

Vietnam's Decree 393 Streamlines Foreign Employment and Challenges EOR Hiring Models

Alitium

Ho Chi Minh City

Level 5, L'Mak Signature Building
147 Hai Ba Trung
Xuan Hoa Ward (District 3)
Ho Chi Minh City, Vietnam

Hanoi

51 Phan Boi Chau
Cua Nam Ward (Hoan Kiem)
Hanoi, Vietnam

P: +84 (28) 3535 6460

E: vietnam@alitium.com

Contact

Phuong Vo

Managing Partner
phuong.vo@alitium.com

Phung Nguyen

Accounting & Tax Partner
phung.nguyen@alitium.com

Matthew Lourey

Chairman
mlourey@alitium.com

Vietnam | Singapore | Malaysia

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Vietnam's new foreign-worker decree brings welcome changes for businesses employing international talent. Broader eligibility criteria, simpler documentation and more flexible work-permit renewal procedures should ease several practical difficulties faced by employers and foreign employees. Alongside these improvements, Decree No. 393/2026/ND-CP ("Decree 393"), which replaces Decree No. 219/2025/ND-CP ("Decree 219") from 5 December 2026, introduces tighter conditions in certain areas, including a narrower scope for intra-company transfers.

For businesses relying on Employer of Record (EOR) providers, however, a key concern is the express requirement under Article 37.6(b) that employers not sublease foreign workers. This directly challenges EOR hosting arrangements in which a provider formally employs a foreign national who works under a client company's direction. For affected arrangements, the implications go well beyond revised paperwork: businesses may need to reconsider the employment structure through which their foreign personnel work in Vietnam.

The potential disruption extends to providers, client companies and the foreign employees themselves. Businesses that have relied on EOR hosting to engage personnel without establishing their own employing entity in Vietnam may face difficult restructuring decisions. Suitable alternatives may take time to establish, depend on the circumstances of each business and employee, or may not be readily available. The practical challenge is therefore how to maintain continuity of employment and operations within the new framework.

Decree 393 represents a positive step in simplifying many aspects of foreign employment in Vietnam, but its impact will differ significantly depending on how businesses engage their people. This article examines seven key changes, beginning with the restriction on subleasing foreign workers and its implications for EOR hosting, before considering the broader improvements and compliance requirements employers should prepare for. It is not an exhaustive summary of every amendment.

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1. Potential legal constraints on EOR hosting arising from the prohibition on subleasing foreign workers

Article 37.6(b) expressly requires employers not to sublease foreign workers. This provision raises a significant legal concern for EOR hosting arrangements, particularly where a provider formally employs a foreign national who works under a client company's direction and supervision. The central issue is the substance of the arrangement, including who employs the individual and who directs and supervises their work.

The commercial consequences may be substantial. Where a client has no suitable employing entity in Vietnam, moving the individual to direct employment may require establishing a local presence or identifying another legally available structure. Neither can be assumed to be immediately feasible. Affected businesses will need to consider continuity of employment, work authorisation and operations alongside the cost and timing of any restructuring.

The EOR label does not, by itself, determine the legal position. Payroll administration, recruitment support and genuine outsourced services require separate analysis according to how they operate. Changing the contractual description of an arrangement that remains foreign-worker subleasing will not resolve the issue. Providers and clients may also have different responsibilities and exposure; contractual assurances alone are not a substitute for assessing the underlying arrangement.

Before 5 December 2026, providers and client companies should identify affected foreign-worker engagements, establish who is responsible for each part of the transition and assess whether a compliant alternative is available. Reviews should address existing employees as well as planned hires, allowing time for any necessary employment, work-permit and immigration steps.

Direct employment or a different service arrangement may be appropriate in some circumstances, but each alternative must satisfy the applicable employment, work-permit and other regulatory requirements. Businesses should not assume that a replacement structure is available for every engagement, or that an existing work permit alone authorises an affected hosting arrangement to continue.

2. Broader eligibility routes for experts and executive directors

The new Decree revises the criteria for certain foreign-worker positions, particularly experts and executive directors. These changes may make it easier for some businesses to demonstrate that a foreign candidate qualifies for a relevant position.

For executive directors who directly manage a particular field in the company, the minimum relevant experience requirement is reduced from three years under Decree 219 to two years under Decree 393.

The new framework also provides additional routes for expert classification. These include routes for eligible outstanding science and technology graduates from qualifying leading universities and for candidates with at least five years of relevant experience who do not hold a university degree. Each route remains subject to the specific conditions and supporting evidence required under the Decree.

These changes may be particularly useful for technology businesses, specialist service providers and companies recruiting experienced personnel whose professional credentials do not follow a conventional degree-plus-experience pathway.

However, broader eligibility should not be confused with automatic approval. Employers still need to establish that the individual meets the applicable criteria and provide supporting documents in the required form.

3. Narrower scope for intra-company transfers

The new Decree revises the treatment of intra-company transfers, including the categories of foreign personnel covered by the relevant route. Under the new framework, the intra-company transfer category is limited to managers, executive directors and experts, rather than also covering technical workers under the previous framework.

This change matters for multinational groups that regularly move personnel from overseas entities to Vietnam. A transfer that was previously considered under the intra-company transfer route should not automatically be assumed to qualify under the new rules.

The analysis should consider the individual's position, the relationship between the overseas entity and the Vietnamese operation, the relevant period of overseas employment and whether the business falls within the applicable conditions for exemption.

4. Alignment between recruitment information and actual employment arrangements

Article 37.6(c) requires the recruitment of foreign workers to meet the professional and technical qualifications and work-experience requirements stated in the recruitment notice. The notice must also be consistent with the proposed position, form of work, work location and duration for the relevant forms of work specified under the Decree.

This requirement reinforces the need for consistency between the recruitment notice and the foreign worker's proposed engagement. Employers should ensure that the qualifications and experience required of the candidate are not lower than those stated in the notice, and that the information accurately reflects the intended working arrangement.

The Decree also encourages employers to publish recruitment notices free of charge on the National Employment Service Exchange or through public employment service organisations. This is an encouragement rather than a mandatory requirement under this provision.

Practical implication: Employers should keep a clear documentary record of the proposed role and working arrangement. Recruitment notices should accurately describe the role and its qualification and experience requirements, and align with the subsequent work-permit application.

5 Simpler administration and digital processing of foreign-worker documentation

The new Decree provides for administrative procedures through the relevant public-service channels and recognises circumstances in which information may be retrieved from government databases rather than being supplied separately by the applicant.

For eligible online applications, the foreign national may not need to submit a separate criminal record certificate where the relevant information can be retrieved from the criminal record database. The competent authority retrieves the relevant information, and the processing period is calculated by reference to receipt of the retrieval result.

This change may simplify the preparation and submission of work-permit applications. However, the extent of the benefit will depend on the availability of the relevant information and the applicant's circumstances. Employers should not assume that all supporting-document requirements have been removed.

6. More flexible filing windows and faster work permit renewals

Decree 393 introduces several procedural changes intended to give employers greater flexibility in managing work-permit applications and renewals, while reducing the stated processing time for renewal applications.

Greater flexibility in filing timelines

For new work-permit applications, the filing window is specified as at least 10 working days but no more than 60 days before the intended start date. For renewals, the window is extended to between 10 working days and 90 days before the existing permit expires, compared with the previous window of 10 to 45 days under Decree 219.

The extended renewal window gives employers more flexibility to plan ahead, coordinate documentation and address potential issues before a permit expires. It may be particularly helpful for businesses managing multiple foreign employees or coordinating renewals across different business units.

Reduced processing time for renewals

Decree 393 reduces the stated processing period for work-permit renewals from 10 working days to five working days, subject to the application meeting the applicable requirements.

This shorter processing period may help employers manage renewals more efficiently and reduce the time required for the administrative process.

Simplified documentation and procedural updates

The new Decree also removes the health certificate from the specified renewal dossier.

What employers should do

Update work-permit calendars and internal procedures to reflect the revised filing windows and shorter renewal processing period. Although the new rules provide greater flexibility, employers should continue to prepare applications in advance, verify document requirements and maintain clear responsibility for tracking permit expiry dates.

7. Clearer Rules for Short-Term Work and New Reporting Obligations

Decree 393 clarifies the conditions under which certain foreign nationals may work in Vietnam for short periods without a work permit, while introducing new periodic reporting obligations for employers.

Short-term work: The 90-day threshold and paid engagements

Decree 393 provides greater clarity on the short-term work exemption, including how the 90-day limit applies across one or more employers in a calendar year. It also clarifies that the exemption does not apply where the arrangement involves an employment relationship and the payment of wages, in which case a work permit is required.

This clarification is relevant to businesses engaging foreign managers, executive directors, experts or technical workers for short-term projects or assignments in Vietnam. Employers should assess the aggregate duration of the relevant work and the substance of the engagement, rather than considering each assignment in isolation.

Periodic reporting obligations

Article 37 also requires employers to maintain information about foreign workers and provide periodic reports, generally before 5 June and 5 December each year, or when requested by the competent local authority or when relevant changes occur, subject to the database-related exceptions specified in the provision.

The Decree assigns responsibilities to the Ministry of Home Affairs, provincial-level authorities and other agencies for administration, data management, inspection and supervision.

Foreign-worker compliance should be treated as an ongoing obligation. Employers should maintain accurate records of their foreign workforce, monitor changes in employment arrangements and ensure that required reports are submitted.

Transition to the new framework and priorities for businesses

Decree 393 takes effect on 5 December 2026, and Decree 219 is repealed from that date under the new Decree's transitional and repeal provisions.

Work permits and exemption confirmations already issued under Decree 219 and the earlier regulatory framework identified in the transitional provisions remain valid until their respective expiry dates. Subsequent applications, reissuance and renewals are subject to the new framework. The continued validity of a permit or exemption confirmation should not be treated as blanket protection for the underlying employment arrangement, or as confirmation that EOR hosting constituting foreign-worker subleasing may continue until the document expires.

For affected EOR engagements, businesses should assess the transitional provisions separately from the restriction on subleasing. They should establish whether any specific transitional protection applies to the arrangement and clarify material uncertainty with the competent authority where necessary. Continuity planning should begin before the new rules take effect rather than being deferred until permit expiry.

We recommend that businesses prioritise the following actions:

1. **Review EOR and other third-party employment arrangements.** Identify engagements that constitute foreign-worker subleasing, assess feasible alternatives and agree responsibilities and timelines for any transition. Consider the position of affected employees as well as the provider and client.
2. **Reassess eligibility.** Review candidates who may qualify under the revised expert or executive-director criteria and identify any newly available work-permit exemptions.
3. **Review intra-company transfers.** Identify planned transfers, particularly those involving technical workers, and verify the applicable route and conditions.

4. **Update application and renewal procedures.** Revise filing calendars, recruitment-notice processes, document checklists and permit-expiry tracking.
5. **Establish reporting responsibility.** Prepare internal processes to support the periodic reporting obligations.
6. **Check transitional arrangements.** Distinguish the continued validity of permits and exemption confirmations from the permissibility of the underlying arrangement, and establish which requirements apply to ongoing engagements and future applications.

Conclusion

Decree 393 brings welcome improvements to the recruitment and administration of foreign employees in Vietnam, while narrowing some routes and reinforcing employer responsibilities. Businesses should use the new framework to reassess eligibility and simplify their processes where the revised rules allow.

For EOR providers and their clients, affected hosting arrangements may require separately assess the transitional provisions and the implications of the new restriction on subleasing foreign workers. In some cases, fundamental restructuring may be necessary, with potential consequences for employees and business continuity. The priority is to identify those engagements, establish what can lawfully continue and determine whether workable alternatives can be implemented in time.

Early assessment matters because a compliant replacement cannot be assumed to be readily available. Businesses should plan around the legal requirements and practical lead times for their particular workforce, rather than relying on contractual labels or existing permit expiry dates.

For any further questions you may have, please reach out to us at vietnam@alitium.com

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