

Alert on immigration

January 2021

On 30 December 2020, the Government officially issued the long awaited Decree No.152/2020/ND-CP ("Decree 152") providing guidance on implementation of some articles of the Labor Code No. 45/2019/QH14 with regard to foreign workers working in Vietnam and recruitment and management of Vietnamese laborers working for foreign organisations or individuals in Vietnam. Decree 152 will take effect from 15 February 2021.

Highlighted below are certain notable points pertaining to foreign workers working in Vietnam:

1. Work permit exemption cases

Decree 152 clarifies certain cases exempt from work permit, which include the following:

- a. Foreigners married to Vietnamese citizens and living in Vietnam
- b. Owners or shareholding members of limited liability companies with a capital contribution of VND3 billion or more
- c. Chairpersons or members of the Board of Directors of joint-stock companies with a capital contribution of VND3 billion or more
- d. Foreign experts, managers, CEOs, skilled workers going to work in Vietnam for less than 30 days per trip and no more than three trips per year
- e. Foreigners coming to Vietnam to set up a commercial presence of a foreign entity in Vietnam

For a, b, c and d above, the Vietnamese sponsoring organizations are not required to complete the work permit exemption certification procedure but still need to report to the labor authorities at least three days in advance of the commencement of work in Vietnam.

2. Term of work permit/work permit exemption certificate

The Decree re-confirms that the maximum term of work permit or work permit exemption certificate is two years and foreign workers are only permitted to renew once for a further two-year term. Thereafter, it is understood that foreign workers are required to start a fresh work permit/work permit exemption application to continue to work in Vietnam.

3. Certificate of expert is no longer accepted

According to Decree 152, a certificate of expert issued by an overseas organization is no longer accepted as supporting document to prove expertise. Instead, proof of five years experience plus a practising certificate equivalent to the job position in Vietnam will be required.

4. Withdrawal of work permit/work permit exemption certificate

Decree 152 requests that for certain cases, the employers must withdraw the work permits from the foreign workers and return to the Labour authority within 15 days from the date the work permit is invalid. In addition to the work permit, the employer must submit a letter explaining the reason for the withdrawal or the reason for not being able to withdraw the work permit from the employee, who are subject to work permit withdrawal.

5. Duration of Foreign worker's labour contract

According to the Labour Code, the duration of a foreign worker's labour contract must not exceed that of the work permit. As the maximum term of work permit is two years, the duration of labour contract of foreign worker is a maximum of two years.

6. Report on use of foreign workers

It is regulated that before 5th July and 5th January of the following year, the employer must submit bi-annual report on the status of foreign workers working for the employer to the relevant MOLISA/DOLISA.

7. Choice of submission of work permit related documents to MOLISA or to DOLISA

Decree 152 allows certain employers to choose to apply for work permit, work permit exemption, work permit extension or withdrawal at MOLISA instead of DOLISA.

8. Provision of information by the Ministry of Public Security to Ministry of Labors, War Invalids and Social Affairs

To enhance the monitoring and management of foreign workers, the Decree regulates that every-month, the Ministry of Public Security shall inform MOLISA of the list of foreigners who are granted with visa to work for/ with Vietnamese sponsoring organisations.

KPMG notes

Decree 152 indicates that apart from extending cases eligible for work permit exemption, the government will adopt a stricter control approach over foreign workers working in Vietnam. Given this, enterprises/organisations are recommended to revisit and update its resource mobilization plans and policies to suit their operation plans and at the same time, to be in compliance with the new regulations.

Please contact KPMG for further detail on this important Decree.

Contact us

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