

# LEGAL UPDATES

November 2019

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## Whether a permanent labor contract is required in case of re-recruiting an employee who has previously retired

Official letter No. 4554/LDTBXH-PC dated October 25, 2019 of the Ministry of Labor, Invalids and Social Affairs refers to the conclusion of labor contracts and additional annual leave according to their seniority.

As stipulated at Clause 2 Article 22 of the Labor Code No. 10/2012/QH13, the enterprise is only allowed to sign fixed term labor contracts two times. Then, if re-signed, it shall be the indefinite term labor contract.

However, if the employee already signed two term labor contracts and left the Company, a later time, this employee is re-hired, then the enterprise is allowed to choose to sign term labor contracts or indefinite labor contracts, similar to signing with a whole new employee.

Regarding to the number of additional holiday for senior working over 05 years, the Ministry of Labor, Invalids and Social Affairs supposes that at Article 112 Labor Code No. 10/2012/QH13 does not regulate that 5 years' working for an employer must be consecutive, therefore, every 5 years' working for an employer considering for adding 01 annual leave shall base on the total working time at the same enterprise. in other words, those employees who have non-consecutive working time at the enterprise are allowed to enjoy the benefit of additional annual leave if the total working time achieve 05 years, 10 years, 15 years and so on.

### New fines in the field of foreign currencies and banking

Decree No. 88/2019/ND-CP dated November 14, 2019 of the Government stipulates on sanctioning the administrative violation in the field of banking and monetary.

The maximum fines in the field of foreign currencies and banks under this Decree still remains 02 billion VND (for organizations) and 01 billion VND (for individuals).

However, compared with old provisions, the Decree supplements some new violations that shall be fined, in particular in the field of foreign currencies, such as:

Foreign exchange transactions between individuals, foreign exchange transactions at the place that is not allowed to exchange foreign currencies, the fine will be from 10 million VND to 20 million VND (for individuals) and from 20 million VND to 40 million VND (for organizations) if the value of the foreign exchange transaction is from 1.000 USD to under 10,000 USD or under 1,000 USD but re-offend or having many violations (Clause 2 Article 23).

With same above violations but the value of the foreign exchange transaction from 10,000 USD to under 100,000 USD, then the fine will be from 20 million VND to 30 million VND (for individuals) and from 40 million VND to 60 million VND (for organizations).

Or violations of goods payment in foreign currencies, the fine will be from 10 million VND to 20 million VND (for individuals) and from 20 million VND to 40 million VND (for organizations) if the payment value is from 1,000 USD to under 10,000 USD or under 1,000 USD but re-offend or having many violations; the fine will be from 20 million VND to 30 million VND (for individuals) and from 40 million VND to 60 million VND (for organizations) if the payment value is from 10,000 USD to under 100,000 USD.

However, those acts such as foreign exchange transactions between individuals; foreign exchange transactions at the place that is not allowed to exchange foreign currencies if the transaction value is under USD 1,000 and not re-offend, not violate many times, then these acts are only warning penalties.

The Decree takes effect from December 31, 2019 and replaces Decree No. 96/2014/ND-CP dated October 17, 2017.



## 2020 Lunar New Year Holidays

Announcement No. 4544/TB-LĐTBXH dated October 25, 2019 of the Ministry of Labor, Invalids and Social Affairs refers to 2020 Lunar New Year Holidays for officers, public servants and employees of career and administrative agencies.

The written notice reminds 2020 Lunar New Year Holiday schedule for government officers and public servants approved by the Prime Minister at Official letter No. 9087/VPCP-KGVX dated October 07, 2019.

Accordingly, 2020 Lunar New Year, government officers and public servants will be off 07 consecutive days from December 29 to January 05 (the Lunar Calendar), ie from January 23, 2020 to January 29, 2020 (the Solar Calendar), in which January 04 and January 05 (the Lunar Calendar) is 02 compensatory leave for January 01 and January 02 (the Lunar Calendar) which are on Saturday and Sunday.

For enterprises, the Lunar New Year Holiday schedule is still applicable at Point b Clause 1 Article 115 Labor Code with 05 consecutive days. In which, enterprises are allowed to choose one of two options: (i) 1 day off at the year end and 04 days off at the early of the year or (ii) 2 day off at the year end and 03 days off at the early of the year.

## Amendment of regulations on reporting of suspicious transactions

Circular No. 20/2019/TT-NHNN dated November 14, 2019 of the State Bank refers to the amendments to a number of Articles of the Circular No. 35/2013/TT-NHNN dated December 31, 2013 of the State Bank guiding implementation of a number of regulations on anti-money laundering.

According to amendments at Clause 2, Article 1 of this Circular, international electronic money transfers without information on the remitter, the beneficiary will be considered as having the risks of money laundering by the Bank and the Bank will apply appropriate settlement and measures including: denial of transaction, suspension of transaction or post-transaction monitoring.

For those suspicious money transfer transactions, the Bank will have to report following information of the remitter, the beneficiary: contact address, permanent address, temporary residential address (in case of individual) and contact address, office address (in case of organization) (Clause 4 Article 1).

## 2020 Tet reward plans must be public by December 31, 2019

Official letter No. 38886/SLDTBXH-LD dated November 12, 2019 of the Department of Labors, War Invalids and Social Affairs.

The Official letter reminds that enterprises should make early and adequate notice to employees on salary and reward plans for the occasions of 2020 New Year and Lunar New Year with the latest date by December 31, 2019.

The notice content must include salaries, bonuses, allowances, benefits for employees on the occasion of Lunar New Year (Tet gifts, benefits of travel tickets and so on), Tet Holiday, Annual vacations, payment time of the salaries, bonuses and so on.

The payment of Tet salaries and bonuses must be adequate and timely as the plan announced, not to happen the unpaid salary and bonus debts that will lead to the risk of labor disputes.

In addition, the Official letter also notes that the enterprise must implement Lunar New Year Holiday Schedule according to the provisions at Point b Clause 1 Article 115 of the Labor Code and agreement in the labor contract, collective labor agreement. For the case that the arrangement of Tet combing annual vacation, the enterprise must negotiate with employees and publicly inform before implementation.

For those domestic electronic money transfer transactions, if the remitter, the beneficiary is a foreigner, the entry visa Number, overseas address and Vietnamese address must be additionally reported clearly.

For those international electronic money transfer transactions having the value which is equivalent to USD 1,000 or above, the beneficiary's bank will conduct authentication, identity of the beneficiary by the measures prescribed at Article 11 Law on Anti-money Laundering (Clause 5 Article 1).

The Circular takes effect from November 14, 2019.

Clause 5 Article 1 Circular No. 31/2014/TT-NHNN dated November 11, 2014 is repealed.

## Region-based minimum wage levels 2020: Increasing from 150,000 dong to 240,000 dong

Decree No. 90/2019/ND-CP dated November 15, 2019 of the Government stipulates the region-based minimum wage levels for employees working under labor contracts.

From January 01, 2020, the region-based minimum wage levels shall be increased from 150,000 dong to 240,000 dong compared with the current levels.

It shall be noted that this is the region-based minimum wage levels 2020 for employees doing simple tasks, for those people who having apprenticeship, vocational training, then the region-based minimum wage levels must add at least 7%.

Regarding to the areas applying the region-based minimum wage levels 2020, please refer to the attached appendix.

### Wage levels corresponding to each region are as follows:

Region I: 4,180,000 dong up to 4,420,000 dong per month (240,000 dong higher).

Region II: 3,710,000 dong up to 3,920,000 dong per month (210,000 dong higher).

Region III: 3,250,000 dong up to 3,430,000 dong per month (180,000 dong higher).

Region IV: 2,920,000 dong up to 3,070,000 dong per month (150,000 dong higher).

The Decree takes effect from January 01, 2020 and replaces Decree No. 157/2018/ND-CP dated November 16, 2018.

### Comparison of year-by-year minimum wage

REGION-BASED MINIMUM WAGE				
Region	2017	2018	2019	2020
I	3,750,000	3,980,000	4,180,000	4,420,000
II	3,320,000	3,530,000	3,710,000	3,920,000
III	2,900,000	3,090,000	3,250,000	3,430,000
IV	2,580,000	2,760,000	2,920,000	3,070,000

#### NOTICE:

"The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application."