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New guidance on labour contracts

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Decree No. 44/2013/ND-CP, dated May 10th 2013, (Decree 44) addresses a number of issues as set out under the Labor Code 2012. Some of the issues addressed include: (i) rules for participating in compulsory social insurance, job loss insurance, and compulsory health insurance by employees with multiple labour contracts, (ii) contents of labour contracts with respect to directors of State-owned enterprise, and (iii) sequences and procedures to declare a labour contract invalid by the labour inspectorate and how to deal with invalid labour contracts. While these are important there remained a number of other issues to be clarified. These were addressed by Circular No. 30/2013/TT-BLDTBXH, dated October 25th, 2013 (Circular 30).

Under Circular 30, in case an employee signs multiple labour contracts with multiple employers, the terms of "the first labor contract" and "the next labor contract" are enumerated:

(a) "the first labor contract", under which the employer and employee are responsible to participate in compulsory social insurance and job loss insurance as provided under Article 4.1(a) of Decree 44, is the first labour contract between an employee and a given employer.

(b) "the next labor contract", under which the employer and employee are responsible to participate in compulsory social insurance and job loss insurance as provided under Article 4.1(b) of Decree 44, is a labour contract successively signed after the signing date of the initial labour contract which has been amended or terminated.

If the employee enters into a new labour contract, or amends, supplements or terminates a labour contract, an employee is liable for notifying employers of the other labour contracts within 5 working days from the date of occurrence of such changes. In addition, within 30 days after signing a new labour contract, amendment or supplementation of a signed labour contract that includes changes to the responsibilities of the contracting parties in participating in compulsory social insurance, job loss, and compulsory health insurance, then the employee is responsible to send an application dossier to request the employer to participate in compulsory social insurance, job loss insurance, and compulsory health insurance in accordance with provisions of the law.

While Circular 30 outlines rules for hiring and insurance requirements for foreigners signed on as directors of State-owned enterprises, the number of people potentially affected by this clause is so minimal as not to justify discussion in this article. Suffice it to say that Circular 30 does so and refers readers to Circular 30 itself for more details.

Regarding decisions to declare a contract invalid, Circular 30 requires the following:

(a) The chief of the Labor Inspection Office (of the Department of Labor, War Invalids and Social Affairs) issuing minutes of a violation must issue a decision to declare a labour contract partially or wholly invalid.

(b) Where there are certain labour contracts with the same contents that violate provisions of the law, the Chief of the Labor Inspection Office (of the Department of Labor, War Invalids and Social Affairs) shall issue a decision to declare those labour contracts partially or wholly invalid, enclosing a list of the labour contracts that are partially or wholly invalid.

(c) Decisions on declaring a labour contract invalid must be sent to the employers, employees or each employee in case the labour contract is entered into with a group of employees, the executive committee of the grassroots trade union or executive committee of the directly superior trade union (in the absence of a grassroots trade union) and the local district's People's Committee where the head office of the enterprise is located.

If an employee is paid less than minimum wage as prescribed under the applicable provisions of the labour law, internal labour rules, and collective labour agreement, the parties must re-agree on the salary in accordance with the said regulations. In such case, the employer is responsible for refunding the difference between the re-agreed salary and salary as provided under the invalid contract, corresponding to the actual working time of the employee, for a maximum of 12 months retroactive.

Circular 30 was enacted on October 25th, 2013, and became effective on 10 December 2013. However, the regime set forth under Circular 30 applied retroactively, as of July 1st, 2013.

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