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## Newsletter

**Updating on levels of sanction of administrative violations in the fields of labour, social insurance and Policies for female employees which will come into effect from November 2015 and a number of guidance on policies of labour, insurance and salary.**

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# Update on levels of sanction in the fields of labour, social insurance which will come into effect from 25 November 2015

The Government has issued Decree No. 88/2015/ND-CP (“Decree 88”) amending Decree No. 95/2013/ND-CP dated 22 August 2013 on sanctioning of administrative violations against regulations in the fields of labour, social insurance, sending Vietnamese employees to work abroad under contracts. A number of contents for the Enterprises’ reference are as follows:

## Sanctioning for violations against regulations in signing labour contracts

**A fine of VND5,000,000 to VND10,000,000**

- Dismissal of 02 employees or above without discussion with the representative organisation of the collective labour in the Enterprise or without notification the provincial labour authority prior to 30 days in the case of re-structuring, technology change, or financial reasons;
- Not setting up the plan of labour employment.

**A fine of VND500,000 to VND5,000,000**

- Requiring probation period toward the employees working under seasonal labour contracts/ Requesting the employees to undergo probation period more than one time for the same job.
- Paying salary for the employee in the probation period less than 85% of the salary of the job.
- Failure to notify the probation results of employees.
- Not entering into labour contracts with employees who continue working at the Company after completion of the probation period.

**A fine of VND1,000,000 to VND20,000,000**

- Failure to enter into written labour contract for the job having term of over 3 months.
- Failure to enter into the right type of labour contract with employees.
- Failure to enter into labour contract with sufficient essential contents of the labour contract.

- Modifying the period of labour contract through its appendix more than once or changing the type of the signed labour contract when modifying the period of labour contract through its appendix.
- Failure to comply with the regulations on payment term of the employee's benefits when terminating the labour contract.
- Failure to pay or pay insufficiently the severance allowance, redundancy allowance for the employees as prescribed by the law.
- Failure to pay or pay insufficiently the compensation for the employees when unilaterally terminating the labour contract against the law.
- Failure to complete the procedures for confirming and returning other kept papers of the employees after terminating the labour contract.

# Update on levels of sanction in the fields of labour, social insurance which will come into effect from 25 November 2015

< Decree No. 88/2015/ND-CP, continued>

## Sanctioning for violations against regulations on salary

A fine of VND5,000,000 to VND50,000,000

- **Not paying salary on time.**
- Paying salary for the employees less than the prescribed levels in the salary scale, the payroll submitted to the labour authority of the district level.
- **Failure to pay or pay insufficiently the overtime salary, salary of night shift, salary of suspension period for the employees as prescribed by the law.**
- **Incorrectly deducting the salaries of employees.**

A fine of VND2,000,000 to VND5,000,000

- Failure to guarantee the time break during working hours, transferring shift, personal leave, unpaid leave for the employees.
- Failure to send a written notification regarding the arrangement of the overtime working from 200 to 300 hours in a year to the provincial labour authority.

A fine of VND10,000,000 to VND15,000,000

- Not obtaining the certificate of training on labour safety, labour hygiene.
- Using employees for the task of labour safety, labour hygiene without certificate of training on labour safety, labour hygiene.
- Not organising periodic examination of health examination/ occupational disease for employees.

## Sanctioning for violations against regulations on employment of foreigners in Vietnam

**Expelling foreign employees working in Vietnam under one of the scenario:**

- Working without work permit as prescribed by the law, except for the case not subject to work permit requirement.
- Using the expired work permit.

Grant Thornton Vietnam would like to note the Enterprises that, the requirement on work permit does not only apply to employees who transferred internally within the group but it is applicable for contractor's employees coming to work in Vietnam under contractor contract.

Furthermore, the Enterprises should re-assess the compliance with the regulations on Personal Income Tax ("PIT") declaration for foreigners working at the Enterprises as well as the PIT obligations of the contractor's employees working at the Enterprises.

Grant Thornton Vietnam will be pleased to support the Enterprises in preparation of dossier for obtaining work permit for foreigner (or Confirmation on not being subject to work permit requirement for foreigners) and declaration of PIT in compliance with regulations.

## Sanctioning for violations against regulations on payment of trade union fees

A fine from 12% to under 20% of total trade union fee

- Late payment/Insufficient payment of trade union fees.

# Whether your Company has complied with the policies for female employees taking effect from 15 November 2015?

The Government issued Decree No. 85/2015/ND-CP to provide details of a number of articles of the Labour Code regarding policies for female employees. Some notable points of policies for female employees are as follows:

## 1. Employers using a large number of female employees shall be supported by the Government as follows:

- Being entitled to Corporate Income Tax (“CIT”) reduction pursuant to the Law on CIT;
- Additional payments for female employees will be included in the deductible expenses when determining CIT taxable incomes according to regulations of the Ministry of Finance.

## 2. Equal working rights of female employees: The Employers have responsibilities to perform equal rights between female employees and male employees in terms of recruitment; employing; training; payment of salary, reward, promotion, remuneration; participation in social insurance, health insurance, unemployment insurance regimes; working conditions; labour safety; working time; rest time and other welfare regimes on physical and mental aspects.

## 3. Health Care for female employees:

- In a periodic health examination, female employees will be examined with obstetric examination according to the obstetric list.
- Arrangement of break time during menstruation, working time for breastfeeding, milking, storing milk, rest and still receive full salary under the labour contracts.
- Employers install milking and milk storage room suitable for the actual conditions at workplace for the needs of female employees and within the capability of the employers.

## 4. The right of unilateral termination and temporary suspension of the labour contract of pregnant employees:

The pregnant employees have the right to terminate the labour contracts or temporarily suspend the labour contract if the continuation of working would negatively affect the foetus.

## 5. Construction of kindergartens, nursery school or a part of cost regarding sending kids, nursery

- Based on specific conditions, the Employers build up the plans on assistance, supporting, construction of kindergartens, nursery schools, or supporting a part of cost regarding sending kids, nursery for female employees having kids in the ages of being send to nursery schools by cash or in-kind. The support level and time shall be agreed between the Employers and female employees.

Grant Thornton Vietnam recommends that the Enterprises should review your labour regulations, collective labour agreements and current labour policies for female employees to make sure the compliance with these new regulations and in order to apply tax incentives policies when the Enterprises employ a large number of female employees.

Please contact with Grant Thornton Vietnam’s professional advisors if the Enterprises need further assistance in reviewing and updating the policies on labour for female employees in particular and policies on labour for the entire employees (Vietnamese and foreigners) in general pursuant to the regulations of labour Code and legal documents in labour field.

# Guidance on policies of labour, insurance and salary

The Ministry of labour-Invalids and Social Affairs has issued Official Letter No. 3945/LĐTBXH-LĐTL on 30 September 2015 guiding some regulations of labour Code that should be noted as follows:

## 1. Time basis for calculating severance allowance for employees

For employees not contributing unemployment insurance due to sick leave or maternity leave for one full month or more, in the case if they terminate the labour contracts, the employers are responsible for paying severance allowance to these employees for such period as mentioned above.

Grant Thornton Vietnam recommends that the Enterprises should review the list of employees to accurately calculate the amount of severance allowances payable for employees who are not participating in unemployment insurance due to sick leave or maternity leave for one full month or more.

## 2. Compulsory insurance participation during probation period

During probation period under a separate probation contract, employees are not subject to participate in social insurance and health insurance.

Grant Thornton Vietnam recommends that the Enterprises should review your Policies on labour to ensure correct and sufficient payment of social insurance and health insurance obligations.

## 3. Payment for overtime salary, holiday, leave pay

Calculation basis to pay for overtime salary, leave pay, holiday pay is the salary consisting of salary level of the job or position, salary allowances and other additional payments.

Grant Thornton Vietnam recommends that the Enterprises should review your Policies on labour to ensure the correct calculation and payment of overtime salary, holiday, leave pay for employees under regulations of labour Code.





# Contact

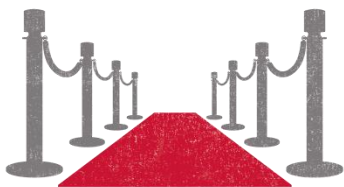
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# Questions & feedback

