Rödl & Partner

CLIENT ALERT VIETNAM

MANAGING CHANGE

Issue:
January 2021

New labor regulation – Decree 145/2020/ND-CP

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Following our Legal Update issued in January 2020 on Labor Code (which is effective as of 01 January 2021), this Legal Update shall introduce the significant changes stipulated in the newly issued Decree 145/2020/ND-CP of the Government dated 14 December 2020 detailing and guiding a number of articles of the Labor Code on employment conditions and employment relation ("**Decree 145**"). The Decree 145 will take effect as from 01 February 2021.

Key Issues

Labor Management

Decree 145 in more detail governs the obligations of employers with regard to labor management.

In particular, within 30 days after commencing their operation, an employer must establish a labor management book at the location of their headquarters, branch or representative office. The labor management book must contain basic information about the employees, i.e. their full name, gender, date of birth and nationality; place of residence; citizen's identity card or people's identity card or passport serial number; technical qualifications or vocational skills level; working location, type of labor contract, date of commencing the job, social insurance contribution; wages, wage level and wage increases; number of days of annual leave; number of overtime hours; apprenticeship or practical training, fostering and improvement of vocational skills, labor discipline and liability for material loss; occupational accidents and diseases, date and reason for termination of labor contract. The employer is responsible for setting out such information as from the date any employee commences work, and to update these immediately upon any change. He is obliged to manage and use it, and to present the labor management book to the State Administrative Agency for Labor and to any other relevant agency upon request in accordance with the prevailing law. We note that this is not a new regulation. but the same as has been valid under the Labor Code 2012. However, under Decree 145, the employer is more flexible to choose the form of labor management book, either in written or electronic form.

In addition to that, the employer must submit a report on the employment of a worker within thirty (30) days after the commencement date, and to report any labor changes during the operational process to the specialized management agency for labor under the provincial people's committee on semi-annually basis (prior to 5 June and 5 December), and also notify same to the social insurance agency.

Labor contract with enterprise managers

The new Labor Code 2019 governs that an employer and an employee may agree on a probation period of up to 180 days in case of the position being enterprise manager, pursuant to the Law on Enterprises. "Enterprise manager" as defined under the Law on Enterprises means a manager of a private enterprise or a manager of a company, comprising the owner of the private enterprise, unlimited liability partners, the chairman of the members' council, members of the members' council, the chairman of the company, the chairman of the board of management, members of the board of management, the director or general director, and individuals holding other managerial positions as stipulated in the charter of the company.

In case of a unilateral termination either by the employer or the enterprise manager employee, the terminating party must send an advance notice of at least 120 days for an indefinite-term labor contract or a labor contract with a term of 12 months or more, or at least a period equal to a quarter of the term for a labor contract with a term of less than 12 months.

Severance allowance and job-loss allowance

In general cases of termination of labor contract, the employer must pay a severance allowance of ½ monthly salary for each working year to employees who have worked for the company for a full 12 months or more when the labor contract is terminated, except for one of the following cases:

(i) The employee satisfies the conditions for entitlement to a pension on retirement age as prescribed in the Labor Code and in the law on social insurance;

(ii) The employee arbitrarily leaves the job [gives up his or her job] without a satisfactory explanation for a period of at least five (5) consecutive working days:

(iii) The employee is disciplined by dismissal;

(iv) The employee illegally unilaterally terminates the labor contract.

In case the labor contract of the employee is terminated due to restructuring, change of technology and economics reasons, or in case of merger and acquisition, the employer must pay job-loss allowance of 1 month for each working year, but not less than 2 months to employees who have worked for the company for a full 12 months or more.

The period of employment as the basis used to calculate the due amount of severance payment or job-loss allowance comprises the total time period the employee actually worked for the employer (including the probation period) minus any time during which the employee participated in unemployment insurance. This is a new point in the Decree 145 to reaffirm the calculation of probation period as working time for the calculation of severance allowance or job-loss allowance, compared to the old regulations provided in Decree 148/2018/ND-CP.

Labor discipline and liability for material loss and damage

Decree 145 governs the issuance of internal labor rules (ILR) with more clarity. In particular, an employer with 10 employees or more is obliged to issue and register an ILR in writing, while an employer with less than 10 employees is not required to issue an ILR in writing, but must agree on the contents of labor discipline and liability for material loss and damage in the labor contract.

Except for the basic contents required for an ILR according to the Labor Code 2012, Decree 145 added new requirements with regard to the content of an ILR. The latter must now include regulations on the prevention of sexual harassment and fighting at workplace; procedures and orders for handling any acts of sexual harassment. In addition, the employer has to regulate the temporary transfer of employees to other positions in their ILR.

To be more specific, the employer´ s regulations regarding sexual harassment at workplace laid out in the ILR or in an appendix attached to the ILR, need to include the following basic contents:

(i) Strictly prohibit any act of sexual harassment at workplace;

(ii) Govern in detail and particular on acts of sexual harassment that may happen with respect to the nature and characteristic of job and workplace;

(iii) Responsibilities, terms and procedures for the internal handling of acts of sexual harassment at workplace, including responsibilities, terms and procedures for denunciations, complaints and other relevant regulations.

(iv) Forms of labor discipline to be applicable to a person conducting an act of harassment, or a person blamable of denunciation or of lodging a false claim with respect to nature and severity of the violation.

The employer is obliged to implement and monitor the implementation and to organize a proper publication of the regulations on the prevention of sexual harassment and fighting at workplace. When complaints or denunciations about sexual harassment appear at the workplace, the employer must take immediate action to handle the incident and to take measures to protect the confidentiality, honor, reputation and dignity, safety of the victims of sexual harassment, as well as of complainants, accusers and the accused.

Specific regulations applicable to female employees | responsibilities regarding gender equality

Decree 145 regulates a number of benefits in relation to specific health care for female employees. These are in particular:

(i) During periodic check-ups, female employees are entitled to have an obstetrics examination;

(ii) During her menstruation, a female employee is entitled to a fully-paid break of thirty (30) minutes every day (at least for 3 days) in the working hours; during the period of nursing a child under twelve (12) months of age, a female employee is entitled to a fully-paid break of sixty (60) minutes every day in the working hours. If the employee does not want to take break during the period and the employer agrees, the employee must be entitled to additional wage for the breaks not taken, while this time is not considered as overtime working;

(iii) The employer is encouraged to install a milking and milk storage room, depending on the actual conditions at workplace, the demand of female employees and the capacities of the employer. The employer is obliged though to install such milking and milk storage room if he has 1,000 female employees or more;

(iv) The employer must ensure to have sufficient bathroom and toilet capacities for the employees´ use in accordance with further guidance from the Ministry of Health;

(v) The employer is obliged to ensure gender equality in recruitment, labor, bonus, training and promotion programs.

Briefly, Decree 145 does not contain much new regulations but mainly focuses on further clarification of a number of regulations of the new Labor Code 2019. It is important to note that a company with less than 10 employees must stipulate regulations regarding labor discipline in their labor contracts, while a company with 10 employees or more must have an ILR in writing. In case an ILR is available, the company further needs to provide regulations about the prevention of sexual harassment and fighting in the form of an appendix to their ILR. In addition, the maximum total of overtime working hours is increased from 30 hours/month to 40 hours/months and should also be updated in the ILR.

Rödl & Partner Vietnam accompanies and assists clients of all kinds in their labor matters and business activities in Vietnam.

Employee conferences | promulgation of democratic regulations at grassroots level

For the implementation of democratic regulations at workplace, the employer must publicly communicate the following information to the employees:

(i) The employer's business performance;

(ii) Internal labor rules, wage scale, wage table, productivity norms, other rules and policies of the employer relating to the employees' interests, duties and responsibilities;

(iii) Collective bargaining agreements entered into by the employer;

(iv) Establishment and use of funds for reward and welfare, and other funds to which the employees contribute (if any);

(v) Payment of trade union fee, payment of social insurance, health insurance, unemployment insurance premiums;

(vi) Implementation of rewards and commendations; disciplinary actions, settlement of complaints and denunciations relevant to employees' rights, duties and interests.

The employer has to cooperate with the organization representing the labor collective at grassroots level (if any) (i.e. grassroots trade union or organization of employees at the company) and group representative for discussion at workplace (if any) to organize an annual employee conference in the form of plenary conferences or conferences of deputies.

The employer is obliged to promulgate democratic regulations at grassroots level in order to implement regulations in dialogue with the workforce, and implement workplace democracy. The employer must, prior to promulgation or amendment of the democratic regulations, consult the opinion of the organization representing the labor collective at grassroots level (if any) (i.e. grassroots trade union or organization of employees at the company) and group representative for discussion at workplace (if any). In case there are opinions offered by an internal employee representative organization with which the employer do not concur, explanation must be provided. The internal workplace democratic regulations must be made publicly available to the employees.

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Imprint
Client Alert, January 2021

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Layout/Type:
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