



LAC DUY & ASSOCIATES

NEWSLETTER

11/2022

Legal Procedures Of Dismissal According To Labour Code 2019



**Decree 65/2022/NĐ-CP: Amendments
to Government's Decree No.
153/2020/NĐ-CP dated December 31,
2020 prescribing private placement
and trading of privately placed
corporate bonds in domestic market
and offering of corporate bonds in
international market**

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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of November 2022 with some notable updates and articles as follows:

- Legal procedures of dismissal according to Labour Code 2019.
- Decree 65/2022/NĐ-CP: Amendments to Government's Decree No. 153/2020/NĐ-CP dated December 31, 2020 prescribing private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in international market.
- Legal document in 11/2022.

Besides, on coming 11th December 2022, attorney Lac Thi Tu Duy, Managing Partner of Lac Duy & Associates, will be honored to be invited to present as the speaker of a yearly training course for lawyers organized by Vietnam Bar Federation with the topic " Labor Code 2019 after nearly 2 years of effectiveness: Lawyer's skills when consulting and resolving labor disputes for Clients".

For detailed information, Clients can refer to the website address:

https://liendoanluatsu.org.vn/thong-bao-moi-tham-du-khoa-boi-duong-chuyen-mon-nghiep-vu-luat-su-to-chuc-tai-thanh-pho-ho-chi-minh-thang-12-2022/?zarsrc=30&utm_source=zalo&utm_medium=zalo&utm_campaign=zalo&fbclid=IwAR11JEZpNRh77aia0uaTDVUNwuOOnDTeqhu6oHgbPoShq_SWrjbqEgtaaUQ



LEGAL PROCEDURES OF DISMISSAL ACCORDING TO LABOUR CODE 2019

According to the provisions of Labour Code No. 45/2019/QH14 (“**Labour Code 2019**”), effective from January 1, 2021, dismissal is the heaviest form in 04 (four) forms of labour discipline. Therefore, the law requires the strict compliance of provisions of condition, process and procedure that, if not understand clearly and apply correctly, enterprises are likely to make mistakes leading to unexpected legal consequences once being involved in related disputes. In this article, **Lac Duy & Associates** summarizes some main points of relevant regulations. Accordingly, dismissal as a type of of labour discipline should go through following steps:

Step 1: Determining the employee's violation including the following cases based on provisions of Article 125 of the Labour Code 2019:

- 1.1. The employee commits an act of theft, embezzlement, gambling, deliberate infliction of injuries or uses drug at the workplace;
- 1.2. The employee discloses technological or business secrets or infringing the intellectual property rights of the employer, or commits acts which are seriously detrimental or



posing seriously detrimental threat to the assets or interests of the employer, or commits sexual harassment in the workplace against the internal labour regulations;

- 1.3. The employee repeats a violation which was disciplined by deferment of pay rise or demotion and has not been absolved;
- 1.4. The employee fails to go to work for a total period of 05 days in 30 days, or for a total period of 20 days in 365 days from the first day he/she fails to go to work without acceptable excuses.

Step 2: Holding a disciplinary hearing

Article 70 of Decree 145/2020/ND-CP guiding disciplinary procedures as follows:

- 2.1. In case an employee’s violation is discovered when it is committed, the employer shall prepare a violation record and inform the



internal employee representative organization of which the employee is a member, the employee's legal representative if the employee is under 15. In case an employee's violation is discovered after it is committed, evidence of such violation must be gathered.

2.1 Within the time limit for disciplinary procedures, the employer shall hold a disciplinary hearing as follows:

(i) At least 05 working days before the disciplinary hearing is held, the employer shall notify the mandatory participants time and location of the hearing, full name of the employee facing disciplinary procedure and his/her violations. Make sure the participants receive the notification before the hearing takes place;

(ii) Upon receipt of the employer's notification, the mandatory participants shall send the employer confirmation of their participation. In case any of the mandatory participants cannot participate in the hearing, the employee and the employer shall reach an agreement on change of time and/or location of the hearing. In case agreement cannot be reached, the employer shall make the final decision;

(iii) Upon receipt of the employer's notification,

the mandatory participants shall send the employer confirmation of their participation. In case any of the mandatory participants cannot participate in the hearing, the employee and the employer shall reach an agreement on change of time and/or location of the hearing. In case agreement cannot be reached, the employer shall make the final decision;

2.3 Minutes of the disciplinary hearing shall be taken and ratified before the end of the hearing. The minutes shall bear the signatures of the participants. In case a person refuses to sign the minutes, the minutes taker shall specify his/her full name and reasons for refusal in the minutes.

2.4 Within the time limit for disciplinary procedures, the person having the power to initiate disciplinary procedure shall issue a disciplinary decision and send it to the mandatory participants.

Step 3: Paying salary and returning insurance books to employees:

According to Article 48 of the Labour Code 2019:

3.1 Within 14 working days following the termination of an employment contract, both parties shall settle all payments in respect of the rights and interests of each party. In the some cases, such period may be extended, but shall



not exceed 30 days.

3.2 The employer has the responsibility to:

- (i) Complete the procedures for verification of duration of participation in social insurance and unemployment insurance, return them and original copies of employee's other documents (if any);
- (ii) Provide copies of the documents relevant to the employee's work if requested by the employee. The employer shall pay the cost of copying and sending the documents.

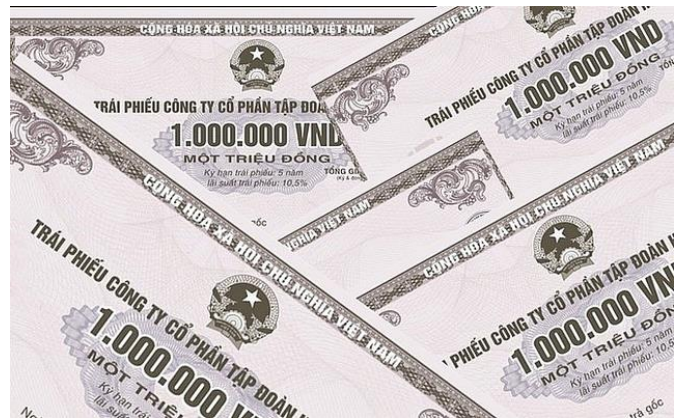
Thus, when applying the form of dismissal as a labour discipline, it is advised that enterprises need to consider the above 03 (three) basic steps to avoid being in contravention of the current law, resulting in being sued by the dismissed employees and having to bear risks not only in legal term but also the reputation of the enterprises.





DECREE 65/2022/ND-CP: AMENDMENTS TO GOVERNMENT'S DECREE NO. 153/2020/ND-CP DATED DECEMBER 31, 2020 PRESCRIBING PRIVATE PLACEMENT AND TRADING OF PRIVATELY PLACED CORPORATE BONDS IN DOMESTIC MARKET AND OFFERING OF CORPORATE BONDS IN INTERNATIONAL MARKET

On 16 September 2022, Government issued Decree No. 65/2022/ND-CP to amend government's Decree No. 153/2020/ND-CP dated December 31, 2020 on private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in international market. Accordingly, Decree No. 65/2022/ND-CP amends and supplements 32 articles and annuls Clause 7, Article 4 of Decree No. 153/2020/ND-CP and provides on transitional provisions. In the amended and supplemented terms, bond issuers and investors should note the following points:



1) Rules for issuance of bonds

Decree 65/2022/ND-CP supplements Clauses 4 and 5, Article 5 on rules for issuance of and use of bonds. Specifically, with regard to bonds issued in the domestic market, their terms and conditions as prescribed in Article 6 of this Decree may only be changed if the change is approved by: a) the issuer's competent authority; b) a number of bondholders that represents at least 65% of total outstanding bonds of the same type.

The bond face value is also revised to increase from VND 100,000 or a multiple of VND 100,000 to VND 100,000,000 or a multiple of VND 100,000,000. Specifically, Decree 65/2022/ND-CP states: Face value of a bond offered in the domestic market is VND 100,000,000 or a multiple of VND 100,000,000.



2) The method of identifying professional investors

Decree 65/2022/ND-CP supplements the method of identifying professional investors who are allowed to invest in and trade privately issued corporate bonds.

Specifically, professional investors are investors that have adequate financial capacity or securities qualifications as prescribed in Article 11 of the Law on Securities. Organizations shall identify professional investors and obtain documents serving identification of professional investors as prescribed in Article 4 and Article 5 of the Government's Decree No. 155/2020/ND-CP dated December 31, 2020 on elaboration of some articles of the Law on securities and its amending or superseding, except the identification of professional investors prescribed in point d of this article.

An individual that is identified as a professional investor as prescribed in point d clause 1 Article 11 of the Law on Securities shall be eligible to buy privately placed bonds if he/she holds a quantity of listed or registered securities, excluding securities borrowed to conduct margin transactions and those of repo transactions, of which the daily average price determined in a minimum period of 180 consecutive days preceding the date on which he/she is identified as a professional investor shall not be lower than VND 02 billion. The certification of a professional investor status as prescribed in this Point shall be valid for 03 months from the date of certification.





3) **Representatives of bondholders**

Decree 65/2022/ND-CP supplements regulations on representative of bondholders to strengthen supervision of the purpose of bond capital use by issuers as well as strengthen supervision of the implementation of other commitments of the issuer.

Accordingly, every bondholders' representative shall submit reports to the State Securities Commission and the Stock Exchange on a quarterly and annual basis, and whenever the issuer is found to have committed violations which adversely affect legitimate rights and interests of bondholders.

Representatives of bondholders are responsible for complying with the provisions of the securities law and Article 14 of this Decree when providing bondholders' representative services. At the same time, the representative of bondholders is subject to the management and supervision of the State Securities Commission in accordance with regulations. In case of violations of the law when providing services, depending on the nature and seriousness of the violations, they will be administratively sanctioned according to the provisions on administrative sanctions in the field of securities and securities market or criminal prosecution.

4) **Time limit and content of information disclosure**

The time limit for disclosing information on bond offering results is regulated to be withdrawn from 10 days to 5 days. The Decree stipulates: Within 05 working days from the completion date of the bond offering, the issuer shall disclose information on offering results to bondholders, and send the disclosed information to the Stock Exchange. The information to be disclosed shall comply with guidelines given by the Ministry of Finance of Vietnam.

If the offering is unsuccessful or an offering wave is cancelled, within 05 working days from the completion of bond distribution, the issuer shall disclose information and send the disclosed information to the Stock Exchange.



LEGAL DOCUMENTS 11/2022

NO.	EFFECTIVE DATE	NAME
ENTERPRISE		
1.	14/11/2022	Decision 1415/QD-TTg in 2022 approving the project "Promoting Vietnamese enterprises directly participate in foreign distribution networks by 2030."
COMMERCIAL		
1.	11/11/2022	Official Dispatch 7180/BCT-TTTN in 2022 on petrol and oil business management issued by the Ministry of Industry and Trade.
2.	08/11/2022	Official Dispatch 11675/BGTVT-VT in 2022 on traffic organization in the province and city to support the petrol and oil supply in the domestic market.
EXPORT/ IMPORT		
1.	08/11/2022	Official Dispatch 4700/TCHQ-TXNK in 2022 on goods for Export Processing Enterprises Financial Lease.
2.	02/11/2022	Official Dispatch 4613/TCHQ-TXNK in 2022 on tax treatment for import goods that produce the export goods.
LABOUR – SALARY		
1.	08/11/2022	Circular 15/2022/TT-BGDDT stipulating the teaching of high school knowledge in vocational education institutions.
2.	01/11/2022	Circular 11/2022/TT-BYT stipulating standards, documents, and procedures for appointment, card issuance, dismissal, and revocation of cards of forensic examiners and forensic psychiatrists.