

# LEGAL UPDATES

December 2019

## LABOR CODE 2019

Law No. 45/2019/QH14 dated November 20, 2019 of the National Assembly refers to Labor Code. Compared with the prevailing Labor Code No. 10/2012/QH13, the new Labor Code has many noticeable changes.

One of which is the provision “the employee does not have to pay the fee for the labor recruitment” (Clause 2 Article 11). This Article means that the new Labor Code prohibits companies and enterprises to collect the recruitment fee.

In addition to the name “labor contract”, the enterprise and the employee might agree to sign a contract under another name, as long as the contract fully expresses contents referring to the paid employment, the management, the administration and supervision of a party (Clause 1 Article 13).

Referring to the form of the contract, it is possible to sign the paper contracts or e-contracts. For the form of verbal communication, it is only allowed for contracts of less than 1 month, instead of less than 3 months as previously provided (Clause 1, 2 Article 14).

About the probation period, the new Labor Code allows to increase the maximum probation period up to 180 days (previously only 60 days) for corporate management positions (Article 25).

Another notable point of the new Labor Code is that it is allowed for the employee to unilaterally terminate the

contract (severance) without reasons, the employee only needs to comply with the notice term in advance (Article 35).

The number of National Day holidays will be increased by 01 day, including the date September 02 and 01 day before (September 01) or 01 following day (September 03) (Article 112).

In addition, the retirement age will be increased according to the schedule as follows: from 60 years of age to 60 years and 3 months of age (for men) and from 55 years of age to 55 years 4 months of age (for women), applicable from 2021 and then it will be added with 03 months (for men) and 4 months (for women) for every year passing. Until 2028, the retirement age of men will be 62 and until 2035 the retirement age for women will be 60 (Article 169).

The Labor Code takes effect from January 01, 2021 and replaces the Labor Code No. 10/2012/QH13 dated June 18, 2012.

The Labor Code simultaneously amends and supplements some articles of the Law on Social Insurance No. 58/2014/QH13 dated November 20, 2014 (which were already amended and supplemented by the Law No. 84/2015/QH13 dated June 25, 2015 and the Law No. 35/2018/QH14 dated November 20, 2018).



## **Invoice issuance notification will be posted on the General Department of Taxation's website after 02 days of receipt**

Official letter No. 4731/TCT-TVQT dated November 19, 2019 of the General Department of Taxation refers to the public of the invoice issuance of the tax payer on the website of the tax industry.

In order not to affect the business and production of the enterprise, the General Department of Taxation requires the tax departments of provinces have to post the invoice issuance notice of the enterprise on the website of the tax industry within 02 working days from the reception date.

The enterprise needs to take note that the invoice issuance notice accompanied with the sample invoice must be sent to the managing tax authority at least 02 days before starting to use invoices. The notice must ensure having full contents as prescribed at Circular No. 39/2019/TT-BTC and amended at Circular No. 37/2017/TT-BTC.

## **Using e-invoices under the former regulations is still allowable in case of no conversion requested by the tax authority**

Official letter No. 90806/CT-TTHT dated December 04, 2019 of the Tax Department of Ha Noi City refers to the content on e-invoices.

According to Decree No. 119/2018/ND-CP and Circular No. 68/2019/TT-BTC, the application of a new type of e-invoices in the transition period from November 01, 2018 to October 31, 2020 is only mandatory to those enterprises that have the direct request from the managing tax authority.

Conversely, if the tax authority does not make the request, then the enterprise is still allowed to continue using the old type of e-invoices according to Decree No. 51/2010/NĐ-CP (amended at Decree No. 04/2014/NĐ-CP) and Circular No. 32/2011/TT-BTC. Meanwhile, the content on e-invoices must be performed as prescribed at Article 6 Circular No. 32/2011/TT-BTC.

## Cases allowable for working overtime up to 300 hours per year

Official letter No. 5199/LDTBXH-ATLD dated December 03, 2019 of the Ministry of Labor, Invalids and Social Affairs refers to the request for extending the limit of overtime working hours in a year.

For some special cases which are allowed to work overtime from 200 hours up to 300 hours a year, the Ministry of Labor requests enterprises to refer the provisions at Point b Clause 2 Article 106 Labor Code and detailed provisions at Clause 2 Article 4 Decree No. 45/2013/NĐ-CP.

In addition, for those enterprises that employ workers for seasonal manufacturing and processing of goods, the arrangement for working overtime up to 300 hours a year should be carried out in accordance with the Circular No. 54/2015/TT-BLĐTBXH.

*Clause 2 Article 4 Decree No. 45/2013/NĐ-CP stipulates cases allowable to have overtime hours from 200 hours up to 300 hours a year, including:*

- *Production and processing of textiles, garments, leather, shoes, agricultural, silvicultural, and aquaculture products;*
- *Electricity supply, telecommunication services, oil refinery, water supply and drainage;*
- *Other urgent cases in which works must not be postponed.*

## Are there any regulations on the minimum amount of Tet rewards?

Pursuant to Article 103 Labor Code 2012, it stipulates the bonus of the employee as follows:

**B**onus is the amount that employer rewards the employee based on the annual business and production results and the level of work completion of the employee.

**R**egulations on bonus shall be decided by the employer and publicly announced at the workplace after consulting the representative organization of the labor collective at the grassroots level.

Therefore, basing on the above provisions, it is understood that the employer offers Tet Bonus on Tet Holiday or not determined by the employer. This issue might be specified in the collective labor agreement in advance. However, in fact, employers will offer bonuses more or less for employees during on the occasion of Tet Holiday. The issue of offering Tet Bonus is intended to give employees a greater motivation to engage with the enterprise and also to support workers to have an income for spending and preparing for Tet Holiday.

Due to not mandatory, when determining Tet Bonuses for employees, the enterprise will base on the business and production results of the last year of the Company, as well as the working position and contributions of employees to offer bonuses in consistent with each employee.

Therefore, currently there is no legal documents stipulating that the enterprise must make a specific amount of money to reward employees for Tet Holiday.

### NOTICE

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