

DECREE 143
PROVIDING DETAILED REGULATIONS ON
THE LAW ON SOCIAL INSURANCE AND THE LAW ON
OCCUPATIONAL SAFETY AND HYGIENE REGARDING
COMPULSORY SOCIAL INSURANCE FOR
FOREIGNERS WORKING IN VIETNAM

Dated 15 October 2018

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GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

No. 143/2018/NĐ-CP

Ha Noi, 15 October 2018

DECREE
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THE LAW ON SOCIAL INSURANCE AND THE LAW ON
OCCUPATIONAL SAFETY AND HYGIENE REGARDING
COMPULSORY SOCIAL INSURANCE FOR
FOREIGNERS WORKING IN VIETNAM

Pursuant to the *Law on Organization of the Government* dated 19 June 2015;

Pursuant to the *Law on Social Insurance* dated 20 November 2014;

Pursuant to the *Law on Occupational Safety and Hygiene* ["*Law on OHS*"]¹ dated 25 June 2015;

Having considered the proposal of the Minister of Labour, Invalids and Social Affairs [MOLISA];

The Government hereby issues this Decree providing detailed regulations on the *Law on Social Insurance* and the *Law on Occupational Safety and Hygiene* ["*Law on OHS*"] regarding compulsory social insurance for foreigners working in Vietnam.

CHAPTER 1

General Provisions

Article 1 *Governing scope*

This Decree provides detailed regulations on the *Law on Social Insurance* and the *Law on OHS* regarding compulsory social insurance for foreigners working in Vietnam.

Article 2 *Applicable entities*

- 1 [This Decree applies to] foreigners working in Vietnam in the compulsory social insurance category² when they have a work permit, practising certificate or practising licence issued by the competent Vietnamese agency and an indefinite term labour contract or a definite term labour contract for a full one year or more with an employer in Vietnam.

¹ Allens footnote: Square brackets contain translator's comments only, mostly contents of the relevant articles in the *Law on Social Insurance* and the *Law on Labour Safety and Hygiene* (*Law on OHS*).

² Allens footnote: Article 2.2 of the *Law on Social Insurance* stipulates that "employees being foreign citizens working in Vietnam with work permits, practising certificates or practising licences granted by Vietnamese agencies shall be covered by compulsory social insurance in accordance with Government regulations".

- 2 Workers prescribed in clause 1 above are not in the compulsory social insurance category pursuant to this Decree in either of the following cases:
 - (a) A worker internally transferred within an enterprise in accordance with article 3.1 of Decree 11/2016/NĐ-CP of the Government dated 3 February 2016 implementing the *Labour Code* on foreigners working in Vietnam;
 - (b) A worker of retirement age as prescribed in article 187.1 of the *Labour Code*.³
- 3 Employers participating in compulsory social insurance include State agencies, State non-business [or professional] units, political and socio-political organizations, socio-professional and other social organizations; foreign agencies and organizations and international organizations operating within the territory of Vietnam; and enterprises, cooperatives, individual household businesses, cooperative groups and other organizations and individuals permitted to conduct business in accordance with law and which hire or employ workers pursuant to labour contracts.
- 4 [Other] agencies, organizations and individuals involved in compulsory social insurance applicable to foreigners working in Vietnam.

Article 3 Rights and responsibilities of employees and employers

Employees and employers prescribed in this Decree have all the rights and responsibilities stipulated in the *Law on Social Insurance* and the *Law on OSH*.

Article 4 Complaints and denunciations, and dealing with social insurance breaches

Complaints and denunciations about social insurance, and dealing with breaches of social insurance regulations by the entities prescribed in article 2 above shall be implemented in accordance with the provisions in Chapter 8 of the *Law on Social Insurance*.

CHAPTER 2

Compulsory Social Insurance Regimes

Article 5 Compulsory social insurance regimes

1. Employees prescribed in article 2.1 above shall implement the following compulsory social insurance regimes: sickness; maternity; labour accident and occupational disease; retirement, and survivor's benefit [following death of the employee].
2. The compulsory social insurance regimes [benefits] referred to article 2.1 of this Decree are calculated on the period for which the employee has been covered by social insurance as stipulated in this Decree.

Article 6 Sickness regime

- 1 Article 25 of the *Law on Social Insurance* sets out the conditions for entitlement to the sickness regime [benefits].
- 2 Period of entitlement to sick leave:
 - (a) Article 26 of the *Law on Social Insurance* regulates the period of entitlement to sick leave⁴;

³ Allens footnote: The retirement age is 60 years of age for a male and 55 for a female.

⁴ Allens footnote: The period depends on how long social insurance contributions have been paid, for example if for under 15 years then the period of entitlement is a maximum 40 days.

- (b) Article 27 of the *Law on Social Insurance* regulates the period of leave upon sickness of a child.
- 3 Article 28 of the *Law on Social Insurance* regulates the amount⁵ of sick leave benefits.
- 4 Article 29 of the *Law on Social Insurance* regulates convalescence and health rehabilitation benefits after sick leave.⁶

Article 7 Maternity regime

- 1 Article 31 of the *Law on Social Insurance* regulates the conditions for entitlement to maternity leave.⁷
- 2 Period of entitlement to maternity leave:
 - (a) Article 32 of the *Law on Social Insurance* regulates the maternity leave period for prenatal check-ups;
 - (b) Article 33 of the *Law on Social Insurance* regulates the leave period upon miscarriage, abortion, stillbirth or pathological abortion;
 - (c) Article 34 of the *Law on Social Insurance* regulates the leave period for childbirth;
 - (d) Article 36 of the *Law on Social Insurance* regulates the leave period for child adoption;
 - (dd) Article 37 of the *Law on Social Insurance* regulates the leave period when taking contraceptive measures.
- 3 Amount of the maternity benefit:
 - (a) Article 38 of the *Law on Social Insurance* regulates the lump sum allowance upon childbirth or child adoption;
 - (b) Article 39 of the *Law on Social Insurance* regulates amounts of the maternity benefit and calculations thereof.
- 4 Article 40 of the *Law on Social Insurance* regulates female employees returning to work prior to expiry of their maternity leave period.
- 5 The maternity regime for female employees as surrogate mothers and as intended mothers is regulated by article 35 of the *Law on Social Insurance* and by articles 3 and 4 respectively of Decree 115/2015/NĐ-CP dated 11 November 2015 with regulations for implementation of the *Law on Social Insurance* regarding compulsory social insurance ["Decree 115"].
- 6 Article 41 of the *Law on Social Insurance* regulates convalescence and health rehabilitation after maternity leave has expired.⁸

Article 8 Labour accident and occupational disease regime

- 1 Conditions for entitlement:

⁵ Allens footnote: Generally the monthly benefit equals 70% of the salary of the month preceding the leave.

⁶ Allens footnote: An employee who has taken sick leave for the full number of prescribed days in a year but whose health has not recovered within 30 days after return to work, is generally entitled to extra leave benefits of 30% of the basic salary for 5 to 10 days in a year.

⁷ Allens footnote: Maternity leave applies to pregnant females, surrogate mothers, parents adopting children aged under 6 months, and also includes paternity leave of 5 to 14 days.

⁸ Allens footnote: A mother whose health has not recovered within 30 days after return to work after maternity leave is generally entitled to extra leave of between 5 to 10 days in a year for convalescence and health rehabilitation.

- (a) Article 45 of the *Law on Occupational Safety and Hygiene* (*Law on OHS*) regulates the conditions for receiving compensation/benefits for a labour accident;
 - (b) Article 46.1 of the *Law on OHS* regulates the conditions for receiving compensation/benefits for an occupational disease.
- 2 Article 47 of the *Law on OHS* regulates how reduced working capacity is determined.
- 3 Amount of the benefit for a labour accident or occupational disease:
- (a) Lump sum allowance pursuant to article 48 of the *Law on OHS*;
 - (b) Monthly allowance pursuant to clauses 1, 2, 3, 4 and 6 of article 49 of the *Law on OHS*.
- 4 Article 51 of the *Law on OHS* regulates living support devices and orthopedic devices.
- 5 Article 52 of the *Law on OHS* regulates service allowances⁹.
- 6 Period of entitlement to the allowance is prescribed in article 50 of the *Law on OHS*.
- 7 The benefit upon death of an employee due to a labour accident or occupational disease is prescribed in article 53 of the *Law on OHS* and article 10 of this Decree.
- 8 Article 54 of the *Law on OHS* applies to convalescence and health rehabilitation benefits after treatment for a labour accident or occupational disease.
- 9 The labour accident and occupational disease regime applicable to an employee who enters into labour contracts with a number of employers is regulated by article 5 of Decree 37/2016/NĐ-CP of the Government dated 15 May 2016 regulating compulsory insurance for labour accidents and occupational diseases (*Decree 37*).
- 10 Support for change of occupation/career by the victim of a labour accident or occupational disease when he or she returns to work is governed by article 55 of the *Law on OHS* and article 7 and 8 of Decree 37.
- 11 Support for the prevention and sharing of risks of labour accidents and occupational diseases is implemented in accordance with clause 1, clause 2(a), 1(b), and 1(d) and clause 3 of article 56 of the *Law on OHS* and articles 11, 12, 15, 16, 19, 20, 23 and 24 of Decree 37.

Article 9 Retirement regime¹⁰

- 1 Any worker prescribed in article 2.1 of this Decree is entitled to a retirement pension on satisfaction of the conditions prescribed in article 54.1 of the *Law on Social Insurance* and article 6 of Decree 115.
- 2 Amount of the pension:
- (a) The amount of the monthly pension is prescribed in article 56.2 of the *Law on Social Insurance* and in clauses 1 and 2 of article 7 of Decree 115;
 - (b) The amount of a lump sum benefit on retirement is prescribed in article 58 of the *Law on Social Insurance*;
 - (c) The amount being the average monthly salary on which social insurance premiums are based in order to calculate the amount of the retirement pension or lump sum benefit is prescribed in article 62.2 of the *Law on Social Insurance*.

⁹ Allens footnote: A worker with severely reduced working capacity is entitled to an additional monthly service allowance.

¹⁰ Allens footnote: Article 17.2 stipulates the effective date for this regime as from 1 January 2022.

- 3 The adjustment of salaries [based on the consumer price index] on which social insurance premiums were paid is prescribed in article 63.2 of the *Law on Social Insurance*.
- 4 The [possible future] adjustment of the amount of the pension salaries [based on the consumer price index and economic growth] is prescribed in article 57 of the *Law on Social Insurance* and article 10.2 of Decree 115.
- 5 Clauses 1 and 3 of article 41 of the *Law on Social Insurance* regulate the time of entitlement [receipt] to the retirement pension.
- 6 Cases of entitlement to a lump sum pension: the employees prescribed in article 2.1 of this Decree, if they so request, are entitled to a lump sum pension if they fall into any one of the following cases:
 - (a) People who have reached the age for entitlement as prescribed in clause 1 of this article but have not paid social insurance premiums for a full twenty (20) years;
 - (b) People suffering from a serious life-threatening disease such as cancer, polio, cirrhosis, tuberculosis, HIV infection, AIDS or other disease as set out in regulations of the Ministry of Health;
 - (c) Employees who satisfy the conditions for entitlement to a pension as prescribed in clause 1 above but who no longer permanently reside in Vietnam;
 - (d) Employees whose labour contracts are terminated or whose work permits, practising certificates or practising licences are no longer effective and are not extended.
- 7 Article 60.2(b) of the *Law on Social Insurance* regulates the amount of the lump sum pension payment.
- 8 The time for entitlement [receipt of the lump sum pension benefit] is the time recording in the decision of the social insurance agency, and any adjustment of the salaries on which social insurance premiums were paid for the purposes of calculating the lump sum pension payment shall also be as prescribed in a decision of the social insurance agency.
- 9 Preserving the time for which social insurance premiums were paid: an employee who retires but who does not yet satisfy the conditions prescribed in clause 1 above for entitlement to a retirement pension or who is not yet entitled to a lump sum payment pursuant to clause 6 above may preserve the time for which he or she has paid social insurance premiums.
- 10 Suspension of, or continued enjoyment of a pension or monthly social insurance allowance:
 - (a) Articles 64.1 of the *Law on Social Insurance* prescribes the cases in which a pension or monthly social insurance allowance shall be suspended;
 - (b) The above payments are continued to be paid when the person concerned lawfully returns to reside in Vietnam. In a case where a court issues a legally effective decision annulling a former decision declaring the person concerned missing, such person shall not only continue to enjoy such pension or allowance but also have such payments retrospectively paid as from the time of their suspension;
 - (c) When a social insurance agency makes a decision suspending entitlement to payments as prescribed in sub-clause (a) above, it must notify such decision in writing and specify the reasons; and within thirty (30) days after the date of suspension, the social insurance agency must issue a further decision resolving entitlement and if the decision terminates such entitlement [payment], then the reasons for same must be specified.

Article 10 Survivor benefit regime [after the death of an employee]¹¹

- 1 The survivor benefit regime is as prescribed in article 66 of the *Law on Social Insurance*.
- 2 Monthly survivor allowance [or benefit]:
 - (a) Article 67 of the *Law on Social Insurance* prescribes the cases of entitlement to a monthly survivor benefit;
 - (b) Article 68 of the *Law on Social Insurance* prescribes the amount of such monthly benefit.
- 3 Lump sum survivor allowance:
 - (a) Article 69 of the *Law on Social Insurance* prescribes the cases of entitlement to a lump sum survivor allowance;¹²
 - (b) If the employee dies and has a relative who satisfies the conditions for entitlement to a monthly survivor benefit but such relative does not reside permanently in Vietnam, then the relative shall receive a lump sum payment;
 - (c) The amount of the lump sum survivor benefit is as prescribed in article 70 of the *Law on Social Insurance*.

Article 11 Regime applicable to people currently receiving a pension or monthly benefit but who no longer reside in Vietnam

- 1 People currently receiving a pension or monthly benefit but who no longer reside in Vietnam [they now reside abroad] may delegate authority to another person to receive their pension or monthly benefit, and if they so request shall receive a one-off benefit [in lieu].
- 2 The amount of the one-off benefit is as prescribed in clause 2 [for pensioners] or clause 3 [for people receiving the monthly benefit] of article 65 of the *Law on Social Insurance*.

CHAPTER 3

Social Insurance Fund

Article 12 Amount of contribution and method of payment of contribution by employees¹³

- 1 As from 1 January 2022, the employees prescribed in article 2.1 of this Decree shall pay a monthly contribution of 8% of their monthly salary into the retirement and survivorship fund.
- 2 Any employee not working and not receiving his or her salary for fourteen (14) or more working days in a month is not required to pay the social insurance contribution for such month. This period of time shall not be included when calculating entitlement to social insurance benefits, except in the case of maternity leave.

¹¹ Allens footnote: Article 17.2 stipulates the effective date for this regime as from 1 January 2022.

¹² Allens footnote: When an employee paying or preserving his or her social insurance payments or receiving a pension or benefit for a labour accident or occupational disease dies, then the relative as defined in article 3.6 of the *Law on Social Insurance* is entitled to a one-off benefit.

¹³ Allens footnote: In December 2016 during the drafting process, Vietnam Business Forum recommended that individuals paying social insurance contributions in their home countries should not be required to pay contributions in Vietnam, or that periods for which they pay contributions in Vietnam should be recognized in their home countries (with similar treatment applying to Vietnamese guest workers in foreign countries). An official replied that this issue should be included in bilateral agreements on social insurance, and now see article 18.1 (and also 17.3).

Article 13 Amount of contribution and method of payment of contribution by employers

- 1 The employers prescribed in article 2.3 of this Decree shall pay the monthly contribution on their employees' monthly salary fund into social insurance as follows:
 - (a) Three per cent (3%) into the sickness and maternity fund;
 - (b) Zero point five per cent (0.5%) into the labour accident and occupational disease fund;
 - (c) Fourteen per cent (14%) into the retirement and survivorship fund as from 1 January 2022;
- 2 Employers are not required to pay contributions for the employees prescribed in article 12.2 of this Decree.
- 3 The Government shall consider, based on the ability to balance the labour accident and occupational disease fund, adjusting the amount prescribed in clause 1(b) above as from 1 January 2020.
- 4 In the case of an employee who enters into labour contracts with a number of employers and is within the compulsory social insurance category, such employee and the employer of the first such labour contract shall pay social insurance premiums. Regarding contributions to the labour accident and occupational disease fund, an employer must pay premiums in respect of each labour contract entered into.

Article 14 Monthly salary fund for purposes of the social insurance contribution [premium]

Clauses 1 and 2 of article 89 of the *Law on Social Insurance* and clauses 2 and 3 of article 17 of Decree 115 apply to calculation of the monthly salary fund for purposes of the social insurance contribution [premium].¹⁴

CHAPTER 4

Sequence and Procedures for Implementing Social Insurance

Article 15 Sequence and procedures for participating in social insurance and resolving claims

- 1 The sequence and procedures for paying social insurance premiums and also for resolving the regime [claims] for the employees prescribed in article 2.1 of this Decree shall be the same as the sequence and procedures applicable to Vietnamese employees as set out in Chapter 7 of the *Law on Social Insurance*; in articles 57 to 62 inclusive of the *Law on OHS*; in article 5 of Decree 115; and in articles 9 to 26 of Decree 37 except for the provisions in clause 3 of this article and in article 16 of this Decree below.
- 2 Files for application and/or resolution of the social insurance regime for employees prescribed in clause 1 above issued by foreign agencies must be translated into Vietnamese and the translations certified in accordance with the Law of Vietnam.
- 3 Resolution of a claim for a lump sum social insurance payment:

Within ten (10) days after the time of termination of the labour contract or ten (10) days after the date of expiry of the work permits, practising certificate or practising license (whichever comes first) in a case where such employee does not continue to work pursuant to the labour contract or does not

¹⁴ Allens footnote: Namely the monthly salary, allowances and other additional entitlements as prescribed in the law on labour. If an employee's salary is recorded in the labour contract in a foreign currency, then the salary must be converted into VND. If a monthly salary is 20 times higher than the basic wage, then the monthly salary for the purposes of social insurance contributions is capped at 20 times the basic wage

extend such work permit, practising certificate or practising license, then if the employee wishes to apply for a lump sum benefit he or she must lodge an application file with the social insurance agency.

The social insurance agency is responsible to resolve the application and arrange payment within five (5) business days after receipt of a complete file, and if the case remains resolved then such agency must provide a written response explaining its reasons.

Article 16 *Sequence for resolution of an application from a person in receipt of a pension or monthly benefit who no longer resides in Vietnam*

- 1 A person currently receiving a pension or a monthly benefit but who no longer resides in Vietnam and who wishes to receive a one-off payment shall lodge an application file with the social insurance agency.
- 2 The social insurance agency is responsible to resolve such claim within five (5) business days after receipt of the complete file, and if the claim is not resolved then such agency must send a written response to the applicant explaining its reasons.

CHAPTER 5

Implementing Provisions

Article 17 *Effectiveness*

- 1 This Decree is of full force and effect as from 1 December 2018.
- 2 The effective date of the regimes prescribed in articles 9 and 10 is as from 1 January 2022.
- 3 If there are any differences concerning the same issue between the provisions of this Decree and those of any international treaty of which Vietnam is a member, then the provisions of the international treaty shall apply.

Article 18 *Responsibilities for implementation*

- 1 The Minister of Labour is responsible to organize implementation and supervise implementation of this Decree, and to preside over coordination with other relevant Ministries in proposing negotiation and signing of unilateral and bilateral treaties on social insurance.
- 2 The General Director of Vietnam Social Insurance shall issue standard forms and tariffs for social insurance applicable to foreign employees in both Vietnamese and English.
- 3 The Minister of Health shall review and issue standard forms for hospital discharge certificates, extracts of hospital patients' records, leave certificates, maternity and pregnancy certificates, certificates of inability to care for a child immediately after birth, and medical certificates of reduced working capacity in order to resolve the social insurance regimes for the employees prescribed in article 2.1 of this Decree.
- 4 Ministers, heads of ministerial equivalent and Government agencies, and chairpersons of provincial people's committees are responsible to implement this Decree.

On behalf of the Government
Prime Minister
NGUYEN XUAN PHUC