

LEGAL UPDATES ON COMPULSORY SOCIAL INSURANCE, HEALTH INSURANCE AND UNEMPLOYMENT INSURANCE

A. PROVIDING GUIDANCE ON THE IMPLEMENTATION OF THE COMPULSORY HEALTH INSURANCE (“HI”) SCHEME FOR EMPLOYEES

On 28 December 2015, The Ministries of Police, Health and Finance issued Inter-Circular No 09/2015/TTLT-BCA-BYT-BTC providing guidance on the implementation of compulsory HI for employees, pupils, students and family members of military officers, non-commissioned officers, servicemen in the people’s police (“Circular”). The Circular clarified key matters as below:

1. The employees and their employers are not subject to HI contributions during the period when the employees are entitled to sick leave benefits, from 14 days onward, which are paid by the SI Agency in accordance with the prevailing SI regulations, and during this period of time they still enjoy the privileges of the HI scheme.
2. In respect of employees held in detention, in custody or temporarily suspended from their work before being investigated or judged guilty or not guilty of their offences, the employees’ and their employers’ HI contributions shall be equal to 4.5% of 50% of the monthly salary subject to SI contributions as stipulated under prevailing regulations (but not exceeding 20 times “basic salary”). In cases where a competent body of Vietnam concludes that the employees are not guilty, they and their employer must be retrospectively subject to HI contributions on their back-paid salary.

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3. With respect to employees being sent abroad for study or those being seconded to work overseas or being on overseas business trips, these periods overseas are not subject to HI contributions. Therefore, employees who are sent abroad for study or on overseas business trip are not subject to HI contributions; from the date they go overseas to the date when they return as decided by their employers, their health insurance contribution is counted as uninterrupted.

The Circular will be effective from 11 February 2016. The provisions on contribution level, contribution liability, and contribution method in respect of HI have been effective since 1 January 2015.

B. PROVIDING GUIDANCE ON A NUMBER OF ISSUES RELATED TO SOCIAL INSURANCE ("SI"), HEALTH INSURANCE ("HI") AND UNEMPLOYMENT INSURANCE ("UI")

On 19 January 2016, Ho Chi Minh SI Agency issued Official Letter No 212/BHXXH-QLT providing guidance on the administration of transactions and requirements for issuing the SI book, HI card ("OL 212") with respect to organizations located in Ho Chi Minh City. In this, Ho Chi Minh SI Agency provided detailed guidance on a number of key issues on SI, HI and UI as below:

1. From 1 January 2016 onwards, organizations will no longer retain 2% of salary subject to SI contributions used to pay employees who are entitled to SI benefits of sick leave, maternity leave and health rehabilitation leave. Instead, the organizations should collect from the employees sufficient documents related to the SI regimes of sick leave, maternity leave and health rehabilitation, then hand over these documents to the SI Agency for them to make payments to the employees directly.
2. From 1 January 2016 to 31 December 2017, the salary subject to SI/HI/UI contributions is the salary and allowance under the provisions of paragraph 1 and item a, paragraph 2, Article 4 of the Circular No 47/2015/TT-BLDTBXH issued on 16 November 2015 by The Ministry of Labor – Invalids and Social Affairs.

The salary subject to SI/HI/UI contributions does not include bonus as stipulated in Article 103 of the Labor Code, initiative bonus; mid-shift meals; transportation, gasoline, mobile, and housing allowance, babysitting payments, young children care allowance; payments for funerals and marriages of employees' relatives, or employees' birthdays, occupational accident payments to employees in need, occupational illness and other allowances.

3. In cases of work suspension where the employees are still entitled to payments of full salary, the employees and their employer are subject to SI/HI/UI contributions on the salary base during the period of work suspension.
4. With regard to the contribution method, the OL 212 provided specific guidance that on a monthly basis, no later than the month-end date, organizations must make SI/HI/UI contributions and at the same time transfer the payment to the SI Agency's bank account. In cases where organizations make late payment of HI contributions; or avoid, delay, or appropriate the payments of SI/UI contributions from 30 days or more, a late payment penalty in line with the prevailing interest rate will be imposed on them.
5. In addition, OL 212 provided detailed guidance on the calculation method for SI contributions in cases where employees take maternity leave of 14 working days or more during the month, with effective from 1 January 2016, as below:
 - In cases where the labor contract expires during the period of entitlement to maternity leave, the period from the start of maternity leave to the expiry date of the labor contract shall be counted as the period for SI contributions; the remaining maternity leave outside the labor contract term shall be waived in terms of SI contributions.
 - In cases where female employees resume work before the end of maternity leave, they are still entitled to maternity leave benefits but they and their employers must be subject to SI/HI contributions for the period from when they come back to work to the end of maternity leave,
 - In cases where the fathers or direct fosterers who are entitled to paternity leave benefits do not take leave, the employees and their employers are still subject to SI/HI contributions.

In light of the specific guidance above, organizations should note the types of allowance which form the basis for SI contributions for their employees. They should also consider the application of SI contributions for female employees resuming work earlier than the end of their 6-month maternity leave, as well as complying with the requirements of payment deadlines for SI/HI/UI contributions to avoid penalties for late payment.

Other provincial SI Agencies have already issued similar regulations providing guidance on the administration of transactions with effect from 1 January 2016.