



LEGAL UPDATE

DECREE 152 PROVIDES GUIDANCE ON EMPLOYING FOREIGNERS

The Vietnamese Government recently issued Decree 152/2020/ND-CP to regulate the management of foreign employees in Vietnam and the recruitment and management of Vietnamese nationals working for foreign organisations and individuals in Vietnam (**Decree 152**).

Decree 152 will come into effect on 15 February 2020 and replaces Decree 11/2016/ND-CP (**Decree 11**). Decree 152 is introduced as part of the new Labour Code, in effect as of 1 January 2021.

Decree 152 lays out the requirements and procedures for issuance, re-issuance, renewal, and revocation of work permits and conditions for an exemption from the work permit obtained by foreign employees in Vietnam. Decree 152 also outlines new requirements for the recruitment and management of Vietnamese workers working for foreign organisations and individuals in Vietnam.

This update highlights the most notable changes to the law compared to previous decrees.

1. Work Permit Requirements

Work permits are issued to foreign individuals meeting the requirements for expert, manager, executive or technical worker. Article 3 of Decree 152 includes additional criterion to qualify as an expert and technical worker.

1.1. Expert

Under Decree 152, a foreign employee can no longer be certified as an expert by a foreign agency or organisation for the purpose of working in Vietnam. Experts will now be determined solely by years of working experience and qualifications. The following must be satisfied for certification as an expert:

- a. An individual holding a bachelor's degree or equivalent and has at least 3 years' experience in their field corresponding with the job position/job assignment that they will be appointed in Vietnam; or

- b. Has at least 5 years' experience and a practicing certificate in corresponding with the job position that they will be appointed in Vietnam; or
- c. Falls under a special case subject to the decision of the Prime Minister according to a request from the Ministry of Labour, War Invalids and Social Affairs (**MoLISA**).

This is different from Decree 11 where a document from a foreign organisation, enterprise or agency stating that the person was an expert would be sufficient. Moreover, the required corresponding experience has increased from 3 to 5 years and a practicing certificate is required.

1.2. Technical Worker

Decree 152 introduces an additional opportunity for certification as a technical worker. Prior to Decree 152, a person could be considered a technical worker only by demonstrating at least 1 year of relevant training and three years working in the field. Decree 152 now adds an additional consideration as follows:

- a. An individual that has been trained in a technical field or another major for at least 1 year and has worked for at least 3 years in their trained field; or
- b. Has at least 5 years' experience corresponding with the job position that they will be appointed in Vietnam.

The criterion under b did not exist in Decree 11.

2. Work Permit Process

Article 4 of Decree 152 requires that an employer wishing to employ a foreign individual send a request for approval to hire foreign employees (**Demand for Foreign Employees**) to MoLISA or the Provincial People's Committee 30 days prior to hiring. A response to such request will be received within 10 working days. Note that in case of work permit exemptions, more categories are now excluded from submitting this request than was the case under Decree 11, as more categories are exempted.

Article 11 requires that upon approval of the request, employers must request a work permit to be issued at least 15 working days prior to the start of work by the foreign employee. The application should be submitted to MoLISA or the relevant Provincial Department of Labour, War



Invalids and Social Affairs (**DoLISA**), with supporting documents showing that the foreign individual meets the requirements for the work permit application.

MoLISA will issue the work permit to the foreign individual within 5 working days from submission of the work permit application. This was 7 working days under Decree 11.

The foreign individual is required to sign the labour contract after the date the work permit is issued and prior to commencement of work, and the employer is required to send a copy of the signed contract to the authorities. Additionally, prior to July 5 and January 5 of the following year, employers are required to submit 6-months' and yearly reports on the use of foreign employees.

3. Work Permit Exemptions

Article 7 of Decree 152 and Article 154 of the Labour Code outline the types of foreign employees exempted from having a work permit. There are some changes compared to Decree 11, as some new categories are added such as being married to a Vietnamese citizen and more detailed requirements, such as the minimum threshold for a. and b. below. The following categories will be exempted:

- a. The owner or capital contributor of a limited liability company with a capital contribution value of 3 billion Vietnamese Dong (**VND**) or more;
- b. A shareholder being the chairman or a member of the board of management of a joint stock company where value of the capital contribution is 3 billion VND or more;
- c. The head of the representative office, project or a person otherwise taking the main responsibility for the operation of an international organisation or foreign non-governmental organisation in Vietnam;
- d. A person entering Vietnam for a period of less than 3 months to (a) offer services for sale; or (b) resolve a breakdown or address a technically or technologically complex situation affecting or with the risk of affecting production or business, which experts currently in the country are unable to resolve;
- e. A person entering Vietnam by way of an internal transfer to work for an enterprise operating one of the 11 services listed in the Schedule of Specific Commitments in Services under Vietnam's accession to the World Trade Organisation;
- f. A person entering Vietnam to work as a manager, managing director, expert or technician for a working

period of less than 30 days not more than three times per year;

- g. A person entering Vietnam to provide expert and technical consultancy services or to carry out other tasks servicing the work of research, formulation, evaluation, monitoring and assessment, management and implementation of a program or project using official development aid (**ODA**) in accordance with an international treaty on ODA signed by the competent authorities of both Vietnam and another country;
- h. A person sent to Vietnam by competent foreign agencies or organisations to teach and research at international schools under the management of foreign diplomatic missions or the United Nations; establishments and organizations established under the agreements that Vietnam has signed and acceded to;
- i. A person in charge of setting up the commercial presence of an organization in Vietnam;
- j. A foreign lawyer issued with a practicing certificate to practice law in Vietnam in accordance with the Law on Lawyers;
- k. A person issued with an operational license in the information and press sector in Vietnam by the Ministry of Foreign Affairs in accordance with the law;
- l. A person having a service passport working for a State agency, political organisation or socio-political organisation;
- m. A person who is certified by the Ministry of Education and Training as a foreign worker entering Vietnam for teaching and research purpose;
- n. A volunteer entering Vietnam to perform work in accordance with international treaties of which Vietnam is a member and his/her entry being confirmed by a foreign diplomatic office or international organization in Vietnam;
- o. Students who are studying at overseas schools and training institutions with internship agreements in agencies, organizations and enterprises in Vietnam; trainees and apprentices on Vietnamese vessels;
- p. Relatives of members of foreign representative missions in Vietnam;
- q. Foreigners married to a Vietnamese citizen and living in the territory of Vietnam; and



- r. Other cases in accordance with international treaties which Vietnam is a member or pursuant to Government regulations.

4. Extension of Work Permit

Under Article 10 and Article 19 of Decree 152, the initial duration of the work permit is 2 years and can be extended once for an additional 2 years. Application for extension must be received at least 5 days prior to expiry date but not longer than 45 days. The application dossier should be submitted to MoLISA or the DoLISA that issued the existing work permit. Within 5 working days, the authorities will issue the extension of the work permit or provide a written explanation for denial.

5. Recruitment and Management of Vietnamese Citizens

Article 24 of Decree 152 allows foreign organisations and individuals to directly recruit Vietnamese citizens without engaging recruitment organisations. The foreign organisations or individual is required to provide written notice along with a certified copy of the labour contract to the competent authority within 7 working days from the date of signing the labour contract.

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