

LEGAL UPDATES ON WORK PERMITS FOR FOREIGNERS WORKING IN VIETNAM EFFECTIVE AS OF 1 APRIL 2016

The Government issued Decree 11/2016/ND-CP ("Decree 11") on 3 February 2016 detailing the implementation of the work permit provisions of the Vietnam Labour Code for foreigners working in Vietnam, effective as of 1 April 2016. Decree 11 has replaced Decree 102/2003/ND-CP ("Decree 102") and includes key changes as below:

I. FOREIGNERS REQUIRED TO APPLY FOR WORK PERMITS:

1. Changes to the definition of foreign experts:

Foreign experts are those falling into one of the following categories:

- a. Those who have been certified as experts by companies, organizations, enterprises abroad;
- b. Those who hold a university degree or higher with a minimum of **three years working experience** majoring in the same training field as the post offered in Vietnam; special cases shall be considered and decided by the Prime Minister.

Previously, under Decree 102, the number of years of working experience required for foreign experts was five years.

This is not a formal legal document.

All information in this document is for reference and general guidance purposes only.

Kindly contact to Talentnet consultant to apply with respect to specific cases:

Payroll and HR Outsourcing Services

Ho Chi Minh City

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2. Clarification of the definition of foreigners who are managers, chief executive officers:

Managers, chief executive officers are foreign workers who fall into one of the following categories:

- a. Managers are individuals who manage the enterprise as stipulated in Clause 18, Article 4 of Enterprise Law; or those who are heads, vice-heads of companies, organizations;

In this Clause, the definition of individuals managing enterprises under Enterprise Law is stipulated as follows: *Enterprise managers are those who manage companies or private enterprises, including the entrepreneur of a private enterprise, general partners, the Chairman of the Members' Council, members of the Members' Council, the Chairman of the company, the Chairman of the Board of Management, Members of the Board of Management, the Director or General Directors and individuals holding other managerial positions who are authorized to enter into transactions on behalf of the company in accordance with the company's charter.*

- b. Chief executive officers are the heads who directly manage subordinate units of agencies, organizations or enterprises.

Under these regulations, individuals being appointed to a number of positions such as Head of Departments, Head of Divisions, ... (Not subject to point no. 2.a and 2.b above) who previously were required to apply for a work permit for the position of "Manager" according to Decree 102, now need to apply for a work permit for the position of "Expert". Companies should please note this change in order to make the appropriate work permit applications.

II. ADDITIONAL SITUATIONS WHERE FOREIGNERS ARE EXEMPT FROM WORK PERMIT:

- Experts, managers, chief executive officers or technicians working in Vietnam for **less than 30 days per period and where the total accumulated working days in Vietnam is less than 90 days per year.**

- Students and trainees who are attending school abroad and have signed internship agreements with companies, organizations in Vietnam.

Note: In these cases, work permit exemption confirmation needs to be obtained from the respective Department of Labour-Invalids and Social Affairs at least seven working days before commencement of work/training.

III. CHANGES RELATING TO WORK PERMIT APPLICATIONS:

1. General changes:

- Foreigners' health check certificates issued by a competent medical center will have a **valid period of twelve months** starting from the date of the certificate until the date of application (instead of six months under previous regulations).
- If a foreigner has been residing in Vietnam, only a criminal record issued in Vietnam needs to be specified for work permit application purposes.

However, Decree 11 has not yet clarified how to define a foreigner residing in Vietnam in this case.

2. Work permit applications for special cases:

Decree 11 provides guidelines on work permit applications for special cases in which the application is simplified compared to the initial one, with details as below:

- a. A foreigner has already obtained a work permit and has changed employer:

If the work permit is still valid and he/she changed employer but still holds a position with the same title as specified in the work permit, then for the work permit renewal application there is **no requirement** to submit the health check certificate, the criminal record and the evidence of a certified university degree and working experience.

b. A foreigner has obtained a work permit and has changed a position:

If the work permit is still valid and he/she changed position with the same company as specified in the work permit, then for the work permit renewal application there is **no requirement** to submit the health check certificate and the criminal record.

c. The foreigner's work permit has expired:

In a situation where the work permit has expired under Article 174 of the Labour Code, if it is returned to the labour authority (e.g. the expired work permit, termination of the labour contract, withdrawal of the work permit, etc...), and if the foreigner wishes to continue working in the same position as specified in the work permit, then for the work permit application there is **no requirement** to submit the evidence of certified university degrees and working experience.

Under the guidelines above as stipulated in Decree 11, we expect the work permit preparation and application will be consistently applied by all labour authorities throughout the country.

IV. CHANGES IN THE WORK PERMIT PROCESS:

- Time taken to issue a work permit: within **07 working days** from the submission date of the work permit application (under Decree 102 it was 10 working days).
- Work permit renewal applications must be submitted at least 5 days but not more than 45 days before the expiry date of the work permit (under Decree 102, it was not more than 15 days instead).

Currently, the Ministry of Labour - Invalids and Social Affairs are drafting and will issue later a Circular to provide implementation guideline as well as clarify some points in Decree 111.