

Decree of government N_o 113/2004/ND-CP dated 16 April 2004

**On Penalization for Administrative Violations
in the field of labour legislation**

Government

Pursuant to the Law on Organization of the Government dated 25 December 2001;
Pursuant to the Labour Code dated 23 June 1994; Pursuant to amended and supplemented
Labour Code dated 02 April 2002;
Pursuant to the Ordinance on Administrative penalties of July 2, 2002
At the proposal of the Minister of the Ministry of Labour, Invalids and Social Affairs,

Decrees

Chapter I

General provisions

Article 1. Scope of application

1. This Decree stipulates administrative penalties for Vietnamese organizations and individuals, who violate labour laws but are not criminal and shall be penalized in accordance with laws within the territory, economically privileged zones and the continental shelf of Vietnam.
2. Foreign individuals and organizations committing acts of administrative violations of labour laws within the territory, economically privileged zones and the continental shelf of the Socialist Republic of Vietnam shall be penalized as regulated by this Decree except for cases stipulated by international treaties, in which the Socialist Republic of Vietnam is a signatory or a supporting member;
3. Labour laws mentioned in this Decree include the regulations in the amended and supplemented Labour Code and documents detailing the compliance with the amended and supplemented Labour Code.

Article 2. Principles for the penalization application to labour legislation violations

1. The penalization for acts of labour law violations shall be conducted by the competent persons as stipulated in Articles 26, 27 and 28 below.
Individuals and organizations committing acts of violation as stipulated in Chapter 2 of this Decree shall be penalized for their labour law violations.
2. The penalization for acts of labour law violations shall be conducted promptly, fairly and thoroughly. A violation detected should be suspended promptly by a decision; every consequence caused by the act of administrative violation shall be surmounted in accordance with laws.
3. One act of administrative violation shall be penalized only once. Each of acts of violation committed by the same person shall be penalized separately. Each of the persons who commit the same act of violation shall be penalized separately.
4. Forms and measures of penalization shall be based on the nature and seriousness of the violation, the personal status of the guilty person, mitigating and aggravating factors as stipulated in Articles 3 and 4 of this Decree.

5. Penalization for administration violation is not applied for cases of emergency, legitimate self-defense, sudden factors or administrative violators losing capacity of consciousness or act control due to mental illness or other diseases.

Article 3. The mitigating factors are determined as follows:

1. The guilty person who has tried to prevent or diminish the damages caused by the violation, voluntarily to take remedial measures or to pay compensation for damages caused.
2. The guilty person has voluntarily clarified, truthfully repented.
3. The guilty person is a pregnant woman, a young, an elderly person, a sick or handicapped person whose conscience and capability to control himself/herself is limited.
4. A violation driven by extremely difficult circumstances, which were not intentionally created by the violator.
5. A violation is committed by backwardness.

Article 4. The aggravating factors are determined as follows:

1. Violating in an organized manner.
2. Multiple violation or recidivism in the same field.
3. Inciting, enticing young persons or compelling materially or spiritually dependant persons into committing a violation.
4. Committing a violation while being drunk with beer, wine or other stimulants.
5. Taking advantage of one's position or powers to commit a violation.
6. Taking advantage of war situation, natural disasters or other especially difficult circumstances of the society to commit a violation.
7. Committing a violation while serving a criminal sentence or while fulfilling an administrative penalty.
8. Continuing to commit the act of administrative violation despite having been requested to stop that act by the competent person .
9. Trying to evade the sanction or to conceal the violation after committing it.

Article 5. Forms of penalization

1. Organizations, individuals who commit acts of administrative violation of labour laws shall be punished with one of the following major forms of penalization:

- a) Serving a warning;
- b) Fining

When the form of fining is applied, the specific rate of fine for an act of violation is the medium rate of the corresponding range of fines for that act as stipulated in this Decree; if the violation involves in mitigating factors, the rate of fine might be lower but not below the lowest rate of the stipulated corresponding range of fines; if the violation involves in aggravating factors, the rate of fine might be higher but not above the highest rate of the stipulated corresponding range of fine.

2. Depending on the nature and seriousness of the violation, organizations and individuals who commit administrative violations of labour law might face supplementary forms of penalization for taking away the use right of licences and operation certificates.

3. Apart from major and supplementary forms of penalization as stipulated in Items 1 and 2 of this Article, one or more than one of following remedial measures might be applied to organizations, individuals committing administrative violation of labour laws:

- a) Being forced to pay compensation for damages caused, including those in terms of machinery, equipment and properties of the enterprise as regulated by laws;
- b) Being forced to comply with legal regulations on setting up the contingency fund for unemployment; plan for employment; labour contract signing; labour bargaining registration; principles of formulation of wage rates, payrolls, labour practice codes and reward regulations; working principles; regulations for typical workers, foreign workers, operational conditions for the trade union, measures for labour management; ensuring occupational safety by the trade union, measures for labour management; ensuring occupational safety and health;
- c) Paying back the deposit and interest rate amounts to workers;
- d) Sending overseas workers back to their countries;
- e) Being forced to pay in arrears of social insurance;
- f) Being proposed to the competent agencies to besiege account, collect social insurance or revoke operation licences;
- g) Being forced to upgrade and repair factories and equipment that do not meet standards on occupational safety and health;
- h) Being forced to verify and register the use of machine, equipment, materials and substances with strict requirements of occupational safety and health;
- i) Other measures as regulated by laws.

Article 6. Prescription periods for handling an administrative violation

1. The prescription period for penalization for administrative violations in the labour legislation is one year, beginning from the occurrence date of the administrative violation as stipulated in this Decree; after this period, remedial measures for damages caused as stipulated in Item 3, Article 5 of this Decree shall be applied for the guilty person instead of the penalization.

2. Within the time limit set in Item 1 of this Article, if individuals or organizations concerned commit a new act of administrative violation in the same field of labour or intentionally evade or obstruct the penalization, the above limitation period shall not be applied.

3. With regard to a person, against whom a legal action has been taken or who is being prosecuted, or to whom a decision has been issued for trial according to the criminal proceedings, but later is subject to a decision issued to cancel the investigation or to cancel the trial, shall be imposed an administrative penalization if there is indication of his/her administrative violation, the limitation period for penalizing is 3 months beginning from the date the cancellation decision of investigation or the trial is issued.

Article 7. Time limit regarded as not yet being penalized for an administrative violation
The time limit upon which guilty organizations or individuals shall be regarded as not yet being penalized for an administrative violation is one year since the decision of administrative penalization is finally executed or since the expiration of the penal decision provided that they do not commit any another violation.

Acts of Administrative Violation of Labour Laws, forms and rates of fines

Section 1

Violations of the provisions on labour relations

Article 8. Violations of the provisions on employment

1. A fine from VND 1,000,000 to VND 2,000,000 shall be imposed on an employer taking one of the following acts:

- a) Not publicizing the list of workers who have been dismissed in accordance with labour laws;
- b) Not discussing with the executive board of the enterprise or the temporary trade union before dismissing workers;
- c) Not informing the provincial labour authority before dismissing workers;
- d) Violating one of the regulations on procedures for employing Vietnamese labourers at enterprises, agencies and organizations.

2. A fine of the following rates shall be imposed on organizations, individuals who commit one of the following acts of violation: violation of regulations on unemployment allowance for workers; collection of job placement fees at a rate higher than the prescribed one; collection of job placement fees without receipts:

- a) From VND 1,000,000 to VND 2,000,000 if the violation is made for between 01 and 10 workers;
- b) From VND 2,000,000 to VND 5,000,000 if the violation is made for between 11 and 50 workers;
- c) From VND 5,000,000 to VND 10,000,000 if the violation is made for between 51 and 100 workers;
- d) From VND 10,000,000 to VND 15,000,000 if the violation is made for between 101 and 500 workers;
- e) From VND 15,000,000 to VND 20,000,000 if the violation is made for at least 500 workers;

3. A fine from VND 5,000,000 to VND 10,000,000 shall be imposed on one of the following acts:

- a) An enterprise does not set up the contingency fund for unemployment as stipulated in Item 3, Article 17 of the amended and supplemented Labour Code;
- b) A job placement centre or job placement enterprise does not have operation licence granted by the competent agency or its operation is not in line with the regulations in the licence.

4. A fine of VND 15,000,000 to VND 20,000,000 shall be imposed on an organization, individual committing one of the following acts:

- a) Acts of enticement, false promises and false advertisements to deceive employees as stipulated in Article 19 of the amended and supplemented Labour Code;
- b) Taking advantage of job placement services to achieve unlawful purposes, which are contrary to the stipulations in Article 19 of the Labour Code;

5. Supplementary forms of penalization imposed on organizations, individuals committing an administrative violation as stipulated in Item 4 of this Article are as follows:

- a) The operation licence is revoked in a fixed term if the violation is made for the first time and in a permanent term if the violation is made for the second time; the operation licence revocation is applied to enterprises operating in the field of job placement;
- b) The operation of a job placement centre shall be suspended by the body having made decision on the centre's establishment in a fixed term if the violation is made for the first time and in a permanent term if the violation is made for the second time.

6. Remedial measures for damages caused:

- a) Being forced to compensate workers for their losses if a violation as stipulated in Items 2 and 4 of this Article is made.
- b) Setting up the Contingency Fund for Unemployment in the case of violation as regulated in point a, Item 3 of this Article.

Article 9. Violations of the provisions on vocational education

1. Serving a warning notice or a fine from VND500,000 to VND 1,000,000 for organizations, individuals committing a violation act of one of the regulations on the establishment, operation registration, division, separation, merge, suspension and dissolution of vocational establishments.
2. A fine shall be imposed on organizations, individuals committing one of the acts of violation of paying apprentices and trainees not in line with the stipulations in Item 2, Article 23 of the amended and supplemented Labour Code; collecting vocational training fees from trainees who shall not pay; collecting vocational training fees higher than ones stipulated by the laws at the following rates:
 - a) From VND 1,000,000 to VND 2,000,000 if the violation is made for between 01 and 10 workers;
 - b) From VND 2,000,000 to VND 5,000,000 if the violation is made for between 11 and 50 workers;
 - c) From VND 5,000,000 to VND 10,000,000 if the violation is made for between 51 and 100 workers;
 - d) From VND 10,000,000 to VND 15,000,000 if the violation is made for between 101 and 500 workers;
 - e) From VND 15,000,000 to VND 20,000,000 if the violation is made for at least 500 workers;
3. A fine from VND 15,000,000 to VND 20,000,000 shall be imposed on organizations, individuals committing one of the acts of taking advantage of apprenticeship and training for profit and for exploitation of the labour force, or enticing and forcing apprentices and trainees to engage in illegal activities as stipulated in Article 25 of the amended and supplemented Labour Code.
4. Supplementary forms of penalization: the training licence of an organization committing an administrative violation as stipulated in Item 3 of this Article might be revoked in a fixed term if the violation is made for the first time and in a permanent term if the violation is made for the second time;
5. Remedial measures: compensating workers for their losses if a violation as stipulated in Items 2 and 3 of this Article is made.

Article 10. Violations of the provisions on labour contract

1. Serving a warning notice or a fine from VND100,000 to VND500,000 for an employer committing one of the following acts:

- a) Not handing a signed copy of the labour contract to the worker;
 - b) Violating stipulations on hiring house servants in Article 139 of the amended and supplemented Labour Code.
2. A fine shall be imposed on an employer committing one of the following acts of violation: signing a labour contract not of the type as stipulated in Article 27 of the amended and supplemented Labour Code; signing a labour contract without signatures of either side at the following rates:
- a) From VND500,000 to VND1,000,000 if the violation is made for between 01 and 10 workers;
 - b) From VND1,000,000 to VND3,000,000 if the violation is made for between 11 and 50 workers;
 - c) From VND3,000,000 to VND5,000,000 if the violation is made for between 51 and 100 workers;
 - d) From VND5,000,000 to VND7,000,000 if the violation is made for between 101 and 500 workers;
 - e) From VND7,000,000 to VND10,000,000 million if the violation is made for at least 500 workers;
3. A fine shall be imposed on an employer committing one of the following acts of violation: Applying a longer probation period than that prescribed in Article 32 of the amended and supplemented Labour Code and accompanied regulations; Violating stipulations on a temporary period of time a worker is moved to another job; Violating stipulations on paying salary for a worker during the temporary period of time the worker is moved to another job as stipulated in Article 34 of the amended and supplemented Labour Code.
- Violating regulations on the unemployment allowance statutes as stipulated in Item 1, Article 42 of the amended and supplemented Labour Code.
- The fine is applied at the following rates:
- a) From VND1,000,000 to VND2,000,000 if the violation is made for between 01 and 10 workers;
 - b) From VND2,000,000 to VND5,000,000 if the violation is made for between 11 and 50 workers;
 - c) From VND5,000,000 to VND10,000,000 if the violation is made for between 51 and 100 workers;
 - d) From VND10,000,000 to VND15,000,000 if the violation is made for between 101 and 500 workers;
 - e) From VND15,000,000 to VND20,000,000 if the violation is made for at least 500 workers;
4. A fine from VND15,000,000 to VND20,000,000 shall be imposed on an employer committing one of the following acts:
- a) Maltreating employees or forcing them to work as stipulated in labour laws;
 - b) Forcing workers to pay a deposit not in line with the laws' regulations;
 - c) A employer successively failing to continue employment of a worker in the labour employment way as stipulated in Article 31 of the amended and supplemented Labour Code.

5. Apart from the forms of penalization as stipulated in this Article, one of the following remedial measures shall be applied to a violator:

- a) For the violations as stipulated in Item 1 of this Article, the employer has to hand one copy of the labour contract over to workers;
- b) Signing a labour contract of the correct type as regulated by laws; in case without signatures of either side, the absent signature shall be added as stipulated in Item 2 of this Article;
- c) Paying back the deposit to worker and an interest rate amount at a rate publicized by the State Bank at the time of paying back for the violation as stipulated in Point b, Item 4 of this Article;
- d) Employing workers in the labour employment way indicated in point c, Item 4 of this Article;
- e) Compensating workers for their losses by violations of regulations in Items 3 and 4 of this Article.

Article 11. Violations of the provisions on collective labour agreement

1. A fine from VND1,000,000 to VND3,000,000 for an employer who does not register a collective labour agreement with the State administrative body in charge of labour as stipulated in point d, Item 1, Article 47 of the amended and supplemented Labour Code.

2. A fine from VND5,000,000 to VND8,000,000 shall be imposed on an employer committing one of the following acts:

- a) Refusing to conduct negotiations for signing, amending or supplementing a collective labour agreement upon a request from the other party as stipulated in Item 1, Article 46 of the amended and supplemented Labour Code;
- b) Conducting a collective labour agreement which has been stated to be futile;

3. Remedial measures for damages caused:

- a) Registering a collective labour agreement with the provincial State administrative body in charge of labour in accordance with laws for the violations stipulated in Item 1 of this Article;
- b) Conducting negotiations to sign, amend or supplement the collective labour agreement at the request of the negotiations for the violations as stipulated in point a, Item 2 of this Article.

Article 12. Violations of the provisions on salary and bonus:

1. Serving a warning notice or a fine from VND100,000 to VND500,000 for an employer committing one of the following acts:

- a) Not in line with principles of formulation of wage rates, payrolls, labour codes of practice in accordance with laws;
- b) Deducting salary of workers without discussing with the enterprise or the temporary trade union (if any).

2. A fine from VND1,000,000 to VND5,000,000 for an employer committing one of the following acts:

- a) Not paying salary directly, sufficiently, timely and at the site; paying salary late without compensation as stipulated in Article 59 of the amended, supplemented Labour Code;

b) Not registering wage rates, payrolls with the provincial State administrative authority in charge of labour; not publicizing wage rates, payrolls, labour practice codes and reward statutes at the enterprise.

3. A fine shall be imposed on an employer committing one of the acts: Deducting salary of a worker without reasons; Deducting monthly salary of a worker at a higher rate than that stipulated in Item 1, Article 60 of the amended, supplemented Labour Code; Paying salary insufficiently for a worker in case of work stoppage not due to the worker's fault; Paying salary for a worker at lower rate than the minimum one in case of work stoppage not due to the worker's fault but due to electric and water breakdowns or other unavoidable factors as stipulated in Article 62 of the amended, supplemented Labour Code; Not paying salary and allowance for a worker in his/her duration of temporary job suspension as stipulated in Article 92 of the amended, supplemented Labour Code. The fine is applied at the following rates:

a) From VND500,000 to VND1,000,000 if the violation is made for between 01 and 10 workers;

b) From VND1,000,000 to VND3,000,000 if the violation is made for between 11 and 50 workers;

c) From VND3,000,000 to VND5,000,000 if the violation is made for between 51 and 100 workers;

d) From VND5,000,000 to VND7,000,000 if the violation is made for between 101 and 500 workers;

e) From VND7,000,000 to VND10,000,000 if the violation is made for at least 500 workers;

4. A fine shall be imposed on an employer committing one of the acts of violation: Paying employees less than the fixed minimum wage; paying the minimum wage to professionally and technically qualified employees, which is contrary to the stipulations in Article 55 and Article 56 of the amended, supplemented Labour Code; not paying salary or paying salary insufficiently for employees working in extra time, at the night shift as stipulated by the labour laws; Penalization in the form of pay cut shall be applied for that employer at the following rates:

a) From VND1,000,000 to VND2,000,000 if the violation is made for between 01 and 10 workers;

b) From VND2,000,000 to VND5,000,000 if the violation is made for between 11 and 50 workers;

c) From VND5,000,000 to VND10,000,000 if the violation is made for between 51 and 100 workers;

d) From VND10,000,000 to VND15,000,000 if the violation is made for between 101 and 500 workers;

e) From VND15,000,000 to VND20,000,000 if the violation is made for at least 500 workers;

5. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who does not set up wage rates, payrolls, labour codes of practice, salary payment regulations and reward statutes at the enterprise.

6. Remedial measures for damages caused:

a) Being forced to compensate workers for losses caused by violations of the stipulations in Items 3 and 4 of this Article;

b) Registering wage rates, payrolls with the State administrative body in charge of labour; publicizing wage rates, payrolls, labour codes of practice and reward statutes at the enterprise for the violations as stipulated in point b, Item 2 of this Article;

c) Formulating wage rates, payrolls, labour codes of practice and reward statutes at the enterprise in accordance with laws applied for the violations as regulated in Item 5 of this Article.

Article 13. Violations of the provisions on work time, rest time:

1. A fine shall be imposed on an employer committing one of the acts of violation of: standards of work time as stipulated in Articles 68, 115, 122, 123 and 125 of the amended, supplemented Labour Code; standards of between-shift and mid-shift rest time, weekly days-off in contrast to the stipulations in Articles 71 and 72 of the amended, supplemented Labour Code; standards of holidays stipulated in Article 73 of the amended, supplemented Labour Code; standards of annual days-off regulated in Articles 74, 75 and 76 of the amended, supplemented Labour Code; standards of days-off due to personal affairs as stipulated in Article 78 of the amended, supplemented Labour Code;

The fine is applied at the following rates:

a) From VND1,000,000 to VND2,000,000 if the violation is made for between 01 and 10 workers;

b) From VND2,000,000 to VND5,000,000 if the violation is made for between 11 and 50 workers;

c) From VND5,000,000 to VND10,000,000 if the violation is made for between 51 and 100 workers;

d) From VND10,000,000 to VND15,000,000 if the violation is made for between 101 and 500 workers;

e) From VND15,000,000 to VND20,000,000 if the violation is made for at least 500 workers;

2. A fine shall be imposed on an employer forcing his/her employees to work overtime hours more than those stipulated in Article 69 of the amended, supplemented Labour Code at the following rates:

a) From VND5,000,000 to VND7,000,000 if the violation is made for between 01 and 50 workers;

b) From VND7,000,000 to VND10,000,000 if the violation is made for between 50 and 100 workers;

c) From VND10,000,000 to VND15,000,000 if the violation is made for between 100 and 500 workers;

e) From VND15,000,000 to VND20,000,000 if the violation is made for at least 500 workers;

3. Remedial measures for damages caused:

a) Arranging time off in compensation for employees for the violations as stipulated in Item 1 of this Article;

- b) Paying salary for overtime hours in accordance with laws on overtime hours or work during the time off (without compensation) for the violations as stipulated in Item 1 of this Article;
- c) Compensating employees for the losses caused by the violations of stipulations in this Article.

Article 14. Violations of provisions on labour discipline and material responsibility

1. A fine from VND500,000 to VND1,000,000 for an employer committing the act of not consulting the enterprise or the temporary executive board of trade union (if any) in implementing labour principles as stipulated in Item 2, Article 82 of the amended, supplemented Labour Code.
2. A fine from VND1,000,000 to VND5,000,000 shall be imposed on an employer committing one of the following acts:
 - a) Not registering labour principles with the provincial State administrative authority in charge of labour as stipulated in Item 3, Article 82 of the amended, supplemented Labour Code;
 - b) Contents of labour principles are contrary to the stipulations in Item 1, Article 83 of the amended, supplemented Labour Code; labour principles are not publicized and posted at the necessary places in the enterprise as stipulated in Item 2, Article 83 of the amended, supplemented Labour Code;
 - c) Violating the time period for job suspension applied to employees as stipulated in Item 2, Article 92 of the amended, supplemented Labour Code.
3. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer committing one of the following acts:
 - a) Not introducing labour principles as stipulated in Item 1, Article 82 of the amended and supplemented Labour Code;
 - b) Violating the stipulations on the handling of labour disciplines stipulated in Article 87 of the amended, supplemented Labour Code, and the stipulations on handling and compensating the losses as stipulated in Article 91 of the amended, supplemented Labour Code;
 - c) Forcing workers to compensate for losses in contrast to the stipulations in Articles 89 and 90 of the amended, supplemented Labour Code;
 - d) Not ensuring the rights of workers according to laws after the competent body's conclusion of wrong discipline handling.
4. Remedial measures for damages caused:
 - a) Being forced to compensate workers for losses if the provisions in point c of Item 2, point d of Item 3 are violated, and to pay back the excess compensation amount as stipulated in point c, Item 3 of this Article;
 - b) Registering labour principles with the provincial State authority in charge of labour in accordance with laws if the provisions in point a, Item 2 of this Article are violated;
 - c) Publicizing and posting the labour principles in the enterprise for violation of the provisions in point b, Item 2 of this Article;
 - d) Formulating labour principles in accordance with laws for violation of the provisions in point a, Item 3 of this Article.

Article 15. Violations of the provisions on typical labour:

1. A fine from VND1,000,000 to VND2,000,000 shall be imposed on organizations, individuals committing one of the following acts:

- a) Failing to provide a changing room, a bathroom and a toilet for female employees as stipulated in Item 1, Article 116 of the amended, supplemented Labour Code.
- b) Failing to consult the representative of female workers when decision on the issues related to the rights and benefits of women and children as stipulated in Item 1, Article 118 of the amended, supplemented Labour Code is made;
- c) Employing female workers in their pregnancy of the 7th month plus or nursing under-12-month babies to work overtime, in the night shift, for missions not stipulated in Item 1, Article 115 of the amended, supplemented Labour Code; and failing to move female workers having to do hard jobs as stipulated in Item 2, Article 115 of the amended, supplemented Labour Code to lighter jobs or to reduce work time by an hour;
- d) Not allowing female workers to take a 30-minute rest per day during their menstruation or a 60-minute rest in the time of nursing under-12-month babies as stipulated in Item 3, Article 115 of the amended, supplemented Labour Code;
- f) Employing female, elderly or disabled workers to do hard, dangerous jobs or be exposed to harmful substances as stipulated in Article 113, Item 3 of Article 124 and Item 3 of Article 127 of the amended, supplemented Labour Code and the accompanied documents;
- g) Failing to establish books for monitoring, periodic health checking; abusing the strength of young workers as stipulated in Article 119 of the amended, supplemented Labour Code;
- h) Employing young and disabled workers to work for more than 7 hours per day or 42 hours per week in contrast to the stipulations in Item 1, Article 122 and Item 4, Article 125 of the amended, supplemented Labour Code;
- i) Employing disabled workers whose labour strength has been degraded by 51% and above to work for extra hours, in the night shift in contrast to the stipulations in Item 2, Article 127 of the amended, supplemented Labour Code.

2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer committing one of the following acts:

- a) Dismissing or unilaterally terminating an employment contract with female employees for the reasons of their marriage, pregnancy, maternity leave, or nursing a child under 12 months in contrast to the stipulations in Item 3, Article 111 of the amended, supplemented Labour Code;
- b) Employing young workers to do hard, dangerous jobs or be exposed to hazardous substances or the workplace and jobs for young workers might adversely affect their working dignity as stipulated in the list jointly introduced by the Ministry of Labour, Invalids and Social Affairs and Ministry of Health in Article 121 of the amended, supplemented Labour Code;
- c) Not employing disabled workers or not contributing to the employment fund for disabled workers for creating types of jobs required to the enterprise as stipulated in Item 3, Article 125 of the amended, supplemented Labour Code and the accompanied documents.

Article 16. Violations of the provisions on foreigners working in Vietnam

1. A fine from VND5,000,000 to VND10,000,000 shall be imposed if one of the following acts occurs:

- a) Foreigners have acts of beating, outraging the honour, dignity of workers without giving rise to criminal liability as regulated by laws;
- b) Employers recruiting foreigners as workers without labour licence.

2. A fine from VND15,000,000 to VND20,000,000 shall be imposed on an employer who commits the act of recruiting foreign workers who make up a proportion more than the stipulated; does not have any plan on providing training to Vietnamese workers to substitute foreign workers as stipulated in Item 1, Article 132 of the amended, supplemented Labour Code.

3. A penalization of expelling foreign workers shall be applied to those who commit one of the following acts:

a) Foreigners working in Vietnam at least three months without labour licence or using expired licence as stipulated in Item 1, Article 133 of the amended, supplemented Labour Code;

b) Acts of violation as stipulated in point a, Item 1 of this Article for the second time; The expelling shall be done in accordance with competency and procedure stipulated by laws.

4. Remedial measures for damages caused:

An employer shall employ foreign workers with appropriate rates in comparison to domestic ones; develop plan on training Vietnamese workers to substitute foreign workers for the acts stipulated in Item 2 of this Article.

Article 17. Violations of the provisions on sending workers abroad

1. Serving a warning notice or a fine from VND200,000 to VND500,000 for enterprises committing one of the following acts:

a) Failing to report or report inadequately profiles of the enterprise's affiliates which are assigned to export labour;

b) Failing to register contracts of labour export; register an inadequate number of contracted workers; or register a contract of labour export after sending workers abroad;

c) Failing to comply with the regulations on nominating an officer to be the representative of workers abroad;

d) Failing to make periodic and unscheduled reports adequately and timely as stipulated.

e) Failing to liquidate labour contracts.

2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on enterprises committing one of the acts violating one of the provisions in points c, d, e and h, Item 2, Article 135 of the amended, supplemented Labour Code.

3. A fine from VND10,000,000 to VND15,000,000 shall be imposed on enterprises committing one of the following acts:

a) Violation of one of the provisions in points a, d, e, g, i, Item 2, Article 135 of the amended, supplemented Labour Code;

b) Inappropriate management of deposits of workers.

4. A fine from VND15,000,000 to VND20,000,000 shall be imposed on organizations, individuals who commit one of the following acts:

a) Recruiting, sending workers abroad to work without licence from the competent body;

b) Taking advantage of labour export to select, train and educate for illegal profit;

c) Sending workers abroad to do jobs, occupations and in the fields that are prohibited.

5. Supplementary forms of penalization: applying the provisions in points a, b, Item 1 Article 11 and Item 2, Article 35 of Decree No 81/2003/ND-CP dated 17 July 2003 by the Government stipulating in details and guiding the implementation of the Labour Code on Vietnamese workers working abroad.

6. Remedial measures for damages caused:

a) Organizations, individuals violating points a and c, Item 4 of this Article have to bring the workers back to Vietnam at the request of the local country or the Vietnam's competent body;

b) Enterprises, organizations and individuals shall compensate workers for their losses and costs arising from violations of Items 2, 3 and 4 of this Article.

Article 18. Violations of the provisions on social insurance

1. A fine shall be imposed on an employer who pays social insurance insufficiently for the workers at the following rates:

a) From VND500,000 to VND1,000,000 million if the violation is made for between 01 and 10 workers;

b) From VND1,000,000 to VND3,000,000 if the violation is made for between 11 and 50 workers;

c) From VND3,000,000 to VND5,000,000 if the violation is made for between 51 and 100 workers;

d) From VND5,000,000 to VND10,000,000 if the violation is made for between 101 and 500 workers;

e) From VND10,000,000 to VND15,000,000 if the violation is made for at least 500 workers;

2. A fine shall be imposed on an employer who commits acts of not paying social insurance or not including social insurance in a worker's salary in case the worker is not a subject of the compulsory social insurance scheme. The fine is applied at the following rates:

a) From VND3,000,000 to VND5,000,000 if the violation is made for between 01 and 10 workers;

b) From VND5,000,000 to VND7,000,000 if the violation is made for between 11 and 50 workers;

c) From VND7,000,000 to VND10,000,000 if the violation is made for between 51 and 100 workers;

d) From VND10,000,000 to VND15,000,000 if the violation is made for between 101 and 500 workers;

e) From VND15,000,000 to VND20,000,000 if the violation is made for at least 500 workers;

3. A fine from VND500,000 to VND1,000,000 shall be imposed on an employer committing the act of granting wrong certificates to workers who are sick or enjoying treatment for occupational accidents and diseases.

4. A fine from VND2,000,000 to VND5,000,000 shall be imposed on one of the following acts:

a) Using fraudulent and deceptive documents to pocket the insurance premiums.

b) An employer, social insurance agency or individual intentionally obstructs or raises difficulties for the beneficiaries to enjoy the insurance premiums.

5. A fine from VND5,000,000 to VND10,000,000 shall be imposed on one of the following acts:

- a) Granting wrong certificates of assessment or injury classification to workers suffering from occupational accidents and diseases;
 - b) An employer pays social insurance at least 30 days later than the deadline for payment in accordance with laws.
6. Supplementary forms of penalization: being proposed to the competent body to revoke the operation licence for the third violation of the provisions in Items 1 and 2 of this Article.

7. Remedial measures for damages caused:

- a) Paying the amount of social insurance as stipulated and compensate workers for their damages if the violation of Items 1 and 2 of this Article is made;
- b) Reimbursing enjoyed benefits back to social insurance agencies if violation of point a, Item 4 of this Article occurs.
- c) Being proposed to the competent persons as stipulated Item 2, Article 26 of this Decree to besiege the account until the employer pays social insurance premiums in full not later than 30 days if violations of Item 1 and 2 of this Article occur. Beyond this duration, the competent person asks the bank at which an employer, who does not pay sufficiently social insurance premiums, to open his/her account to deduct the debt of social insurance premiums from his/her account to the account of the social insurance agency.

Article 19. Violations of provisions on labour disputes and strikes

1. Serving a warning notice or a fine from VND200,000 to VND500,000 for employees committing the following acts:

- a) Going on strike after the decision of the Prime Minister on the temporary postponement or suspension of a strike as stipulated in Article 175, or deliberately going on strike as stipulated in points a and b, Item 1, Article 176 of the amended, supplemented Labour Code;
- b) Committing an act causing damage to machinery, equipment, property of the enterprise or an act in breach of public order and security during a strike.

2. A fine from VND10,000,000 to VND15,000,000 shall be imposed on a person who has an act of obstructing the exercise of the right to strike or compelling or inciting other people to strike, which is contrary to the stipulations in Item 2, Article 178 of the amended, supplemented Labour Code;

3. A fine from VND15,000,000 to VND20,000,000 shall be imposed on a person who has an act of repressing or taking revenge on the person who took part in or had a leading role in a strike, which is contrary to the stipulations in Item 1, Article 178 of the amended, supplemented Labour Code;

4. Remedial measures for damages caused: forcing a person who commits the act of violation of the stipulations in point b, Item 1 of this Article to compensate for material damages to machinery, equipment, property.

Article 20. Violations of the provisions on organizations of trade unions:

1. A fine from VND1,000,000 to VND3,000,000 shall be imposed on an employer who commits one of the following acts:

a) Failing to ensure necessary working equipment for the trade union; failing to provide time for trade union officers to take action as regulated in Item 2, Article 154 and Items 1,2 and 3 of the amended, supplemented Labour Code.

b) Discriminating against workers who establish, join and take action in trade union; applying economic measures or other tricks to interfere in the organization and operation of the trade union as stipulated in Item 3, Article 154 of the amended, supplemented Labour Code.

c) Dismissing or unilaterally terminating the labour contract with members of the enterprise's trade union executive board without an agreement of the executive board, the chairperson of the executive board of the enterprise's trade union, or the higher level trade union as stipulated in Item 4, Article 155 of the amended, supplemented Labour Code.

2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who commits an act of obstructing the establishment or operation of the trade union at the enterprise.

3. Remedial measures for damages caused:

a) Providing necessary working conditions for the trade union, arranging time for officers who are involved in trade union activities if violation of the stipulations in point a, Item 1 of this Article is made;

b) Re-employing the employees dismissed if violation of the stipulations in point c, Item 1 of this Article is made.

Article 21. Violations of other provisions

1. A fine from VND500,000 to VND1,000,000 shall be imposed on an employer who commits one of the following acts:

a) Failing to notify employment and failing to report changes in labour; failing to report the stop of employment in case the enterprise stops its operations as stipulated in Article 182 of the amended, supplemented Labour Code;

b) Failing to set up labour books, salary books, social insurance books as stipulated in Article 182 of the amended, supplemented Labour Code;

c) Failing to give back labour books, social insurance books to employees.

2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on a person who commits the act of offending honour and dignity of employees.

3. Remedial measures for damages caused:

a) Notifying the employment; reporting the changes in labour; reporting the stop of employment in case the enterprise stops its operation in contrast to the stipulations in point a, Item 1 of this Article;

b) Establishing the labour books, salary books, social insurance books for the violations indicated in point b, Item 1 of this Article;

c) Give back the labour books, social insurance books to the employee for the violations indicated in point c, Item 1 of this Article.

Section II

Violation of the provisions on occupational safety, occupational health

Article 22. Violations of the provisions on equipment of occupational safety and health for employees

1. Serving a warning notice or a fine from VND100,000 to VND500,000 for employees commits one of the following acts:

- a) Failing to observe the provisions on occupational safety and health stipulated in Item 1, article 95 of the amended, supplemented Labour Code;
- b) Failing to use personal protective equipment provided by the employer.

2. A fine from VND1,000,000 to VND5,000,000 shall be imposed on an employer who fails to provide adequately personal protective equipment to employees as stipulated in Item 1, Article 95 of the amended, supplemented Labour Code.

3. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who commits one of the following acts:

- a) Failing to provide guards for dangerous parts of machine, equipment; failing to provide signboards with instructions on occupational safety in working places, machine and equipment sites and in places holding dangerous and harmful elements as stipulated in Article 98 of the amended, supplemented Labour Code;
- b) Failing to adequately provide appropriate technical, medical and labour protection equipment to ensure timely rescue in case of emergencies, accidents in workplaces with dangerous and harmful elements as stipulated in Article 100 of the amended, supplemented Labour Code.

4. Remedial measures for damages caused: forcing the employer to provide employees with technical, health and labour protection equipment as stipulated if violation of the provisions in Items 2 and 3 of this Article occurs.

Article 23. Violations of the provisions on ensuring safety and health for workers

1. A fine shall be imposed on an employer who commits one of the acts: failing to provide compensation in kind to workers engaged in jobs with dangerous and hazardous elements as stipulated in Article 104 of the amended, supplemented Labour Code; failing to provide health treatment or periodic checks and to establish health profiles for workers suffering from occupational diseases at the following rates:

- a) From VND500,000 to VND1,000,000 if the violation is made for between 01 and 10 workers;
- b) From VND1,000,000 to VND3,000,000 if the violation is made for between 11 and 50 workers;
- c) From VND3,000,000 to VND5,000,000 if the violation is made for between 51 and 100 workers;
- d) From VND5,000,000 to VND7,000,000 if the violation is made for between 101 and 500 workers;
- e) From VND7,000,000 to VND10,000,000 if the violation is made for at least 500 workers;

2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who commits one of the following acts:

a) Not providing training, guidance and information to employees about rules, measures for occupational safety, possibilities of occupational accidents which shall be prevented as stipulated in Article 102 of the amended, supplemented Labour Code;

b) Not providing periodic health checks, care for health of workers as stipulated in Article 102 and Article 103 of the amended, supplemented Labour Code;

c) Not complying with regulations on work time, rest time, measures for counterpoisoning, sterilization, personal hygiene for workers engaged in jobs with dangerous and hazardous elements as stipulated in Article 104 of the amended, supplemented Labour Code.

3. Remedial measures for damages caused:

a) Having to provide training and guidance on safety measures, possibilities of occupational accidents; provide periodic health checks, treatment; establish health profiles for workers if violation of the provisions in Item 1 and points a and b of Item 2 of this Article occurs;

b) Having to refund allowance back to workers if violation of Item 1 of this Article occurs.

Article 24. Violations of the provisions on occupational safety and health standards

1. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who commits one of the following acts:

a) Not periodically checking, repairing machine, equipment, workshops and stores as stipulated in Item 1, Article 98 of the amended, supplemented Labour Code;

b) Violating practice codes, standards on occupational safety in production, use, preservation, storage, keeping and conveyance of machine, equipment, materials and substances with strict OSH requirements as the list issued by the Ministry of Labour, Invalids and Social Affairs and Ministry of Health indicated in Item 2, Article 96 of the amended, supplemented Labour Code;

c) Not registering to use machine, equipment, materials and substances with strict OSH requirements as stipulated in Item 2, Article 96 of the amended, supplemented Labour Code and guiding documents;

d) Not ensuring standards on workplaces as stipulated in Article 97 of the amended, supplemented Labour Code.

2. A fine from VND15,000,000 to VND20,000,000 shall be imposed on an employer who commits one of the following acts:

a) There are no factual foundations for measures of occupational safety in construction and upgrading of undertakings to produce, use, maintain, keep and store machine, equipment, materials and substances with strict OSH requirements as the list issued by the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health indicated in Item 1, Article 96 of the amended, supplemented Labour Code;

- b) Not conducting verification of machines, equipment, materials and substances with strict OSH requirements as stipulated in Item 2, Article 96 of the amended, supplemented Labour Code;
 - c) Not taking remedial measures or not stopping operation of workplaces, machine, equipment exposed to risks of occupational accidents and diseases as stipulated in Item 1, Article 99 of the amended, supplemented Labour Code.
3. Remedial measures for damages caused:
- a) Being forced to take measures for occupational safety and health; comply with safety practice codes, standards if violation of the provision in points b and d of Item 1, point a of Item 2 of this Article occurs;
 - b) Being forced to repair machine, equipment which do not meet standards on occupational safety as stipulated by the list issued by the Ministry of Labour, Invalids and Social Affairs;
 - c) Being forced to register for operation licence of machine, equipment, materials and substances with strict OSH requirements with the competent bodies if violation of the provisions in point c, Item 1 of this Article occurs.

Article 25. Violations of the provisions on occupational accidents and diseases

1. A fine from VND1,000,000 to VND5,000,000 shall be imposed on an employer who commits one of the following acts:
- a) Failing to comply with the stipulations on settling, arranging work appropriate to the health of workers suffering from occupational diseases or accidents in accordance with conclusions by the Medical Assessment Council as stipulated in Item 1, Article 107 of the amended, supplemented Labour Code;
 - b) Failing to pay medical costs for the periods of first aid service, emergency service and medical treatment completion in favour of worker suffering from occupational accidents and diseases as stipulated in Item 2, article 107 of the amended, supplemented Labour Code;
 - c) Failing to pay allowance and compensation for workers suffering from occupational accidents and diseases in the cases stipulated in Items 2 and 3, Article 107 of the amended, supplemented Labour Code.
2. A fine from VND5,000,000 to VND10,000,000 shall be imposed on an employer who commits the act of not notifying or wrongly notifying the fact of occupational accidents and diseases; failing to make periodic statistics on occupational accidents and diseases as stipulated in Article 108 of the amended, supplemented Labour Code.
3. Remedial measures for damages caused: being forced to compensate workers for their damages from violation of the provisions in points b and c, Item 1 of this Article.

Chapter III

Powers, Procedures of Penalization, Execution of Decision on Administrative Penalization of Acts of Labour Laws

Article 26. Powers of People's Committees at all levels

1. Chairpersons of People's Committees in districts, towns, cities under provinces have the right to:

- a) Serve a warning notice.
- b) Fine up to VND20,000,000.
- c) Apply supplementary forms of penalization as stipulated in Item 2, Article 5 of this Decree.
- d) Apply remedial measures for damages caused as stipulated in points a, b, c, d, e, g and h, Item 3, Article 5 of this Article.

2. Chairpersons of People's Committee in provinces and cities at the central level have the right to:

- a) Serve a warning notice.
- b) Fine up to VND20,000,000.
- c) Apply supplementary forms of penalization as stipulated in Item 2, Article 5 of this Decree.
- d) Apply remedial measures for damages caused as stipulated in Item 3, Article 5 of this Article.

Article 27. Powers of penalization of the State Inspectorate for Labour

1. Labour inspectors on their mission have the right to:

- a) Serve a warning notice.
- b) Fine up to VND200,000.
- c) Seize evidence, equipment used for administrative violation worth up to VND2 million;
- d) Apply remedial measures for damages caused as stipulated in points a, b, c, d, e, g and h, Item 3, Article 5 of this Decree.

2. Chief Labour Inspector at the Department has the right to:

- a) Serve a warning notice.
- b) Fine up to VND20,000,000.
- c) Apply supplementary forms of penalization as stipulated in Item 2, Article 5 of this Decree.
- d) Apply remedial measures for damages caused as stipulated in points a, b, c, d, e, g and h, Item 3, Article 5 of this Decree.

3. Chief Labour Inspector at the ministerial level has the right to:

- a) Serve a warning notice.
- b) Fine up to VND20,000,000.
- c) Apply supplementary forms of penalization as stipulated in Item 2, Article 5 of this Decree.
- d) Apply remedial measures for damages caused as stipulated in points a, b, c, d, e, g and h, Item 3, Article 5 of this Decree.

Article 28. Powers of penalization in the field of occupational safety and health in the branches of Police, Defense, Science and Technology, Industry and Transport

Persons who are competent in inspection over occupational safety and health in the fields stipulated in Item 3, Article 191 of the amended, supplemented Labour Code during the inspection have the right to impose administrative penalization on labour law violations equivalent to the powers of penalization of labour inspectors stipulated in this Decree.

The inspection over occupational safety and health in the fields of radiation, oil and gas exploration, transport means of railway, waterway, land and airway and in the armed force units is conducted by administrative bodies in those fields in collaboration with the State Inspectorate for Labour.

Article 29. Principles of determining the powers of administrative penalization of labour law violations

1. For the acts of administrative violations of labour laws within the competence of a various number of State agencies, the penalization shall be conducted by the one handling the case first as stipulated in this Decree.

2. The powers of penalization of the persons mentioned in Articles 26, 27 and 28 are applied to one act of administrative violation.

In case fining is made, the powers of penalization are determined based on the maximum rate of the corresponding fine range to each specific act of violation.

3. In case a person is penalized for committing more than one acts of administrative violation, the powers of penalization are determined based on the principles as follows:

a) If forms, rates of penalization stipulated for each act are within the competence of the penalizing person, the powers of penalization still hold for that person.

b) If forms, rates of penalization stipulated for each act are beyond the competence of the penalizing person, that person has to transfer that case to the competent level for penalization;

c) If an act involves the powers of penalization of various persons belonging to various agencies, the powers of penalization shall be held by the Chairperson of People's Committee at the competent level administering the site of violation.

Article 30. Authorization of penalization of administrative violations

In case competent persons in administrative violations as stipulated in Articles 26, 27 and 28 of this Decree are absent, the lower level person who is authorized shall be competent in solving administrative violations and responsible for his/her decision.

Article 31. Procedures of penalization of administrative violations and execution of the penalization decision

The procedures in dealing with administrative violations in the field of labour and the execution of the penalization decision shall comply with the provisions stipulated in Articles 54 to 68 Chapter VI of the Ordinance on the Handling of Administrative Violations of 2nd July, 2002.

Article 32. Publicity of situation of labour law violation and result settlement

The chief labour inspector is responsible for publicizing situation of labour law violations by enterprises and the penalization of violation acts as regulated by laws via the mass media.

Chapter IV

Reward, complaints, denunciations and handling of complaints and denunciations

Article 33. Complaints, denunciations against decisions on penalization of administrative violation and handling of complaints and denunciations

1. Individuals, organizations penalized for their administrative violation or their legitimate representatives have the right to complain about the decision on penalization of administrative violation, decision on application of preventive measures and to ensure the handling of administrative violation.
2. Citizens have the right to denounce to the State competent bodies about illegal acts in handling administrative penalization of labour law violations.
3. Powers, procedures, steps and duration of complaints, denunciations and handling of complaints and denunciations shall comply with laws on complaints and denunciations.

Article 34. Reward

1. Individuals, organizations having good performance in fighting, preventing administrative violations of labour laws shall be rewarded in accordance with general regulations on emulation and reward.

The use of money from penalization of administrative violations or from evidences and equipment seized for reward shall be banned.

2. Enterprises, individuals employing workers, if seriously complying with labour laws and ensuring industrial relations to develop healthily, shall be rewarded in accordance with general regulations on emulation and reward.

Article 35. Handling of violations

1. Competent persons responsible for penalization of administrative violation of labour laws, if having acts of exacting, winking, shielding, not penalizing or penalizing late or beyond their competence, shall be disciplined or prosecuted depending on the nature and seriousness of violations; and shall compensate for damages caused, if any, in accordance with laws.
2. Persons facing penalization for their administrative violation of labour laws, if committing acts of obstructing, fighting against the competent persons, delaying, evading the compliance with the decision on penalization or committing other acts of violation, shall face administrative penalization or criminal prosecution depending on the nature and seriousness of the violation; or compensate for damages caused in accordance with laws.

Chapter V

Implementation provisions

Article 36. Implementation effectiveness

1. This Decree comes into effect 15 days since the date of publicity on major newspapers.
2. This Decree replaces Decree No 38/CP dated 25 June 1996 by the Government on administrative penalization of labour law violations.

3. Other regulations on penalization of administrative violations of labour laws which are contrary to this Decree shall be repealed.

Article 37. Responsibility for implementation guidance

The Minister of Labour, Invalids and Social Affairs is responsible for guidance and supervision of the implementation of this Decree.

Ministers, heads of ministerial agencies, heads of governmental agencies, chairpersons of People's Committees in provinces, cities at the central level are responsible for the implementation of this Decree.

On behalf of the Government

Prime Minister

Phan Van Khai

(signed)