



LAC DUY & ASSOCIATES

NEWSLETTER

09/2023



**NEW POINTS OF THE
DRAFT ON LAW ON
SOCIAL INSURANCE
(AMENDED) EXPECTED TO
BE ADOPTED IN 2024**



**ENTERPRISES PAY
COMPULSORY SOCIAL
INSURANCE OR PAY AN
EQUIVALENT AMOUNT TO
COMPULSORY SOCIAL
INSURANCE DURING THE
PROBATIONARY PERIOD FOR
EMPLOYEES.**



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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of September 2023 with some notable updates and articles as follows:

- New points of the draft on law on Social insurance (amended) expected to be adopted in 2024
- Enterprises pay compulsory Social insurance or pay an equivalent amount to compulsory social insurance during the probationary period for employees?
- Legal Document in 09/2023





NEW POINTS OF THE DRAFT ON LAW ON SOCIAL INSURANCE (AMENDED) EXPECTED TO BE ADOPTED IN 2024



On July 28, the Government issued Resolution No. 114/NQ-CP, thereby basically agreeing on the Draft on Law on Social Insurance (amended). The Draft has 09 chapters and 133 articles with the following new points:

1. Adding layers of social retirement benefits, forming a multi-layer social insurance system

Currently, the social insurance system ("**social insurance**") has Compulsory social insurance, Voluntary social insurance and Supplementary retirement scheme as stipulated in the Law on Social Insurance 2014. However, there are many people who do not enjoy retirement benefits when they get old because they do not meet the prescribed conditions. Therefore, the Draft on Law on Social Insurance (amended) has proposed to add a form of social retirement benefits for Vietnamese citizens aged 80 years or older if they do not have pensions, other monthly social insurance benefits will receive social retirement benefits guaranteed by the State budget. From there, to form a multi-layer social insurance system and expand beneficiaries of social insurance benefits.

With the above addition, the social insurance system will have many layers, ensuring that the majority of people when they get old will enjoy retirement benefits and monthly benefits.

2. Additional subjects participating and enjoying social insurance benefits

Draft on Law on Social Insurance (amended) has continued to expand the subjects participating in Compulsory social insurance to be: (i) household business owners, (ii) business managers, cooperative managers who do not receive salary and (iii) part-time employees.

The addition of the above subjects will ensure consistency with the new provisions of the Labour Code, while also ensuring increased benefits for groups participating in accordance with regulations.



Draft on Law on Social Insurance (amended) also adds the right to enjoy sickness and maternity benefits for part-time workers at the commune authority. According to current law, this group of people is only entitled to two benefits: retirement and survivorship allowance benefits. If the Law is passed, about 100,000 people will directly benefit from this regulation.

3. Add maternity benefits to the Voluntary social insurance policy

In the current Law on Social Insurance, Clause 2 Article 4 only stipulates retirement and survivorship allowance benefits when participating in Voluntary social insurance. However, the Draft on Law on Social Insurance (amended) this time, maternity benefits have been added to the group of benefits that Voluntary social insurance participants enjoy. Accordingly, they will enjoy three benefits: pension, maternity and survivorship allowance benefits.



Specifically, the Draft on Law on Social Insurance (amended) stipulates that the condition for enjoying maternity benefits is that employees must pay Voluntary social insurance for at least full 6 months within 12 months before childbirth. The maternity benefit level is VND 02 million for a new born child, the funding source is guaranteed by the State budget. In case only the mother is covered by Voluntary social insurance and dies in childbirth, the father or the direct fosterer is entitled to receive maternity benefits. In case both parents are covered by Voluntary social insurance and are eligible to enjoy maternity benefits, only the father or mother is entitled to receive a maternity benefit of VND 02 million.

4. Reduce the minimum number of years of social insurance payment to receive pension from 20 years to 15 years

Accordingly, to meet the conditions for pension benefits, employees have to pay social insurance premiums for at least 20 years and reach the prescribed retirement age to receive a pension. However, many agencies have proposed removing this regulation to ensure balance for groups participating in social insurance, creating conditions for elderly employees with fewer years of participation in social insurance to access and enjoy the social insurance benefits. Accepting that opinion, the Ministry of Labour - War Invalids and Social Affairs has removed the above condition in the Draft on Law on



Social Insurance (amended), reducing the minimum number of years of social insurance payment to receive a pension from 20 years to 15 years.

This regulation is intended to create opportunities for those who join late (45 - 47 years old just starting to participate) or those who do not participate continuously that not having accumulated 20 years of social insurance contributions when they reach retirement age. Thus, these people previously did not receive pensions, but will now receive monthly pensions. The pension level will be adjusted by the State. At the same time, during their pension period, they will receive health insurance from the Social Insurance Fund.

5. Supplementing regulations on Lump-sum social insurance allowance

Currently, the number of workers withdrawing Lump-sum social insurance allowance has a worrying increasing trend. This not only directly affects the rights of workers but also affects the socio-economic situation.

To reduce the situation of entitled to a Lump-sum social insurance allowance and help employees enjoy maximum long-term benefits when they reach retirement age, the Draft on Law on Social Insurance (amended) has added many regulations to encourage employees to choose to participate or reserve the time to participate in social insurance to qualify for monthly pension. Specifically:

- Employees who reach retirement age but are not yet eligible for pension will have the option to receive a monthly benefit equal to the social allowance level.
- People receiving monthly benefits are entitled to health insurance, with funding guaranteed by the State budget.

In addition, for regulations on Lump-sum social insurance allowance, the Draft on Law on Social

Insurance (amended) has proposed 02 options as follows:

- Option 01 is to maintain the current regulations of the Law and Resolution No. 93/2015/QH13. Specifically, employees who participated in social insurance before this Law taken effect and less than 20 years will still continue to enjoy Lump-sum social insurance allowance; Employees who start participating in social insurance from the effective date of this Law and have paid for less than 15



years are only entitled to Lump-sum social insurance allowance when they reach full retirement age.

According to expert opinion, with this option, in the first years the number of people receiving Lump-sum social insurance allowance does not decrease much, but will decrease even more in the following years. Option 01 only deals with Lump-sum social insurance allowance in cases of ineligibility/inability to receive monthly pension. Thereby, it helps employees enjoy maximum long-term benefits when they reach retirement age, contributes to stabilizing life in old age. In the long term, this is a more optimal solution, without affecting workers participating in social insurance. However, this option has the disadvantage that it only applies to employees who start participating in social insurance from the effective date of the Law, thus creating a comparison between employees participating before and after the Law takes effect.

- Option 02 is that after 12 months of not participating in Compulsory social insurance, Voluntary social insurance and having paid social insurance for less than 20 years, if the employee requests, it will be partially resolved but not more than 50% of the total time has been paid into the Retirement and Survivorship allowance fund. The remaining social insurance payment period is reserved so that employees can continue to participate and enjoy social insurance benefits .

The advantage of this option is to harmonize workers' rights and long-term social welfare policies. Although the number of people receiving Lump-sum social insurance allowance may not decrease much, when employees receive Lump-sum social insurance allowance, they do not completely leave the system, because part of the remaining payment time is still reserved. When employees continue to participate, their payment period will be extended to enjoy social insurance benefits with higher benefits; be more motivated to continue participating and accumulate contributions to have more opportunities to qualify for a pension when reaching retirement age.

6. Apply electronic social insurance books

Another new point worth noting in the Draft on Law on Social Insurance (amended) is a social insurance book built in an electronic environment and issued to each employee to track contributions and benefits. Vietnam Social Insurance has built a digital social insurance application - VssID with full information like a paper book to encourage employees to use it to track contributions/benefits through the electronic system, helping employees proactively monitor and Proactively handle social insurance benefits without having to wait for administrative procedures from businesses.



ENTERPRISES PAY COMPULSORY SOCIAL INSURANCE OR PAY AN EQUIVALENT AMOUNT TO COMPULSORY SOCIAL INSURANCE DURING THE PROBATIONARY PERIOD FOR EMPLOYEES.

Before officially signing a labor contract, employers and employees usually agree on probation. The probationary period will be an opportunity for the employer to evaluate working ability, and also for the employee to consider whether or not to stick with this employer in the future. An probation agreement can be concluded by a separate probation contract or agreed upon in the labor contract depending on will of the parties. A question: During the probationary period, will the employee be eligible for compulsory social insurance or be paid an amount equivalent to the compulsive social insurance payment by the employer? Below are two somewhat contradictory viewpoints of the Ministry of Labor, War Invalids and Social Affairs and a Provincial Department of Labor, War Invalids and Social Affairs (“Department of Labor, War Invalids and Social Affairs”) when responding to this issue, specifically:



1. Viewpoint of the Ministry of Labor, War Invalids and Social Affairs on payment of social insurance and equivalent amounts during the probationary period.

The question received by the Ministry of Labor, War Invalids and Social Affairs is: *"During the working period under a probationary contract, does the employer have to pay an additional amount of money to the employee at the same time as the salary period tantamount to the amount the employer pays for compulsory social insurance, health insurance, and unemployment insurance for employees according to regulation in Clause 3,*

Article 168 of the Labor Code?"

Accordingly, the Ministry of Labor, War Invalids and Social Affairs has the its answer to the question via Official Dispatch No. 308/CV-PC issued on July 20, 2022, as follows:

To ensure fairness and equality between 02 subjects: probationers who sign probationary contracts and probationers whose probationary content had written in the labor contract, the regulation in Article 168.3 the Labor Code 2019 must be applied. Whereby, **for employees with a probationary period stated in the labor contract**



and that labor contract is required to participate in mandatory social insurance, the employer and employee must pay compulsive social insurance for the entire probationary period. And as for probationary employees under probationary contracts, they will not be able to participate in social insurance because they are not subject to Article 2 of the Law on Social Insurance 2014. Therefore, in order to balance the rights between the two groups of probationers, the Ministry of Labor, War Invalids and Social Affairs believes that **employees who sign separate probationary contracts should be paid an additional amount at the same time as the salary period an amount equivalent to the amount the employer pays for mandatory social insurance, health insurance, and unemployment insurance.**

2. Viewpoint of the Department of Labor, War Invalids and Social Affairs on paying social insurance and equivalent amounts during the probationary period.

Contrary to the view of the Ministry of Labor, War Invalids and Social Affairs, when asked whether employers must pay mandatory social insurance during the probationary period, the Department of Labor, War Invalids and Social Affairs responded as follows:

The employer and employee can agree to record probationary content in one of the following two ways:

(i) Agreement to record probationary content in the labor contract. Then, the content of the labor contract that the two parties enter into must ensure compliance with regulations of Clause 1, Article 21 of the 2019 Labor Code, including the provisions on "Social insurance, health insurance and unemployment insurance".

At the same time, Article 24.3 of the Labor Code 2019 stipulates: "Probation does not apply to employees who sign labor contracts with a term of less than 01 month". Therefore, in case the parties agreement to record the probationary content in the labor contract and the term of the labor contract must be 01 month or more, then the employee will be qualified to participate in compulsory social insurance according to the regulations of the Law on Social Insurance 2014 and participate in health insurance and unemployment insurance if eligible according to the provisions of the Law on Employment 2013 and the Law amendments to the Law on Health Insurance 2014.

In case the employee is not eligible (scope/subject) to participate in compulsory insurance according to the above regulations, the employer must pay additional money at the same time as pay period of the employee an amount equivalent to the amount the employer pays for social insurance, health insurance, and unemployment insurance for employees as prescribed in Article 168.3 of the Labor Code 2019.



(ii) Probation agreement signing a probationary contract. At that time, the contents of the probationary contract that the two parties enter into must comply with the provisions of Article 24.2 of the 2019 Labor Code, which does not contain provisions on "social insurance, health insurance and unemployment insurance."

Therefore, in this case, the employer does not have to pay an additional amount at the same time as the employee's salary period equivalent to the amount the employer pays for social insurance, health insurance, and unemployment insurance for the employee according to regulations specified in Article 168.3 of the Labor Code 2019.



3. Contradiction pointviews between the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and Social Affairs.

Regarding this issue, both the Ministry of Labor, War Invalids and Social Affairs and the Department of Labor, War Invalids and Social Affairs Both consider the two cases and have the same opinion regarding the first case: If an employee has a probationary period stated in the labor contract and that labor contract is subject to participation in

compulsory social insurance, the employer and employee must pay compulsive social insurance for employees probationary period. However, in the second case, the two sides had opposite views based on different legal grounds.

The author of this article considers that the viewpoint of the Ministry of Labor, War Invalids and Social Affairs is more appropriate because the provisions in Article 168.3 of the Labor Code 2019 apply to employees who are not subject to participate in compulsive social insurance, whereby it is necessary to consider whether the probationary employee by signing a probationary contract is in the case of an employee who is not subject to compulsory social insurance participation or not to determine without regard to the whether or not the probationary contract has content about "social insurance, health insurance and unemployment insurance" because when the employee is not subject to compulsory social insurance, the probationary contract has no contents of the regulations on "social insurance, health insurance and unemployment insurance" is appropriate and logically reasonable.



LEGAL DOCUMENT IN 09/2023

NO.	EFFECTIVE DATE	NAME
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TRANSPORTATION

1.	01/11/2023	Circular No. 25/2023/TT-BGTVT amending Circular No. 11/2021/TT-BGTVT guiding methods of pricing and managing public service prices in the field of management and maintenance of national railway infrastructure implemented according to the order method using the State budget from the regular expenditure source issued by the Minister of Transport
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GOVERNMENT

1.	25/08/2023	Decision No. 996/QD-TTg, 2023 on the List of public service units under the Ministry of Construction issued by the Prime Minister
2.	31/08/2023	Decision No. 1012/QD-TTg, 2023 on Plan to implement the Law on Protection of Consumers' rights issued by the Prime Minister
3.	10/12/2023	Decision No. 23/2023/QD-TTg on the establishment, organization and operation of inter-sectoral coordination organizations issued by the Prime Minister
4.	18/09/2023	Decree No. 70/2023/ND-CP amending Decree No. 152/2020/ND-CP regulating foreign workers working in Vietnam and recruiting and managing Vietnamese workers working for organizations, foreign individuals in Vietnam
5.	20/09/2023	Resolution No. 148/NQ-CP, 2023 continues to implement Resolution No. 42/2017/QH14 on pilot handling of bad debts of credit institutions issued by the Government
6.	20/09/2023	Decree No. 71/2023/ND-CP amending Decree No. 112/2020/ND-CP on disciplining of cadres, civil servants and public employees

FINANCE

1.	16/10/2023	Circular No. 59/2023/TT-BTC regulating the rates, collection, remittance, management and use of fees in the health sector issued by the Minister of Finance
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| 2. | 15/09/2023 | Decision No. 1965/QD-BTC on adjusting State budget expenditure estimates for 2023 issued by the Ministry of Finance |
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NATURAL RESOURCES AND ENVIRONMENT

1.	14/09/2023	Circular No. 09/2023/TT-BTNMT amending the Circular related to the submission and presentation of household registration books and related documents when carrying out administrative procedures and providing public services in the field of water resources issued by the Minister of Natural Resources and Environment
2.	19/09/2023	Consolidated document No. 08/VBHN-BTNMT, 2023 consolidates the Decree guiding the Land Law issued by the Ministry of Natural Resources and Environment

HOME AFFAIRS

1.	15/10/2023	Circular No. 13/2023/TT-BNV guiding the storage of electronic administrative procedure records issued by the Minister of Home Affairs
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LABOUR

1.	25/08/2023	Decision No. 7785/QD-TLD of 2023 amending Decision No. 6696/QD-TLD regulating the implementation of policies to support trade union members and employees whose working hours are reduced or labour contracts terminated by enterprises, cut or reduce orders issued by the Vietnam General Confederation of Labour
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INDUSTRY AND TRADE

1.	16/10/2023	Circular No. 16/2023/TT-BCT guiding on electricity purchase and sale contracts for serve daily purposes issued by the Minister of Industry and Trade
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