

No. 09/2020/TT-BLDTBXH

Hanoi, November 12, 2020

CIRCULAR

ELABORATING SOME ARTICLES OF THE LABOR CODE ON MINOR WORKERS

Pursuant to the Labor Code dated November 20, 2019;

Pursuant to the Government's Decree No. 14/2017/ND-CP dated February 17, 2017 on functions, duties, powers and organizational structure of the Ministry of Labor - War Invalids and Social Affairs;

At the request of Director Generals of Department of Work Safety and Department of Child Affairs;

The Minister of Labor - War Invalids and Social Affairs hereby promulgates a Circular elaborating some Articles of the Labor Code on minor workers.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Circular elaborates the following Articles and Clauses of the Labor Code on minor workers:

1. Employment of persons under 15 years of age according to Clause 4 Article 145.
2. List of light works where persons from 13 to under 15 years of age may be employed according to Clause 3 Article 143.
3. List of jobs and works where persons from 15 to under 18 years of age may be employed for overtime or night work according to Clause 2 Article 146.
4. Lists of works and workplaces causing harm to physical, intelligence and personality development of minors according to Clause 3 Article 147.

Article 2. Regulated entities

1. Employers.

2. Minor workers.

3. Other regulatory bodies, organizations and individuals involved in implementation of regulations of this Circular.

Chapter II

EMPLOYMENT OF PERSONS UNDER 15 YEARS OF AGE

Article 3. Conditions for employment of persons under 15 years of age

Employers must employ persons under 15 years of age in accordance with Article 145 of the Labor Code and the following specific regulations:

1. Conclude a written contract with the employee and their legal representative according to regulations in Article 4 herein.
2. Arrange the working hours according to regulations in Clause 1 Article 146 of the Labor Code and so as not to affect the employee's study hours.
3. Arrange breaks according to regulations in Clause 2 Article 109 of the Labor Code.
4. Comply with regulations on health checkups and occupational health checkups and ensure working and occupational safety and hygiene conditions according to Points c and d Clause 1 Article 145 and Law on Occupational Safety and Hygiene.
5. Persons from 13 to under 15 years of age may be employed only for light works meeting the following conditions:
 - a) The work is included in the list mentioned in Article 8 of this Circular;
 - b) The workplace is not any of the cases mentioned in Points a, b, c and d Clause 2 Article 147 of the Labor Code and Clause 2 Article 9 of this Circular.
6. Do not recruit and employ persons under 13 years of age, excluding arts and sports, which must not affect their physical, intelligence and personality development and require approval from Departments of Labor - War Invalids and Social Affairs according to regulations in Article 5 of this Circular.

Article 4. Conclusion of labor contracts with persons under 15 years of age

1. The person who concludes the labor contract on the employer's side shall abide by regulations in Clause 3 Article 18 of the Labor Code and meet the following requirements:
 - a) They have a police record issued no sooner than 06 months before the date on which the labor contract is concluded, which includes no conviction for child exploitation and abuse;

b) They have a statement of no criminal prosecution and administrative penalty for child exploitation and abuse, which is made using Form No. 02 in Appendix I enclosed therewith.

2. Labor contracts with persons under 15 years of age must contain the contents mentioned in Article 21 of the Labor Code and the following contents:

a) Full name; date of birth; sex; place of residence; phone number (if any); and identity card or passport number of the legal representative of the employee;

b) Lodging (for employees working away from their family);

c) How the employee's study is facilitated.

3. Labor contracts with persons under 13 years of age shall come into force with the written approval from Departments of Labor - War Invalids and Social Affairs according to regulations in Article 5 of this Circular.

Article 5. Competence in approving employment of persons under 13 years of age

Recruitment and employment of persons under 13 years of age in compliance with regulations in Clause 3 Article 145 of the Labor Code require approval from the following regulatory bodies:

1. Department of Labor - War Invalids and Social Affairs of the province where the head office or the address written in the enterprise/ cooperative/ cooperative union registration certificate or investment registration certificate or written approval for investment guidelines or decision on regulatory body or organization establishment or cooperation agreement of cooperative group is located if the employer is an enterprise, regulatory body, organization or cooperative.

2. Department of Labor - War Invalids and Social Affairs of the province where the permanent or temporary residence of the household or individual is registered if the employer is a household or individual.

Article 6. Applications for employment of persons under 13 years of age

An application for employment of a person under 13 years of age includes:

1. An application for employment of person under 13 years of age, which is made using Form No. 01 in Appendix I enclosed therewith.

2. Copy of the enterprise/ cooperative/ cooperative union registration certificate or investment registration certificate or written approval for investment guidelines or decision on regulatory body or organization establishment or cooperation agreement of cooperative group (if the employer is an enterprise, regulatory body, organization or cooperative) or copy of family registry or record of temporary residence (if the employer is a household or individual).

3. Copy of police record of the person who concludes the labor contract on the employer's side according to regulations in Point a Clause 1 Article 4 of this Circular.
4. Statement of no criminal prosecution and administrative penalty for child exploitation and abuse according to regulations in Point b Clause 1 Article 4 of this Circular.
5. Labor contract or draft labor contract between the employer and the person under 13 years of age and their legal representative. The draft labor contract shall come with a written agreement from the legal representative of the person under 13 years of age, which is made using Form No. 03 in Appendix I enclosed therewith.
6. Copy of birth certificate and health certificate of the person under 13 years of age. Study timetable or curriculum of the educational institution where the person under 13 years of age is studying if they are a student.

Article 7. Procedure for application for employment of persons under 13 years of age

1. The employer shall submit one application for employment for each person under 13 years of age whom they wish to employ, which is prepared according to regulations in Article 6 of this Circular, to the Department of Labor - War Invalids and Social Affairs mentioned in Article 5 of this Circular directly or by post or online.
2. The Department of Labor - War Invalids and Social Affairs will receive the application when it contains all components required according to regulations in Article 6 of this Circular.
3. Within 10 working days starting from the date of receipt of an adequate application according to regulations in Clause 2 herein, the Department of Labor - War Invalids and Social Affairs shall cooperate with relevant regulatory bodies and organizations in verifying information (if needed), appraising the application and notifying the employer of the approval for the employment using Form No. 04 in Appendix I enclosed therewith.

If the application is rejected, the Department of Labor - War Invalids and Social Affairs shall explain the reason to the employer in writing.

Chapter III

LISTS OF JOBS, WORKS AND WORKPLACES APPLICABLE TO MINOR WORKERS

Article 8. List of light works where persons from 13 to under 15 years of age may be employed

Promulgated together with this Circular is Appendix II - List of light works where persons from 13 to under 15 years of age may be employed.

Article 9. Lists of works and workplaces causing harm to physical, intelligence and personality development of minors

1. Promulgated together with this Circular is Appendix III - List of works causing harm to physical, intelligence and personality development of minors according to regulations in Point h Clause 1 Article 147 of the Labor Code.
2. Promulgated together with this Circular is Appendix IV - List of workplaces causing harm to physical, intelligence and personality development of minors according to regulations in Point dd Clause 2 Article 147 of the Labor Code.

Article 10. List of jobs and works where persons from 15 to under 18 years of age may be employed for overtime or night work

Promulgated together with this Circular is Appendix V - List of jobs and works where persons from 15 to under 18 years of age may be employed for overtime or night work.

Chapter IV

IMPLEMENTATION

Article 11. Responsibilities of Departments of Labor - War Invalids and Social Affairs

1. Take charge and cooperate with health, culture, sports, tourism and education authorities affiliated to People's Committees of provinces and central-affiliated cities and relevant regulatory bodies and organizations in regularly expediting and supervising the implementation of this Circular.
2. Provide guidelines for and inspect employment of minor workers in their provinces.
3. Provide training in and improve capacity for management and inspection of employment of minor workers.
4. Apply information technology to management of employment of minor workers.
5. Before December 25 of every year, submit a report on approval for employment of persons under 13 years of age in their provinces to the Ministry of Labor - War Invalids and Social Affairs using Form No. 05 in Appendix I enclosed therewith.

Article 12. Responsibilities of employers

1. Prepare a minor worker employment record book using Form No. 06 in Appendix I enclosed therewith and regularly update this book.
2. Respect and obtain opinions of minors on matters concerning their rights and interests.

3. Regularly inspect and supervise to ensure safety of minors in workplaces.
4. In case a minor's health condition is no longer suitable for work, notify the minor. If they are under 15 years old, their legal representative shall also be notified.
5. Fully comply with existing regulations of laws on child protection.

Chapter V

IMPLEMENTATION CLAUSE

Article 13. Effect

1. This Circular comes into force from March 15, 2021.
2. The following Circulars are annulled from the entry into force of this Circular:
 - a) Circular No. 10/2013/TT-BLDTBXH dated June 10, 2013 by the Minister of Labor - War Invalids and Social Affairs promulgating the lists of jobs and workplaces in which the employment of minor persons is prohibited;
 - b) Circular No. 11/2013/TT-BLDTBXH dated June 11, 2013 by the Minister of Labor - War Invalids and Social Affairs promulgating list of light works allowed using persons under 15 years old to work./.

THE MINISTER

Dao Ngoc Dung

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