

GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 195-CP

Hanoi, 31 December 1994

**DECREE
ON
IMPLEMENTATION OF A NUMBER
OF ARTICLES OF THE LABOUR CODE
WITH RESPECT TO WORKING HOURS
AND REST BREAKS**

The Government

Pursuant to the *Law on the Organization of the Government* dated 30 September 1992;

Pursuant to the *Labour Code* dated 23 June 1994;

Following the proposal of the Minister of Labour, War Invalids and Social Affairs;

Decrees:

CHAPTER I

Entities and Scope Regulated

Article 1

Working hours and rest breaks shall apply to employees of the following enterprises, units and organizations:

- State owned enterprises;
- Enterprises in other economic sectors and organizations and individuals employing labour;

- Enterprises with foreign owned capital, enterprises in export processing zones and industrial zones; foreign organizations and international organizations operating in Vietnam employing Vietnamese labour, except in cases where international treaties to which the Socialist Republic of Vietnam is a signatory or party otherwise provide;
- Professional, business and service units of administrative or professional units, mass associations, political and social organizations, units of the people's armed forces and public security force;
- This Decree shall also apply to State employees and officials in professional and administrative units, elected and appointed officials, and personnel of mass associations, units of the people's armed forces and public security forces, and political and social organizations, except where other separate legislation applicable to such entities otherwise provides.

CHAPTER II

Working Hours

Article 3

In accordance with article 68 of the *Labour Code*, working hours are provided for as follows:

1. In normal working conditions and a normal working environment, working hours shall be:
 - No more than eight hours per day;
 - No more than forty eight (48) hours per week.
2. Working hours shall be reduced by one or two hours for workers who perform extremely heavy, dangerous or toxic work as stipulated in a list issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health.
3. The following shall be included in the number of paid working hours:
 - Rest breaks between shifts;
 - Special rest breaks due to the nature of the job;
 - Rest breaks during working hours which are required as a result of natural human physical needs;

- A female employee shall be entitled to a sixty (60) minute break per day during the period of raising a child under twelve (12) months of age;
- A female employee shall be entitled to a thirty (30) minute break per day during menstruation;
- Work stoppages not due to the fault of the employee;
- Study and training time related to occupational safety and hygiene;
- Meeting times or training hours required or permitted by the employer.

Article 4

Pursuant to article 68 of the *Labour Code*, an employer shall have the right to determine the working hours on a daily or a weekly basis and the weekly holidays in accordance with business production conditions provided that they are not inconsistent with the provisions of clauses 1 and 2 of article 3 of this Decree and are stated clearly in the labour contracts, labour agreements and internal labour rules of the enterprise.

Article 5

Pursuant to article 69 of the *Labour Code*, additional working hours shall be provided for as follows:

1. Additional working hours shall not exceed fifty (50) per cent of the daily working hours stipulated for each type of job. In cases where working hours are calculated on a weekly basis, the total number of normal working hours plus the additional working hours worked in a day must be less than twelve (12) hours. The total number of additional working hours must be less than two hundred (200) hours annually.
2. An employer and an employee may agree on additional working hours in the following cases:
 - To deal with breakdowns in production;
 - To deal with urgent problems immediately;
 - To deal in a timely manner with fresh and raw commodities or with construction and production works which, due to technological requirements, cannot be left uncompleted.
3. Where there is a need to deal with or remedy the adverse consequences of a natural disaster, war, fire or epidemic, an employer shall be permitted to

increase the additional working hours stipulated in clause 1 of this article subject to the agreement of the employee.

Article 6

Pursuant to article 70 of the *Labour Code*, nightshift hours shall be provided for as follows:

- In regions from Thua Thien - Hue to the north of Vietnam, from 10.00 pm to 6.00 am.
- In regions from Quang Nam - Da Nang to the south of Vietnam, from 9.00 pm to 5.00 am.

CHAPTER III

Rest Breaks

Article 7

Pursuant to article 71 of the *Labour Code*, rest breaks shall be provided for as follows:

- An employee who works for eight hours consecutively in normal working conditions; or seven or six hours consecutively in cases of reduced working hours shall be entitled to a break of thirty (30) minutes.
- An employee who works nightshift hours consecutively from 10.00 pm to 6.00 am or from 9.00 pm to 5.00 am shall be entitled to a break of forty five (45) minutes.

Article 8

In addition to the fully paid days off in accordance with article 73 of the *Labour Code*, foreign employees working in Vietnamese enterprises or organizations shall be entitled to additional fully paid days off for his or her customary New Year and National Day (if any).

Article 9

1. The following hours shall be regarded as the working hours of an employee of an enterprise or employer for the purposes of calculation of annual leave pursuant to article 74 of the *Labour Code*:
 - Period of apprenticeship or training for the purpose of working in the enterprise as specified in the apprenticeship or training contract;
 - Trial period for the purpose of working in the enterprise as provided for in the labour contract;
 - Period of personal leave of absence;
 - Period of unpaid leave of absence taken with the permission of the employer;
 - Absence from work as a result of a work-related accident or occupational disease provided that the aggregate period is less than six months;
 - Sick leave provided that the aggregate period is less than three months;
 - Leave of absence in accordance with provisions on female employees;
 - Leave of absence due to public commitments as determined by law;
 - Leave of absence for trade union activities as determined by law;
 - Leave of absence for meetings or training required or permitted by the employer;
 - Work stoppages not due to the fault of the employee;
 - Work stoppages due to temporary suspension of work;
 - Period of temporary detention or imprisonment after which the employee is permitted to return to work as a result of being acquitted or having been wrongfully prosecuted.
2. Annual leave of fourteen (14) or sixteen (16) days as stipulated in sub-clauses 1(b) and 1(c) of article 74 of the *Labour Code* shall apply to employees working in extremely heavy, dangerous or toxic jobs, or in regions with harsh living conditions as determined by the Ministry of Labour, War Invalids and Social Affairs.

3. Where an employee travels by car, ship or train during his or her annual leave and the number of travelling days (including return) exceeds two days, any additional days from the third day onwards shall be treated as travelling days and excluded from annual leave.
4. Travel expenses and wages paid during travelling days shall be agreed between the employer and employee; in respect of persons working in remote regions (mountainous areas, areas which are difficult to access, or islands), travel expenses and wages for travelling days during annual leave shall be paid by the employer.

Article 10

An employee who fails to take his or her annual leave or has not used all his or her annual leave shall be paid in the following cases in accordance with clause 3 of article 76 of the *Labour Code*:

1. Where the performance of a labour contract is temporarily suspended due to military service;
2. Where the term of a labour contract has expired or where a labour contract has been unilaterally terminated. Where there is a job loss due to technological changes, lawful dismissal, retirement or death.

Article 11

Pursuant to clause 3 of article 76 and clause 2 of article 77 of the *Labour Code*, annual leave shall be calculated as follows:

To the number of days of annual leave entitlement add the number of additional days for seniority in the enterprise (if any), divide the sum by twelve (12) months (rounded off), and then multiply by the number of actual working months during the year to calculate the number of fully paid days of annual leave.

CHAPTER IV

Working Hours and Rest Breaks for Jobs of a Special Nature

Article 12

Working hours and rest breaks for employees working in the jobs referred to in article 80 of the *Labour Code* shall be as follows:

For jobs of a special nature such as: road, railway, waterway transportation; pilots, stewards, air controllers in the airline industry; workers in oil and gas offshore exploration and exploitation; artists and performers in artistic fields; workers working with radioactive and nuclear technology; workers working with high frequency waves; divers; and miners, the relevant ministry shall stipulate in detail the working hours and rest breaks after consultation with the Ministry of Labour, War Invalids and Social Affairs.

Article 13

An employer must not assign a female employee to heavy, dangerous, toxic or poisonous work which may adversely affect her ability to bear and raise children in accordance with the provisions of clause 1 of article 113 of the *Labour Code*. In cases where a female employee is currently working in such a job and has not yet been transferred to another job, the female employee shall be entitled to work at least two hours less than the stipulated working hours per day and receive full pay.

Article 14

Male employees or female employees over sixty (60) or fifty five (55) years of age respectively who are still working shall, during the final year prior to retirement, be entitled to work four hours less per day and receive full pay.

CHAPTER V

Implementing Provisions

Article 15

This Decree shall be of full force and effect as of 1 January 1995. All previous provisions which are inconsistent with this Decree are hereby repealed.

Article 16

Ministers, heads of ministerial equivalent bodies, heads of Government bodies, and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

On behalf of the Government
Prime Minister

VO VAN KIET

□ Ministry of Planning and Investment
and
Phillips Fox

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