

SOME ISSUES TO BE NOTED BY ENTERPRISES FROM THE DRAFT DECREE GUIDING COMPULSORY SOCIAL INSURANCE

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The Law on Social Insurance 2024 (**Law on Social Insurance**) approved by the 15th National Assembly at the 7th session will officially take effect from July 1, 2025, replacing the Law on Social Insurance 2014. However, the documents guiding the implementation of the Law on Social Insurance are currently based on the provisions of the Law on Social Insurance 2014. Therefore, on November 12, 2024, the Prime Minister issued Decision 1370/QĐ-TTg approving the Plan for implementation of the Law on Social Insurance 2024 and Resolution 142/2024/QH15. After consulting relevant ministries, sectors, localities, and appraisal opinions of the Ministry of Justice, the Ministry of Labour, Invalids and Social Affairs (now merged into the Ministry of Home Affairs) has submitted to the Government a draft Decree detailing and guiding the implementation of a number of articles of the Law on Social Insurance on compulsory social insurance (**Draft Decree**). The below are some specific analyses related to the outstanding contents of the Draft Decree that enterprises need to pay attention to.

Firstly, regarding the subjects of employees participating in compulsory social insurance, they include the employees stipulated in points a, b, c, e, g, h, i, k, l m and n, clause 1, Article 2 of the Law on Social Insurance (for example, people working

under labor contracts, cadres, civil servants, public employees, employees working abroad under contracts, business managers, business household owners with registered business) and clause 2, Article 2 of the Law on Social Insurance (foreigners working in Viet Nam under a fixed-term labor contract of 12 months or more, not subject to internal transfer, or of retirement age). In the case that the employees specified at points a, b, c, i, k, l, clause 1 and clause 2, Article 2 of the Law on Social Insurance are sent to study, do an internship, or work domestically and internationally but still enjoy salary in their home country, they are subject to compulsory social insurance.

Secondly, regarding salary as the basis for compulsory social insurance payment, it is the monthly salary, including salary based on job or title, salary allowances, and other additional amounts, in which:

(i) The salary based on job or title is calculated by the time (by month) of the job or title according to the salary scale and payroll developed by employers according to Article 93 of the Labor Code, and it is agreed upon in labor contracts.

(ii) Salary allowances are compensation for such factors as working conditions, work complexity, living conditions, and level of labor attraction which have not been taken into account or have not been fully calculated in the salary, and are agreed upon in labor contracts; excluding salary allowances that depend on or fluctuate according to labor

productivity, working process and work performance quality of employees.

(iii) Other additional amounts that can be fixed, together with the salary, are agreed upon in labor contracts and paid regularly and stably in each salary payment period; excluding other additional amounts that depend on or fluctuate according to labor productivity, working process, and work performance quality of employees.

The salary used as the basis for compulsory social insurance payment **does not** include other regimes and benefits such as bonuses as prescribed in Article 104 of the Labor Code, initiative bonuses; mid-shift meal allowances; allowances for gasoline, telephone, travel, housing, childcare, small children raising; allowances for the death or marriage of employees' relatives, allowances for employees' birthday, allowances for employees in difficult circumstances when suffering from occupational accidents, occupational diseases, and other supports and allowances recorded as separate items in labor contracts in accordance with the labor laws.

Thirdly, regarding the cases and amounts of requested collection and payment of compulsory social insurance arrears, according to the Draft Decree, requested collection and payment of the compulsory social insurance arrears shall apply to:

(i) Employees entitled to a salary increase, which increases compulsory social insurance premiums with retroactive effect;

(ii) Vietnamese employees working abroad and having their contracts extended or signing new labor contracts in the receiving country will be subject to requested collection and payment upon returning to their home country;

(iii) Subjects under points m and n, clause 1, Article 2 of the Law on Social Insurance, who pay insurance premiums after the latest deadline for paying social insurance (the last day of the month following the payment cycle).

The amount of requested collection and payment of social insurance arrears for groups (i) and (ii) is the payable compulsory social insurance premiums according to Articles 33 and 34 of the Law on Social Insurance (8%, 14%, or 22% of the salary to pension and survivorship fund, 3% of the salary to sickness and maternity fund, depending on specific cases). In the case that by the end of the last day of the month following the month of the decision on salary increase adjustment or the month of returning to the home country, the employer and the employees have not yet made the payment of compulsory social insurance arrears, the social insurance agency will have the right to apply measures to handle acts of late payment or acts of payment evasion according to Article 40, Article 41 of the Law on Social Insurance. For group (iii), the amount of requested collection and payment of social insurance arrears is 3% of the salary used as the basis for compulsory social insurance payment to sickness and maternity fund, 22% of the salary used as the basis for compulsory social insurance payment to pension and survivorship fund, and the amount equal to 0.03%/day calculated on the payable compulsory social insurance premium and the number of days from the latest deadline to the actual day of payment (the last day of the month following the payment cycle).

Fourthly, regarding the responsibilities of employers when delaying compulsory social insurance payment for employees who are eligible for social insurance or laid off, terminate labor contracts and working contracts. In accordance with the Draft Decree, employers are responsible for paying the full amount of compulsory social insurance premiums specified in clause 1, Article 40 and clause 1, Article 41 of the Law on Social Insurance for employees who are eligible for social insurance or laid off, terminate labor contracts or working contracts to promptly settle social insurance benefits for the employees. In the case that the employers have not paid the full compulsory social insurance premiums, the social insurance benefits shall be settled based on the period with paid social insurance premiums for employees eligible for social insurance benefits, and the social insurance payment period will be confirmed up to the time of full social insurance payment for employees being laid off, terminating their labor contracts or working contracts. After collecting the payable amount of compulsory social insurance, the additional time of social insurance payment shall be confirmed and the level of entitlement to social insurance benefits shall be adjusted.

In general, the provisions of the Draft Decree are developed in the direction of ensuring social security, developing the social insurance system towards diversity, flexibility, and ensuring the interests of employees. In addition to the contents analyzed above, the Draft Decree also stipulates other important issues such as the roadmap for participation in compulsory social insurance for business household owners (clause 2, Article 3), adjustment of salaries as the basis for compulsory social insurance payment (Article 16), etc. NHQuang&Associates is willing to provide answers and further legal advice to issues raised by valued Clients and readers related to the new policies and regulations of the Draft Decree and matters related to social insurance in general.