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New Decree guiding the Labour Code 2019

On 14 December 2020, the Government issued Decree No. 145/2020/ND-CP which elaborates the implementation of the current Labour Code 2019 (“**Labour Code**”) on working conditions and labour relations (“**Decree 145**”). Decree 145 came into effect from 01 February 2021 . Notable changes introduced in Decree 145:

1. Prevention of Sexual Harassment at the Workplace

Introduction of Sexual Harassment Provisions: For the first time, Vietnam labour laws have introduced detailed provisions on sexual harassment. Decree 145 clarifies situations that can constitute sexual harassment and regulates the employers’ responsibility for preventing sexual harassment at the workplace. Specifically, sexual harassment at the workplace may include:

- a) Actions, gestures, physical contact with the body of a sexual or suggestive nature;
- b) Verbal sexual harassment: sexual or suggestive comments or conversations in person, by phone or through electronic media; and/or
- c) Non-verbal sexual harassment: body language; displays and/or descriptions of sex or sexual activities whether directly in person or through electronic media.

Decree 145 also clarifies that sexual harassment does not just occur in the workplace, but in any place where an employee actually works for an employer or on the employer's assignment, including during trainings/seminars, business trips, through electronic communications and during travel to/from the workplace

Recourse: When there is a complaint or denunciation of such act, the employer must promptly prevent or handle the act and take measures to protect the secrets, honour, reputation, dignity, and safety of the person being sexually harassed, the person making the complaint or denunciation and the person against whom such complaint or denunciation is made.

Employer Regulations on Sexual Harassment: The internal labour regulations formulated by the employer now need to contain basic contents related to sexual harassment at the workplace, such as procedures for handling incidents of sexual harassment, procedures for complaints and denunciations, disciplinary actions against perpetrators, and compensation to the victims. Such regulations may also be provided in an appendix issued together with such internal labour regulations.

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2. **Organisation of Dialogue; Employee Representation**

Matters Requiring Dialogue: Decree 145 explicitly provides procedures for holding a dialogue at the workplace where the employer is required to consult with the internal employee representative organisation. This includes the following issues: (i) criteria for evaluation of employees' performance, (ii) termination of employment in cases changes in structure, technology or due to economic reasons, (iii) labour usage plan, (iv) pay scale, payroll and labour productivity norms, (v) bonus scheme, and (vi) internal labour regulations.

Employee Representation: For this purpose, the employee representative organisation is no longer confined to just a trade union (whether formed in the workplace or as the district-level Labour Federation in the absence of a workplace trade union). It can (and in the absence of a trade union, would) include internal organisation established by the employees to represent their interests.

Even in the absence of such internal organisation to represent employees, in cases where mandatory dialogue is required, the employer has a duty to guide, support and enable the employees to elect members to represent their interests when engaging in dialogue with the employer.

Noticeably, Decree 145 places emphasis on dialogue with employees, and the minutes of the dialogue have generally be required to be provided in submissions with the competent labour authorities – e.g., registration of internal labour regulations.

3. **Notice Period for Unilateral Termination of Employment Contracts**

Decree 145 introduces new prior notice periods for unilateral termination of employment contracts for special occupations and business lines. Special occupations and business lines include:

- a) aircrew members; aircraft maintenance technicians, aviation repairmen; flight coordinators;
- b) enterprise managers;
- c) crewmembers working on Vietnamese vessels which are functioning overseas; crewmembers dispatched to foreign vessels by Vietnamese dispatching agencies; and
- d) other cases as prescribed by law.

Employees in the above categories must give an advance notice of at least 120 days (for indefinite term labour contract or a fixed term labour contract of 12 months or more) or at least one fourth of the labour contract term for a labour contract with a term of less than 12 months.

4. **Overtime**

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Consent for Overtime: The Labour Code requires overtime work to be subject to the employees' consent. Decree 145 elaborates upon such consent requirement, in which employees must consent to the following with respect to overtime work: (i) the extent of overtime, (ii) the type of overtime work and (iii) any part-time work.

Furthermore, where consent is to be documented separately, Decree 145/2020 introduces a form of "overtime agreement" that is to be signed by the employer and the employee. This is in contrast to former labour laws, which leave the form of consent open.

Overtime of 200 – 300 Hours per Year: The Labour Code require employers to notify the labour authorities if they seek to impose overtime work of 200 – 300 hours per year. While former laws did not elaborate upon the specific "notice" (and content of the same) for this purpose, Decree 145 now introduces the form of notice to be submitted.

The law had also limited such extent of overtime to only certain occupations (e.g., manufacturing of certain products). Decree 145 supplements this list, and permits such overtime for public services, medical examination and treatment services, educational services, and career education.

Overtime Cap of 44 Hours per Week for Certain Jobs: For direct production and business jobs in enterprises with normal working hours, Decree 145 introduces an overtime cap of 44 hours per week

Contacts



Chau Huy Quang
Managing Partner

D +84 28 3821 2382
F +84 28 3520 8206

quang.chau@rajahtannlct.com



Vu Thi Que
Partner

D +84 28 3821 2382
F +84 28 3520 8206

que.vu@rajahtannlct.com



Nguyen Dinh Nha
Partner

D +84 28 3821 2382
F +84 28 3821 2382

nha.nguyen@rajahtannlct.com



Logan Leung
Partner

D +84 28 3821 2382
F +84 28 3821 2685

logan.leung@rajahtannlct.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

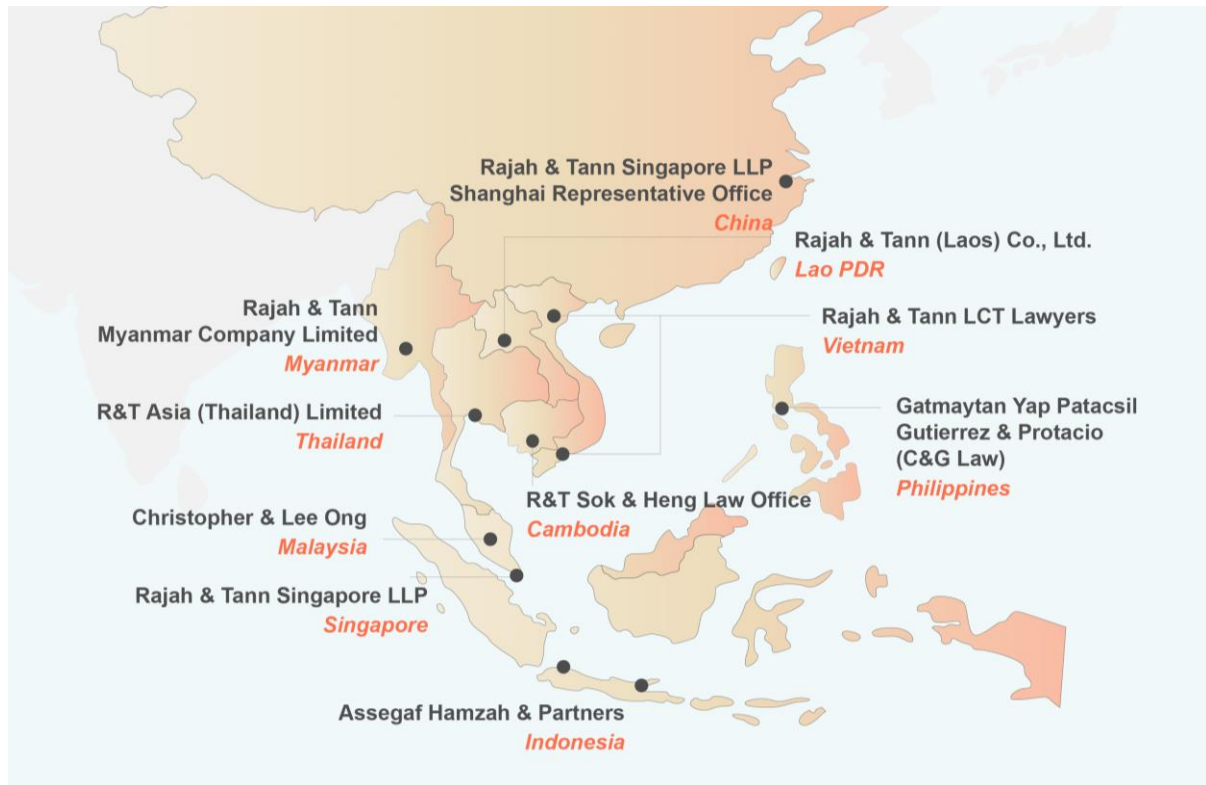
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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