

NEW REGULATIONS GUIDING IMPLEMENTATION OF SOME ARTICLES OF THE SOCIAL INSURANCE LAW ON COMPULSORY SOCIAL INSURANCE

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On July 7, 2021, the Ministry of Labor, War Invalids and Social Affairs issued Circular 06/2021/TT-BLDTBXH amending Circular 59/2015/TT-BLDTBXH guiding the implementation of some articles of the Law on Social Insurance on compulsory social insurance (**Circular 06**). The Circular takes effect on September 1, 2021 and provides some outstanding contents related to employees' rights as follows:

Firstly, supplementing incomes that are not subject to compulsory social insurance contributions. To conform to Article 3 Circular 10/2020/TT-BLDTBXH on elaborating and guiding certain articles of the Labor Code on employment contracts, collective bargaining council and occupations, jobs with negative impacts on reproductive function and children raising, the incomes not subject to compulsory social insurance contributions added by Circular 06 include: "Additional payments with undetermined amounts along with the salary agreed in the employment contract, which are paid regularly or irregularly in every pay period associated with the working process and performance results of employees". These incomes supplement to those not subject to social insurance contributions such as bonuses as prescribed in Article 104 of the Labor Code, bonuses for initiatives; mid-shift meal allowance; vehicle, cell phone, travel, lodging, daycare, children raising allowances; allowances for the employees with relatives who are dead or get married, employee's birthday, allowances for the employees suffering from financial hardship resulted from work accident, occupational disease, etc.

Secondly, providing the regulations on time calculation in the case where an annual leave



coincides with maternity leave. Circular 06 provides specific guidelines for calculating maternity leave period in accordance with Articles 32, 33, Clause 2 Article 34 and Article 37 of the Law on Social Insurance for cases where employees are taking annual leave, permitted personal leave, unpaid leave under labor laws as follows:

- The period that overlaps with annual leave, permitted personal leave and unpaid leave shall not be eligible for maternity benefits;
- Leave periods other than annual leave, permitted personal leave and unpaid leave shall be eligible for maternity benefits in accordance with Articles 32, 33, Clause 2 Article 34 and Article 37 of the Law on Social Insurance.

Thirdly, clearly stipulating male employees' receipt of one-time allowance upon childbirth in accordance with Article 38 of the Law on Social Insurance. Accordingly, Circular 06 has added points c and d to Clause 2, Article 9 of Circular 59/2015/TT-BLDTBXH as follows:

- If the mother engages in social insurance but is ineligible for maternity benefits when giving birth, while the father has paid social insurance premiums for full 06 months in 12 months before the childbirth, the father is entitled to one-time allowance when giving birth, which is 02 months' base salary in the month of childbirth for each child.
- The husband of a surrogacy mother is entitled to one-time allowance as prescribed in Clause 1, Article 9 of Circular 59/2015/TT-BLDTBXH.

Fourthly, stipulating the level of sickness benefits when taking leave in incomplete months. Clause 2, Article 1, Circular 06 has amended and

supplemented the calculation method for enjoying the sickness benefits that require long-term medical treatment with the days of leave less than a full month at point b, Clause 2, Article 6, Circular 59/2015/TT-BLDTBXH according to the following formula:

Benefit level = Salary to pay social insurance premiums of the month preceding the month of leave/ 24 days x Percentage of entitlement to sickness benefits (%) x Number of leave days entitled to sickness benefits.

Accordingly, employees who take sick leave within the days less than a full month will be entitled to a rate proportional to the number of odd days and up to one-month sickness allowance.

At the same time, Circular 06 also amends and supplements the level of sickness benefits for employees who contribute social insurance premiums to sickness and maternity fund, are subject to sickness or accident rather than occupational accidents or must take leave to take care of their sick children being under 7 years old with leave period of 14 days or more within a month (including cases of unpaid leave). Accordingly, the benefit rate will be calculated based on the salary to pay social insurance premiums of the month immediately preceding the month of leave, instead of the monthly salary serving as the basis for payment of social insurance contributions of that month as specified in Clause 3, Article 6, Circular 59/2015/TT-BLDTBXH. In the case where employees remain sick and must take leave in subsequent months, sickness benefits shall be calculated based on the monthly salary serving as the basis for social insurance payment of the month preceding the month of leave.



COMMNETS AND RECOMMENDATIONS

Circular 06 has amended and supplemented a lot of specific guiding regulations that are still unavailable in applicable law on compulsory social insurance regimes or are inconsistent with related legal provisions. This helps to ensure better protected rights of employees in the process of engagement in compulsory social insurance. This is also one of the efforts of the Ministry of Labor, War Invalids and Social Affairs to strengthen and perfect the policies on social insurance for Vietnamese employees.

Employees and businesses should keep updated and study the provisions of Circular 06 to apply appropriately during the implementation of social insurance procedures, ensuring the rights of their employees in the coming time.