

THE GOVERNMENT

No. 127/2008/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

Hanoi, December 12, 2008

DECREE

**DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE
SOCIAL INSURANCE LAW CONCERNING UNEMPLOYMENT INSURANCE**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the June 29, 2006 Law on Social Insurance;
Pursuant to the June 23, 1994 Labor Code; the April 2, 2002 Law Amending and Supplementing
a Number of Articles of the Labor Code; and the June 29, 2006 Law Amending and
Supplementing a Number of Articles of the Labor Code;
At the proposal of the Minister of Labor, War Invalids and Social Affairs,*

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree guides the implementation of a number of articles of the Social Insurance Law concerning subjects and scope of application; rights and responsibilities of parties involved in unemployment insurance; unemployment insurance regimes; the unemployment insurance fund; unemployment insurance procedures; complaints and denunciations about unemployment insurance and some other provisions on unemployment insurance.

Article 2.- Laborers participating in unemployment insurance under Clause 3, Article 2 of the Social Insurance Law

1. Laborers participating in unemployment insurance under Clause 3, Article 2 of the Social Insurance Law are Vietnamese citizens who enter into the following labor or working contracts with the employers specified in Article 3 of this Decree:

a/ Labor contracts of a term of between full twelve months and thirty six months;

b/ Labor contracts of indefinite term;

c/ Working contracts of a term of between full twelve months and thirty six months;

d/ Working contracts of indefinite term, including those for laborers who were employed at state non-business units prior to the date of the Government's Decree No. 116/2003/ND-CP of October 10, 2003, on recruitment, employment and management of cadres and public employees at state non-business units.

Persons who enter into the above labor or working contracts are below collectively referred to as laborers.

2. Persons currently receiving monthly pensions or monthly working capacity loss allowances who enter into labor or working contracts specified in Clause 1 of this Article with the employers specified in Article 3 of this Decree are not covered by unemployment insurance.

Article 3.- Employers participating in unemployment insurance under Clause 4, Article 2 of the Social Insurance Law are those employing ten (10) or more laborers at the following agencies, units, organizations and enterprises:

1. State agencies and non-business units, people's armed force units.
2. Political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, non-business units of political organizations and socio-political organizations, and other social organizations.
3. Enterprises established and operating under the Enterprise Law and the Investment Law.
4. Cooperatives and cooperative unions established and operating under the Law on Cooperatives.
5. Business households, cooperative groups, other organizations and individuals hiring, employing and paying wages to laborers.
6. Foreign agencies, organizations and individuals and international organizations operating in the Vietnamese territory employing Vietnamese laborers, unless otherwise provided for by treaties to which the Socialist Republic of Vietnam is a contracting party.

Article 4.- State management of unemployment insurance

1. The Government shall perform the uniform state management of unemployment insurance, direct the elaboration, promulgation and implementation of legal documents, regimes and policies on unemployment insurance.

2. The Ministry of Labor, War Invalids and Social Affairs shall take responsibility before the Government for its state management of unemployment insurance, covering:

a/ Assuming the prime responsibility for, and coordinating with ministries, branches, agencies and organizations in, studying, elaborating and submitting to competent state agencies for promulgation or promulgating according to its competence legal documents on unemployment insurance;

b/ Assuming the prime responsibility for, and coordinating with concerned ministries and branches in, propagating and disseminating unemployment insurance regimes, policies and laws; doing statistical work;

c/ Guiding and organizing the implementation of legal provisions on unemployment insurance;

d/ Examining the implementation of legal provisions on unemployment insurance; settling complaints and denunciations about unemployment insurance;

dd/ Conducting specialized unemployment insurance inspection;

e/ Carrying out international cooperation on unemployment insurance under law.

3. Ministries, ministerial-level agencies and government-attached agencies shall, within the ambit of their tasks and powers, perform the state management of unemployment insurance, covering:

a/ Coordinating with the Ministry of Labor, War Invalids and Social Affairs and concerned ministries and branches in elaborating laws and policies related to unemployment insurance;

b/ Monitoring and examining the implementation of unemployment insurance regimes, policies and laws under their competence;

c/ Reporting to competent agencies on their state management of unemployment insurance.

4. Provincial-level People's Committees shall perform the state management of unemployment insurance in their localities. Provincial-level Labor, War Invalids and Social Affairs Services shall take responsibility before provincial-level People's Committees for their state management of unemployment insurance, covering:

a/ Organizing vocational training and job counseling and recommendation for laborers on unemployment allowance in their localities;

b/ Monitoring and examining the implementation of the law on unemployment insurance;

c/ Assuming the prime responsibility for or coordinating with concerned agencies in examining and inspecting the implementation of unemployment insurance regimes and policies.

d/ Proposing concerned ministries and branches to settle unemployment insurance-related matters under their competence;

dd/ Making annual reports on the implementation of the law on unemployment insurance under regulations of the Ministry of Labor, War Invalids and Social Affairs.

Article 5.- Unemployment insurance inspection under Article 10 of the Social Insurance Law

1. The Labor, War Invalids and Social Affairs Inspectorate, which conducts specialized unemployment insurance inspection, has the following tasks:

a/ To inspect the implementation of unemployment insurance regimes, policies and laws;

b/ To inspect sources for the formation, and the management and use, of the unemployment insurance fund;

c/ To verify, conclude on and propose the settlement of, complaints and denunciations about unemployment insurance under law;

d/ To administratively sanction violations of the law on unemployment insurance according to its competence; to propose functional agencies to handle violations of the law on unemployment insurance;

dd/ To provide guidance on and training in specialized unemployment insurance inspection.

2. Subject to specialized unemployment insurance inspection are:

- a/ Laborers specified in Article 2 of this Decree;
- b/ Employers specified in Article 3 of this Decree;
- c/ Vietnam Social Insurance;
- d/ Other organizations and individuals related to unemployment insurance.

Article 6.- Prohibited acts under Article 14 of the Social Insurance Law

1. Regarding payment of unemployment insurance premiums

- a/ Failing to pay unemployment insurance premiums under the law on unemployment insurance;
- b/ Failing to pay unemployment insurance premiums at the levels specified in Article 102 of the Social Insurance Law;
- c/ Failing to pay unemployment insurance premiums according to the time prescribed by the law on unemployment insurance;
- d/ Failing to fully pay unemployment insurance premiums for all laborers subject to compulsory unemployment insurance under Article 2 of this Decree.

2. Falsification and forger)' of unemployment insurance dossiers, covering:

- a/ Declaring untruthfully or making modifications or erasures causing misrepresentation of contents related to the payment of unemployment insurance premiums and entitlement to unemployment insurance indemnities;
- b/ Forging dossiers to receive unemployment insurance indemnities;
- c/ Granting in contravention of regulations certificates to be used as a basis for receiving unemployment insurance indemnities.

3. Using the unemployment insurance fund for improper purposes or in contravention of policies and regimes.

4. Troubling, obstructing, harming lawful rights and interests of laborers and employers, covering:

- a/ Troubling, obstructing or delaying laborers' payment of unemployment insurance premiums or entitlement to unemployment insurance indemnities;
- b/ Troubling or obstructing employers in paying unemployment insurance premiums;
- c/ Failing to grant or return unemployment insurance dossiers to laborers according to regulations.

5. Making false reports, supplying false information and data on unemployment insurance.

Chapter II

RIGHTS AND RESPONSIBILITIES OF LABORERS, EMPLOYERS, LABOR AGENCIES AND VIETNAM SOCIAL INSURANCE

Article 7.- Unemployment insurance-related rights of laborers under Article 15 of the Social Insurance Law

1. To be fully certified for their payment of unemployment insurance premiums in social insurance books.
2. To receive social insurance books when losing jobs or terminating labor or working contracts.
3. To fully and timely enjoy unemployment insurance regimes specified in Articles 16,17,18 and 19 of this Decree.
4. To authorize other persons to receive their monthly unemployment allowances.
5. To request employers to supply information on unemployment insurance premium payment; to request labor agencies and social insurance organizations to supply unemployment insurance-related information.
6. To lodge complaints or denunciations with competent agencies when employers, labor agencies or social insurance organizations commit acts of violation of regulations on unemployment insurance.
7. To have other rights under law.

Article 8.- Unemployment insurance-related responsibilities of laborers under Article 16 of the Social Insurance Law

1. To fully and properly pay unemployment insurance premiums under Clause 1, Article 102 of the Social Insurance Law.
2. To comply with regulations on compilation of unemployment insurance dossiers.
3. To keep and use social insurance books according to regulations.
4. To make registration at labor agencies when losing jobs or terminating labor or working contracts.
5. To monthly report to labor agencies on their job seeking during the time of receiving unemployment allowances.
6. To receive appropriate jobs or attend relevant vocational training courses recommended by labor agencies during the time of receiving unemployment allowances.

Article 9.- Unemployment insurance-related rights of employers under Article 17 of the Social Insurance Law

1. To reject requests which are against the law on employment insurance.

2. To lodge complaints or denunciations with competent agencies when laborers, labor agencies or social insurance organizations commit acts of violation of regulations on unemployment insurance.

3. To have other rights under law.

Article 10.- Unemployment insurance-related responsibilities of employers under Article 18 of the Social Insurance Law

1. To fully and properly pay unemployment insurance premiums under Clause 2, Article 102 of the Social Insurance Law.

2. To preserve unemployment insurance dossiers of laborers during the time laborers work for them.

3. To comply with regulations on compilation of unemployment insurance dossiers for laborers to pay unemployment insurance premiums and receive unemployment insurance indemnities.

4. To produce documents and dossiers and supply relevant information at the request of competent state agencies upon unemployment insurance examination or inspection.

5. To supply documents under Clause 2, Article 37 of this Decree for laborers to complete their dossiers for enjoyment of unemployment insurance indemnities.

6. To perform other responsibilities under law.

Article 11.- Rights of labor agencies in organizing the implementation of unemployment insurance policies

1. To reject requests for unemployment insurance indemnities which are against the law.

2. To settle complaints about unemployment insurance according to regulations.

3. To examine the implementation of unemployment insurance.

4. To propose competent agencies to elaborate, amend or supplement unemployment insurance regimes, policies and laws and to manage the unemployment insurance fund.

5. To propose competent agencies to handle violations of the law on unemployment insurance.

6. To have other rights under law.

Article 12.- Responsibilities of labor agencies in organizing the implementation of unemployment insurance policies

1. To organize the communication and propagation of unemployment insurance policies and laws.

2. To receive unemployment insurance dossiers and settle unemployment insurance regimes according to regulations.

3. To provide job counseling and recommendation and vocational training for laborers participating in unemployment insurance.
4. To settle in accordance with law organizations' or individuals' complaints and denunciations about the implementation of unemployment insurance regimes.
5. To report to state management agencies under law.
6. To fully and timely supply information on unemployment insurance procedures at the request of laborers or trade unions.
7. To supply relevant documents and information at the request of competent agencies.
8. To file unemployment insurance dossiers under law.
9. To participate in the elaboration, amendment and supplementation of unemployment insurance-related regimes and policies.
10. To conduct professional training and retraining in, and study and apply sciences and technologies related to, unemployment insurance.
11. To carry out international cooperation on and participate in scientific research into unemployment insurance.
12. To perform other responsibilities under law.

Article 13.- Rights of Vietnam Social Insurance under Article 19 of the Social Insurance Law

1. To manage its personnel, finance and assets under law.
2. To reject requests for unemployment insurance indemnities, which are against the law.
3. To lodge complaints about unemployment insurance.
4. To examine the payment of unemployment insurance premiums.
5. To propose competent agencies to elaborate, amend or supplement unemployment insurance regimes, policies and laws and to manage the unemployment insurance fund.
6. To propose competent agencies to handle violations of the law on unemployment insurance.
7. To have other rights under law.

Article 14.- Responsibilities of Vietnam Social Insurance under Article 20 of the Social Insurance Law

1. To propagate and disseminate unemployment insurance regimes, policies and laws; to guide procedures for collecting unemployment premiums and paying unemployment insurance indemnities for laborers and employers eligible for unemployment insurance.
2. To collect unemployment insurance premiums.

3. To pay unemployment allowances, support vocational training and job counseling and recommendation.
4. To pay health insurance premiums for persons on unemployment allowance.
5. To manage and use the unemployment insurance fund under law.
6. To take measures to preserve and increase the unemployment insurance fund under law.
7. To make unemployment insurance statistics and accounting.
8. To apply information technology to unemployment insurance management; to file dossiers of unemployment insurance buyers under the Social Insurance Law.
9. To biannually, report on unemployment insurance to the social insurance management council. To annually report to the Government and state management agencies on revenues, expenditures, management and use of the unemployment insurance fund.
10. To fully and promptly supply information on the payment of unemployment insurance premiums and indemnities and unemployment insurance procedures at the request of laborers or trade unions.
11. To supply relevant documents and information at the request of competent agencies.
12. To settle complaints and denunciations about unemployment insurance according to its competence.
13. To perform other responsibilities under law.

Chapter III

UNEMPLOYMENT INSURANCE REGIMES

Article 15.- Conditions for entitlement to unemployment insurance under Article 81 of the Social Insurance Law

1. Having paid unemployment insurance premiums for full twelve months or more within twenty four months before losing a job or terminating a labor contract under the labor law or a working contract under the law on cadres and public employees.
2. Having registered with a labor agency when losing a job or terminating a labor or working contract.
3. Failing to find a job 15 days after the date of registering with a labor agency under Clause 2 of this Article.

Article 16.- Unemployment allowance under Article 82 of the Social Insurance Law

1. Unemployment allowance is the monthly amount paid to an unemployed laborer participating in unemployment insurance who fully satisfies the conditions for entitlement to unemployment insurance under Article 15 of this Decree or to his/her authorized person under Clause 4, Article 7 of this Decree.

2. The monthly unemployment allowance is equal to 60% of the laborer's average monthly salary or remuneration of six consecutive months before he/she loses a job or terminates a labor contract under the labor law or a working contract under the law on cadres and public employee, on which unemployment insurance premiums are based.

3. The time for receiving monthly unemployment allowance depends on the time of working during which a laborer has paid unemployment insurance premiums, and the total time for receiving monthly unemployment allowance complies with Clause 2, Article 82 of the Social Insurance Law.

Article 17.- Vocational training support under Article 83 of the Social Insurance Law

1. Labor agencies shall support laborers on unemployment allowance in vocational training through vocational training establishments.

2. The level of support for laborers on unemployment allowance is equal to the cost for a short-term vocational training under the law on vocational training.

3. The time of support does not exceed 6 months from the date a laborer receives monthly unemployment allowance.

Article 18.- Job seeking support under Article 84 of the Social Insurance Law

1. Labor agencies shall provide free job counseling and recommendation for laborers on unemployment allowance through job centers.

2. The time for laborers to receive job counseling and recommendation starts from the date they receive monthly unemployment allowance and does not exceed the duration they are on unemployment allowance under Clause 2, Article 82 of the Social Insurance Law.

Article 19.- Health insurance under Article 85 of the Social Insurance Law

1. Persons on unemployment allowance are entitled to the health insurance regime.

2. Social insurance organizations shall pay health insurance premiums for persons on unemployment allowance.

Article 20.- Time of entitlement to unemployment insurance

When fully meeting the conditions for entitlement to unemployment insurance under Article 15 of this Decree, laborers may receive unemployment insurance regimes 15 days after the date of registration under Clause 2, Article 15 of this Decree.

Article 21.- Time of unemployment insurance premium payment

The time of paying unemployment insurance premiums under this Decree to be used as a basis for entitlement to unemployment insurance is the total of the periods of time of paying unemployment insurance premiums added up from the time of starting unemployment insurance premium payment to the time of losing jobs or terminating labor contracts under the labor law or working contracts under the law on cadres and public employees during which unemployment allowances are not paid.

Article 22.- Suspension from enjoyment of unemployment allowance under Article 86 of the Social Insurance Law

1. Laborers who are on monthly unemployment allowance are suspended from enjoying such allowance in either of the following cases:

a/ Failing to monthly report on their job seeking to labor agencies;

b/ Being put in detention.

2. Laborers may receive monthly unemployment allowances again in the subsequent months in the following cases:

a/ The period for laborers to receive unemployment allowance under Clause 2, Article 82 of the Social Insurance Law has not yet expired and laborers resume their monthly reporting on job seeking to labor agencies.

b/ The period for laborers to receive unemployment allowance under Clause 2. Article 82 of the Social Insurance Law has not yet expired after they are released from detention.

Article 23.- Termination of unemployment allowance under Article S7 of the Social Insurance Law

1. Persons on unemployment allowance are no longer entitled to such allowance in either of the cases specified in Clause 1, Article 87 of the Social Insurance Law.

2. Persons subject to termination of unemployment allowance in cases specified at Points b and c. Clause 1. Article 87 of the Social Insurance Law may receive a lump-sum allowance equal to the value of the total unemployment allowance of the remaining time they are entitled to unemployment allowance under Clause 2, Article 82 of the Social Insurance Law.

Article 24.- Re-counting of the time of unemployment insurance premium payment under Clause 3, Article 87 of the Social Insurance Law

1. After ceasing to receive unemployment allowance under Article 23 of this Decree, laborers' previous time of paying unemployment insurance premiums for which they have received monthly unemployment allowance is not counted for paying unemployment allowance to laborers for their subsequent loss of jobs or termination of labor or working contracts.

2. The time of unemployment insurance premium payment for the subsequent working time shall be re-counted.

Chapter IV

UNEMPLOYMENT INSURANCE FUND

Article 25.- Sources to form the unemployment insurance fund under Article 102 of the Social Insurance Law

1. Laborers' payment of 1% of their monthly salary or remuneration on which unemployment insurance premiums are based.

2. Employers' payment of 1% of the fund of monthly salaries and remunerations of laborers participating in unemployment insurance on which unemployment insurance premiums are based.

3. The State's monthly budgetary support, which is transferred once a year and equal to 1 % of the fund of the salaries and remunerations of laborers participating in unemployment insurance on which unemployment insurance premiums are based.

4. Profits from the fund's investment activities.

5. Other lawful sources of revenue.

Article 26.-Mode of unemployment insurance premium payment

1. Employers shall monthly pay unemployment insurance premiums at the level set in Clause 2, Article 102 of the Social Insurance Law and deduct the salary and remuneration of every laborer at the level set in Clause 1, Article 102 of the Social Insurance Law for concurrent payment into the unemployment insurance fund.

2. The time for employers to pay unemployment insurance premiums is prescribed by Vietnam Social Insurance.

3. Annually, the State shall transfer from the state budget an amount to the unemployment insurance fund at the level set in Clause 3. Article 102 of the Social Insurance Law.

The Ministry of Finance shall provide specific guidance on state budget supports for the implementation of the unemployment insurance policy under this Article.

Article 27.- Monthly salaries or remunerations on which unemployment insurance premiums are based under Article 105 of the Social Insurance Law

1. Monthly salaries of laborers subject to the state-prescribed wage regime, on which unemployment insurance premiums are based, are their rank- or grade-based salaries and position, extra-seniority or professional seniority allowances (if any).

These salaries shall be calculated on the basis of the common minimum salary at the time of paying unemployment insurance premiums.

2. Monthly salaries or remunerations of laborers paying unemployment insurance premiums according to the salary regime decided by their employers, on which unemployment insurance premiums are based, are their monthly salaries or remunerations specified in their labor or working contracts.

3. When the monthly salaries or remunerations specified in Clauses 1 and 2 of this Article are higher than twenty months' common minimum salary, the monthly salary or remuneration on which social insurance premiums are based is equal to twenty months' common minimum salary at the time of paying unemployment insurance premiums.

Article 28.- Use of the unemployment insurance fund under Article 103 of the Social Insurance Law

1. Paying monthly unemployment allowances for laborers entitled to unemployment insurance regimes under Article 16 of this Decree.

2. Supporting vocational training for laborers who are on monthly unemployment allowance under Article 17 of this Decree.
3. Supporting job seeking for laborers who are on monthly unemployment allowance under Article 18 of this Decree in seeking jobs.
4. Paying health insurance premiums for laborers who are on monthly unemployment allowance under Article 19 of this Decree.
5. Covering unemployment insurance management expenses.
6. Making investment to preserve and increase the fund according to regulations.

Article 29.- Management expenses under Article 104 of the Social Insurance Law

Annual unemployment insurance management expenses shall be taken from the unemployment insurance fund and are equal to the level of management expenses of state administrative agencies under the Government's regulations.

Article 30.- Management of the unemployment insurance fund

1. Vietnam Social Insurance shall collect revenues and cover expenses of, and manage, the unemployment insurance fund and may open savings accounts of the unemployment insurance fund at state treasuries and state commercial banks. The credit balance on the savings accounts enjoys savings interest rates set by state treasuries and state commercial banks.
2. Social insurance organizations shall annually settle revenues and expenditures of the unemployment insurance fund; and cover management expenses according to regulations.

Article 31.- Investment activities of the fund under Clause 6, Article 103 of the Social Insurance Law

1. Vietnam Social Insurance shall take measures to preserve and increase the value of the unemployment insurance fund from the fund's temporarily idle money. Investment activities of the unemployment insurance fund must ensure security, efficiency and recovery when necessary.
2. The Social Insurance Management Council may decide on investment in the following forms:
 - a/ Purchasing bonds and treasury bills of the State and state commercial banks;
 - b/ Providing loans to state commercial banks, the Vietnam Development Bank and the Policy Bank;
 - c/ Other forms of investment decided by the Social Insurance Management Council.
3. Annual investment profits and increased funds of the unemployment insurance fund shall be added to the unemployment insurance fund.

Article 32.- Financial plans

1. Vietnam Social Insurance shall annually elaborate plans on revenues and expenditures of the unemployment insurance fund (including state budget supports under Clause 3. Article 25 of this

Decree); unemployment insurance management expenditures; and investment for the fund's growth and submit them to the Social Insurance Management Council for evaluation and report to the Ministry of Finance and the Ministry of Labor, War Invalids and Social Affairs.

The Ministry of Finance shall make the sum-up and propose the Prime Minister to decide on the assignment of financial plans.

2. On the basis of financial plans assigned by the Prime Minister, the general director of Vietnam Social Insurance shall assign revenue-expenditure tasks to units.

Article 33.- Examination, inspection, audit of financial activities of the unemployment insurance fund

The unemployment insurance fund's financial activities are subject to the examination, inspection and audit by finance state management agencies and the state audit.

Chapter V

UNEMPLOYMENT INSURANCE PROCEDURES

Article 34.- Job seeking registration and notification to labor agencies under Clauses 4 and 5. Article 8 of this Decree

1. A laborer shall make registration at a labor agency within 7 working days from the date of losing his/her job or terminating his/her labor or working contract.

2. During the lime of receiving unemployment allowance, an unemployed person shall monthly notify a labor agency of his/her job seeking.

Article 35.- Records on unemployment insurance premium payment and entitlement

1. The record on unemployment insurance premium payment and entitlement as a basis for unemployment insurance coverage under this Decree is the social insurance book.

2. Vietnam Social Insurance shall issue social insurance books to meet the requirement on unemployment insurance coverage.

Article 36.- Unemployment insurance dossiers under Article 110 of the Social Insurance Law

Within 30 working days from the date of entering a labor or working contract, employers specified in Article 3 of this Decree shall submit unemployment insurance dossiers of their own and their employees to social insurance organizations. Such a dossier comprises;

1. Personal declarations made by laborers according to a form set by the Ministry of Labor, War Invalids and Social Affairs.

2. A list of laborers participating in unemployment insurance made by the employer according to a form set by the Ministry of Labor, War Invalids and Social Affairs.

Article 37.- A dossier for enjoyment of unemployment insurance indemnities under Article 125 of the Social Insurance Law comprises:

1. A written request for enjoyment of unemployment insurance indemnities, made according to a form set by the Ministry of Labor, War Invalids and Social Affairs.

2. A copy of the expired labor or working contract or the agreement on termination of the labor or working contract or the last employer's certification of the lawful unilateral termination of the labor or working contract.

Article 38.- Settlement of enjoyment of unemployment insurance indemnities

1. Laborers shall submit to labor agencies their dossiers for enjoyment of unemployment insurance indemnities under Article 37 of this Decree.

2. Within 20 days from the date of receiving a complete dossier specified in Article 37 of this Decree, the labor agency shall settle the case; in case of refusal, it shall reply in writing, clearly stating the reason.

Chapter VI

COMPLAINTS AND DENUNCIATIONS ABOUT UNEMPLOYMENT INSURANCE

Article 39.- Unemployment insurance complainants under Article 130 of the Social Insurance Law include:

1. Laborers specified in Article 2 of this Decree;
2. Persons who are on monthly unemployment allowance;
3. Persons who have a reserved unemployment insurance premium payment period;
4. Persons who are suspended from receiving monthly unemployment allowance;
5. Persons subject to termination of receipt of monthly unemployment allowance;
6. Employers specified in Article 3 of this Decree.

Article 40. -Competence, order and procedures for settling complaints about unemployment insurance under Clause 2. Article 131 of the Social Insurance Law

1. Competence to settle complaints about unemployment insurance:

a/ Employers, heads of labor agencies and heads of social insurance agencies shall settle first-time complaints about their complained unemployment insurance-related decisions or acts.

When an employer making a decision or committing an act related to unemployment insurance about which a complaint is lodged no longer exists, a district-level labor state management agency shall settle such complaint;

b/ Provincial-level Labor, War Invalids and Social Affairs Service directors may settle complaints about complaint-settling decisions made by employers, heads of labor agencies or heads of social insurance agencies with which complainants disagree or complaints which, past the prescribed time limit, have not been settled while complainants do not initiate a lawsuit at court.

2. Order of and procedures for lodging complaints and first settlement of complaints about unemployment insurance

a/ When finding that an unlawful unemployment insurance-related decision or act infringes upon his/her lawful rights or interests, a complainant may send a written complaint to the person or organization that has issued such decision or committed such act;

b/ When receiving such a complaint the person or organization having issued the complained decision or committed the complained act shall accept and settle that complaint;

c/ The statute of limitations for lodging complaints, the procedures for lodging complaints and time limit for first settlement of complaints comply with the law on complaints and denunciations.

3. Order of and procedures for lodging complaints and second settlement of complaints about unemployment insurance

a/ When a complainant disagrees with the decision on first settlement of his/her complaint or past the prescribed time limit, his/her complaint has not been settled, he/she may lodge another complaint to the director of a provincial-level Labor, War Invalids and Social Affairs Service or initiate a lawsuit at court;

b/ When a complainant disagrees with the complaint-settling decision of the director of a provincial-level Labor, War Invalids and Social Affairs Service or past the prescribed time limit, his/her complaint has not been settled he/she may initiate a lawsuit at court.

c/ The statute of limitations for lodging complaints, the procedures for lodging complaints and time limit for second settlement of complaints comply with the law on complaints and denunciations.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 41.- Transitional provisions under Clause 6. Article 139 of the Social Insurance Law

1. The duration for which laborers pay unemployment premiums under Clause 1, Article 102 of the Social Insurance Law may not be counted for entitlement to job loss or severance allowance under the labor law or the law on cadres and public employees.

2. The actual working time of laborers under labor or working contracts with employers for which unemployment insurance premiums are not paid may be counted for entitlement to job loss or severance allowance under the current labor law or to severance allowance under the law on cadres and public employees.

Salaries or remunerations which are used for calculating severance or job loss allowances under the labor law are the average salary or remuneration of six consecutive months under labor contracts before laborers lose their jobs or terminate their labor contracts, including grade-or position-based salaries or remunerations, region- or position-based allowances (if any).

Salaries used for calculating severance allowances under the law on cadres and public employees are the rank- or grade-based salaries, position-, region- or extra seniority-based allowances and reserved difference coefficient (if any) at the time of job severance.

3. The duration for which employers pay unemployment insurance premiums for their laborers under Clause 2, Article 102 of the Social Insurance Law is counted for relieving them from the responsibility to pay job loss or severance allowances under the labor law and the law on cadres and public employees.

4. The provisions of this Decree are applicable to laborers being salaried managers of enterprises or cooperatives.

Article 42.- Responsibilities of ministries and branches

1. The Ministry of Labor, War Invalids and Social Affairs shall guide the implementation of this Decree.

2. The Ministry of Finance shall guide the financial regime applicable to the unemployment insurance fund.

3. Other concerned ministries and branches shall, within the ambit of their functions, tasks and powers, guide the implementation of this Decree.

Article 43.- Implementation effect

This Decree takes effect on January 1, 2009.

Article 44.- Implementation responsibilities

Ministers, heads of ministerial-level agencies, heads of government-attached agencies and presidents of provincial-level People's Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung