

Various guidance issued on the new Labour Code

14 January 2021

At a glance...

Three decrees and a circular were issued by the government and the Ministry of Labour recently to guide the new Labour Code, including the following:

- Decree 145 clarifying various matters in the new Labour Code (dated 14 December 2020),
- Decree 152 on foreign employees working in Vietnam and Vietnamese employees working for foreign organisations in Vietnam (dated 30 December 2020),
- Decree 135 detailing the Labour Code's provisions on new retirement ages (dated 18 November 2020), and
- Circular 10 guiding labour contract contents, collective bargaining council and jobs that adversely affect reproductive function and child rearing (dated 12 November 2020).

Except for Decree 145 and Decree 152 which are coming into effect on 1 February and 15 February respectively, the new Labour Code and its other guiding instruments came into effect on 1 January.

Notable changes include the following:

1. Labour disciplinary matters

The new Labour Code and Decree 145 require new contents be added to companies' Internal Labour Rules ("ILR"), such as:

- prevention of sexual harassment in the workplace and the procedures for dealing with breaches,
- cases where an employer can temporarily transfer an employee to work that is different from that agreed in the labour contract, and
- the person authorised to impose disciplinary penalties.

Decree 145 also stipulates that employers with less than 10 employees are not required to have written ILR. However, they must agree on labour disciplinary issues and material responsibilities in labour contracts signed with their employees.

2. Protection of business and technology secrets

Protection of business and technology secrets may be included in a labour contract as stipulated in both the previous and the new Labour Codes. However, for the first time, Circular 10 provides guidance on handling breaches in this regard.

- If an employee's breach occurs during the term of a labour contract, it shall be handled in accordance with Article 130.2 of the new Labour Code.
- If the employee is detected committing such a breach after terminating the labour contract, it shall be handled in accordance with the civil laws and other relevant laws.

3. Longer advance notice required for termination of management positions

Given the new Labour Code allows a longer probationary period for certain management positions (180 days instead of 60 days previously), under Decree 145, employees holding such positions must give at least 120 days advance notice (instead of 45 days) before termination of labour contracts with indefinite terms/definite terms of 12 months or more, or give notice equal to at least a quarter of the term if they have labour contracts with terms less than 12 months.

4. Work permit exemption

According to the new Labour Code, a foreign national who is a company owner will be exempted from the work permit requirement if he/she is the owner/member/chairman/board member and contributes charter capital to the company of a monetary value stipulated by the government.

In the government's Decree 152, such value is set at VND3bn or more. So, this means that a foreign national will be exempted from needing a work permit if he/she contributes at least VND3bn or more to the company's charter capital.

5. Retirement ages – We are going to have to work longer!

Starting from 2021, the general retirement ages are 60 years and three months for men and 55 years and four months for women. Retirement ages will be increased annually by three months for men until reaching 62 in 2028, and by four months for women until reaching 60 in 2035.

Decree 135 adds that employees in certain cases (such as under heavy and hazardous working conditions) can retire at a lower age but not more than five years younger than the retirement age applicable for normal working conditions. Decree 135 also allows an employee to retire at a higher age subject to agreement with his/her employer.

6. Overtime (OT) work formalities

Decree 145 requires employers to obtain employee consent/agreement for OT work, specifically the time, the place and the tasks of such OT work. The Decree also provides a template/form for cases where the consent/agreement is made in writing.

To facilitate the employer's registration for OT work from 200 hours/year – 300 hours/year with the relevant Department of Labour, a template/form for this purpose is also provided.

7. Labour declaration and reports

On 15 October, Decree 122 streamlined four registration procedures for a new company/branch/office establishment, of which, initial labour usage declaration is one of these procedures (*Please refer to this [link](#) for our NewsBrief on this matter*).

Decree 145 confirms this streamlining by stating that the initial labour usage declaration will be in accordance with Decree 122.

Moreover, the timing for periodic labour reports is also changed, i.e., by 5 June for semi-annual reports and by 5 December for annual reports (previously by 25 May and 25 November, respectively).

Contact us

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