

## LEGAL UPDATES ON EMPLOYMENT – SALARY – SOCIAL INSURANCE

### A. UPDATES ON EMPLOYMENT – SALARY POLICIES

On 16 November 2015, the Ministry of Labor – Invalids and Social Affairs promulgated Circular No. 47/2015/TT-BLĐTBXH (“Circular 47”) with guidance on a number of articles in the Decree No. 05/2015/ND-CP, and to amend and remove some articles in Circular 23/2015/TT-BLĐTBXH. Here are some points for enterprises to note.

#### I. Changed regulations on salary, allowances, and other additional payments printed in labor contracts:

Salary, allowances and other additional payments printed in labor contracts:

1. Salary is the job salary or title salary in accordance with the salary scale developed by the employer, according to the Labor Code and mutual agreement. For employees paid a product-based salary or piecework salary, it is the time-based salary which is used to determine the product unit price or the piecework salary.
2. Salary-based allowances are mutually agreed items, including:
  - a. Allowances such as additional pay for work conditions and complexity, living conditions, incentives to attract candidates to roles where market rates are higher than the salary scale.

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- b. Any other salary-based additional pay related to the work or the work performance of employees.
- 3. Mutually agreed other additional payments, including:
  - a. Additional payments paid as specific amounts of money together with salary stated in the labor contract and are processed in the normal payroll schedule.
  - b. Additional payments which are NOT specific amounts of money together with salary stated in the labor contract, are processed in the normal payroll schedule or not, based on the work performance of employees.

Other welfare regime: 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, funerals and marriages of employees' relatives, employees' birthdays, occupational accident payments to employees in need, occupational illness and other allowances will **be presented in a separate article in the labor contract**.

Therefore, "allowances and other additional payments" have been clarified in Circular 47, in comparison with the contract salary definition in Circular 23/2015/TT-BLĐTBXH. Mid-shift meals, transportation, gasoline, mobile, and housing allowance, babysitting payments, young children care .... have been removed from "other additional payments", and presented in a separate article in the labor contract named "other welfare regime" (excluded from the salary article).

## II. Salary base for severance/redundancy allowance calculation:

The salary base for severance/redundancy allowance calculations will be the average salary in the employment contract, including the job salary or title salary in the salary scale prepared by the employer (item I.1 mentioned above), allowances (item I.2.a mentioned above) and other additional payments (item I.3.a mentioned above) in the preceding 06 months before the employee's resignation or job loss.

### III. Salary base for annual leave, public holiday, and paid leave pay calculation:

The salary base for lay-off, annual leave, public holiday, paid leave pay, and salary advance calculations is the employment contract salary, including the job or title salary in the salary scale prepared by the employer (item I.1 mentioned above), allowances (item I.2.a mentioned above) and other additional payments (item I.3.a mentioned above).

### IV. Removal of payment term within the working month:

Circular 47 states that the payment term for employees should be on a monthly basis or a fortnightly basis, and must be **as scheduled**.

Therefore, the requirement for salary payments to employees to be scheduled within the working month, as previously stipulated in Circular 23/2015/TT-BLDTBXH, has been removed.

### V. Standard working day for salary calculation:

In Circular 47, the daily wage for a working day is calculated on the basis of the monthly salary divided by the number of normal working days in a particular month by law at the discretion of **employers**, but must not be more than 26 days.

Therefore, the definition of standard working days per calendar month, as stipulated in Circular 23/2015/TT-BLDTBXH, has been amended.

**Circular 47 comes into effect from 1 January 2016.**

## B. LAW ON SOCIAL INSURANCE NO. 58/2014/QH13 – CHANGES TO NOTE ARE EFFECTIVE FROM 1 JANUARY 2016:

On 20 November 2014, the National Assembly issued Law on Social Insurance (“SI”) No. 58/2014/QH13 with changes to note effective from 1 January 2016, as follows:

### 1. Managing the SI book:

Managing the SI book shall be handed over from the employer to the employee. Accordingly, the employees shall be responsible for the custody of their SI books themselves.

## 2. Monthly wage subject to SI contribution:

With effect from 1 January 2016, for employees making SI contributions under the employer-determined salary regime, the monthly wage subject to SI contributions is made up of salary, and allowances as regulated by employment legislation.

## 3. Paternity regime:

- Male employees currently making SI contributions whose wives give birth to children are entitled to paternity leave of:
  - ✓ 5 working days;
  - ✓ 7 working days, in cases where their wives undergo a surgical birth or give birth to children after less than 32 weeks of pregnancy;
  - ✓ 10 working days, in cases where their wives give birth to twins. Triplets or a greater number of children at one time, plus 3 additional working days for each infant from the second upwards;
  - ✓ 14 working days, in cases where their wives undergo a surgical birth for twins or more infants.
- The paternity leave period specified in this provision must be taken within the first 30 days after the date of childbirth.

## 4. One-off allowance upon childbirth or child adoption:

In cases where the mother gives birth to a child but only the father is subject to SI contributions, the father is entitled to a one-off allowance of two months' basic salary for each child, in the month of childbirth.

## 5. Allowance levels for the prenatal check-up leave, paternity leave:

The one-day rate of the allowance for the cases specified in the provisions of this Law must equal the monthly maternity allowance divided by 24 days.

## 6. Allowance levels for the sickness regime:

The one-day rate of sick leave allowance must equal the monthly sickness allowance divided by **24 days** (under Law on SI No 71/2006/QH11 it was 26 days).

## 7. Sickness regime – sickness with long-term treatment:

- Period of entitlement for sickness benefit:

A maximum of 180 days in a calendar year, including public holidays, New Year holidays and weekends. If, at the end of the 180-day period, treatment is being continued, employees will continue to be entitled to sick leave benefit for a short period **but not exceeding the duration for which social insurance contributions were made**. (under Law on SI No 71/2006/QH11 there was no limitation in this regard).

- From the 181st day, the allowance levels for sick leave allowance are as below:

The rate of allowance must be equal to 65%, 55% or **50%** of the salary of the month preceding their leave in which social insurance contributions were made, respectively depending on the duration for which SI contributions were made (under Law on SI No 71/2006/QH11 the levels of this allowance were equal to 65%, 55%, and **45%** respectively).

## 8. Convalescence and health rehabilitation after sickness or maternity:

The one-day rate of allowance for convalescence and health rehabilitation after sickness or maternity must equal 30% of the basic salary, regardless of whether the employee is taking rest at home or at a health center (under Law on SI No 71/2006/QH11 the one-day rate of this allowance was equal to 25% of basic salary where the employee was resting at home or equal to 40% where the employee was at a health center).