

THE GOVERNMENT

Decree No. 102/2013/ND-CP of September 5, 2013, detailing a number of articles of the Labor Code regarding foreign workers in Vietnam

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the June 18, 2012 Labor Code;

At the proposal of the Minister of Labor, War Invalids and Social Affairs;

The Government promulgates the Decree detailing a number of articles of the Labor Code regarding foreigners working in Vietnam,

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree details a number of articles of the Labor Code regarding the grant of work permits to foreign citizens who work in Vietnam, and the expulsion of foreign citizens who work in Vietnam without a work permit.

Article 2. Subjects of application

1. Foreign citizens who work in Vietnam (below referred to as foreign workers) in one of the following forms:

a/ Performing labor contracts;

b/ Intra-corporate transfer;

c/ Performing contracts or implementing agreements on business, commerce, finance, banking, insurance, science and technology, culture, sports, education, vocational training or health;

d/ Providing contractual services;

dd/ Offering services;

e/ Working for foreign non-governmental organizations or international organizations in Vietnam that are licensed to operate in accordance with Vietnamese law;

g/ Working as volunteers;

h/ Taking charge of establishing commercial presence;

i/ Managers, executives, specialists and technical workers;

k/ Participating in the performance of bid packages and projects in Vietnam.

2. Employers of foreign workers, including:

- a/ Enterprises operating in accordance with the Law on Enterprises, the Law on Investment, or treaties to which the Socialist Republic of Vietnam is a contracting party;
- b/ Foreign or Vietnamese contractors (contractors and subcontractors) participating in bidding or performing contracts;
- c/ Representative offices and branches of enterprises, agencies, organizations and contractors established under licenses of competent agencies;
- d/ State agencies;
- dd/ Political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations, foreign non-government organizations and international organizations in Vietnam;
- e/ Lawfully established non-business organizations;
- g/ Vietnam-based offices of foreign projects or international organizations;
- h/ Vietnam-based executive offices of foreign parties to business cooperation contracts;
- i/ Organizations practicing law in Vietnam in accordance with law;
- k/ Cooperatives and cooperative unions established and operating in accordance with the Law on Cooperatives;
- l/ Lawfully established business associations and unions of business associations;
- m/ Business households and individuals permitted to do business in accordance with law.

Article 3. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Foreign intra-corporate transferee means a manager, executive, specialist or technical worker of a foreign enterprise that has established a commercial presence in the territory of Vietnam, who is temporarily transferred within the same enterprise to a commercial presence in Vietnam, and has been employed by the foreign enterprise for at least 12 months.
2. Volunteer means an unpaid foreign worker who voluntarily works in Vietnam to implement a treaty to which the Socialist Republic of Vietnam is a contracting party.
3. Specialist means a foreign worker who is recognized by a foreign country as specialist or who possesses an engineer, bachelor or equivalent or higher degree and has worked for at least 5 years in his/her trained discipline.

4. Technical worker means a foreign worker who has received technical training for at least 1 year and has worked for at least 3 years in his/her trained discipline.

Chapter II

GRANT OF WORK PERMITS, RE-GRANT OF WORK PERMITS, EXPULSION OF FOREIGN WORKERS WITHOUT A WORK PERMIT

Section 1

IDENTIFICATION OF WORKING POSITIONS ELIGIBLE FOR FOREIGN WORKERS

Article 4. Demand for foreign workers

1. Annually, employers (except contractors) shall determine the demand for foreign workers for every working position which Vietnamese are unable to hold, and send reports thereon to chairpersons of People's Committees of provinces or centrally run cities (below referred to as provincial-level People's Committees) where the head offices of the employers are located. In the course of implementation, employers shall report any change in their demand for foreign workers to chairpersons of provincial-level People's Committees.
2. Chairpersons of provincial-level People's Committees shall issue a written approval to each employer for the employment of foreign workers in each working position.

Article 5. Contractors' demand for foreign workers

1. In case a bid package needs employment of foreign workers with relevant professional qualifications, the bidding or requirement dossier must specify the number and professional qualifications and capabilities of foreign workers who are needed for performing the bid package. It is prohibited to employ foreign workers to do jobs that can be performed by Vietnamese workers satisfactorily according to the requirements of the bid package, especially manual jobs and unskilled jobs.

The assessment and selection of contractors must be based on the regulations on employment stated in the bidding or requirement dossier and pursuant to Vietnamese law on bidding.

2. When a contract is performed, the investor shall organize supervision and request the contractor to properly implement the commitments in the bid or proposal dossier in terms of employment of Vietnamese workers and foreign workers.
3. Before recruiting foreign workers, the contractor shall send a written request for employment of Vietnamese workers in the working positions expected to be performed by foreign workers (enclosed with a certification of

the investor) to the chairperson of the provincial-level People's Committee of the locality where the contractor performs the bid package.

When the contractor wishes to change or increase the number of workers already stated in the bid or proposal dossier, the investor shall certify the change or increase of workers to be employed by the foreign contractor.

4. The chairperson of the provincial-level People's Committee shall direct local agencies and organizations to introduce and supply Vietnamese workers for the contractor. If Vietnamese workers are not introduced or supplied for the contractor within 2 months from the date of receiving a written request for 500 Vietnamese workers or more, or within 1 month from the date of receiving a written request for fewer than 500 Vietnamese workers, the chairperson of the provincial-level People's Committee shall consider and permit the contractor to recruit foreign workers for the working positions in which Vietnamese workers cannot be recruited.

5. The investor shall guide, urge and inspect the contractor in complying with the regulations on recruitment and employment of foreign workers in accordance with law; monitor and ensure that foreign workers comply with Vietnam's law; send quarterly reports to the provincial-level Department of Labor, War Invalids and Social Affairs on the contractor's recruitment, employment and management of foreign workers according to regulations of the Ministry of Labor, War Invalids and Social Affairs.

6. Quarterly, provincial-level Departments of Labor, War Invalids and Social Affairs shall cooperate with public security and relevant agencies in inspecting the compliance with Vietnamese laws by foreign workers working for bid packages performed by winning contractors in their localities.

Article 6. Report on employment of foreign workers

Biannually and annually, provincial-level Departments of Labor, War Invalids and Social Affairs shall report on the demand for foreign workers, approved demands for foreign workers, and the employment of foreign workers in their localities to the Ministry of Labor, War Invalids and Social Affairs.

Section 2

FOREIGN WORKERS EXEMPTED FROM WORK PERMIT

Article 7. Cases in which foreign workers are exempt from applying for a work permit

1. Foreign workers mentioned in Clauses 1, 2, 3, 4, 5, 6, 7 and 8, Article 172 of the Labor Code.

2. Other cases in which a work permit is not required:

a/ Intra-corporate transferees within 11 service sectors in Vietnam's Schedule of WTO Commitments on Services, including business; communication;

construction; distribution; education; environment; finance; health; tourism; entertainment and transportation;

The Ministry of Industry and Trade shall guide the grounds and procedures for identifying foreign intra-corporate transferees within the 11 service sectors above.

b/ Foreigners who enter Vietnam to provide professional and technical consultancy services or perform other tasks serving the research, development, appraisal, monitoring and evaluation, management and implementation of ODA-funded programs and projects according to ODA treaties between competent authorities of Vietnam and other countries;

c/ Foreigners who are licensed to carry out information and press activities in Vietnam by the Ministry of Foreign Affairs;

d/ Teachers of foreign agencies and organizations sent to Vietnam by competent agencies of such countries to teach in international schools under the management of foreign diplomatic missions or international organizations in Vietnam;

dd/ Volunteers;

Foreign workers mentioned at Points d and dd, Clause 2 of this Article must have the certification of the foreign diplomatic missions or international organizations in Vietnam.

e/ Foreigners who hold a master's degree, an equivalent or a higher degree and provide consultancy, teach or conduct scientific research at higher education institutions or vocational colleges for no more than 30 days;

The higher education institutions or vocational colleges shall make a written certification of the consultancy, teaching or scientific research of the foreign workers.

g/ Foreign workers who enter Vietnam to implement international agreements which central state agencies, local state agencies or central socio-political organizations have signed in accordance with law.

The central state agencies, local state agencies or central socio-political organizations shall send a written notification to the agency authorized to grant work permits of the foreign workers' entry in Vietnam to implement the international agreements which these agencies or organizations have signed.

h/ Other cases decided by the Prime Minister at the proposal of the Minister of Labor, War Invalids and Social Affairs.

Article 8. Procedures for certifying foreign workers exempted from work permit

1. Provincial-level Departments of Labor, War Invalids and Social Affairs are competent to certify foreign workers who are exempted from work permit.

2. The employer shall request the provincial-level Department of Labor, War Invalids and Social Affairs of the locality where the foreign workers regularly work to certify that these workers are exempted from work permit at least 7 working days before the date on which they start to work.

3. A dossier of request for certification of exemption from work permit comprises:

a/ A written request for certification that the foreign workers are exempted from work permit;

b/ A list of foreign workers, specifying their full names, ages, gender, nationality, passport numbers, starting and ending dates of working, and their working positions;

c/ Papers proving that the foreign workers are exempted from work permit.

The papers proving that the foreign workers are exempted from work permit may be originals or copies each; the papers that are made in foreign languages are exempted from consular legalization but must be translated into Vietnamese and certified in accordance with Vietnamese law.

4. Within 3 working days after receiving a complete dossier of request, the provincial-level Department of Labor, War Invalids and Social Affairs shall send a written certification to the employer. In case of refusal, it shall issue a written reply clearly stating the reason.

Section 3

GRANT OF WORK PERMITS

Article 9. Conditions for grant of work permits

1. Having full civil act capacity as prescribed by law.

2. Being physically fit to job requirements.

3. Being a manager, an executive, a specialist or technical worker.

Foreign health practitioners who personally conduct medical examination and examination in Vietnam, or foreigners who work in education, training or vocational training must meet the conditions prescribed by Vietnamese law for medical examination and treatment, education, training or vocational training.

4. Not being a criminal or examined for penal liability according to Vietnamese and foreign laws.

5. The employment of foreign workers is approved in writing by a competent state agency.

Article 10. Dossier of application for a work permit

1. A written application for a work permit made by the employer according to regulations of the Ministry of Labor, War Invalids and Social Affairs.
2. The health certificate granted in the foreign worker's home country or in Vietnam according to regulations of the Ministry of Health.
3. The written certification that the worker is neither a criminal nor examined for penal liability under Vietnamese and foreign laws, which is made within 6 months by the date the dossier is submitted.
4. The written certification that the worker is a manager, an executive, a specialist or technical worker.

For some professions or occupations, the written certification of the professional or technical qualification of the foreign worker may be replaced with one of the papers below:

- a/ The written certification that the worker is an artisan in a traditional craft, which is issued by a competent foreign authority;
 - b/ The documents proving experience of foreign soccer players;
 - c/ The pilot certificate granted by a competent Vietnamese agency to foreign pilots;
 - d/ The license for aircraft maintenance granted by a competent Vietnamese agency to foreign workers who maintains aircraft.
5. The written approval for employment of foreign workers given by the chairperson of the provincial-level People's Committee.
 6. Two color photos (4 cm x 6 cm, bareheaded, frontal, clear face and two ears, no glasses, white background) taken within 6 months by the date the dossier is submitted.
 7. A copy of the passport or a paper of equivalent validity, which is valid in accordance with law.

The papers mentioned in Clauses 2, 3 and 4 of this Article may be originals or copies each; the papers in foreign languages must be consularly legalized, except cases in which consular legalization is exempted under a treaty to which Vietnam and the foreign country are contracting parties or on the principle of reciprocity, be translated into Vietnamese and certified in accordance with Vietnamese law.

8. Papers related to the foreign worker:

- a/ Foreign workers mentioned at Point b, Clause 1, Article 2 of this Decree must have papers of the foreign enterprise showing that they are sent to work at the commercial presence of such foreign enterprise in the Vietnamese

territory, and the documents proving that they have been employed by such foreign enterprise for at least 12 months before they are sent to work in Vietnam;

b/ Foreign workers mentioned at Point c, Clause 1, Article 2 of this Decree must have contracts or agreements signed between the Vietnamese partner and foreign partner, including the agreement on sending foreign workers to work in Vietnam;

c/ Foreign workers mentioned at Point d, Clause 1, Article 2 of this Decree must have service provision contracts signed between the Vietnamese partner and foreign partner, and the papers proving that the foreign workers have worked for the foreign enterprise without commercial presence for at least 2 years;

d/ Foreign workers mentioned at Point dd, Clause 1, Article 2 of this Decree must have the paper made by the service provider that sends the foreign workers to Vietnam to negotiate the service provision;

dd/ Foreign workers mentioned at Point e, Clause 1, Article 2 of this Decree must have the paper proving that the foreign non-governmental organization or international organization is licensed to operate in accordance with Vietnamese law;

e/ Foreign workers mentioned at Point h, Clause 1, Article 2 of this Decree must have the paper made by the service provider that sends the foreign workers to Vietnam to establish its commercial presence;

g/ Foreign workers mentioned at Point b, Clause 1, Article 2 of this Decree, who participate in the operation of the foreign enterprise that has established its commercial presence in Vietnam, must have papers proving that foreign workers are permitted to participate in such foreign enterprise.

The papers mentioned in this Clause are originals or copies each; the papers that are made in foreign languages are exempt from consular legalization but must be translated into Vietnamese and certified in accordance with Vietnamese law.

Article 11. Validity duration of a work permit

The validity duration of a work permit is maximum 2 years, and is equal to one of the durations below:

1. The duration of the labor contract to be signed;
2. The duration of assignment in Vietnam decided by the foreign partner;
3. The duration of the contract or agreement between the Vietnamese partner and foreign partner;

4. The duration of the service contract or agreement between the Vietnam partner and foreign partner;
5. The duration stated in the document made by the service provider that sends the foreign worker to Vietnam to negotiate the service provision;
6. The duration stated in the certificate of the foreign non-governmental organization or international organization licensed to operate in accordance with Vietnamese law;
7. The duration in the document made by the service provider that sends the foreign worker to Vietnam to establish its commercial presence;
8. The duration in the document proving the foreign worker is permitted to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

Article 12. Sequence of granting a work permit

1. At least 15 working days before the date the foreign worker intends to start working, the employer shall submit a dossier of application for a work permit to the provincial-level Department of Labor, War Invalids and Social Affairs of the locality where the foreign worker works for the employer on a full time basis.

If the foreign worker does not work for the employer in the same province or centrally run city on a full-time basis, the dossier of application for a work permit must be submitted to the provincial-level Department of Labor, War Invalids and Social Affairs of the locality where the employer's head office is located.

2. Within 10 working days from the date of receiving a complete dossier, the provincial-level Department of Labor, War Invalids and Social Affairs shall grant a work permit to the foreign worker according to the form set by the Ministry of Labor, War Invalids and Social Affairs. In case of refusal, it shall issue a written reply clearly stating the reason.

3. After the foreign worker mentioned at Point a, Clause 1, Article 2 of this Decree obtains a work permit, the employer and the foreign worker shall sign a written labor contract in accordance with Vietnamese labor law before the date the foreign worker intends to work. The labor contract contents must be consistent with the contents of the granted work permit.

Within 5 working days after signing the labor contract, the employer shall send a copy of the signed labor contract and a copy of the work permit to the provincial-level Department of Labor, War Invalids and Social Affairs that granted such work permit.

Section 4

RE-GRANT OF WORK PERMITS



Article 13. Cases in which a work permit is re-granted

1. The work permit is lost or damaged, or its content such as name, date of birth, nationality, passport number, or workplace is changed.
2. The work permit expires.

Article 14. Dossier of application for re-grant of a work permit

1. A written request for re-grant of a work permit made by the employer according to regulations of the Ministry of Labor, War Invalids and Social Affairs.
2. Two color photos (4 cm x 6 cm, bareheaded, frontal, clear face and two ears, no glasses, white background) taken within 6 months by the date the dossier is submitted.
3. Other papers related to the foreign worker:
 - a/ In the case specified in Clause 1, Article 13 of this Decree, a copy of the valid passport or paper of equivalent validity and the granted work permit (unless it is lost);
 - b/ In the case specified in Clause 2, Article 13 of this Decree, the work permit (unless it is lost) that remains valid for at least 5 days, but not more than 15 days, the health certificate mentioned in Clause 2, Article 10 of this Decree, the written approval for employment of the foreign worker given by the chairperson of the provincial-level People's Committee, and one of the papers below:
 - The document made by the foreign partner that sends the foreign worker to Vietnam;
 - The contract or agreement sign by the Vietnamese partner and foreign partner, including the agreement on sending foreign workers to work in Vietnam;
 - The service contract signed by the Vietnamese partner and foreign partner, or the paper proving that the foreign worker continues negotiating the service provision in Vietnam;
 - The certificate of the foreign non-governmental organization or international organization licensed to operate in accordance with Vietnamese law;
 - The document proving that the foreign worker continues working at a foreign non-governmental organization or international organizations in Vietnam;
 - The document made by the service provider that sends the foreign worker to Vietnam to establish its commercial presence;

- The document proving the foreign worker is permitted to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

The papers mentioned in this Clause may be originals or copies each; the papers made in a foreign language are exempted from consular legalization, but must be translated into Vietnamese and certified in accordance with Vietnamese law.

Article 15. Sequence of re-granting a work permit

1. For the cases prescribed in Clause 1, Article 13 of this Decree:

a/ The foreign worker shall notify the employer within 3 days from the date he/she discovers that his or her work permit is lost, damaged or its content is changed;

b/ The employer shall submit a dossier of application for re-grant of a work permit to the provincial-level Department of Labor, War Invalids and Social Affairs that granted such work permit within 5 working days from the date the employer is notified by the foreign worker.

2. For the case specified in Clause 2, Article 13 of this Decree:

At least 5 but within 15 days before the work permit expires, the employer shall submit a dossier of application for re-grant of a work permit to the provincial-level Department of Labor, War Invalids and Social Affairs that granted such work permit.

3. Within 3 working days after receiving a complete dossier of application for re-grant of a work permit, the provincial-level Department of Labor, War Invalids and Social Affairs shall re-grant the work permit. In case of refusal, it shall issue a written reply clearly stating the reason.

4. After the foreign worker mentioned at Point a, Clause 1, Article 2 of this Decree is re-granted a work permit, the employer and the foreign worker shall sign a labor contract in accordance with Vietnamese law before the date the foreign worker intends to return to work. The labor contract contents must be consistent with the contents of the re-granted work permit.

Within 5 working days after signing the labor contract, the employer shall send a copy of the signed labor contract and a copy of the re-granted work permit to the provincial-level Department of Labor, War Invalids and Social Affairs that has re-granted it.

Article 16. Duration of a re-granted work permit

1. The duration of the work permit re-granted in the cases in Clause 1, Article 13 of this Article is equal to the duration of the granted work permit minus the period of time the foreign worker has worked up to the date of application for re-grant of the work permit.

2. The duration of the work permit re-granted in the case in Clause 2, Article 13 of this Decree does not exceed 2 years, and is equal to one of the following durations:

- a/ The duration of the labor contract to be signed;
- b/ The duration of assignment in Vietnam decided by the foreign partner;
- c/ The duration of the contract or agreement between the Vietnamese partner and foreign partner;
- d/ The duration of the service contract or agreement between the Vietnam partner and foreign partner;
- dd/ The duration stated in the paper made by the service provider that sends the foreign worker to Vietnam to negotiate the service provision;
- e/ The duration stated in the certificate of the foreign non-governmental organization or international organization licensed to operate in accordance with law;
- g/ The duration in the paper made by the service provider that sends the foreign worker to Vietnam to establish its commercial presence;
- h/ The duration in the paper proving that the foreign worker is permitted to participate in the operation of a foreign enterprise that has established its commercial presence in Vietnam.

Section 5

REVOCAION OF WORK PERMITS, EXPULSION OF FOREIGN WORKERS

Article 17. Revocation of a work permit

1. Cases in which the work permit is revoked:
- a/ The contents of the dossier of application for the grant or re-grant of the work permit are found untrue;
 - b/ The work permit expires;
 - c/ The foreign worker or the employer fails to comply with the granted work permit;
 - d/ The labor contract is terminated;
 - dd/ The labor contract contents are not consistent with the contents of the granted work permit;
 - e/ The contract or agreement on business, commerce, finance, banking, insurance, science and technology, culture, sports, education and training, vocational training, or health expires or is terminated;

- g/ The foreign partner makes a written notification that the foreign worker is no longer assigned to work in Vietnam;
 - h/ The employer terminates operation;
 - i/ The foreign worker is imprisoned, dead or missing as declared by the court;
 - k/ A competent agency or organization makes a written request for revocation of the work permit due to violations of Vietnamese law committed by the foreign worker.
2. Provincial-level Labor, War Invalids and Social Affairs Departments may revoke the work permits they have granted.

Article 18. Expulsion of foreign workers

1. Foreigners who work in Vietnam without a work permit and do not fall into the cases in Article 7 of this Decree will be expelled in accordance with Vietnamese law.
2. Provincial-level Departments of Labor, War Invalids and Social Affairs shall request the public security agency to expel foreigners who work in Vietnam without a work permit.

Organizations and individuals shall report on foreigners working in Vietnam without a work permit to provincial-level Departments of Labor, War Invalids and Social Affairs upon detection.

3. Within 15 working days from the day on which the foreign worker is determined to be working in Vietnam without a work permit, the provincial-level Labor, War Invalids and Social Affairs Department shall request the public security agency to expel that foreign worker.
4. The Ministry of Public Security shall:
- a/ Provide guidance on the power and procedure for expelling foreigners working in Vietnam without a work permit;
 - b/ Provide guidance on the grant of visas to foreign workers after they are granted or re-granted work permits, or the complete dossiers of application for the grant or re-grant of work permits are submitted;
 - c/ Assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, guiding the procedures for sending the list of foreign workers who are granted or re-granted work permits to the immigration management agency.

Chapter III

IMPLEMENTATION PROVISIONS

Article 19. Effect

1. This Decree takes effect on November 1, 2013.

2. The Government's Decree No. [34/2008/ND-CP](#) of March 25, 2008, on recruitment and management of foreign workers in Vietnam; and Decree No. [46/2011/ND-CP](#) of June 17, 2011, amending and supplementing a number or articles of Decree No. [34/2008/ND-CP](#) of March 25, 2008, cease to be effective on the date this Decree takes effect.

3. Work permits that remain valid by the effective date of this Decree are not required to be renewed.

Article 20. Implementation responsibility

1. The Minister of Labor, War Invalids and Social Affairs, the Minister of Public Security, the Minister of Industry and Trade and the Minister of Health shall guide the implementation of this Decree.

2. Other ministers, heads of ministerial agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG

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