

SOME KEY ASPECTS OF THE DRAFT LAW ON SOCIAL INSURANCE

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After a decade of implementation, besides certain advantages, the Law on Social Insurance 2014 has gradually revealed numerous deficiencies and limitations and is no longer suitable for the current socio-economic development. Therefore, the Draft Law on Social Insurance (**the Draft Law**) is being prepared and discussed with a focus on overcoming current shortcomings of the Law on Social Insurance 2014. Some new points possibly affecting the internal operations of enterprises in the Draft Law will be analyzed in this volume of Legal Newsletter by NHQuang&Associates.

Extending the scope of subjects covered by compulsory social insurance

The Draft Law has added 5 subjects covered by compulsory social insurance as follows:

- i. Employees who do not enter into any labor contracts or comply with agreements under other names but containing the contents of paid employment, salary, management, administration, and supervision of one party (except for probation contracts by provisions of labor laws);
- ii. Part-time staff working in hamlets and residential groups;
- iii. Employees working under indefinite-term labor contracts, definite-term labor contracts with a term of full 1 month or more (including case (i) above) but not working full time, having monthly salary equal to or higher than the salary used as the basis for paying the lowest premium of compulsory social insurance according to legal provisions;
- iv. Owners of business households subject to apply for business registration;
- v. Enterprise managers, controllers, representatives of the state capital, representatives of an enterprise's investment in the company and the holding company, operation managers of cooperatives, and union of cooperatives without salary.

This provision complies with Resolution 28-NQ/TW on social insurance policy reform (**Resolution 28**), which is to “review, extend the scope of subjects covered by compulsory social insurance for business household owners; non-salaried enterprise managers, and



operators of cooperatives; employees working under flexible regimes”, contributing to ensuring the right to engagement in and enjoyment of compulsory social insurance for other subjects that have not been engaged in compulsory social insurance according to the applicable Law on Social Insurance 2014.

Adding social retirement allowances to social insurance benefits

The Law on Social Insurance 2014 currently regulates 3 types of retirement benefits under compulsory social insurance, voluntary social insurance, and supplementary retirement scheme. The Draft Law has added the concept of “retirement allowance”, which is applied to Vietnamese citizens meeting both requirements of (i) being full 75 years of age or older, and (ii) not having pensions, monthly social insurance allowances, and other monthly social allowances under the Government's provisions. The above-mentioned subjects shall receive monthly social retirement allowances in compliance with the Government's provisions and engage in health insurance under the law on health insurance. In the case where the persons receiving the retirement allowance pass away, the persons in charge of their funeral shall receive a lump-sum funeral allowance according to the law on the elderly. The order and procedures of social retirement allowance shall be provided in detail by the Government.

Besides the beneficiaries mentioned above, the Draft Law also regulates benefits for employees who reach retirement age but are not eligible for pensions and do not meet the age condition to receive social retirement allowance. In particular, if these subjects have paid social insurance before and long to receive an allowance, they will still receive a monthly allowance and health insurance before they reach the required age for social retirement allowance. The benefit period and monthly benefit level will depend on the employees' total payment time and number of months of social insurance payment. In the case where the employees receiving monthly allowance pass away, their relatives shall

receive a lump-sum allowance for the months that have not yet been paid and also a funeral allowance if qualified. To meet the requirements to receive social retirement allowances, employees must submit relevant dossiers to social insurance agencies according to the Draft Law's provisions.

It can be seen that the supplementation of the social retirement allowance aims to realize Resolution 28's objectives, namely, about 60% of people passing the age of retirement can receive pensions, monthly social insurance, and social retirement allowances by 2030, and the satisfaction index of subjects participating in social insurance is enhanced. According to some statistics, this rate is about 35% at the end of 2022.

Adding maternity benefits to voluntary social insurance policies

According to the Law on Social Insurance 2014, voluntary social insurance consists of 2 types: retirement and survivorship. The Draft Law has added maternity benefits to voluntary social insurance policies. Accordingly, employees participating in voluntary social insurance shall be entitled to maternity benefits if they fulfill the requirements: (i) being female employees who give birth to children or male employees currently paying social insurance, whose wives give birth to children, and (ii) having paid social insurance for a period of full 6 months or more within 12 months before giving birth to children. As a result, female employees giving birth to children, and male employees whose wives giving birth to children shall be entitled to VND 2,000,000 for a newborn baby. The level of this allowance may be amended to be consistent with the socio-economic development conditions and state budget capacity in each period.

Within 45 days since giving birth to children, employees shall submit the dossier prepared according to legal provisions to receive maternity benefits. Within 5 business days since receiving the full dossier required, social insurance agencies are responsible for settling and making payment to the employees. In the case that the dossier is rejected, the social insurance agencies must notify the employees in writing and clearly state the reason thereof. This benefit is supplemented in accordance with Resolution 28's policy and aims to increase people's benefits and encourage their engagement in voluntary social insurance.

Adding the provisions on management of the collection and payment of compulsory social

insurance and voluntary social insurance premiums

To ensure publicity and transparency during management as well as to guarantee social insurance obligations of related subjects, the Draft Law has added some provisions on the management of the collection and payment of compulsory social insurance and voluntary social insurance premiums.

Firstly, determining the basis for compulsory social insurance and voluntary social insurance premium payment

The Draft Law provides the basis for paying compulsory social insurance and voluntary social insurance. For instance, insurance contributions by Vietnamese guest workers working under contracts shall depend on their monthly salary paid to compulsory social insurance agencies before working abroad. In terms of the basis for voluntary social insurance premiums, employees participating in this type of insurance can select the level of income to be the basis for voluntary social insurance premiums, therein, the lowest amount must be equal to half of the monthly lowest region-based minimum wage, and the highest amount must not be higher than 8 times of the monthly highest region-based minimum wage as announced by the Government. It can be seen that these provisions may provide social insurance participants with a certain legal basis to determine payable social insurance premiums, as well as overcome the situation of insufficient social insurance premium payment, which affects the legitimate rights and interests of social insurance participants.

Secondly, regulating the act of delaying, shirking compulsory social insurance payments, and violation handling sanctions

Delaying and shirking the payment of compulsory social insurance is one of the acts strictly prohibited by the Law on Social Insurance 2014. The Draft Law has inherited this provision and concretized the above-mentioned acts through certain cases. The acts of delaying compulsory social insurance premium payment are stated as follows:

- Employers have registered compulsory social insurance for their employees but have not paid or not paid the full registered social insurance premiums before the deadline for compulsory social insurance premiums payment.
- Employers submit compulsory social insurance dossiers of their employees within 90 days after the

deadline for submission.

The Draft Law also regulates cases of shirking compulsory social insurance premium payments as follows:

- Employers have not submitted or submitted the dossier to register compulsory social insurance for their employees after 90 days from the deadline of submission.
- Employers register and pay compulsory social insurance premiums with an amount lower than the salary used as the basis for paying compulsory social insurance premiums according to legal provisions.
- Employers have registered compulsory social insurance for their employees but have not paid or paid the premiums insufficiently even though it is overdue, while they are capable of paying.

In the case where employers violate the above regulations, if the employers have not paid compulsory social insurance premiums when it is overdue, they have to pay not only the full amount delayed, or shirked but also an interest equal to 0.03% per day on the amount delayed, shirked and will be handled for violations according to the provisions of law. Competent authorities shall have the right to implement several measures against employers who delay or shirk paying compulsory social insurance premiums, such as suspending from using invoices, making decisions on exit restrictions for the employers' legal representatives, and filing lawsuits against the employers (depending on the degree of violation). It should be noted that, if there is any sign of committing the crime of shirking social insurance premium payment according to the Criminal Code, the employers shall be prosecuted by the law. Furthermore, to ensure employees' interests, the Draft Law has added employers' responsibilities to compensate their employees if the compulsory social insurance premiums are not paid or paid insufficiently and promptly, affecting the employees' legitimate rights and interests.

Besides the issues analyzed above, the Draft Law on Social Insurance also has some new points that aim towards simplifying administrative procedures, ensuring convenience for social insurance participants and beneficiaries, for instance, using information technology applications, establishing the national database on social insurance, etc. In general, the Draft Law has inherited and developed the current provisions that are consistent with the practice and also amended limited regulations, ensuring the feasibility, and long-term purposes, as well as the synchronism and consistency of the legal system. Accordingly, the Draft Law has extended the subjects and facilitated employees to participate and receive social insurance benefits. The Law on Social Insurance will soon be promulgated in the future. Therefore, enterprises should research and update the Draft Law's provisions to have an early approach to the amendments of relevant legal provisions.