

WORK PERMIT

8 IMPORTANT NEW POINTS

take effect from September 18, 2023

CDLAF LAW FIRM



INTRODUCTION

From September 28, 2023, a series of new regulations on foreign workers in Vietnam will officially take effect. The specific content is recorded in Decree No. 70/2023/ND-CP that this Decree will amend, supplement and abolish some contents of Decree 152/2020/ND-CP. Therefore, enterprises using foreign workers or having recruitment plans will need to pay attention to meet the provisions of the new decree, as well as prepare documents in accordance with the requirements of the licensing authorities. We will share information about the new regulations specifically in this article, and the forms are attached at the end of the article.



CONTENT

- 1 Changes in regulations on determining Foreign experts**
- 2 Changes in “Determination of demand for using foreign workers”**
- 3 Announcement of recruitment of workers**
- 4 Additional report obligations**
- 5 Amending some cases of foreign workers exempt from work permit**
- 6 Supplementing regulations on documents proving to be managers, executives, experts, technical workers**
- 7 Additional cases of re-issuance of work permits**
- 8 To annul rights to grant licenses of Management boards industrial parks and economic zones**

1. CHANGES IN REGULATIONS ON DETERMINING FOREIGN EXPERTS

For experts

Previous regulations: the criteria for determining an Expert who is a foreign worker if he/she has a bachelor's degree or higher or equivalent, and at least 3 years of working experience in a specialized training which is appropriate to the position that he/she expects to work in Vietnam;

Currently: this regulation has changed the requirement of working experience in the specialized training and replaced it with the regulation of at least 3 years of working experience which is appropriate to the position that foreign workers expect to work in Vietnam without requiring experience in the specialized training recorded in certificates and degrees.



For technical workers



Chief Executive Officer

For technical workers



Similar to the expert, instead of meeting the requirement of working at least 3 years in the specialized training as per previous regulations, the criteria for determining technical workers are: (i) having been trained for at least 1 year and (ii) having at least 3 years of working experience which is appropriate to the position that foreign workers expect to work in Vietnam

Changing the understanding of expert and technical worker positions facilitates enterprises as well as foreign workers when proving foreign workers' experience corresponding to each position expected to be recruited.

Chief Executive Officer

According to the previous definition, the Chief Executive Officer is understood as the head and direct manager of the unit under an agency, organization or enterprise.

The new regulations clearly define the chief executive officer as the person in one of the following cases: (i) The head of a branch, representative office or business location of the enterprise, (ii) The head directly manages at least 1 field of an agency, organization or enterprise and is subject to the direct direction and management of the head of the agency, organization or enterprise.

Adjusting the understanding and determination of the Chief Executive Officer position as the new regulation will create flexibility and convenience for enterprises. The personnel structure of each country is different from that in some multinational enterprises, in addition to the head of the enterprise as legal representative, the enterprise also has many chief executive officer positions for each different field.



2. CHANGES IN “DETERMINATION OF DEMAND FOR USING FOREIGN WORKERS”

Determination of demand for using foreign workers is the first step in the procedures for applying for a Work Permit or confirming that it is not subject to a Work Permit.

In addition, in the process, if there is any change in the demand for using foreign workers regarding the job position, job title, working mode, quantity of workers, or working location, the enterprise must report to the Ministry of Labor, War Invalids and Social Affairs at least 15 days before the expected date of using foreign workers. This period is shortened compared to the previous regulation which is 30 days.

COMPARISON OF PREVIOUS REGULATIONS AND NEW REGULATIONS

PREVIOUS DECREE



According to previous regulations, dossier determination of demand for using foreign workers must be submitted at least 30 days before the expected date of using foreign workers and reporting explanation to the Ministry of Labor, War Invalids and Social Affairs or the People's Committee of province or city under the central Government depending on each specific case

NEW DECREE



the new decree has changed that this period of 30 days is shortened to 15 days, as well as the competent authority is the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs depending on each specific case.

3. ANNOUNCEMENT OF RECRUITMENT OF WORKERS



New regulation

the announcement of recruitment of Vietnamese workers to positions expected to recruit foreign workers shall be made on the portal of the Ministry of Labor, War Invalids and Social Affairs (Department of Employment) or the portal of the Employment Service Center.

Established by the President of the People's Committee of province or city under the central Government.

Within at least 15 days from the expected date of reporting explanation to the Ministry of Labor, War Invalids and Social Affairs or the Department of Labor, War Invalids and Social Affairs where the foreign worker is expected to work.

The recruitment announcement

shall contain the job position and job title, job description, quantity of workers, required qualifications and experience, salaries, working time and location. After failing to recruit Vietnamese workers for positions which are expected to recruit foreign workers, the employer is responsible for determining the demand for employing foreign workers in accordance with the regulations mentioned in Section 2.

4.ADDITIONAL REPORT OBLIGATIONS

In addition to the obligations to report periodically in the first 6 months of the year and annual reports

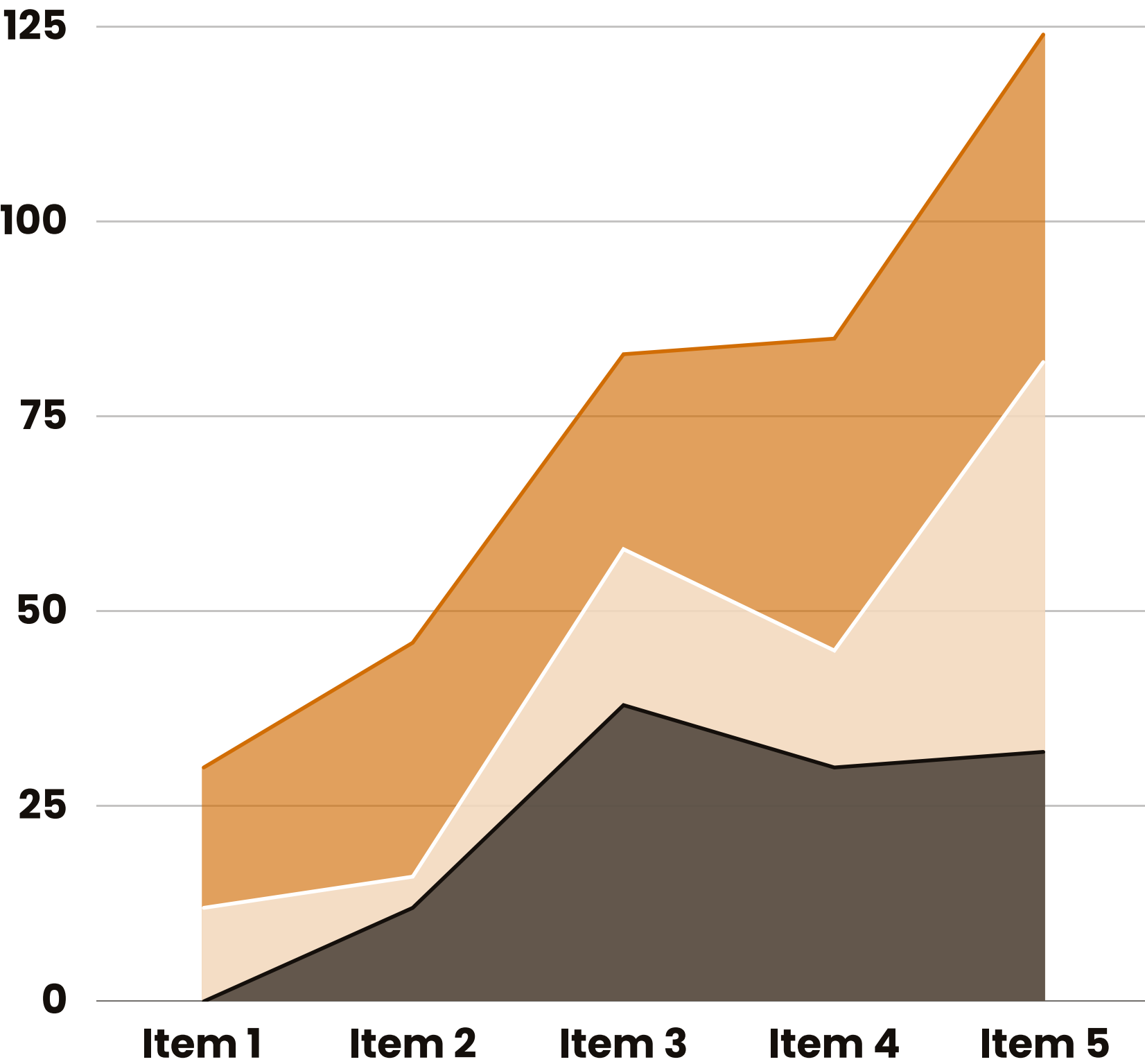
Under the new regulations, enterprises employing foreign workers will have additional obligations to report online to the Ministry of Labor – War Invalids and Social Affairs, Department of Labor – War Invalids and Social Affairs where foreign workers come to work.

This reporting will apply in the case of foreign workers working for an employer in multiple provinces, and municipalities. Enterprises are required to implement reporting obligations within 03 working days from the date the foreign workers start working.



5. AMENDING SOME CASES OF FOREIGN WORKERS EXEMPT FROM WORK PERMIT

Decree 70/2023/ND-CP adds cases that foreign workers are exempt from work permits when the Ministry of Education and Training is confirmed to enter Vietnam to assume managers positions, executive directors, principal, subprincipal of educational institutions proposed by foreign diplomatic mission or intergovernmental organizations for establishment in Vietnam.



COMPARISON OF PREVIOUS REGULATIONS AND NEW REGULATIONS

PREVIOUS DECREE



the old regulations only recognized the case of foreign workers “Being sent to Vietnam by a foreign competent authority or organization **to teach or do research** at an international school managed by the foreign diplomatic mission or United Nations; facilities, organizations established under agreements that Vietnam has signed and joined.”

NEW DECREE



the new regulations in Decree 70/2023/ND-CP have added the case that foreign workers sent to Vietnam by a foreign competent authority or organization to teach **or work as managers, and executives** at the above organizations are also in the case exempt from work permits

6. SUPPLEMENTING REGULATIONS ON DOCUMENTS PROVING TO BE MANAGERS, EXECUTIVES, EXPERTS, TECHNICAL WORKERS

For managers and executives: the old regulation only recorded general documents proving that managers and executives, but there were no detailed instructions, which led to difficulties for enterprises to implement as well as inconsistent understanding and application from the licensing authority.

The new regulations have detailed the direction of listing documents that are considered documents proving the status of managers and executives, specifically:

- The company's charter or operation regulations of authorities, organizations, or enterprises
- Enterprise Registration Certificate or establishment certificate or establishment decision or other document of equivalent legal validity;
- Resolutions or appointment decisions of authorities, organizations, or enterprises.



For the expert position and technical worker: Accordingly, the new regulation has listed documents that are considered as documents proving experts, the technical worker will include:

- Diplomas or certificates or certificates;
- A written certification by the overseas authority, organization, or enterprise of several years of experience of experts, technical workers, or work permits that have been issued or confirmed exempt from work permits that have been issued.”.



7. ADDITIONAL CASES OF RE-ISSUANCE OF WORK PERMITS



Old regulations

when there is a change in surname and surname, nationality, passport number, and working location stated in the valid work permit, the enterprise shall apply for a re-issuance of the work permit

New regulations

have added that in case an enterprise changes its name without changing the enterprise code stated in the work permit, it is also in the case of having to re-issue a work permit.

8. TO ANNUL RIGHTS TO GRANT LICENSES OF MANAGEMENT BOARDS INDUSTRIAL PARKS AND ECONOMIC ZONES

new issuance, re-issuance, renewal, and revocation of work permits and confirmation of foreign workers who
➤ are exempt from work permits for foreigners working in industrial parks, economic zones, will have no longer fall under the jurisdiction of the Management boards industrial parks and economic zones.

➤ All applications related to foreign workers will be handled by the Ministry of Labor – War Invalids and Social Affairs or the Department of Labor – War Invalids and Social Affairs in each case.

➤ Decree 70/2023/ND-CP also adjusts several contents related to the copy format for passports, proving documents for some positions that foreign workers are expected to work

➤ instructions on how to implement some documents related to work permits that have been submitted before the effective date of Decree 70/2023/ND-CP.

THANK

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YOU

Much!