

**THE GOVERNMENT**

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**THE SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

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No. 45/2013/ND-CP

*Hanoi, May 10<sup>th</sup> 2013*

## **DECREE**

**ELABORATING A NUMBER OF ARTICLES OF THE LABOR CODE ON HOURS OF WORK, HOURS OF REST, OCCUPATIONAL SAFETY AND OCCUPATIONAL HYGIENE**

*Pursuant to the Law on Government organization dated December 25<sup>th</sup> 2001;*

*Pursuant to the Labor Code dated June 18<sup>th</sup> 2012;*

*At the request of the Minister of Labor, War Invalids and Social Affairs;*

*The Government elaborates a number of articles of the Labor Code on hours of work, hours of rest, occupational safety and occupational hygiene,*

### **Chapter 1.**

#### **SCOPE AND SUBJECTS OF APPLICATION**

##### **Article 1. Scope of regulation**

This Decree elaborates a number of articles of the Labor Code on hours of work, hours of rest, occupational safety and occupational hygiene

##### **Article 2. Subjects of application**

1. The regulations on hours of work and hours of rest are applicable to the subjects in Article 2 of the Labor Code.
2. The regulations on occupational safety and occupational hygiene in this Decree are applicable to the following subjects:
  - a) Vietnamese employees, foreign employees working in Vietnam, and apprentices;
  - b) Enterprises, agencies, organizations, cooperatives, households, and relevant individuals.

### **Chapter 2.**

#### **HOURS OF WORK AND REST**

## **SECTION 1. HOURS OF WORK**

### **Article 3. Periods included in paid working hours**

1. Rest periods during hours of work as prescribed in Article 5 of this Decree.
2. Breaks at work according to the characteristics of the job.
3. Rest periods necessary for physiological needs of humans
4. A rest period of 60 minutes every day for female employees having children under 12 months of age.
5. A rest period of 30 minutes every day for menstruating female employees.
6. Periods during which work are paused that are not on account of employees.
7. Periods of training in occupational safety and occupational hygiene.
8. Periods of meeting or training requested or agreed by the employee.
9. Periods of meeting or training requested by superior Trade Union as prescribed by the laws on Trade Union.
10. The working hours of elderly employees shall be shortened to at least 01 hour in the last year before their retirement.

### **Article 4. Overtime**

1. Overtime hours in a day shall:
  - a) Not exceed 50% of the normal working hours in 01 day; the total normal working hours and overtime hours shall not exceed 12 hours in a day when applying weekly working hours;
  - b) Not exceed 12 hours in a day when working overtime on public holidays and weekends.
2. 200-300 overtime hours in a year:
  - a) Overtime hours are permitted in the following cases:
    - Production and processing of textiles, garments, leather, shoes, agricultural, silvicultural, and aquaculture products;
    - Electricity supply, telecommunication services, oil refinery, water supply and drainage,
    - Other urgent cases in which works must not be postponed.

b) When organizing overtime, employees shall notify local specialized agencies that assist People's Committees of central-affiliated cities and provinces (hereinafter referred to as provincial People's Committees) in charge of labor management.

3. Compensatory rest periods prescribed Point c Clause 2 Article 106 of the Labor Code:

a) After each overtime up to 07 consecutive days in a month, the employer shall provide their employees with compensatory rest periods;

b) Where compensatory rest periods are not available, overtime pay shall be given as prescribed in Article 97 of the Labor Code.

## **Article 2. HOURS OF REST**

### **Article 5. Rest periods during working hours**

1. The short breaks prescribed in Clause 1 and Clause 2 Article 108 of the Labor Code are considered working hours in a 08-hour shift in normal conditions or 06 hours if shortened. Specific rest periods are decided by the employer.

2. Apart from short breaks during a normal shift prescribed in Clause 1 of this Article, employees working 10 hours a day or more, including overtime hours, shall be given at least 30 minutes of rest during working hours

### **Article 6. Periods considered working hours of employees to calculate annual leaves**

1. The apprenticeship specified in the apprentice contract.

2. The probation period in the labor contract.

3. Separate paid leaves according Clause 1 Article 116 of the Labor Code.

4. Unpaid leaves agreed by the employee, but the total length must not exceed 01 month.

5. Rest periods due to occupational accidents or occupational illness, but the total length must not exceed 06 months.

6. Rest periods due to sickness, but the total length must not exceed 02 months.

7. Maternity leaves as prescribed by the laws on social insurance.

8. Rest periods to do Trade Union activities as prescribed by the laws on Trade Union.

9. Periods during which works are suspended that are not on account of employees.

10. Suspension periods

11. Detention period after which the employee is released and goes back to work after being declared innocent by competent state authorities.

**Article 7. Calculation of number of days of annual leave when a person has not worked for a full year.**

The number of days of annual leave as prescribed in Clause 2 Article 114 of the Labor Code equals the number of days of annual leave plus additional days off according to seniority (if any) divided by 12 months, then multiplied by the actual number of working months in the year; the result shall be rounded up if the decimal is 0.5 or bigger.

**Article 8. Lunar New Year Holiday**

1. The period of Lunar New Year Holiday according to Clause 1 Article 115 of the Labor Code is selected by the employee, either 01 last day and 04 first days of the lunar year, or 02 last days and 03 first days of the lunar year.

2. Employers shall notify employees of the Lunar New Year Holiday plan at least 30 days before the holiday.

**Chapter 3.**

**OCCUPATIONAL SAFETY AND OCCUPATIONAL HYGIENE**

**SECTION 1. GENERAL REGULATIONS ON OCCUPATIONAL SAFETY AND OCCUPATIONAL HYGIENE**

**Article 9. The formulation of the National Program on occupational safety and occupational hygiene**

1. The Ministry of Labor, War Invalids and Social Affairs shall formulate 05-year National Programs on occupational safety and occupational hygiene and submit them to the Prime Minister for approval.

2. Annually, according to the approved National Programs on occupational safety and occupational hygiene and estimates made by the Ministries, agencies and local governments, the Ministry of Labor, War Invalids and Social Affairs shall send the estimate of budget for the construction together with the State budget estimates to the Ministry of Finance and the Ministry of Planning and Investment.

**Article 10. Making plans for ensuring occupational safety and occupational hygiene.**

1. When building, expanding, or upgrading a construction serving the production or storage of machinery, equipment, supplies, and substances that having strict requirements for occupational safety and occupational hygiene, the investor and the employer shall make a plan for ensuring

occupational safety and occupational hygiene for the workplace and the environment, then submit it to the agency competent to permit such construction, expansion, or upgrade.

2. The plan for ensuring occupational safety and occupational hygiene shall contain:

- a) The location and scale of the construction, specifying the distance from the construction to residential areas and other constructions;
- b) A list and details of items in that construction;
- c) The hazards and accidents that may occur during the operation;
- d) Specific measures from eliminating and minimizing the hazards; plans for dealing with accidents and emergency response.

### **Article 11. Employing elderly employees to do hard works, hazardous works, and dangerous works**

1. Elderly employees shall be employed to do hard works, hazardous works, and dangerous works when the following conditions are satisfied:

- a) Employees are experienced, skillful with at least 15 years of seniority, and issued with vocational qualifications or recognized as artists as prescribed by law;
- b) Elderly employees meet the health standards for their occupations established by the Minister of Health;
- c) Each employment does not exceed 05 years;
- d) Health-checks are given at least twice a year;
- dd) At least 01 co-worker is not an elderly employee.

2. Pursuant to Clause 1 of this Article, Ministries and ministerial agencies shall specify the hard works, hazardous works, dangerous works, and specific conditions for each employment of elderly employees.

## **SECTION 2. OCCUPATIONAL ACCIDENTS AND OCCUPATIONAL ILLNESS**

### **Article 12. Serious accidents**

1. Occupational accidents are accidents that cause harm to any organ and function of the body, or lead to death; happen during the fulfillment of employees' tasks, even during short breaks, meal breaks, preparation for work, and finalization of work at workplaces.

2. An accident is considered an occupational accident when it happens at a suitable location and time when the employee is going to work from home and vice versa.

3. Occupational accidents are classified as:

- a) Fatal occupational accidents;
- b) Serious occupational accidents;
- c) Minor occupational accidents;

4. Serious emergencies are accidents that happen during the work process (not including occupational accidents) that cause damage to property of employees and employers.

### **Article 13. Statement, investigation, statistics, report, compensation, pays for occupational accidents, occupational illness, and serious emergencies**

1. The statement, investigation, statistics, report, compensation, pays for occupational accidents, occupational illness, and serious emergencies are specified as follows:

- a) Employers shall report fatal occupational accidents and serious occupational accidents that hurt at least 02 employees and serious accidents to Inspectors of local Services of Labor, War Invalids and Social Affairs
- b) Employers shall investigate minor occupational accidents and serious occupational accidents that injure 01 employees, and serious accidents;
- c) Labor inspectors shall investigated fatal occupational accidents and serious occupational accidents that injure 02 employees or more; investigate occupational accidents and severe accidents that have been investigated by employers if complaints or denunciations are filed or where necessary;
- d) During the investigation into occupational accidents and severe accidents, if commitment of crimes are suspected, the labor inspector and the employee shall send reports to competent state authority and send documentations to a criminal proceedings agency;
- d) Employers shall open logbooks and send biannual and annual reports to state agencies in charge of labor.

2. Statistics and reports on occupational illness:

- a) Employers shall make health profiles of employees suffering from occupational illness, and send biannual and annual reports to state agencies in charge of health and labor;
- b) The Minister of Health shall provide guidance on the procedure for making statistics and reports on occupational illness.

3. Employers shall provide compensations and benefits for employees suffering from occupational accidents and occupational illness under the guidance of the Minister of Labor, War Invalids and Social Affairs.

#### **Article 14. Controlling hazards**

At workplaces facing hazards that may causes occupational accidents or occupational illness, employers shall:

1. Check and assess the hazards; provide solutions for eliminating and minimizing hazards, improve working conditions, and take care of employees' health;
2. Measure the hazards at least once a year; make and retain records as prescribed by law;
3. Provide technical and health equipment to ensure responsive aid when occupational accidents happen;
4. Draw up plans for dealing with accidents, emergency response, and organize an on-site medic team as prescribed by law; the medic team must be regularly trained.

### **SECTION 3. ASSESSMENT OF OCCUPATIONAL SAFETY**

#### **Article 15. Occupational safety assessing organizations**

1. Assessment of occupational safety is a technical activity following a certain procedure (hereinafter referred to as assessment procedure) in order to assess and certify the safety of the assessed subjects according to technical standards.
2. Occupational safety assessing organizations are public service providers or enterprises established within law and issued with the Certificate of eligibility to assess occupational safety by competent state authority.

#### **Article 16. Conditions for the Certificate of eligibility to assess occupational safety**

1. Holding a Certificate of Business Registration or an Establishment Decision issued by a competent authority.
2. The facilities and technical equipment satisfy the requirements for assessing each subject.
3. The quantity of assessors that satisfy the requirements of assessing is sufficient.
4. The organization is suitable for carrying out assessment.

#### **Article 17. Documentation and procedure for issuing, reissuing, and adjusting the Certificate of eligibility to assess occupational safety**

1. The application for the Certificate of eligibility to assess occupational safety includes:

a) The written request for the Certificate

b) Documents proving the fulfillment of the conditions in Article 16 of this Decree.

2. The application for the reissuance of the Certificate of eligibility to assess occupational safety:

a) At least 03 months before the expiration date of the Certificate, if the organization wishes to continue the assessment of occupational safety, it shall submit an application for the reissuance of the Certificate. The application includes:

- The written request for the reissuance of the Certificate;

- The issued Certificate;

- The report on the operation of the organization while holding the Certificate;

- Documents proving the fulfillment of the conditions in Article 16 of this Decree.

b) Where the Certificate is lost or damaged and the organization wishes to continue the assessment of occupational safety, it shall submit an application for the reissuance of the Certificate. The application includes:

- The written request for the reissuance of the Certificate;

- The copy or original Certificate issued (if any).

3. The application for the adjustment of the Certificate of eligibility to assess occupational safety:

a) The written request for the adjustment of the Certificate;

b) The issued Certificate;

c) Supporting documents.

4. Procedure for issuing, reissuing, and adjusting of the Certificate of eligibility to assess occupational safety:

a) When an organization requests the issuance, reissuance, or adjustment of the Certificate, it send a competent authority prescribed in Article 18 of this Decree an application for the issuance, reissuance, or adjustment of the Certificate, and pay the fee for the adjustment of the conditions for such issuance, reissuance, or adjustment;

b) Within 30 working days from the day on which the complete and valid application is received, the competent authority prescribed in Article 18 of this Decree shall issue, reissue, or adjust the Certificate; if the application is rejected, the competent authority shall notify the applicant in writing and provide explanation.

**Article 18. The power to issue the Certificate of eligibility to assess occupational safety:**

1. The power to issue the Certificate of eligibility to assess occupational safety:

a) The Ministry of Industry and Trade: industrial explosives, hydraulic system for raising the sluice gate; machinery and equipment having strict requirements for occupational safety used in mining;

b) The Ministry of Transport: machinery, equipment, and supplies having strict requirements for occupational safety to operate vehicles on roads, inland waterway, sea, rail, and air (not including the machinery, equipment and supplies having strict requirements for occupational safety carried on such vehicles to work at constructions, warehouses, factories, and business places; equipment having strict requirements for occupational safety that serve the petroleum exploration and extraction at sea, oil and gas pipeline system at sea;

c) The Ministry of Science and Technology: nuclear reactors, electromagnetic compatibility test; machinery and equipment having strict requirements for occupational safety that operate on high-voltage grids; machinery and equipment that contain and radiation sources;

d) The Ministry of Construction: scaffolding system, sliding formwork system;

dd) The Ministry of Information and Communications: high-frequency antennae; high-frequency amplifiers in radio and television;

e) The Ministry of National Defense: machinery, equipment, and supplies having strict requirements for occupational safety used for national defense and military activities;

g) The Ministry of Labor, War Invalids and Social Affairs: machinery, equipment, and supplies having strict requirements for occupational safety, except for the machinery, equipment and supplies in Points a, b, c, d, dd, and e of this Clause.

2. The authorities competent to issue the Certificate in Clause 1 of this Article are the authorities competent to issue, reissue, adjust, revoke, and suspend Certificates of eligibility to assess occupational safety.

**Article 19. Validity period of the Certificate of eligibility to assess occupational safety**

1. The validity period of a Certificate of eligibility to assess occupational safety that is issued for the first time or when the old one is expired is 03 years.

2. The validity period of a Certificate of eligibility to assess occupational safety that is issued when the old one is lost or damaged is the remaining validity period of the old one.

#### **Article 20. Suspending occupational safety assessing organizations**

Occupational safety assessing organizations shall be suspended when:

1. The conditions in Article 16 of this Article are not satisfied;
2. No report on the assessment is sent to competent authorities for 18 consecutive months.

#### **Article 21. Revoking the Certificate of eligibility to assess occupational safety**

1. The suspension period is over but the causes of suspension are not eliminated.
2. Carry 03 administrative penalties for the same violations or in a year.
3. Carry out assessment during the suspension.
4. Forge or falsify documents in the application.
5. Falsify the Certificate.

#### **Article 22. Rights and responsibilities of occupational safety assessing organizations**

1. Occupational safety assessing organizations are entitled to:
  - a) Carry out assessments in accordance with assessment service contracts;
  - b) Collect fees and services charges as prescribed by law;
  - c) File complaints and denunciation against acts of obstructing the assessment;
  - d) Request their clients to provide documents and information serving the assessment;
  - dd) Other rights as prescribed by law.
2. Occupational safety assessing organizations shall:
  - a) Provide assessment services in accordance with the Certificate of eligibility to assess occupational safety;
  - b) Not refuse to provide assessment services without rational explanation;
  - c) Comply with the assessment procedure;

d) Take responsibility for the assessment result, pay compensation for the damage caused by the assessment; withdraw the assessment result when misconduct is discovered;

dd) Send reports on the assessment to competent authorities as prescribed by law;

e) Retain the assessment files;

g) Other rights as prescribed by law.

### **Article 23. Responsibilities when using machinery, equipment, and supplies having strict requirements for occupational safety**

Enterprises, organizations, cooperatives, households, and individuals using machinery, equipment, and supplies having strict requirements for occupational safety shall:

1. Sign contracts with occupational safety assessing organizations for assessment before use or periodic assessment throughout their operation.

2. Send declaration and reports on the assessment of machinery, equipment, and supplies having strict requirements for occupational safety to competent authorities before use.

### **Article 24. Responsibilities of state management authorities for the assessment of occupational safety**

Ministries, ministerial agencies, and Governmental agencies shall:

1. Suggest machinery, equipment, and supplies under their management to the list of machinery, equipment, and supplies having strict requirements for occupational safety;

2. Establish procedures for assessing the subjects within their competence as prescribed in Article 18 of this Decree, after obtaining written opinions from the Ministry of Labor, War Invalids and Social Affairs;

3. Elaborate Article 16, Article 17, and Article 20 of this Decree; the conditions, order, and procedure for issuing and revoking Certificates of occupational safety assessors within their competence;

4. Inspect the assessment of occupational safety within their competence;

5. Send annual or unscheduled reports to the Ministry of Labor, War Invalids and Social Affairs on the assessment of occupational safety.

## **Chapter 4.**

## **STATE MANAGEMENT OF HOURS OF WORK, HOURS OF REST, OCCUPATIONAL SAFETY, AND OCCUPATIONAL HYGIENE**

## **Article 25. State management of hours of work, hours of rest, occupational safety, and occupational hygiene**

1. The Ministry of Labor, War Invalids and Social Affairs is responsible to the Government for unifying the state management of hours of work, hours of rest, labor safety and labor hygiene, and:

a) Formulate and promulgate or request the promulgation of legislative documents on hours of work, hours of rest, labor safety and labor hygiene

b) Cooperate with relevant Ministries and agencies in formulating the National Regulation on occupational safety and occupational hygiene in conformity with international practice;

c) Disseminate the laws on hours of work, hours of rest, occupational safety, and occupational hygiene;

d) Provide guidance and training in occupational safety and occupational hygiene;

dd) Provide guidance on occupational safety and occupational hygiene at enterprises, organizations, and cooperatives engaged in production and business;

e) Integrate occupational safety and occupational hygiene in the curriculums of vocational training institutions;

g) Investigate occupational accidents; cooperate with the Ministry of Public Security and the Supreme People's Procuracy in investigating and dealing with occupational accidents suspected of crimes.

h) Inspect the adherence to the laws on hours of work, hours of rest, occupational safety and occupational hygiene;

i) Seek international cooperation in hours of work, hours of rest, occupational safety, and occupational hygiene.

2. The Ministry of Health shall:

a) Formulate and promulgate or request the promulgation of legislative documents on occupational health care and health standards applicable to each occupation;

b) Cooperate with the Ministry of Labor, War Invalids and Social Affairs in making and promulgating the list of occupational illness;

cc) Cooperate with the Ministry of Labor, War Invalids and Social Affairs in building, expanding, or upgrading a construction serving the production and storage of substance with high demand for occupational hygiene within their competence;

d) Provide guidance on the organization of on-site medic teams, training in first-aid at workplaces;

dd) Provide guidance and organize periodic health-checks, pre-employment health-checks, diagnosis of occupational illness, and medical examinations to rate injuries, provide treatment and rehabilitation for people suffering from occupational accidents and occupational illness.

3. The Ministry of Science and Technology shall:

a) Unify the management of research and application of occupational hygiene and occupational safety technologies;

b) Organize and direct the radiation safety and nuclear safety works.

4. The Ministry of Education and Training shall integrate occupational safety and occupational hygiene into the curriculums of higher education institutions.

5. The Ministry of Culture, Sports and Tourism and the Ministry of Labor, War Invalids and Social Affairs shall provide guidance on hours of work, hours of rest, occupational safety and occupational hygiene to suit the working conditions of employees that work in arts and sports.

6. The Ministry of Finance and the Ministry of Labor, War Invalids and Social Affairs shall specify the level, collection, management, and use of fees and charges relating to the assessment of occupational safety and training in occupational safety and occupational hygiene.

7. Ministries and ministerial agencies, within their competence, are responsible for the state management of hours of work, hours of rest, occupational safety and occupational hygiene.

8. Provincial People's Committees are in charge of state management of hours of work, hours of rest, occupational safety and occupational hygiene locally; set occupational safety, occupational hygiene targets, and improve working conditions.

## **Chapter 5.**

### **IMPLEMENTATION**

#### **Article 26. Effect**

1. This Decree takes effect on July 01<sup>st</sup> 2013.

2. The Government's Decree No. 195/CP dated December 31<sup>st</sup> 1994 elaborating and providing guidance on the implementation of a number of articles of the Labor Code on hours of work and hours of rest; the Government's Decree No. 06/CP dated January 20<sup>th</sup> 1995 on the amendments to the Government's Decree No. 195/CP dated December 31<sup>st</sup> 1994; the Government's Decree No. 110/2002/ND-CP dated December 27<sup>th</sup> 2002 on the amendments to the Government's Decree No. 06/CP dated January 20<sup>th</sup> 1995; Article 2 of the Government's Decree No. 81/2012/ND-CP dated

October 08<sup>th</sup> 2012 on the amendments to the Government's Decree No. 68/2008/ND-CP dated May 30<sup>th</sup> 2008 on the conditions, establishment procedure, organization, operation, and dissolution of social protection institutes, and the Government's Decree No. 109/2002/ND-CP dated December 27<sup>th</sup> 2002 on the amendment to the Government's Decree No. 195/CP dated December 31<sup>st</sup> 1994 are annulled from the effective date of this Decree.

3. The regulations on hours of works, hours of rest, occupational safety and occupational hygiene in this Decree are applicable to officials, public employees, personnel of the army and the police, unless otherwise prescribed by legislative documents on those subjects.

#### **Article 27. Elaboration and guidance on implementation**

1. The Minister of Labor, War Invalids and Social Affairs shall provide guidance on the implementation of this Decree;

2. Ministers, Heads of ministerial agencies, Heads of Governmental agencies, Presidents of the provincial People's Committees are responsible for the implementation of this Decree./.

**FOR THE GOVERNMENT  
THE PRIME MINISTER**

**Nguyen Tan Dung**

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