

Circular No 10/2003/TT- BLDTBXH dated 18 April 2003 of the MOLISA

**Instructing the implementation of compensation to the victims
of occupational accidents and diseases**

Implementing the Government Decree No 110/2002/ND-CP dated 27/12/2002 on amending and supplementing the Government Decree No 06/CP dated 20/1/1995 regulating in detail some Articles of the Labour Code on occupational safety and health, after having sought the view of the Ministry of Health, the Ministry of Finance, VGCL, and other bodies concerned, the Ministry of Labour, Invalids and Social affairs instructs the implementation as follows:

I. SUBJECTS AND SCOPE OF APPLICATION

The subjects entitled to the compensation and allowance for the occupational accident and disease stipulated in Paragraph 4, Article 1 of the Government Decree No 110/2002/ND/CP dated 27/12/2002 include:

1. Worker employed under the labour contract in the following undertakings, bodies and organizations:
 - a) Undertakings set-up, operating under the State- owned undertaking Law comprising undertakings operating in production and business field, undertaking of public interest, undertaking belonging to armed force;
 - b) Undertakings set-up, operating under the Enterprise Law comprising the limited liability companies, joint stock companies, joint adventures, private companies;
 - c) Undertaking set - up, operating under the Foreign - invested in Vietnam Law comprising joint ventures and undertaking with 100% foreign invested capital;
 - d) Undertakings belonging to political, socio-political organizations;
 - e) Private productive, business household, co-operatives;
 - f) Administrative, non-productive bodies; political, socio-political, socio- politic- trade and other organizations; armed force; organizations and units belonging to administrative, non-productive, party, mass organizations, social associations permitted to productive, business, service activities.
 - g) Semi-public, People-founded, Private institutions belonging to industries of culture, health, education, training, sciences, sports and other non-productive branches;
 - h) Health care station of the Commune, Precinct and Town
 - i) Foreign organization & body or international organization in Vietnam, except where an International concluded, or acceded to, by the Socialist Republic of Vietnam provides otherwise;
 - k) Other organizations having labours employed not to mention in the above items.
2. Cadres, Governmental staffs, Officials working according to the Ordinance on Cadre and Governmental staff.
3. Employees, Co-op members working and enjoying wage in accordance with the Labour Contract to 03 months upwards in Co-ops established and operating in accordance with the Co-op Law.
4. Employees as regulated in points 1,2,3 of this Section including apprentice to work in enterprise, agency and organization to be subjects of this circular.

II. Compensation, allowance

1. Compensation benefit

- a) Occupational accident or disease as stipulated below and reducing ability to work from 5% upward or causing death shall be entitled to compensation:

- Occupational accidents occurred as result of impacts of dangerous, harmful factors causing injury for whatever part and function of the body of the worker or causing death in the course of employment and in connection with the execution of the work or task assigned (including the time for the necessary demand stipulated by the Labour Code: for the break, for lunch, for meal of allowances in kind, time off in menstruation of the female workers, washing, nursing, preparation to work and finishing the work).

- Occupational diseases are diseases caused by the effect of harmful of working conditions on the workers according to the list of occupational diseases established by the Ministry of Health and the Ministry of Labour, Invalids and Social affairs (Annex 1).

b) Conditions the worker shall be entitled to the compensation

- For the occupational accidents: The victim of occupational accident as stipulated in point 1, Item a above if the cause of the occupational accident is the fault of the employer according to the conclusion of the occupational accident investigation concluding minutes

The compensation shall be implemented by the case. Each time when the accident occurs, the benefit for the accident should be granted, not accumulating with previous cases.

- For the occupational diseases: The victim of occupational diseases as stipulated in point 1, Item a above shall be entitled to the compensation according to the conclusion of the concluding minutes of the competent forensic medicine body or medical assessment council for the cases:

+ Dead by the occupational diseases in the course of employment or before transferring to other employment, before redundancy, before retirement.

+ Periodical medical examination of occupational diseases to determine the degree of reduction of capacity to work.

The compensation shall be carried out by the time stipulated as follows:

The first time shall be based on the degree of reduction of the capacity to work (%) of the first examination and after that, from the second time forward, it shall be based on increased of the reduction of the capacity to work for the compensation corresponding to the increase of the reduction of capacity to work compared to the immediately previous time.

c) The amount of compensation

The amount of occupational accident and disease compensation as stipulated in Item b above shall be calculated as follow:

- At least equal to 30 monthly wage and benefits (if any) for the worker whose capacity to work has been reduced by 81% and more or died for the occupational accident or disease.

- At least equal to 1.5 monthly wage and benefit (if any) for those whose capacity to work has been reduced by 5% to 10%. After that, if the capacity to work reduces from more than 10% to less than 81%, each percent of reduction will be added 0.4 monthly wage and benefit (if any).

Method of calculating amount of compensation: The amount of compensation for those, whose capacity to work has been reduced from more than 10% to less than 81% shall be calculated by the formula below or consult the table of compensation amount, benefit corresponding to the reduction of capacity to work by 5% to the death (Annex 2)

$$Tbt = 1,5 + \{ (a - 10) \times 0,4 \}$$

In which:

Tbt: The amount of compensation for the worker, whose capacity to work has been reduced from more than 10% upward (the unit for calculation: monthly wage and benefit if any);

1.5: The amount of compensation to the reduction of capacity to work by 5% to 10%.

a: The rate (%) of reduction of capacity to work of the victims of occupational accident, disease.

0.4: coefficient of compensation for the increase of reduction of capacity to work 1%.

For example:

Mr. A has suffered from occupational disease, the first medical assessment defined the reduction of his capacity to work is 15%. The amount of compensation calculated as follow:

The amount of the first compensation for Mr. A will be:

$$Tbt = 1.5 + \{ (15 - 10) \times 0.4 \} = 3.5 \text{ (monthly wage and benefit, if any).}$$

The next periodical assessment defined the reduction of his capacity to work as 35% (the reduction of his capacity to work has increased 20%, compared with the first assessment).

The amount of the second compensation for Mr. A will be:

$$Tbt = 20 \times 0.4 = 8 \text{ (monthly wage and benefit, if any)}$$

2. Benefits

a) The victim of occupational accident shall be entitled to the benefit in the following cases:

- The occupational accident as stipulated in point 1, Item a and occurred by the direct fault of the worker, according to the conclusion of the minute of occupational accident investigation;
- The accident regarded as occupational accident occurred to the worker when he/she travel from his/her home to the workplace, from his/her workplace to home, or accident due to the objective factors as natural disaster, fire, and other unlucky cases related to execution of work or task, or the person causing the accident at work is not defined.
- The benefit is granted by case. Each time when the accident occurs, the benefit for the accident should be granted, not accumulating with accidents that occurred earlier.

b) The amount of the benefit

The amount of benefit is calculated as follow:

- At least equal to 12 monthly wages and benefit (if any) for worker, whose capacity to work has been reduced 81% upward or dead due to occupational accident.
- At least equal to 0.6 monthly wage and benefit (if any) for the worker, whose capacity to work has been reduced by 5% to 10%. If the reduction of capacity to work is more than 10% to less than 81% the amount of benefit shall be calculated by the formula below or by the table of compensation and benefit corresponding to the reduction of capacity to work from 5% to the death (annex 2).

Method calculating the benefit:

(Similar to the calculating method of the amount of compensation, then multiply the result by 0.4):

$$Ttc = Tbt \times 0.4$$

Of this:

Ttc: The amount of benefit for the worker with the reduction of capacity to work more than 10% upward (the unit of calculation: monthly wage and benefit, if any).

Tbt: The amount of compensation for the worker with the reduction of capacity to work more 10% upward (the unit of calculation: monthly wage and benefit, if any)

For example:

Mr. B suffered occupational accident (due to his fault of violation of safety rules), the first examination defines his capacity to work has been reduced 15%. The amount of benefit shall be calculated as follow:

The amount of benefit of the first time provided for Mr. B equal to:

$T_{tc} = T_{bt} \times 0.4 = 3.5 \times 0.4 = 1.4$ (monthly wage and benefit, if any).

In the second time, he suffered occupational accident when travelling from workplace to home (the accident has been regarded as occupational accident), the second medical examination defined his capacity to work reduced 20%.

The amount of benefit of the second time provided for Mr. B equal to:

$T_{tc} = 5.50 \times 0.4 = 2.20$ (monthly wage and benefit, if any).

3. The stipulated amounts of compensation and benefit are the minimum figure, The State encourage employers to apply the higher amount of compensation and benefit for the victims of occupational accidents and diseases.

4. The wage serving as a basis for calculation of amount of compensation and benefit is an average amount of the wage specified in labour contract for six (6) consecutive months immediately prior to the occupational accident or prior to detection of occupational disease. This includes fixed wage, the area allowance, the function allowance (if any) in accordance with the current regulations. If the worker has worked less than six months, the wage serving as a basis for calculation of compensation and benefit shall be the wage of the month immediately prior to or the wage at the time the accident occurred or disease was detected.

5. Subjects entitled to compensation, benefit of occupational accidents and diseases in accordance with this Circular still be entitled to social insurance benefit relating to occupational accident, disease (if participating in compulsory social insurance) stipulated in the Governmental Ordinance No 12/CP, dated 26 January 1995 on the promulgation of Social Security Regulation.

III. Documentation and procedure

1. Setting documentation and procedure

a) The employer shall be responsible to setting up the documentation for the victim of occupational accident according to the following provisions:

- The minutes of accident investigation in accordance with the current legislation (annex 3, annex 4)
- The minutes of examination (the document defining the degree of reduction of capacity to work caused by occupational accident) of the competent medical assessment council.
- The decision of the employer on compensation and benefit (annex 5)

b) The employer shall be responsible to setting up the documentation for the victim of occupational diseases according to the following provisions:

- The document of occupational disease according to current regulation (annex 6);
- The minutes specifying the death of the worker due to occupational disease established by the forensic medical body or the minutes assessing the degree of reduction of capacity to work caused by occupational disease of the competent medical assessment council;
- The decision of the employer on compensation (annex 7).

c) The documentation shall be established in triple (3 copies)

- One copy for the employer;
- One copy for the worker who's victim of occupational accident, disease (or relatives of the deceased worker);
- One copy for the local department of labour invalids and social affairs where the headquarters of undertaking body organization are positioned.

2. Time frame to implement the compensation, benefit.

- The decision on compensation, benefit of the employer for the victim of occupational accident, disease shall be completed in 5 days from the day the decision of the medical assessment council or of the forensic medical body was established.

- The compensation, benefit for the victim of the occupational accident, disease shall be given on the lump sum basis in 5 days from the day the employer has the decision.
- 3. The compensation, benefit expense for the victim of the occupational accident, disease shall be included in production or circulation cost of undertakings, production and business units. For the administrative non-productive body, it shall be included in current expenditure of the body. The households or individuals are responsible to bear the cost of compensation and benefit.

IV. Implementation

1. The employer has the responsibility of:

- Strengthening measures to improve the working conditions taking preventive measures and measure of propaganda, education to enhance the workers' awareness to eliminate the occupational accident and diseases.
- Taking health care for the workers, periodical medical examination. In case of detection of patient of occupational disease, the measure should be taken for treatment, convalescence and rehabilitation. Organizing the medical examination and assessment to determine the degree of reduction of capacity to work; paying the compensation to the victim of occupational disease (if any)
- Implementing policies, stipulation on occupational accident and disease compensation and benefit for worker or his/her relatives who died as result of occupational accident disease.
- Implementing the periodical report on situation of occupational accident and disease, the implementation of payment of occupational accident and disease compensation and benefit. These information shall be included in general 6 month and annual report to the local department of Labor, Invalids and Social affairs, confederation of trade union where the headquarter of undertaking body, organization is located.

2. The local department of Labor, Invalids and Social affairs, in collaboration with the confederation of trade union shall organize control, supervision regularly on the implementation of regulations on occupational safety and health and stipulations of this circular, direct the employer to implement correctly if the shortcomings are detected; for the serious violation the strict punishment can be applied.

3. The ministries, bodies equal to ministry, people's committee of provinces and cities coming directly under the central administration shall disseminate, instruct the implementation of this circular to every undertaking, body, organization under their administration.

4. The victims of occupational accident and disease certified from 01/01/2003 forward are entitled to occupational accident and disease compensation in this circular.

5. This circular shall take effect after 15 days from the date of its publication. The Circular No19/LDTBXH-TT dated 02/8/1997 issued by the Ministry of Labor, Invalids and Social affairs instructing the implementation of compensation for the victims of occupational accident are hereby repealed.

In the course of implementation the problems arisen, if any, shall be reported to the ministry of Labor Invalids and Social affairs for consideration and settlement.

Minister of Ministry of Labor, Invalids and Social Affairs

**Nguyen Thi Hang
(Signed)**

