

Special Alert

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Decree 70 - New regulations for foreign employees working in Vietnam

Introduction

On September 18, 2023, the Government issued Decree No. 70/2023/ND-CP ("Decree 70"), amending and supplementing Decree No. 152/2020/ND-CP dated December 30, 2020, which regulates foreign employees working in Vietnam and the recruitment and management of Vietnamese employees working for foreign entities or individuals in Vietnam. Decree 70 took immediate effect upon issuance, except for the section regarding job postings as mentioned in Section 3, which is scheduled to become effective on January 1, 2024.

Decree 70 introduces significant changes to the regulations governing the issuance of work permits ("WPs") for foreign employees working in Vietnam. In addition to clarifying certain concepts, easing requirements for specific job titles, and changing the order and procedures for the application process, Decree 70 regulates new requirements and conditions for hiring foreign employees and tightens management to prioritize protecting employment opportunities for local employees. Key takeaways include:

Change of licensing authority jurisdiction

According to Decree 70, the Management Boards of Economic and Industrial Zones are no longer responsible for the management of foreign employees working in these areas.

The authority for granting WPs and managing foreign employees across the country, including inside and outside the Economic Zones and Industrial Zones, falls under the jurisdiction of the Ministry of Labour-Invalids and Social Affairs ("**MOLISA**") and the Department of Labour-Invalids and Social Affairs ("**DOLISA**") at the location where the foreign employees are intended to work. This change

aims to unify the recruitment and management of foreign employees working in Vietnam from the central to local levels. Moreover, having an authorized specialized agency to grant WPs and manage foreign employees helps to unify the management and simplify the permitting process.

Easing experience requirements for the titles of "Expert" and "Technician"

Decree 70 significantly simplifies the process for foreign employees in Vietnam by eliminating the requirement that foreign employees must have work experience in a specialty appropriate for the job it is proposed the foreigner will take up in Vietnam two titles of Expert and Technician. This change addresses the challenges faced by enterprises under Decree 152, where many employees, despite not having experience in their trained field, still met the job requirements. As a result, foreign employees only need to have work experience suitable to the position they intend to work in Vietnam, making it easier for them to obtain WPs.

Notification of the recruitment of Vietnamese employees before applying for approval of the need to employ foreign employees

Starting from January 1, 2024, enterprises must first post notifications on the recruitment of Vietnamese employees to the positions expected to recruit foreign employees on the Electronic Information Portal of the MOLISA (Employment Department) or the Electronic Information Portal of the Employment Service Centre within at least 15 days from the expected date of reporting explaining the need to use foreign employees. The enterprises can only submit a report explaining the need to employ foreign employees after they fail to find suitable Vietnamese candidates.

This new regulation holds significance in managing, administering, and controlling the utilization of foreign employees in Vietnam. This ensures the protection of the rights and interests of Vietnamese employees and gives them access to information and opportunities to apply for jobs that enterprises need to employ foreign employees, thereby ensuring transparency in the context of market integration. Moreover, this regulation contributes to the transparency of the foreign employee recruitment process, including the provision of their rights and working conditions in accordance with the prevailing labor laws.

Shortened timeframe for reporting or amending the demand for the use of foreign employees

Decree 70 adjusts the timeframe within which employers must fulfill their obligation to specify the need for employing foreign employees to the competent state authority from 30 days to 15 days prior to the anticipated date of employment.

Furthermore, Decree 70 also explicitly outlines cases involving changes in the demand for foreign employees, such as positions, job titles, working forms, numbers, and locations. In these cases, employers must report to the competent state authority at least 15 days prior to the anticipated date of employment instead of the previous stipulation of 30 days as stated in Decree 152.

This change facilitates a more flexible recruitment process, reduces waiting times, and enables a rapid response to the enterprises' need for foreign employees.

Definitions clarification

An executive director

Instead of the general definition stating that "An executive director is a person who heads and directly manages a unit within an agency, organization, or enterprise" which posed practical challenges for application, Decree 70 provides specific titles that are considered an executive director, namely:

- The head of a branch, representative office, or business location of an enterprise; and
- The head and direct administrator of at least one field within the agency, organization or enterprise and is under the direct direction and administration of the head of the agency, organization, or enterprise.

Documents to serve as proof of being the manager or executive director

Decree 70 specifies three types of documents that serve as proof of being the manager or executive director, marking a significant improvement over the vague guidelines in the previous Decree 152. The three types of documents that can be used as proof are as follows:

- The company's charter or operation regulations of agencies, organizations, or enterprises;
- Enterprise registration certificate or establishment certificate, or establishment decision, or other documents of equivalent legal validity; and
- Resolutions or appointment decisions of agencies, organizations, or enterprises.

Additional provisions

Decree 70 regulates additional provisions to provide more detailed guidance for several cases that Decree 152 did not previously address, specifically:

- (i) In cases where foreign employees work for one employer in multiple locations:
 - In the application for the WP, the employer must list all the work locations; and
 - Within three working days from the starting date of the foreign employee in more than one province or centrally run city, the employer must report electronically to the MOLISA and the DOLISA where the foreign employees are scheduled to work.

Previously, Decree 152 did not specify this matter. Therefore, in principle, foreign employees were understood to work at only one location, as indicated on their WPs. However, the choice of work location is considered a right of the foreign employee and has been legally recognized through the regulation that "if the employee performs the job on a regular basis in varied locations, specify them". Therefore, this new regulation is seen as granting enterprises more flexibility in using foreign employees while still ensuring competent authority management oversight through the employer's obligation to report within 3 working days from the starting date of the foreign employees.

- (ii) To demonstrate their status as experts or technical employees, in addition to diplomas, certificates, and confirmation documents from foreign authorities, organizations, or enterprises regarding the number of years of experience as required, Decree 70 introduces the provision that a WP or confirmation of exemption from the WP requirement that has been previously granted to foreign employees is also considered as valid documentation to verify the work experience of foreign employees.
- (iii) Additional cases of foreign employees not subject to a WP, specifically: being sent to Vietnam by a competent foreign agency or organization to teach or act as a manager or executive director at an educational institution proposed by a foreign diplomatic mission or intergovernmental organization to establish in Vietnam; establishments and organizations established under international treaties to which Vietnam has signed and acceded.
- (iv) For foreign employees classified as experts or technical employees who have been granted a WP and had it extended once and wish to continue working in the same position and job title specified in the WP, the application for a new WP, in addition to the required documents, must be accompanied by a copy of the previously issued WP.

In conclusion, Decree 70 is a comprehensive regulatory update that aims to improve the management of foreign employees in Vietnam, ensuring a more transparent, efficient, and equitable labor market. It is crucial for businesses operating in Vietnam to understand and adhere to these new regulations to navigate the permit application process effectively and comply with the legal framework. These changes represent a positive step towards creating a dynamic and inclusive workforce in Vietnam.

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