



## LEGAL UPDATE

### DECREE 143 ON APPLICABILITY OF SOCIAL INSURANCE FOR FOREIGN EMPLOYEES

Decree No. 143/2018/ND-CP (**Decree 143**) gives details about the Law on Social Insurance and the Law on Occupational Safety and Hygiene regarding mandatory social insurance for foreign employees working in Vietnam and entered into force on 1 December 2018.

Under the Law on Social Insurance No. 58/2014/QH13 dated 20 November 2014 (**Law on SI**) the law would also apply to foreign employees as of 1 January 2018. However, until Decree 143 implementing guidelines were lacking, and it was therefore not clear what the scope would be.

Decree 143 gives the long-awaited guidance about the scope of the Law on SI. The application will be implemented in two steps. The first enters into force in 2018 and the second per 2022.

We set out below the most important highlights regarding the participation in compulsory social insurance of the Foreign Employees under Decree 143.

#### 1. Conditions

The following conditions must be met for a foreign employee to be covered by Decree 143. The foreign employee must:

- Have obtained a work permit, a practicing certificate or license issued in Vietnam;
- Have a labour contract of at least one year;
- Not be an intra-company transferee<sup>1</sup>; and
- Not have reached the retirement age<sup>2</sup>.

#### 2. Coverage

The foreign employee will benefit from the same range of mandatory social insurance as Vietnamese employees:

sickness; maternity leave; occupational diseases and accidents; retirement; and death.

The coverage for sickness, maternity leave occupational diseases and accidents entered into force on 1 December 2018. The coverage for retirement and death shall enter into force on 1 January 2022.

#### 3. Insurance Percentage

The premium that a foreign employee and the employer will have to pay is a percentage of the salary. For social insurance the following percentages apply for employee and employer respectively per the dates in Decree 143:

Insurance percentage from 1 December 2018	
<b>Employee</b> 0%	<b>Employer</b> 3.5% of which: - 3% to sickness and maternity funds; and - 0.5% to occupational diseases and accident funds

Insurance percentage from 1 January 2022	
<b>Employee</b> 8% (to retirement and death funds)	<b>Employer</b> 17.5% of which: - 3% to sickness and maternity funds; - 0.5% to occupational diseases and accident funds; and - 14% to retirement and death funds

A foreign employee who neither works nor receives salaries or wages for at least 14 working days in each month does not have to pay social insurance in that month. That month shall not be taken into account when it is determined if the foreign employee is entitled to social insurance benefits, except in case of absence due to maternity leave. In this case employers do not have to pay social insurance for the foreign employee.

<sup>1</sup> An intra-company transferee is a manager, executive director, expert or technician of a foreign enterprise with a commercial presence in Vietnam and who is temporarily transferred internally within the enterprise to the commercial presence in Vietnam, and who was recruited or employed by the foreign enterprise at least twelve months prior to such transfer.

<sup>2</sup> The retirement age in Vietnam is 60 years old for males and 55 years for females.



Furthermore, in case the foreign employee has employment contracts with more than one employer, both the employer and the foreign employee shall only pay social insurance for the first employment. However, the employers shall pay for the social insurance fund per each employment contract in case of occupational accident and disease insurance fund.

#### **4. One-off claim lump sum**

From 1 January 2022, it is possible for a foreign employee to claim a one off lump-sum pay-out in case one of the following conditions is met. The foreign employee must:

- Have reached the retirement age but has not contributed for 20 years in full to the social insurance;
- Have a terminal illness as defined by the law;
- Be eligible to receive monthly retirement allowances but is no longer residing in Vietnam; and
- Have terminated a labour contract and expired practice licenses, practicing certificate or work permit *and* the foreign employee does not continue to work under a labour contract.

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