

SOME NEW REGULATIONS ON FOREIGN EMPLOYEES WORKING IN VIET NAM

PHUONG NAM

On September 18, 2023, the Government issued Decree 70/2023/ND-CP (**Decree 70**) to amend and supplement several articles of Decree 152/2020/ND-CP (**Decree 152**) which governs foreign employees working in Viet Nam and the recruitment and management of Vietnamese employees working for foreign organizations, individuals in Viet Nam. Taking effect from September 18, 2023, Decree 70 focuses on amending some regulations related to foreign employees working in Viet Nam:

Firstly, Decree 70 amends the method of determining foreign employees. Thereby, the determination of foreign experts and technical employees is stipulated as follows:

(i) Criteria for determining foreign experts: Under Decree 152, one of the criteria for determining foreign experts is: *"obtaining at least a bachelor's degree or equivalent and at least 03 years' experience in his/her training field corresponding to the job position/assignment that he/she plans to assume in Viet Nam"*. Decree 70 adjusts this criterion to: *"obtaining at least a bachelor's degree or equivalent and at least 03 years' experience relevant with the job position/assignment that he/she plans to assume in Viet Nam"*.

(ii) Criteria for determining foreign technical employees: The criterion to determine foreign technical employees in Decree 152 that: *"Being trained in a technical field or another major for at least 1 year and having worked for at least 03 years in his/her training field"* is adjusted in Decree 70 to: *"being trained for at least 1 year and have at least 3 years of experience corresponding to the job position/assignment that the foreign employee plans to assume in Viet Nam"*.

Secondly, Decree 70 amends and supplements the regulations on the employment of foreign employees. Typically, the Decree amends the time for reporting the use demand of foreign employees and supplements the regulations on announcing the



recruitment of Vietnamese employees for positions requiring foreign employees before reporting the demand for employing foreign employees, specifically:

- Regarding reporting the demand to use foreign employees, Decree 70 changes the time limit for employers to report and explain the demand for employing foreign employees to the Ministry/Department of Labor, War Invalids and Social Affairs depending on the expected work location of foreign employees from *"at least 30 days prior to the expected date of using foreign employees"* to *"at least 15 days prior to the expected date of using foreign employees"*.
- Regarding recruitment of Vietnamese employees for positions expected for foreign employees, according to Decree 70, from January 1, 2024, at least 15 days prior to the expected date of the explanatory report, the employer in need shall announce recruitment of Vietnamese employees for positions expected to recruit foreign employees on the Portal of the Department of Employment, Ministry of Labor, War Invalids and Social Affairs (csdl.vieclamvietnam.gov.vn) or the Portal of the Employment Service Center of the province or city where the foreign employee is expected to work. The recruitment announcement should state the position and job title, job description, quantity, requirements for qualifications, experience, salary, working time, and location. After the above deadline, if no Vietnamese employee is recruited, the employer will be allowed to send a report explaining the demand to use foreign employees to the Ministry/Department of Labor, War Invalids, and Social Affairs.

Thirdly, Decree 70 also amends the authority to issue, reissue, extend, and revoke work permits for foreigners working in industrial parks, and economic zones. Accordingly, Decree 70 abolishes the authority of the Management Board of industrial

parks and economic zones to (i) issue, re-issue, extend, and revoke work permits and confirm that foreign employees are not subject to the issuance of work permits to foreigners working in industrial parks and economic zones and (ii) receive explanatory reports from businesses in industrial parks, economic zones on the demand to employ foreigners for each job position that Vietnamese employees do not meet in accordance with Decree 35/2022/ND-CP. Therefore, the Department of Labor, War Invalids and Social Affairs will be the agency responsible for managing foreign employees locally as proposed by the Ministry of Labor, War Invalids and Social Affairs.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 70 has contributed to improving the applicable regulations on foreign employees working in Viet Nam. In particular, Decree 70 has amended and supplemented regulations on the use of foreign employees such as the time of explanatory report on the demand to use foreign employees or the obligation to notify state agencies upon recruitment of Vietnamese employees for positions expected to recruit foreign employees, adjusted the authority related to work permits of foreign employees in industrial parks, economic zones, etc. In addition, the criteria to determine foreign experts, technical employees, etc. are also regulated more specifically and more favorably than those in the former document. Individuals and organizations need to study the new contents in Decree 70 to ensure compliance with legal regulations when employing foreign employees to work in Viet Nam.