Cooperative Law.”

2. Points 1 and 2 of Section II is amended and supplemented as follows:

“1. Labor users may recruit foreign laborers under the provisions of Article 3 of amended and supplemented Decree No. 105/2003/ND-CP, specifically:

a/ Labor users mentioned at Item a, Point 1, Section I of this Circular may recruit foreign laborers according to the following provisions:

- The number of foreign laborers permitted to be recruited is calculated according to the following formula:

$$LNN = LDN \times 0.03$$

Of which:

+ LNN is the number of foreign laborers an enterprise may recruit according to regulations, including foreigners who are recruited by labor users under labor contracts and foreigners who are sent by foreign parties to work for the enterprise in Vietnam. LNN shall be at least 01.

Foreigners being members of managing boards or members' councils (for limited liability companies set up under the Enterprise Law), and foreigners entering Vietnam and working at enterprises to perform contracts of various types (other than labor contracts) under the provisions of Clause 5, Article 6 of amended and supplemented Decree No. 105/2003/ND-CP, shall not be included in the above-said number of foreign laborers employed by enterprises.

+ LDN is the current number of laborers of an enterprise (including both Vietnamese laborers and foreign laborers) at the time of recruitment of foreign laborers, including the number of laborers currently working at the enterprise; the number of laborers sent by the enterprise to work or be trained abroad; the number of laborers who are on leave, enjoying social insurance regime (due to sickness, maternity, labor accidents or occupational diseases); the number of laborers being currently trained by the enterprise; and the number of laborers who are on leave because of the postponement of their labor contracts.

Where LNN is a decimal figure, it shall be rounded up.

Example 1: If enterprise A has 76 laborers at the time of recruitment of foreign laborers, then it may recruit, as prescribed, the following number of foreign laborers:

$$LNN = 76 \times 0.03 = 2.28$$

So, the number of foreign laborers enterprise A may recruit as prescribed is 03.

Example 2: If enterprise B has 1,767 laborers at the time of recruitment of foreign laborers, then it may recruit, as prescribed, the following number of foreign laborers:

$$LNN = 1,767 \times 0.03 = 53.01$$

So, the number of foreign laborers enterprise B may recruit is 54.

- For enterprises engaged in particular domains that employ a small number of laborers or have just begun investment, not yet stabilized production, but wish to recruit foreign laborers for the jobs Vietnamese laborers cannot yet perform, in excess of 3%, they must submit their requests to the presidents of the People's Committees of provinces or centrally-run cities where they are headquartered for consideration and written approval based on the actual requirements of each enterprise. Labor users' written requests for recruitment of additional foreign laborers shall be made according to a set form.

- Where labor users have projects approved under decisions of, or granted operation licenses by, Vietnamese competent state agencies, which have stated the number of foreign laborers permitted to be employed, such approval of presidents of provincial/municipal People's Committees is not required.

- For enterprises which recruited foreign laborers before the effective date of Decree No. 105/2003/ND-CP, labor users may continue employing the recruited foreign laborers till the expiration of the signed labor contracts or the granted work permits. Where the duration of employing the recruited laborers has expired but the enterprises wish to recruit foreign laborers in excess of the set percentage, they shall abide by the provisions of this Circular.

b/ Before recruiting foreign laborers, labor users defined at Items b, c, d, e, f, g, h, i and j, Point 1, Section I of this Circular must send to People's Committees of provinces or centrally-run cities where the enterprises are headquartered written requests for recruitment of foreign laborers, made according to a set form, and they may recruit foreign laborers only after obtaining written approval of the presidents of such provincial/municipal People's Committees.

2. Foreigners who have high professional and technical qualifications, many years' working experience in their professions, in production/business administration or in managerial jobs which Vietnamese laborers cannot perform yet as provided for in Clause 3, Article 4 of amended and supplemented Decree No. 105/2003/ND-CP, are specified as follows:

a/ Foreigners with high professional and technical qualifications are engineers or persons with qualifications equivalent to an engineer's, having university, master's or doctoral diplomas suitable to the specialties or jobs as required by recruiters;

b/ Foreigners are craftsmen of traditional crafts, who must have written certifications by competent agencies or organizations of the countries where they are nationals;

c/ Foreigners with many years' working experience in their professions or in production/business administration or managerial jobs which Vietnamese laborers cannot perform yet are those who have at least 5 (five) years' experience in such jobs, are capable of performing the jobs as required by labor users, and must have written certifications by foreign competent agencies or organizations."

3. Point 5 of Section III is amended and supplemented as follows:

"5. For those who are not required to have work permits as provided for in Clause 1, Article 6 of amended and supplemented Decree No. 105/2003/ND-CP, labor users shall have to send reports, made according to a set form, on their personal details to the Services of Labor, War Invalids and Social Affairs of the provinces or centrally-run cities where the enterprises are headquartered.

For foreigners who enter Vietnam to perform contracts of various types (other than labor contracts) signed between Vietnam-based enterprises, agencies or organizations and foreign-based enterprises, agencies or organizations, they are not required to apply for work permits but must fully satisfy the conditions set in Clauses 1, 2, 3 and 4, Article 4 of amended and supplemented Decree No. 105/2003/ND-CP, and the Vietnam-based enterprises, agencies or organizations shall make reports, made according to a set form, enclosed with papers of these foreigners as provided for at Items b, c, d and e, Clause 1, Article 5 of amended and supplemented Decree No. 105/2003/ND-CP."

4. To add the following Item d to Point 2 of Section IV:

“d/ When receiving dossiers of application for work permits, dossiers of application for extension of work permits or papers of application for re-grant of work permits, provincial/municipal Services of Labor, War Invalids and Social Affairs must make entries thereof into monitoring books and hand over receipts to labor users. Such receipts must clearly state the date of receipt of dossiers, documents included in dossiers, and the time for reply.”

5. Form 6 is amended and supplemented as follows:

The phrase “general directors, directors” at the second line from the bottom is replaced with the phrase “labor users.”

This Circular takes effect 15 days after its publication in “CONG BAO.”

Any problems arising in the course of implementation should be promptly reported to the Ministry of Labor, War Invalids and Social Affairs for study and settlement.

Minister of Labor, War Invalids and Social Affairs
NGUYEN THI HANG