

NEW REGULATIONS ON SANCTIONING ADMINISTRATIVE VIOLATIONS IN LABOR AND SALARY

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On January 17, 2022, the Government promulgated Decree 12/2022/ND-CP on regulations of administrative penalties for violations in labor, social insurance, and sending Vietnamese workers to work abroad under contracts (**Decree 12**). Decree 12 replaces Decree 28/2020/ND-CP stipulating penalties for administrative violations in labor, social insurance, and sending Vietnamese workers to work abroad under contracts (**Decree 28**), and provides several supplements and amendments on the acts of violation, forms of violations, and penalties in the fields mentioned above. Below are some notable contents of Decree 12:

Firstly, supplementing acts of violation, forms of violations, penalties in recruitment, conclusion, implementation, and termination of labor contracts, specifically:

- **When recruiting employees:** A penalty from VND 50,000,000 to VND 75,000,000 shall be imposed for the act of enticement, solicitation, promising; misleading advertising, or other tricks to deceive or recruit employees for the purpose of labor exploitation or forced labor but not to the extent of criminal liability.

- **When contracting with employees:** A penalty from VND 2,000,000 to VND 25,000,000 (the penalty depends on the number of employees in the organization or enterprise) for not entering a written labor contract with an employee working for a full month or more, or with the person authorized to conclude labor contracts for a group of employees at the age of 18 or older to do seasonal work or particular work with a term of fewer than 12 months.

- **When implementing labor contracts:**

- A penalty from VND 15,000,000 to VND 30,000,000 shall be imposed for sexual harassment at the workplace but not to the



extent of criminal liability.

- A penalty from VND 50,000,000 to VND 75,000,000 shall be imposed for the act of forcing employees to perform labor contracts to repay debts to the employer.

- **When changing, supplementing, terminating labor contracts:**

- A penalty from VND 1,000,000 to VND 3,000,000 shall be imposed for the failure to notify employees in writing of labor contract termination when the labor contracts terminate.
- A penalty from VND 1,000,000 to VND 20,000,000 (the penalty depends on the number of employees in the organization or enterprise) shall be imposed for the failure to provide the copy of documents related to an employee's working process upon the employee's requests after the termination of the labor contract.
- A penalty from VND 5,000,000 to VND 10,000,000 shall be imposed for not making any labor use plan; making a labor use plan but without the full main contents under regulations of law; or not consulting with the organization representing employees at grassroots level for the workplace having such organization when formulating the labor use plan in case of structural and technological changes or for economic reasons; when dividing, separating, consolidating, merging; selling, leasing or converting the enterprise form; transferring the ownership and the right to use assets of enterprises.
- A penalty from VND 5,000,000 to VND 10,000,000 shall be imposed for the use of the regulations on work performance review without consulting the organization representing employees at the grassroots level for the workplace having such organization.

Secondly, highly increasing the penalty, adding the

violations related to training, fostering, and improving professional skills of enterprises. Accordingly, administrative sanctions will apply to employers that do not sign vocational training contracts with the contents under regulations or collect tuition fees from trainees or apprentices to work for themselves. In addition, Decree 12 increases the sanction from VND 50,000,000 to VND 75,000,000 for behaviors of **(i)** taking advantage of vocational training or apprenticeship to make a profit, or exploiting labor power, or enticing, forcing trainees or apprentices to engage in illegal activities;

(ii) recruiting persons under 14 years old for training or apprenticeship, except for occupations and jobs permitted by law; **(iii)** recruiting people for vocational training to work for themselves with a duration of more than 03 months.



Thirdly, supplementing acts of violation in salary area. Specifically, Decree 12 adds behaviors of **(i)** unequal payment or gender discrimination against employees doing work of equal value; **(ii)** limiting or interfering with employees' right to self-determination to spend their salary; forcing employees to spend their salaries on purchasing goods or services of the employer or another unit designated by the employer; **(iii)** failing to pay or pay insufficient salaries of employees for unused annual leave days or the remaining annual leave days when the employees quit or lose their job; **(iv)** failing to advance or advance insufficient salaries for employees during the suspension of work under the law; and behavior of not paying enough salaries to employees in other specific situations.

In addition to the new provisions mentioned above, Decree 12 also identifies many other violations related to employment, labor sub-lease, dialogues at the workplace, collective bargaining, collective agreements, occupational safety and hygiene, special labor, dispute resolution, etc.

COMMENTS AND RECOMMENDATIONS

Compared with Decree 28, Decree 12 has made significant changes. Decree 12 has added several new acts of violation to better match the practice in current labor use activities in Viet Nam. At the same time, this Decree is also more austere in sanctioning violations against organizations and businesses by raising the level of sanctions for violations.

Decree 12 has come into force since its signing for promulgation. Therefore, organizations and enterprises should study and carry out such tasks as reviewing, editing, or drafting additional types of necessary internal documents to ensure compliance with legal provisions, avoiding administrative sanctions for the violations provided in this Decree.