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## Vietnam: Guidance for Implementation of Employment Conditions and Employment Relationship

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Decree No. 145/2020/ND-CP was issued on 14 December 2020 (“**Decree 145**”) providing detailed guidance on some articles of the Labor Code 2019, including, among other things, management of labor, labor contracts, and labor outsourcing.

The introduction of Decree 145 can be seen as an improvement in drafting and issuing legal documents given its comprehensiveness in detailing the numerous regulations on different issues of employment in a single document. Decree 145 took effect from 1 February 2021 and repeals and replaces 10 decrees that had been issued with respect to Labor Code 2012.

Below we discuss some of the notable points of Decree 145.

### 1. Longer Notification Period to Terminate Certain Special Job Labor Contracts

With respect to a number of industries, trades and special jobs referenced in the Labor Code, the period of prior notice to be provided in the case of termination of certain labor contracts is stipulated in government regulations.

Decree 145 specifies that these jobs include various jobs within the aviation industry and the Vietnamese merchant marine, as well as enterprise managers in accordance with the regulations of the Law on Enterprises and Law on Management and Usage of State Capital Investing in Other Enterprises. Under Decree 145, to terminate the labor contracts of these jobs, the employer or employee, as the case may be, is required to notify the other party at least 120 days in advance in the case of indefinite labor contracts and labor contracts with a term of more than 12 months, or a number of days equal to 1/4 the total period of the term of the labor contract in the case of labor contracts with a term less than 12 months.

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## 2. Significant Changes in Overtime

### *(i) Cases eligible for overtime work*

In addition to the cases stated in the Labor Code, Decree 145 adds three more circumstances eligible for overtime of up to 300 hours per year:

- (a) Conducting urgent work relating to public jobs of the state authorities and agencies;
- (b) Providing public services, medical services and education services; and
- (c) Performing work directly manufacturing products or providing services for enterprises that apply normal working hours of up to 44 hours per week.

### *(ii) Stricter requirement on employees' consent to overtime*

Decree 145 sets out specific contents to which employees must consent when working overtime that were not clearly required under the prior law. Particularly, employers must procure employees' consent regarding (1) the overtime work, (2) the place in which the overtime work is to be performed and (3) the amount of overtime.

### *(iii) Report on overtime work*

Under the prior regulations, employers had to notify the authorized local labor management authority in writing about any arrangement of overtime work up to 300 hours/year. As a matter of practice, the employer could arrange the overtime work only after notifying and obtaining a confirmation from the authority.

Decree 145 provides that such notification must be sent to the local labor authority no later than 15 days after the overtime work has commenced. The notice must be made in the statutory form enclosed with Decree 145, which was not available under the prior law. As such, enterprises may now arrange overtime work without waiting for confirmation from the authority but are solely responsible for ensuring that such overtime work arrangement is legally permissible.

## 3. Damage Compensation Cases

Under the prior law, the procedures and statute of limitation for dealing with a claim for compensation when an employee causes damage to the employer are the same as those applied to other cases of employee labor malfeasance. Decree 145 introduces separate procedures and a different statute of limitations for dealing with such damage compensation cases. While the sequence and procedures for dealing with damage compensation are similar to those of other labor disciplinary matters, the statute of limitation for dealing with a damage compensation case is now set at six months from the date when an employee commits the damaging act and there is no longer an extended (12 month) statute of limitations for exceptional cases as in other cases of labor malfeasance.

## 4. Extra Payments for Female Employees

Under Decree 85/2015/ND-CP, a female employee is entitled to take a 30-minute break, at a minimum of three days per month, for the purpose of managing feminine hygiene. The precise duration of the breaks is to be a matter of agreement between the employer and employee. During such breaks, female employees are entitled to receive their full contractual salary.

Decree 145 adopts the regulations of Decree 85 but further adds that, where a female employee does not have a need to take the

prescribed break and obtains the employer's consent to work without such break, in addition to her regular salary, such female employee must also be paid for the breaks not taken and such working time is not to be included in the her overtime threshold. This regulation also applies in the case of female employees who are nursing a child under 12 months of age.

## **5. Internal Labor Regulations (“ILR”)**

Similar to the prior regulations, Decree 145 provides that employers who employ less than 10 employees are not required to produce a written ILR. However, Decree 145 newly requires that, in such case, all contents regarding labor discipline and material responsibilities be specified in the labor contracts.

## **6. Identifying Sexual Harassment**

The Labor Code mandates that a section addressing sexual harassment in the workplace be included in the ILR of enterprises. In order to help enterprises build effective and enforceable regulations on the prevention of sexual harassment in the workplace, Decree 145 provides clear factors to determine sexual harassment as follows:

- (a) Sexual harassment can take many forms, including suggestions, requests, threats, and the like, for the purpose of conferring any benefit that relates to work in exchange for sexual favors or causing physical or emotional damage.
- (b) Sexual harassment in the workplace includes three types: (a) physical acts, including gestures or physical contact that is sexually suggestive; (b) verbal harassment (whether in person, over the phone, or via electronic means) with sexual content or sexual implications; (c) non-verbal communication, such as through suggestive body language, the display or description of visual material of a sexual nature, whether directly or indirectly.

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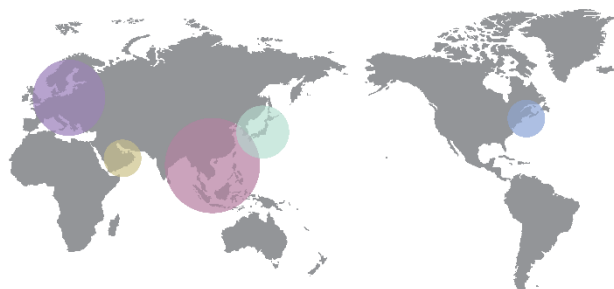
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