

CIRCULAR

**GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE DECREE
NO.152/2006/ND-CP DATED DECEMBER 22, 2006 OF THE GOVERNMENT GUIDING A NUMBER
OF ARTICLES OF THE LAW ON SOCIAL INSURANCE REGARDING COMPULSORY SOCIAL
INSURANCE**

Pursuant to the Decree No.152/2006/ND-CP dated December 22, 2006 of the Government guiding a number of Articles of the Law on Social Insurance regarding compulsory social insurance (hereinafter referred to as Decree No.152/2006/ND-CP), The Ministry of Labour, War Invalids and Social Affairs guides the implementation of a number of Articles of the Decree as follows:

A. SCOPE OF APPLICATION

1. Officials and public servants and employees working under labor contracts, take part in compulsory social insurance provided for in Article 2 of Decree No.152/2006/ND-CP, including:

- a) Officials, public servants and employees as prescribed by law on officials and public servants;
- b) Employees working under labor contract with a term of full 3 months or more and the labor contract without a definite time limit as prescribed by law on employees;
- c) The employees, members of cooperative, including managers work and receive remuneration under the labor contract of full 3 months or more in the cooperative and unions of cooperatives established and operating under the Law of cooperatives;
- d) Employees of defense, public security employees working in the enterprises of the armed forces;
- đ) Employees specified in the points a, b, c and d of this clause are sent for study, practice, work in the country and foreign countries and still receive salaries or wages in the country;
- e) Employees who have participated in compulsory social insurance without receiving lump sum social insurance before going to work abroad with term as prescribed by law for the Vietnamese laborers working abroad under contract, including the following types of contracts:
 - Contracts with business administrative organizations and enterprises that are allowed to operate services on sending laborers to work overseas, the enterprises that send laborers to work abroad in the form of training, skill improvement and the enterprises investing abroad send laborers to work overseas;
 - To contract with Vietnamese enterprises that are bidding, successful bidding of the works in foreign countries;
 - Individual contracts.

Subject to the application of compulsory social insurance specified in this Clause hereinafter referred to as employees. For laborers to work overseas under contract provided for in point e, this clause, the regimes of pension and death should be conducted but not including employees working under contract with Vietnamese enterprises that receive bidding, successful bidding of the works in foreign countries.

2. The employers participating in compulsory social insurance as provisions in Article 3 of Decree No.152/2006/ND-CP, including:

- a) Enterprises established and operating under the Enterprise Law;
- b) The State-owned enterprises established under the Law on State-owned Enterprises is in the time converted into a limited liability company or joint stock company under the Enterprise Law;
- c) State agencies, administrative units of State;
- d) Political organizations, socio-political organizations, professional-socio-political organizations, socio-professional organizations, other social organizations;
- đ) Organizations and units operating under the provisions of law;
- e) Non-public establishments operating in the fields of education and training;
Healthcare; culture; sports; science and technology; environment; society; population;
Family; security and child care and other business sectors;
- g) Cooperatives, Union of Cooperatives established and operating under the Cooperatives Law;
- h) Individual business households, cooperatives, other organizations and individuals that lease, use and pay wages for employees under the provisions of labor law;
- i) Agencies and organizations, foreign individuals, international organizations operating in the territory of Vietnam using laborers as Vietnamese, except for the international agreements which the Socialist Republic of Vietnam has signed or acceded to otherwise provided for.

B. REGIMES OF SOCIAL INSURANCE

I-REGIME OF SICKNESS

1. Rates to enjoy regime of sickness by time specified in Article 9 and Article 10 of Decree No.152/2006/ND-CP is calculated as follows:

$$\text{Rates to enjoy regime of sickness} = \frac{\text{Salary, wage paying premiums for the month preceding the leaving-job month}}{26 \text{ days}} \times 75\% \times \text{Number of off-work days enjoyed sickness regime}$$

- Number of off-work days enjoyed sickness regime is counted in working days excluding holidays, Tet holidays, and weekends.

2. Rates to enjoy regime of sickness for the employees getting disease required to treat a long term is calculated as follows:

$$\begin{array}{ccccccc}
 \text{Rates to enjoy} & & \text{Salaries, wages paying} & & \text{Rate} & & \text{Number of} \\
 \text{regime of} & & \text{premiums for the month} & & \text{enjoyed} & & \text{off-work} \\
 \text{sickness for} & = & \text{preceding the leaving-job} & \times & \text{regime of} & \times & \text{days} \\
 \text{diseases required} & & \text{month} & & \text{sickness (\%)} & & \text{enjoyed} \\
 \text{to treat a long} & & \hline & & & & \text{sickness} \\
 \text{term} & & \text{26 days} & & & & \text{regime}
 \end{array}$$

In which:

- The Rate enjoyed regime of sickness:

+ Equal to 75% with a maximum time of 180 days per year;

+ Equal to 65% for the cases of expiry of 180 days per year but laborers still continue to take treatment if they paid the premiums for full 30 years or more;

+ Equal to 55% for the cases of expiry of 180 days per year but laborers still continue to take treatment if they paid the premiums for full 15 years to less than 30 years;

+ Equal to 45% for the cases of expiry of 180 days per year but laborers still continue to take treatment if they paid the premiums for less than 15 years.

- Number of off-work days enjoyed sickness regime including holidays, Tet holidays, and weekends.

- If the employees need to treat the long term disease, after 180 days of treatment but continuing to do so and rate enjoyed sickness regime per month calculated lower than common minimum wage, then shall be calculated equal to the common minimum wage.

3. Time that laborers leave their jobs to enjoy sickness regime from 14 working days or more in the month, both the employee and the employer must not pay social insurance in that month. This time of period is not counted as the time of paying social insurance.

II-Maternity regime

1. Conditions for enjoying maternity regime as prescribed in Clause 1 of Article 14 of Decree No.152/2006/ND-CP is guided as follows:

Women laborers having birth and employees adopting child less than four months old must pay social insurance from six months or more during the 12 months before the birth or adoption.

Where the birth or adoption takes place before the 15th date of the month, the month of birth or adoption is not included in the period of 12 months before the birth or adoption.

Where the birth or adoption takes place from the 15th date of the month or onwards, the month of birth or adoption is included in the period of 12 months before the birth or adoption.

Example 1: Ms. A has born her child on 13/01/2007, a 12-month period before the birth is calculated from 01/2006 to 12/2006, if in that time Ms. A has paid social insurance from full six months or more, she shall be enjoyed maternity regime as prescribed.

Example 2: Ms. B leaves her job in 8/2007 and has born her child on 16/12/2007, 12-month period before the birth is calculated from 01/2007 to 12/2007, if in this period Ms. B has paid social insurance from full six months or more, she shall be enjoyed maternity regime as prescribed.

2. Female employees entitled to leave their jobs for five months to have a birth as provisions in point b, clause 1, Article 15 of Decree No.152/2006/ND-CP shall apply even for the cases of practicing or working the extremely hard, hazardous, dangerous works.

3. In cases the mother died after the birth, the father or person who directly fosters entitled to enjoy the maternity regime as provisions of clause 3 of Article 15 of Decree No.152/2006/ND-CP is guided as follows:

a) Where only the mother participates in paying social insurance, the parent or person who directly fosters is entitled to enjoy the maternity regime until children reach 4 months old. The rate to enjoy maternity regime is calculated based on the average of monthly salary, wage paying social insurance of 6 months preceding the leaving-work month of the mother.

b) Where both parents participates in paying social insurance or only the father participates in paying social insurance, the father who leave works to take care his child shall be enjoy the maternity regime until the child reaches 4 months old. The rate to enjoy maternity regime is calculated based on the average of monthly salary, wage paying social insurance of 6 months preceding the leaving-work month of the father.

4. Average of monthly salary, wage paying social insurance for use as a basis for calculation of maternity regime as provisions in Article 16 of Decree No.152/2006/ND-CP is guided as follows:

Average of monthly salary, wage paying social insurance for use as a basis for calculation of maternity regime is the average of salary, wage of six months closest preceding before leaving work. If the period of paying social insurance is not continuous, it shall be accumulated.

Example 3: Ms. C has birth on 5/2/2007, which process of paying social insurance as follows:

- From 8/2006 to 9/2006 (two months) paying social insurance with salary wage of 900,000 VND/month;

- From 10/2006 to 01/2007 (4 months) paying social insurance with salary wage of 1.2 million dong/month.

The average of monthly wage paying social insurance of 6 months preceding the leaving-work month of Ms. C is calculated as follows:

$$\begin{array}{l} \text{The average of monthly wage} \\ \text{paying social insurance of 6} \\ \text{months preceding the leaving-} \\ \text{work month} \end{array} = \frac{(900,000 \times 2) + (1,200,000 \times 4)}{6} = 1,100,000 \text{ VND/month}$$

Thus, the average of monthly wage paying social insurance of 6 months preceding the leaving-work month of Ms.C is 1,100,000 VND/month.

Where the employees pay social insurance of less than 6 months, rate of enjoying maternity regime of pregnant examination, miscarriage, abortion, and aspiration for abortion or stillbirth, the implementation of birth control is the average rate of monthly salary and wage of the months paying social insurance.

Where the employees enjoy maternity regime of pregnant examination, miscarriage, abortion, and aspiration for abortion or stillbirth, the implementation of birth control right in the first month of participation in social insurance, then take the rate of salary, wage paying social insurance of such month for use as a basis for calculation of regime.

Example 4: Ms. D began to participate in paying social insurance in 5/2007, to put Intra-uterine device (IUD) on 21/05/2007, the salary rate of 5/2007 is 1,500,000 VND. Ms. D is taken the salary rate of 5/2007 (1,500,000VND) for use as a basis for calculation of enjoying maternity regime when putting IUD.

5. The rate enjoying maternity regime is defined as follows:

a) The rate enjoying maternity regime as leaving work for pregnant examination, miscarriage, abortion, aspiration for abortion or stillbirth, the implementation of birth control are calculated by the following formula:

$$\frac{\text{The rate enjoying as leaving work for pregnant examination, miscarriage, abortion, aspiration for abortion or stillbirth, the implementation of birth control}}{\text{the average of monthly salary, wage paying social insurance of 6 months preceding the leaving-work month}} \times 100\% \times \text{Number of off-work days by the regime of maternity}$$

26 days

In which:

- The average of monthly salary, wage paying social insurance of 6 months preceding the leaving-work month is calculated as specified in clause 4 of this Item.

- Number of off-work days by maternity regime including holidays, Tet holiday, and weekends. Separately for time off work enjoying regime of pregnant examination calculated in working days excluding holidays, Tet holiday, and weekends.

b) The rate enjoying maternity regime as leaving work for childbirth or adoption is calculated by the following formula:

$$\text{The rate enjoying maternity regime as leaving work for childbirth or adoption} = \frac{\text{the average of monthly salary, wage paying social insurance of 6 months preceding the leaving-work month}}{\text{Number of months leaving work for childbirth or adoption under regime}} \times$$

6. While female employees leave their works for enjoying maternity regime without receiving monthly salary or wage, the employees and the employers shall not pay social insurance. This period is calculated as the time of paying social insurance.

III-REGIME OF LABOR ACCIDENT AND OCCUPATIONAL DISEASE

1. Conditions to be enjoyed regime of labor accident as provisions in clauses 1, 2 and 3 of Article 19 of Decree No.152/2006/ND-CP is guided as follows:

a) To be accidents at the workplace and during working hours include:

- The accident occurred in the labor associated with performing the tasks assigned;
- Accident occurred during the breaks due to the living demand which has been defined by the regime, the rules such as menstrual hygiene, bathing, breast feeding, and toileting;
- Accident occurred during breaks, mid-shift meals, and food allowances, in the time to prepare and finish the job.

b) The accident occurred outside the workplace or outside working hours when conducting the works at the request of the employer that the works associated with the implementation of works, labor tasks assigned.

c) The accident occurred on the route from home to workplace and vice versa during the period and the route that daily the employee regularly go and back from home to workplace and vice versa.

2. Lump sum allowance prescribed in clause 2 of Article 21 of Decree No.152/2006/ND-CP is calculated by the formula as follows:

$$\begin{aligned} \text{Lump sum allowance} &= \text{Allowance rate calculated by} &+ &\text{Allowance rate calculated} \\ &\text{the reduction of labor capability} &&\text{by the number of years} \\ &&&\text{paying social insurance} \\ &= \{5 \times L_{\min} + (m - 5) \times 0.5 \times L_{\min}\} + \{0.5 \times L + (t - 1) \times 0,3 \times L\} \end{aligned}$$

In which:

- L_{\min} : common minimum wage.
- m : the reduction rate of working capacity due to occupational accidents and occupational diseases (taking absolute number $5 \leq m \leq 30$).
- L : rate of salary, wage paying social insurance for the month preceding the leave for treatment. Where the employee got labor accident right in the first month of participation in social insurance is equal to salary, wage paying social insurance of such month.
- t : number of years of paying social insurance. One year calculated in full 12 months, excluding the first year of paying social insurance.

Example 1: Mr. Đ got labor accident in 8/2007. After stable treatment at the hospital, Mr. Đ has assessed the reduction of working capacity is 20%. A. He has 10 years of paying social insurance; salary paying social insurance of 7/2007 is 1.2 million dong. Mr. Đ is subject to enjoying the lump sum allowance with an allowance rate is calculated as follows:

$$\begin{aligned} \text{The allowance rate calculated by} &= 5 \times 450,000 + (20 - 5) \times 0.5 \times 450,000 \\ \text{the reduction of working capacity} &= 5,625,000 \text{ (dong)} \end{aligned}$$

The allowance rate calculated by the number of years paying social insurance = $0.5 \times 1,200,000 + (10 - 1) \times 0.3 \times 1,200,000$
= 3,840,000 (dong)

The lump sum allowance of Mr. Đ is:

VND 5,625,000 + VND 3,840,000 = 9,465,000 VND

3. The monthly allowance specified in clause 2 of Article 22 of Decree No.152/2006/ND-CP is calculated by the formula as follows:

$$\begin{aligned} \text{monthly allowance rate} &= \begin{array}{l} \text{The allowance rate calculated} \\ \text{by the reduction of working} \\ \text{capacity} \end{array} + \begin{array}{l} \text{The allowance rate} \\ \text{calculated by the number of} \\ \text{years paying social} \\ \text{insurance} \end{array} \\ &= \{0.3 \times L_{\min} + (m-31) \times 0.02 \times L_{\min}\} + \{0,005 \times L + (t-1) \times 0.003 \times L\} \end{aligned}$$

In which:

- L_{\min} : common minimum wage.

- m : the reduction rate of working capacity due to occupational accidents and occupational diseases (using absolute number $31 \leq m \leq 100$).

- L : rate of salary, wage paying social insurance for the month preceding the leave for treatment. Where the employee got labor accident right in the first month of participation in social insurance is equal to salary, wage paying social insurance of such month.

- t : number of years of paying social insurance. One year calculated in full 12 months, excluding the first year of paying social insurance

Example 2: Mr. E got accident on road of meeting in 5/2007. After stable treatment at the hospital, Mr. E has assessed the reduction of working capacity is 40%. Mr. E has 12 years of paying social insurance; salary pay social insurance of 4/2007 is 1.4 million dong. Mr. E is subject to enjoying the monthly labor accident allowance with an allowance rate is calculated as follows:

$$\begin{aligned} \text{the allowance rate} \\ \text{calculated by the} \\ \text{reduction of working} \end{aligned} &= 0.3 \times 450,000 + (40 - 31) \times 0.02 \times 450,000 \\ &= 216,000 \text{ (dong/month)} \end{aligned}$$

$$\begin{aligned} \text{The allowance rate} \\ \text{calculated by the} \\ \text{number of years} \\ \text{paying social} \\ \text{insurance} \end{aligned} &= 0.005 \times 1,400,000 + (12 - 1) \times 0.003 \times 1,400,000 \\ &= 53,200 \text{ (dong/month)} \end{aligned}$$

The monthly allowance rate of Mr. E is:

216,000 VND/month + 53,200 VND/month = 269,200 (VND/month)

4. Time of enjoying allowance for labor accidents and occupational diseases monthly for laborer of in-stay treatment is calculated from the month that the employees finished their treatment and be discharged from hospital.

Where laborers do not take in-stay treatment, the time of enjoying allowance is calculated from the month of the conclusion of the Council of Medical Appraisal.

IV- REGIME OF PENSION

1. The exploitation of coal in the pit is in accordance with provisions in clause 3 of Article 26 of Decree No.152/2006/ND-CP, including:

- Coal mining;
- Transportation of coal, soil, and rocks;
- Operations of driller;
- Blasting;
- Digging pit for coal mining

2. Laborers with HIV/AIDS due to occupational accidents and with sufficient 20 years or more of paying social insurance, retired on pension as provisions in clause 4 of Article 26 of Decree No.152/2006/ND-CP include the following subjects:

- Officials, public servants and employees working in the establishments of civil health and of the armed forces, medical treatment establishments are set up under provisions in Article 26 of Ordinance No.44/2002/PL -UBTVQH10 dated July 02, 2002 of the National Assembly Standing Committee on the handling of administrative violations or in the establishments or drug detoxication;
- Officials and public servants as members of the drug detoxication team provided in Article 13 of Decree No.56/2002/ND-CP dated May 15, 2002 the Government on organization of drug detoxication in their families and communities;
- Officials and public servants in charge of prevention and combat of social evils.

3. Monthly pension and lump sum allowance as retirement provided for in Article 28 of Decree No.152/2006/ND-CP is guided as follows:

a) The rate of monthly pension is calculated by 45% corresponding to 15 years of paying social insurance, then each additional year of paying social insurance, shall be calculated the additional 2% for men and 3% for women; maximum level by 75%.

Example 1: Mr. G retired on the pension when he reached 60 years old, with 20 years 7 months of paying social insurance, the rate of monthly pension is calculated as follows:

- The number of years paying social insurance of Mr. G is 20 years 7 months, the 7 odd months is counted as one year, so the number of years paying social insurance for the calculation of pension of Mr. G is 21 years.

- The first 15 years are calculated by 45%;

- From 16th year to 21th year is six years, calculated additionally: $6 \times 2\% = 12\%$

- The rate of monthly pension of Mr. G is $45\% + 12\% = 57\%$.

Example 2: Mr. H retired on pension when he reaches 60 years old, with 35 years of paying social insurance, the rate of pension is calculated as follows:

- The first 15 years are calculated by 45%;

- From 16th year to 35th year is 20 years, calculated additionally: $20 \times 2\% = 40\%$;

- Total 2 above ratios are: $45\% + 40\% = 85\%$;

The rate of monthly pension of Mr. H is calculated only by 75%.

Example 3: Mrs. K retired on pension when she reaches 55 years old, with 20 years 5 months of paying social insurance, the rate of pension is calculated as follows:

- Number of years of paying social insurance of Mrs. K is 20 years 5 months, the 5 odd months is calculated as 0.5 year, so the number of years paying social insurance for the calculation of pension of Mrs. K is 20.5 years.

- The first 15 years are calculated by 45%;

- From 16th year to 20,5th year is 5.5 years, calculated additionally: $5.5 \times 3\% = 16.5\%$;

- The rate of monthly pension of Mrs. K is $45\% + 16.5\% = 61.5\%$.

Example 4: Ms. L retired on pension at 55 years old, with 30 years of paying social insurance, the rate of pension is calculated as follows:

- The first 15 years is calculated by 45%;

- From 16th year to 30th year is 15 years, additionally: $15 \times 3\% = 45\%$;

- Total 2 above ratios is: $45\% + 45\% = 90\%$;

The rate of monthly pension of Mrs. L is calculated only by 75%.

b) The monthly pension under Clause 2 of Article 28 of Decree No.152/2006/ND-CP is guided as follows:

- The rate of monthly pension for people who enjoy earlier pension is calculated as specified in point a, this clause. But for each year of early retirement, the rate of pension is decreased 1%. If the age of retirement has odd months shall be rounded up to a year-old.

- For retirees under clause 1 of Article 27 of Decree No.152/2006/ND-CP, the enumeration of age 60 for men and age 55 for women is made to calculate the number of years of retirement in advance the provided age.

- For retirees under clause 2 of Article 27 of Decree No.152/2006/ND-CP, the enumeration of age 55 for men and age 50 for women is made to calculate number of years of retirement in advance the provided age.

Example 5: Mr. M worked in normal conditions, with 20 years of paying premiums, reduced working capacity of 61%, retired on pension at 50 years 3 months.

- The rate of monthly pension of Mr. M is calculated by 55%;

- Mr. M retired on pension at 50 years 3 months, so his age of pension is calculated as 51 years, Mr. M retired before age of 60 is 9 years so the rate of pension is reduced by 9%;

- The rate of monthly pension of Mr. M is $55\% - 9\% = 46\%$.

Example 6: Mrs. N worked in the normal conditions, with 20 years of paying premiums, reduced working capacity of 61%, retired on pension as 50 years of age.

- The rate of monthly pension of Mrs. N is calculated by 60%;

- Ms N retired before age of 55 is five years so the rate of pension is reduced by 5%;

- The rate of monthly pension of Mrs. N is $60\% - 5\% = 55\%$

Example 7: Mr. Q retired on pension when he reached the age of 50. Mr. Q has 15 years of working extremely hard, hazardous; reduced working capacity by 61% and with 27 years of paying social insurance. The rate of pension is calculated as follows:

- The rate of monthly pension of Mr. Q is calculated by 69%;

- Mr.Q retired before age 55 is five years in accordance with provisions, so the ratio of pension is reduced by 5%;

- The rate of monthly pension of Mr. Q is $69\% - 5\% = 64\%$

c) The monthly pension is calculated by the product of the rate of monthly pension with monthly average wage, salary rates paying social insurance. If after the specific calculation that monthly pension is still lower than common minimum wage shall be adjusted by the common minimum wage.

d) The lump sum allowance rate as retirement is calculated in accordance with provisions in clause 4 of Article 28 of Decree No.152/2006/ND-CP.

Example 8: Mr. P retired on pension when he reached 60 years old, with 35 years 2 months of paying social insurance, the monthly average wage paying social insurance of Mr. P is 1.8 million dong/month. Thus, the time to pay social insurance of Mr. P is calculated as 35 years, the lump sum allowance rate as retirement of Mr. P is:

$(35-30) \times 0.5 \times 1.8 \text{ million} = 4.5 \text{ million (VND)}$

Example 9: Mrs. Q retired for her pension when she reached 55 years old, with 26 years 10 months of paying social insurance, the monthly average wage of paying social insurance of Mrs. Q is 1,050,000 VND/month. Time of paying social insurance of Mrs. Q is rounded up to 27 years, the lump sum allowance as Mrs. Q retired is:

$$(27-25) \times 0.5 \times 1,050,000 = 1,050,000 \text{ (VND)}$$

Example 10: Mr. S retired for her pension when she reached 55 years old, with 27 years 4 months of paying social insurance, the monthly average wage of paying social insurance of Mrs. S is 1,450,000 VND/month. Time of paying social insurance of Mrs. S is calculated as 27.5 years, the lump sum allowance as Mrs. S retired is:

$$(27.5 - 25) \times 0.5 \times 1,450,000 = 1,812,500 \text{ (VND)}$$

4. The monthly average wage of paying social insurance to calculate pension and lump sum allowance as retirement and lump sum social insurance for employees subject to the implementation of wage regime provided for by the State and with full-time of paying social insurance under this wage regime prescribed in point a clause 1, clause 2 and point a, clause 3, Article 31 of Decree No.152/2006/ND-CP is guided as follows:

a) For employees participating in social insurance before January 01, 1995:

$$\text{Mbqtl} = \frac{\text{Total monthly wage of paying social insurance of last five years (60 months) prior to leaving off work}}{60 \text{ months}}$$

b) For employees participating in social insurance during the period from January 01, 1995 to December 31, 2000:

$$\text{Mbqtl} = \frac{\text{Total monthly wage of paying social insurance of last 6 years (72 months) prior to leaving off work}}{72 \text{ months}}$$

c) For employees participating in social insurance during the period from January 01, 2001 to December 31, 2006:

$$\text{Mbqtl} = \frac{\text{Total monthly wage of paying social insurance of last eight years (96 months) prior to leaving off work}}{96 \text{ months}}$$

d) For employees participating in social insurance from 01 January, 2007 onwards:

Mbqtl = Total social insurance monthly wage of 10 years (120 months) prior to quitting

120 months

$$\text{Mbqtl} = \frac{\text{Total monthly wage of paying social insurance of last ten years (120 months) prior to leaving off work}}{120 \text{ months}}$$

In which:

Mbqtl: the monthly average wage paying social insurance.

Monthly wages paying social insurance are wages by scale, grade, army rank, position allowance, seniority allowance of exceeding bracket, job seniority allowance (if any). These salaries are calculated on the common minimum wage at the time of calculating the monthly wage average paying social insurance.

5. Average salary, wage paying social insurance for laborers with full-time social insurance payment according to salary regime decided by the employer as provisions at point b, clause 1, point b, clause 2 and point b, clause 3, Article 31 of Decree No.152/2006/ND-CP is guided as follows:

Mbqtl = Total monthly social insurance

$$\text{Mbqtl} = \frac{\text{Total salaries and wages of the months paying social insurance}}{\text{Total months paying social insurance}}$$

6. Monthly average salary, wage paying social insurance for laborers having time period of paying social insurance subject to the salary regime prescribed by the State, and having a time period of paying social insurance as salary regime decided by the employer in accordance with point c, clause 1, point c, clause 2 and point c, clause 3, Article 31 of Decree No.152/2006/ND-CP is guided as follows:

$$\text{Mbqtl} = \frac{\begin{array}{l} \text{Total monthly average salary,} \\ \text{wage paying social insurance} \\ \text{subject to the salary regime} \\ \text{prescribed by the State} \end{array} + \begin{array}{l} \text{Total monthly average salary, wage paying} \\ \text{social insurance as salary regime decided} \\ \text{by the employer} \end{array}}{\text{Total months of paying social insurance}}$$

In which:

a) Total monthly salary, wage paying social insurance subject to the salary regime prescribed by the State is calculated by the multiplication between the total months of paying social insurance according to the salary regime prescribed by the State with the monthly average salary, wage paying social insurance.

The monthly average salary, wage paying social insurance is calculated in accordance with provisions in clause 4 of this Item.

b) Where an employee has from the 2 stages or more subject to the salary regime prescribed by the State, then the total monthly salaries paying social insurance of each period are calculated as specified in the above point a.

Total monthly salaries paying social insurance subject to the salary regime prescribed by the State is equal to total monthly salaries paying social insurance of the stages.

7. Suspension of receiving pension, social insurance allowance monthly specified in Article 33 of Decree No.152/2006/ND-CP is guided as follows:

a) The time of suspension of pension, social insurance allowance monthly is calculated from the month preceding the month that the person who enjoys the pension, social insurance allowance monthly serving a prison sentence but not enjoyed suspended sentence or illegally exits or enters or is declared missing by a court.

b) Pension, social insurance allowance monthly is continued implementation according to the provisions in clause 2 of Article 33 of Decree No.152/2006/ND-CP.

V-REGIME OF SURVIVORSHIP ALLOWANCE

1. When calculating lump sum survivorship allowance prescribed in clause 1, Article 39; if the period of paying social insurance with odd months, shall be calculated as prescribed in clause 5 of Article 28 of Decree No.152/2006/ND-CP.

2. Lump sum survivorship allowance for relative of pensioner who dies as prescribed in clause 2 of Article 39 of Decree No.152/2006/ND-CP is guided as follows:

If He/she died from 3th month onwards, lump sum survivorship allowance is calculated as follows:

$$\text{Lump sum survivorship allowance for pensioner who dies} = 48 \times L_h - (t - 2) \times 0.5 \times L_h$$

In which:

L_h: pensions are being enjoyed;

t: number of months has been enjoyed pension.

Where lump sum survivorship allowance is lower than three months of pensions being enjoyed prior to the death, then lump sum survivorship allowance is calculated by three months of pensions being enjoyed prior to the death.

3. Persons who are enjoyed allowance of labor accidents and occupational diseases monthly have not received lump sum social insurance, as dead if it is sufficient conditions to be enjoyed monthly survivorship allowance as prescribed in point d clause 1 of Article 36 or sufficient conditions to be enjoyed monthly survivorship allowance, but having no relatives subject to monthly survivorship allowance prescribed in clause 2 of Article 36 of Decree No.152/2006/ND-CP, his/her family's member shall be paid lump sum survivorship allowance. Lump sum survivorship allowance is calculated by the number of years of paying social insurance prescribed in clause 1 of Article 39 of Decree No.152/2006/ND-CP.

4. If relatives of the subjects prescribed in clause 1 of Article 36 are reduced working capacity, the assessment of reduction of working capacity for enjoying monthly survivorship allowance as prescribed in clause 2 of Article 36 of Decree No.152/2006/ND-CP introduced by the social insurance organizations. The time limit for introduction of assessment of reduction of working capacity must be conducted within two months since the employee has died.

5. The persons who are enjoyed pension regime and regime of labor accidents and occupational diseases monthly, their relatives shall be enjoyed the survivorship allowance like the pensioners's death.

C. SOCIAL INSURANCE FUND

1. Settlement of payment of regime of sickness, maternity under the provisions of point a clause 1 of Article 43 of Decree No.152/2006/ND-CP of the employer with the social insurance organization is done every quarter.

Where the settlement amount is less than the retained amount, then the employer is the responsibility for returning the social insurance fund the difference in the first month of next quarter. Where the settlement amount is more than the retained amount, the social insurance organization grants compensation for the difference in the first month of next quarter.

In case the amount of the payment of regime of sickness, maternity for laborers exceeding the retained amount in the quarter, then the employer shall take initiative earlier settlement with the social insurance organization.

2. Suspension of paying into retirement and survivorship allowance fund provided for in Article 44 of Decree No.152/2006/ND-CP is guided as follows:

a) The cases suspended to pay as prescribed in clause 1 of Article 44 are the cases of natural disasters, fires, epidemics, crop failures or other unforeseen reasons that the employers are forced to temporarily narrow production, suspend production or business, cut jobs.

b) The employers are suspended to pay social insurance if there is one of the following conditions:

- Number of laborers subject to social insurance to temporarily leave off their jobs account for 50% or more of the total laborers available prior to suspension of production and business.

The determination of the number of laborers subject to social insurance that temporarily leave off their jobs for agencies, units, organizations and enterprises of management of the local People's Committees shall be conducted by the local Labour, Invalids and Social Affair agencies; and for the enterprises of ministries and central branches' management shall be conducted by the ministries, branches.

- Damaged more than 50% of the total value of assets due to natural disasters, fires, epidemics, crop failures or other unforeseen reasons (excluding the value of the property as land).

The determination of conditions on the property value damaged for the agencies, units, organizations and enterprises of the local People's Committees' management shall be conducted by local financial agency; for the enterprises of ministries and central branches' management shall be conducted by the financial agencies of Ministry, branch or the Ministry of Finance.

Value of damaged property is compared with the value of property of the preceding year.

c) The suspension of paying into retirement and death fund of the employer shall be considered and settled on the basis of the employer's a written request to the competent agencies defined in clause 3, Article 44 of Decree No.152/2006/ND-CP.

3. Monthly salaries, wages paying compulsory social insurance provided for in clause 3, Article 45 of Decree No.152/2006/ND-CP is guided as follows:

The employee with monthly salary and wage higher than 20 months of common minimum wages, the monthly salary, wages paying social insurance equal to 20 months of common minimum wage (currently 450,000 dong/month; monthly salary, wage paying social insurance maximum by 9,000,000 VND/month). When the government adjusts the common minimum wage, the monthly salary, wage paying social insurance will change in accordance with the above provisions.

Example 1: Mr. T worked in a company manufacturing computer components at the time of February 2007 with a salary level of 9,500,000 VND/month. In this case, monthly salary paying premiums of Mr. T is 9,000,000 VND/month.

Example 2: Mr. U working in an enterprise with 100% foreign capital, with wages stated in the labor contract is 700 USD/month; in 01/2007, his actually received salary is 11,270,700 VND/month (average exchange rate on the inter-bank foreign exchange market announced by the State Bank of Vietnam on January 02, 2007 is 16,101 VND/ 1 USD). The monthly salary, wages paying social insurance of Mr. U is 9,000,000 VND.

D. IMPLEMENTATION ORGANIZATION

1. The laborer is the manager of the enterprises to be of titles prescribed in clause 13, Article 4 of the Enterprise Law enjoying salary, wages or other managerial titles, operating cooperatives enjoying salary or wages provided for in the Cooperatives Law is applied the provisions of this Circular.

2. The commune-level in-charge officials who are being continued to pay monthly social insurance as specified in clause 6 of Article 58 of Decree No.152/2006/ND-CP, the monthly premiums from January 2007 to December 2009 is 16% and from January 2010 to December 2011 is 18% on the monthly salary before leaving their titles until having full 15 years of paying social insurance and full 60 years for men, and 55 years for women to enjoy pension.

3. The employees left their jobs under Decree No.41/2002/ND-CP dated September 11, 2002 the Government with full 15 years or more paying social insurance, with the maximum five-year deficit for enough age to retire and being continued to pay monthly social insurance as stipulated in clause 7 of Article 58 of Decree No.152/2006/ND-CP, the monthly premiums of the employees from January, 2007 to December 2009 is 16% and from January, 2010 to December 2011 is 18% on the monthly salary before leaving jobs until the full 60 years for men and 55 years for women to enjoy retirement regime.

4. Wife (husband) during the period of enjoying wife (husband) regime at the overseas-base Vietnam agencies that had participated in compulsory social insurance shall be continue paying social insurance during the period presiding overseas at the monthly premiums specified in point a clause 3 of Article 42 of Decree No.152/2006/ND-CP on the salary, wage of the last month participated in the social insurance for implementation of pension and death regime.

The employers managing officials, public servants with wife (husband) subject to those mentioned above, monthly, take responsibility for collecting premiums of wife (husband) to pay into the social insurance fund.

5. Method to calculate time of paying social insurance for calculation of pension and survivorship allowance provided for in clause 9 of Article 58 of Decree No.152/2006/ND-CP is guided as follows:

a) As determining the time condition of paying social insurance for calculation of pension and survivorship allowance monthly, a year must include full 12 months.

b) The employees who are enough age for enjoying pension regime, but time paying social insurance to be short of maximum not exceeding six months, the employee shall be paid lump sum to the number of to-be-short-of months with monthly premiums equal to the premiums specified in point a clause 3 of Article 42 of Decree No.152/2006/ND-CP under the salary or wages before leaving their jobs to enjoy pension regime.

c) The employees who have time paying social insurance of not enough 15 years, if it is short of maximum not exceeding 6 months (including the employees who are reserving the time of social insurance payment) that died, if they have relatives of sufficient conditions to enjoy monthly survivorship allowance regime, their relatives are continued to pay lump sum for the to-be-short-of months with monthly premiums equal to the premiums specified in point a clause 3 of Article 42 of Decree No.152/2006/ND- CP by the rate of monthly salary, wage before the laborers die (or before

leaving jobs for the laborers who are reserving the time of social insurance payment) to be enjoyed the monthly survivorship allowance.

6. The laborers working under labor contracts in the state-owned company transformed into joint-stock companies; One member State-owned limited liability company; State-owned limited liability company with two members or more, are applied the average of monthly wage paying social insurance provided in clause 4, Item IV Part B of this Circular to calculate the pension and lump sum allowance as retirement and lump sum social insurance if the company fully implemented the following regulations:

a) Implementation of salary scale and payroll as prescribed by the State and register with the State administration agency on labor of provinces and cities directly under the Central Government under the provisions of Decree No.114/2002/ND-CP dated December 31, 2002 of the Government detailing and guiding the implementation of some Articles of the Labor Code on wages;

b) Implementation of transferring salary, raising salary scale and payroll as prescribed by the State for the state-owned companies on the basis of the wage scale and payroll applied at point a of this clause;

c) Paying social insurance based on the salary level stipulated in points a, and b of this clause.

Where the company does not fully implement the above provisions, the employee shall apply to the monthly average salary, wage paying social insurance as prescribed in clause 6, Item IV Part B of this Circular to calculate for enjoying the social insurance.

7. For workers with salary and wage stated in the labor contracts in foreign currency, the payment of social insurance and recording into social insurance book is implemented as follows:

a) Monthly salary, wage paying social insurance calculated in Vietnam dong on the basis of salary, wages in foreign currencies are converted into Vietnam dong at the average exchange rate on inter-bank foreign currency market announced by the State Bank of Vietnam on January 02 for first 6 months of year and the 1st July for the last six months of year. Where due to holiday so the State Bank of Vietnam has not announced, it is allowed to take the next day's exchange rate announced the State Bank of Vietnam.

b) Monthly salary, wage paying social insurance are recorded in the book of social insurance is the salary and wages in Vietnam dong calculated as prescribed in point a of this clause.

8. Organization of Social Insurance is responsible for introducing the employees who are reserving the time paid social insurance to appraise reduction of working capacity for enjoying social insurance.

9. Where as granting the social insurance books or when dealing with regime of pension, death to the employees who have not been granted social insurance books without original documents required to have documents of the governing agency for explaining the reason of loss, and confirmation of the participation of social insurance and bear responsibility before law for such certification, together with documents relating to working time, workplace, nature of work, wages, salary (if any).

E. IMPLEMENTATION PROVISIONS

1. This Circular takes effect 15 days after its publication in the Official Gazette. The regimes provided for in this Circular shall apply from January 01, 2007.

2. This Circular replaces Circular No.06/LD-TBXH-TT dated April 04, 1995 of Ministry of Labour, Invalids and Social Affairs guiding the implementation of some Articles to make Social Insurance Charter issued together Decree No.12/CP dated January 26, 1995 of the Government; Circular No.07/2003/TT-BLDTBXH dated March 12, 2003 of Ministry of Labour, Invalids and Social Affairs guiding the implementation of some Articles of the Decree No.01/2003/ND-CP dated January 09, 2003 of the Government.

3. Annuling the Circular No.12/2001/BLDTBXH-TT dated December 19, 2001 of Ministry of Labour, Invalids and Social Affairs guiding the retirement age of workers exploiting coal in the mining pit; regulations on social insurance at the point a, b and c Clause 1, Item II of Circular No.19/2004/TT-BLDTBXH dated November 22, 2004 of Ministry of Labour, Invalids and Social Affairs guiding the implementation of some Articles of the Decree No.41/2002/ND-CP dated April 11, 2002 of the Government on the policy for redundant employees due to reorganization of state-owned enterprises that has been revised and supplemented by Decree No.155/2004/ND-CP dated August 20, 2004 by the Government.

During the implementation, any problem is needed to reflect to the Ministry of Labour, Invalids and Social Affairs for timely guidance, supplementation in their scope, power./.

MINISTER

Nguyen Thi Hang