

## THE GOVERNMENT

### **Decree No. 45/2013/ND-CP of May 10, 2013, detailing a number of articles of the Labor Code on working time, rest time and occupational safety and hygiene**

*Pursuant to the December 25, 2001 Law on Organization of the Government;  
Pursuant to the June 18, 2012 Labor Code;*

*At the proposal of the Minister of Labor, War Invalids and Social Affairs,  
The Government details a number of articles of the Labor Code on working time, rest time and occupational safety and hygiene.*

#### **Chapter I**

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

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

This Decree details a number of articles of the Labor Code on working time, rest time and occupational safety and hygiene.

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

1. The provisions on working time and rest time in this Decree are applicable to the subjects defined in Article 2 of the Labor Code.

2. The provisions on occupational safety and hygiene in this Decree are applicable to the following subjects:

a/ Vietnamese employees; foreign employees working in Vietnam; apprentices and trainees who will work for their employers;

b/ Enterprises, agencies, organizations, cooperatives, households; and related individuals.

#### **Chapter II**

##### **WORKING TIME AND REST TIME**

###### **Section 1**

###### **WORKING TIME**

###### **Article 3. Time to be counted in paid working time**

1. Rest time during working hours as defined in Article 5 of this Decree.

2. Breaks as required by the nature of jobs.

3. Rest time which is necessary during the working process for physiological needs of humans and included in labor norms.

4. Daily rest time of 60 minutes for female employees who are nursing their under-12 month infants.
5. Daily rest time of 30 minutes for female employees during their periods.
6. Time of work stoppage not due to employees' fault.
7. Time for occupational safety and hygiene training.
8. Time for meeting, learning and training as required or agreed by employers.
9. Time for meeting, learning and training of part-time trade union officers as summoned by higher-level trade unions in accordance with the law on trade unions.
10. Daily working time reduction of at least one hour for elderly employees in the last year before their retirement.

#### **Article 4. Overtime work**

1. The number of overtime working hours per day is prescribed as follows:
  - a/ It does not exceed 50% of the normal working hours per day; when regulations on weekly work are applied, the total of normal working hours and overtime working hours must not exceed 12 hours per day;
  - b/ It does not exceed 12 hours per day in case of overtime work on public and New Year holidays, and weekends.
2. The organization of overtime work for between over 200 and 300 hours per year is prescribed as follows:
  - a/ Overtime work may be organized in the following cases:
    - Production and processing for export of textile, garment, leather footwear, agricultural, forest and aquatic products;
    - Power generation and supply, telecommunications services, oil refinery; water supply and drainage;
    - Other cases in which urgent work must be performed without delay.
  - b/ When organizing overtime work, employers shall notify such in writing to professional agencies assisting People's Committees of provinces or centrally run cities (below referred to as provincial-level People's Committees) in performing the state management of labor in their localities.
3. Compensatory days off provided at Point c, Clause 2, Article 106 of the Labor Code are specified as follows:
  - a/ After each period of overtime work of up to 7 consecutive working days within a month, employers shall arrange compensatory days off for their employees' overtime working hours.

b/ If unable to arrange sufficient compensatory days off for their employees' overtime working hours, employers shall pay overtime wages as prescribed in Article 97 of the Labor Code.

## **Section 2**

### **REST TIME**

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

1. Rest breaks during working hours provided in Clauses 1 and 2, Article 108 of the Labor Code are regarded as working time applicable to a shift of 8 consecutive hours under normal conditions or of 6 hours in case of shortened shift. Specific time for a break is decided by employers.

2. In addition to breaks during normal working shifts defined in Clause 1 of this Article, employees who work for 10 hours or more per day, including overtime hours, are entitled to a break of at least 30 minutes which will be counted in the working hours.

#### **Article 6.** Time regarded as working time of employees for calculation of annual leave days

1. Time of apprenticeship and job training for employers as committed in apprenticeship or job training contracts.
2. Time of internship under labor contracts before interns work for employers.
3. Time of paid leaves for personal reasons as provided in Clause 1, Article 116 of the Labor Code.
4. Time of unpaid leaves agreed by employers, provided that the aggregated time of unpaid leaves does not exceed 1 month.
5. Time of labor accident or occupational disease leaves, provided that the aggregated time of these leaves does not exceed 6 months.
6. Time of illness leaves, provided that the aggregated time of these leaves does not exceed 2 months.
7. Time of maternity leaves as provided in the law on social insurance.
8. Time of leaves for trade union activities as provided in the law on trade unions.
9. Time of work stoppage or layoff not due to employees' fault.
10. Time of suspension from work.
11. Time of being held in temporary custody or detention before returning to work after competent state agencies conclude that detainees are not guilty.

**Article 7.** Method of calculation of annual leave days for persons who have not worked for a full year

The number of annual leave days provided in Clause 2, Article 114 of the Labor Code is calculated as follows: Dividing the number of annual leave days plus the number of extra leave days according to seniority (if any) by 12 months, then multiplying by the number of actual working months in the year. The result of this calculation will be rounded, with the decimal higher or equal to 0.5 rounded up.

**Article 8.** Lunar New Year holidays

1. The time of Lunar New Year holiday provided in Clause 1, Article 115 of the Labor Code is selected by employers, which may include either the last day and first four days or the last two days and first three days of the lunar year.

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

### **Chapter III**

## **OCCUPATIONAL SAFETY AND HYGIENE**

### **Section 1**

#### **GENERAL PROVISIONS ON OCCUPATIONAL SAFETY AND HYGIENE**

**Article 9.** Elaboration of national programs on occupational safety and hygiene

1. The Ministry of Labor, War Invalids and Social Affairs shall elaborate national programs on occupational safety and hygiene for every five years and submit them to the Prime Minister for approval.

2. Annually, based on the approved national program on occupational safety and hygiene and funding estimates of ministries, sectors and localities, the Ministry of Labor, War Invalids and Social Affairs shall sum up estimates of funds for the program implementation and send them together with the state budget estimates to the Ministry of Finance and the Ministry of Planning and Investment for subsequent submission to a competent agency for decision.

**Article 10.** Elaboration of plans on measures to assure occupational safety and hygiene

1. When building, expanding or renovating buildings or facilities to manufacture, use, preserve or store machines, equipment, supplies and substances subject to strict requirements on occupational safety and hygiene, investors and employers shall elaborate optional plans on measures to assure occupational safety and hygiene at workplaces of employees and for the

environment, then submit them to competent agencies for permission for building, expansion or renovation of such buildings or facilities.

2. A plan on measures to assure occupational safety and hygiene must have the following principal details:

a/ Location and size of the building or facility, clearly indicating the distance from the building or facility to residential areas and other works;

b/ List and detailed description of items in the building or facility;

c/ Dangerous and harmful factors and incidents which might occur in the course of operation;

d/ Specific measures to eliminate and minimize dangerous and harmful factors; plans to handle incidents or respond to emergency cases.

**Article 11.** Employment of elderly employees for heavy, hazardous or dangerous jobs

1. The employment of an elderly employee for a heavy, hazardous or dangerous job must fully satisfy the following conditions:

a/ He/she is experienced or highly skilled with a seniority of full 15 years or more; possesses a certificate or job certificate or is recognized as an artisan in accordance with law;

b/ He/she is physically fit up to the health standards promulgated by the Minister of Health for the job or work;

c/ He/she is employed for a definite period not exceeding 5 years;

d/ He/she is given health checks at least twice a year;

dd/ He/she co-works with at least one employee who is not an elderly.

2. Pursuant to Clause 1 of this Article, ministries and ministerial-level agencies shall specify titles of heavy, hazardous or dangerous jobs and works and specific conditions in each special case of employing elderly employees in fields, sectors, occupations or professions under their management.

## **Section 2**

### **LABOR ACCIDENTS AND OCCUPATIONAL DISEASES**

**Article 12.** Labor accidents and serious incidents

1. Labor accident means an accident that causes harms to any bodily part or function or causes the death of an employee, occurs in the course of work and in connection with the performance of a job or task, even during rest break, mid-shift meal, snack (in-kind allowance) break, time for menstrual hygiene, bath, breastfeeding, toilet break, work preparation and finishing at the workplace.

2. Accident regarded as a labor accident means an accident occurring at a reasonable place and time when a laborer commutes from his/her residence to the workplace or from the workplace to his/her residence.
3. Labor accidents are classified as follows:
  - a/ Fatal labor accidents;
  - b/ Serious labor accidents;
  - c/ Minor labor accidents.
4. Serious incident means an accident occurring in the course of work (excluding labor accidents) and causing great damage to property of employees and employers.

**Article 13.** Labor accident, occupational disease and serious incident notification, investigation, statistics, reporting, compensation and allowance

1. Labor accident and serious incident notification, investigation, statistics and reporting are prescribed as follows:
  - a/ Employers shall promptly notify fatal labor accidents, serious labor accidents which injure two or more employees and serious incidents to Inspectorates of provincial-level Labor, War Invalids and Social Affairs Departments of localities where such accidents or incidents occur;
  - b/ Employers shall investigate minor labor accidents, serious labor accidents which injure one employee, and serious incidents;
  - c/ Labor inspectorates shall investigate fatal labor accidents and serious labor accidents which injure two or more employees; and reinvestigate labor accidents and serious incidents which have been investigated by employers when complaints or denunciations are filed or when they find it necessary;
  - d/ In the course of investigation into labor accidents or serious incidents, if detecting signs of crime, labor inspectorates and employers shall report them to competent state agencies and request the transfer of dossiers to criminal procedure-conducting agencies;
  - dd/ Employers shall compile statistical books and make biannual and annual reports to competent state agencies in charge of labor.
2. Occupational disease statistics and reporting are prescribed as follows:
  - a/ Employers shall keep health records of their employees suffering from occupational diseases and make biannual and annual reports to competent state agencies in charge of health and labor;
  - b/ The Minister of Health shall guide in detail the procedures and order for making statistics and reports on occupational diseases.

3. Employers shall pay compensations and allowances to their employees who suffer from labor accidents or occupational diseases under the guidance of the Minister of Labor, War Invalids and Social Affairs.

**Article 14.** Control of dangerous and harmful factors

For workplaces with dangerous and harmful factors which are likely to cause labor accidents or occupational diseases, employers shall:

1. Check and assess these factors; devise measures to eliminate and minimize dangers and harms and improve working conditions and health care for employees;
2. Organize the measurement of harmful factors at least once a year; and make and preserve monitoring records in accordance with law;
3. Equip technical and medical instruments in order to assure prompt response, rescue and first aid when incidents and labor accidents occur;
4. Work out plans on handling of incidents, emergency response and rescue, and organize on-the-spot first-aid teams in accordance with law. First-aid teams must be trained and regularly practice their skills.

**Section 3**

**TECHNICAL APPRAISAL OF OCCUPATIONAL SAFETY**

**Article 15.** Organization of technical appraisal of occupational safety

1. Technical appraisal of occupational safety means a technical activity conducted in a certain process (below referred to as the inspection process) to assess and certify appraised objects' technical safety conformity with technical regulations or standards.
2. Occupational safety technical appraisal organizations are non-business units or enterprises lawfully established and granted with certificates of eligibility for technical appraisal of occupational safety by competent state management agencies.

**Article 16.** Conditions for grant of certificates of eligibility for technical appraisal of occupational safety

1. Having a business registration or an establishment decision issued by a competent agency.
2. Having physical and technical foundations satisfying the appraisal requirements of each to-be-appraised object.
3. Having sufficient appraisers satisfying the appraisal requirements of each to-be-appraised object.
4. Having an organizational structure suitable to appraisal activities.

**Article 17.** Dossiers and procedures for grant, re-grant, supplementation and modification of certificates of eligibility for technical appraisal of occupational safety

1. A dossier for grant of a certificate of eligibility for technical appraisal of occupational safety comprises:

a/ An application for a certificate;

b/ Documents proving the satisfaction of the conditions prescribed in Article 16 of this Decree.

2. Dossiers for re-grant of certificates of eligibility for technical appraisal of occupational safety are prescribed as follows:

a/ At least 3 months before the expiration of the validity duration stated in its certificate, an organization that wishes to continue providing the service of technical appraisal of occupational safety shall send a dossier for re-grant of the certificate which comprises:

- An application for re-grant of the certificate;

- The granted certificate;

- A report on its operation during the validity duration of the certificate;

- Documents proving its satisfaction of the conditions prescribed in Article 16 of this Decree.

b/ In case its certificate is lost or damaged, an organization that wishes to continue providing the service of technical appraisal of occupational safety shall send a dossier for re-grant of the certificate which comprises:

- An application for re-grant of the certificate;

- A copy or the original of the granted certificate (if any).

3. A dossier of request for supplementation or modification of a certificate of eligibility for technical appraisal of occupational safety comprises:

a/ A written request for supplementation or modification of the certificate;

b/ The granted certificate;

c/ Documents on supplementation or modification requirements.

4. Procedures for grant, re-grant, supplementation or modification of a certificate of eligibility for technical appraisal of occupational safety are prescribed as follows:

a/ An organization that wishes to be granted a certificate or have its certificate re-granted, supplemented or modified shall send to a competent agency defined in Article 18 of this Decree a dossier for registration for grant, re-grant,



supplementation or modification of the certificate; and at the same time pay charges and fees related to the assessment of operation conditions and conditions for the grant, re-grant or supplementation and modification of the certificate;

b/ Within 30 working days after receiving a complete and valid dossier, the competent agency defined in Article 18 of this Decree shall grant, re-grant or supplement and modify the certificate. In case of refusal to grant, re-grant or supplement and modify the certificate, it shall reply in writing, clearly stating the reason.

**Article 18.** Competence to grant certificates of eligibility for technical appraisal of occupational safety

1. Competence to grant certificates of eligibility for technical appraisal of occupational safety is prescribed as follows:

a/ The Ministry of Industry and Trade shall grant such certificates for industrial explosives; hydraulic actuator for hydropower butterfly valve; machines and equipment subject to strict occupational safety requirements and used only in pit mining;

b/ The Ministry of Transport shall grant such certificates for machines, equipment and supplies subject to strict occupational safety requirements and used for operating engines of road, inland waterway, maritime, railway and air means of transportation (excluding those subject to strict occupational safety requirements carried or installed on means of transportation working at construction sites, warehouses and production or business places); equipment subject to strict occupational safety requirements and used only for petroleum exploration and exploitation at sea, and undersea oil and gas pipelines;

c/ The Ministry of Science and Technology shall grant such certificates for nuclear reactors, electromagnetic compatibility testing chambers; machines and equipment subject to strict occupational safety requirements and operating in high-voltage power grids; machines and equipment containing radioactive and radiation sources;

d/ The Ministry of Construction shall grant such certificates for scaffoldings, sliding formworks, composite support bars and columns;

dd/ The Ministry of Information and Communications shall grant such certificates for high-frequency radio antennas and high-frequency amplifiers for radio and television broadcasting;

e/ The Ministry of National Defense shall grant such certificates for machines, equipment and materials subject to strict occupational safety requirements and used exclusively for defense and military purposes;

g/ The Ministry of Labor, War Invalids and Social Affairs shall grant such certificates for machines, equipment and materials subject to strict occupational safety requirements, except machines, equipment and materials specified at Points a, b, c, d, dd and e of this Clause.

2. Agencies that grant certificates of eligibility for technical appraisal of occupational safety specified in Clause 1 of this Article are competent to re-grant, supplement, modify, revoke or invalidate such certificates.

**Article 19.** Validity duration of certificates of eligibility for technical appraisal of occupational safety

1. The validity duration of a certificate of eligibility for technical appraisal of occupational safety is 3 years, regardless of whether it is granted for the first time or re-granted upon the expiration of its original validity duration.

2. The validity duration of a re-granted certificate of eligibility for technical appraisal of occupational safety after the original certificate is lost or damaged is the remaining validity duration of the original one.

**Article 20.** Suspension of operation of occupational safety technical appraisal organizations

An occupational safety technical appraisal organization is suspended from appraisal operation in the following cases:

1. It no longer satisfies the conditions prescribed in Article 16 of this Decree;
2. It fails to report to a competent agency on the appraisal operation as prescribed by law for 18 consecutive months.

**Article 21.** Revocation of a certificate of eligibility for technical appraisal of occupational safety

1. Failing to remedy the causes of suspension of the appraisal operation upon the expiration of the suspension duration.
2. Having been administratively sanctioned three times for the same violation or within a year.
3. Conducting appraisal in the operation suspension duration.
4. Forging or providing untruthful information in documents in the dossier for grant, re-grant, supplementation or modification of the certificate.
5. Altering contents of the certificate.

**Article 22.** Rights and responsibilities of occupational safety technical appraisal organizations

1. Occupational safety technical appraisal organizations have the following rights:

- a/ To conduct appraisal under contracts on provision of appraisal services;
- b/ To collect service charges as prescribed by law;
- c/ To report, complain about and denounce acts obstructing appraisal activities;
- d/ To request organizations and individuals that have objects subject to appraisal to provide documents and information to serve appraisal activities;
- dd/ Other rights as provided by law.

2. Occupational safety technical appraisal organizations have the following responsibilities:

- a/ To provide the appraisal service within the scope and to subjects stated in their certificates of eligibility for technical appraisal of occupational safety;
- b/ Not to refuse to provide the appraisal service without plausible reasons;
- c/ To conduct appraisal according to the appraisal process;
- d/ To take responsibility for appraisal results and pay compensations for damage caused by appraisal activities in accordance with law; and to withdraw provided appraisal results upon detection of wrongdoings;
- dd/ To report to a competent agency on their inspection activities as prescribed by law;
- e/ To preserve appraisal dossiers.
- g/ Other responsibilities as prescribed by law.

**Article 23.** Responsibility to use machines, equipment and supplies subject to strict occupational safety requirements

Enterprises, agencies, organizations, cooperatives, households and individuals that use machines, equipment and supplies subject to strict occupational safety requirements shall:

1. Sign contracts with occupational safety technical appraisal organizations to appraise such machines, equipment and supplies before use or to periodically inspect such machines, equipment and materials when in use;
2. Declare such machines, equipment and supplies before use and report on the appraisal of such machines, equipment and materials to a competent agency.

**Article 24.** Responsibilities of state management agencies for occupational safety technical appraisal

Ministries, ministerial-level agencies and government-attached agencies shall:

1. Propose machines, equipment and supplies in the fields under their management to be included in the list of machines, equipment and materials

subject to strict occupational safety requirements promulgated by the Ministry of Labor, War Invalids and Social Affairs;

2. Promulgate processes of appraisal of objects under their management as specified in Article 18 of this Decree, after obtaining written opinions of the Ministry of Labor, War Invalids and Social Affairs;

3. Detail Articles 16, 17 and 20 of this Decree; and conditions, order and procedures for grant and revocation of certificates of technical appraisers of occupational safety under their management;

4. Inspect and examine activities of technical appraisal of occupational safety under their management;

5. Annually or extraordinarily review and report to the Ministry of Labor, War Invalids and Social Affairs on their technical appraisal of occupational safety.

#### **Chapter IV**

### **STATE MANAGEMENT OF WORKING TIME, REST TIME AND OCCUPATIONAL SAFETY AND HYGIENE**

**Article 25.** State management of working time, rest time and occupational safety and hygiene

1. The Ministry of Labor, War Invalids and Social Affairs shall take responsibility before the Government for performing uniform state management of working time, rest time and occupational safety and hygiene, and has the following responsibilities:

a/ To elaborate and submit to competent agencies for promulgation or promulgate according to its competence documents on working time, rest time and occupational safety and hygiene;

b/ To assume the prime responsibility for, and coordinate with related ministries and agencies in, making the occupational safety and hygiene country profile according to international practice;

c/ To organize dissemination of the law on working time, rest time and occupational safety and hygiene;

d/ To guide and manage occupational safety and hygiene training;

dd/ To guide the performance of occupational safety and hygiene work in enterprises, agencies, organizations and cooperatives engaged in production or business activities;

e/ To incorporate occupational safety and hygiene contents in curricula of job-training schools and institutions;

g/ To investigate labor accidents; to coordinate with the Ministry of Public Security and the Supreme People's Procuracy in investigating and handling labor accidents showing signs of crime;

h/ To inspect and examine the observance of the law on working time, rest time and occupational safety and hygiene;

i/ To undertake international cooperation in the field of working time, rest time and occupational safety and hygiene.

2. The Ministry of Health has the following responsibilities:

a/ To elaborate and submit to competent agencies for promulgation or promulgate according to its competence documents on health care for laborers; health standards prescribed for each job or work;

b/ To assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, drawing up and promulgating the list of occupational diseases;

c/ To coordinate with the Ministry of Labor, War Invalids and Social Affairs in guiding measures to assure labor hygiene in the construction, expansion or renovation of buildings and facilities for production, use, preservation and storage of substances subject to strict occupational hygiene requirements under its competence;

d/ To guide the formation of on-site first-aid teams; contents of training in first aid and intensive care at workplaces;

dd/ To guide and manage the organization of periodical health checks, pre-recruitment health checks and examination of occupational diseases; provide medical examination for injury assessment, treatment and rehabilitation of working functions for employees hit by labor accidents or suffering from occupational diseases.

3. The Ministry of Science and Technology has the following responsibilities:

a/ To uniformly manage the research into and application of scientific and technical advances for occupational safety and hygiene;

b/ To organize and direct radiation and nuclear safety activities.

4. The Ministry of Education and Training shall incorporate occupational safety and hygiene contents in curricula of tertiary education institutions.

5. The Ministry of Culture, Sports and Tourism and the Ministry of Labor, War Invalids and Social Affairs shall guide working time, rest time and occupational safety and hygiene suitable to working conditions of employees working in arts, sports and physical training fields.

6. The Ministry of Finance and the Ministry of Labor, War Invalids and Social Affairs shall prescribe rates and regime of collection, remittance, management and use of charges and fees for the technical appraisal of occupational safety and occupational safety and hygiene training.
7. The ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, perform the state management of working time, rest time and occupational safety and hygiene.
8. Provincial-level People's Committees shall perform the state management of working time, rest time and occupational safety and hygiene within their localities; set forth objectives of assurance of occupational safety and hygiene and improvement of working conditions.

## **Chapter V**

### **IMPLEMENTATION PROVISIONS**

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

1. This Decree takes effect on July 1, 2013.
2. The Government's Decree No. 195/CP of December 31, 1994, detailing and guiding a number of the Labor Code on working time and rest time; Decree No. 06/CP of January 20, 1995, detailing a number of articles of the Labor Code on occupational safety and hygiene; Decree No. 109/2002/ND-CP of December 27, 2002, amending and supplementing a number of articles of Decree No. 195/CP of December 31, 1994; Decree No. 110/2002/ND-CP of December 27, 2002, amending and supplementing a number of articles of Decree No. 06/CP of January 20, 1995; Article 2 of Decree No. 81/2012/ND-CP of October 8, 2012, amending and supplementing a number of articles of Decree No. 68/2008/ND-CP of May 30, 2008, prescribing conditions and procedures for establishment, organization, operation and dissolution of social protection establishments; and Decree No. 109/2002/ND-CP of December 27, 2002, amending and supplementing a number of articles of Decree No. 195/CP of December 31, 1994, detailing and guiding a number of articles of the Labor Code on working time and rest time, cease to be effective on the effective date of this Decree.
3. The provisions on working time, rest time and occupational safety and hygiene in this Decree apply to cadres, civil servants, public employees and personnel of the people's army and people's public security forces, unless otherwise prescribed in legal documents applicable to these subjects.

#### **Article 27.** Implementation detailing and guidance

1. The Minister of Labor, War Invalids and Social Affairs shall guide the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government

*Prime Minister*

*NGUYEN TAN DUNG*

[www.LuatVietnam.vn](http://www.LuatVietnam.vn)