

## ALERT ON LABOR CODE

**Decree No. 145/2020/ND-CP for  
guidance on some regulations of  
the Labor Code related to working  
conditions and labor relationship**

**13 January 2021**



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## General Information

The Government has issued **Decree No. 145/2020/ND-CP** dated 14 December 2020 for guidance on some regulations of the Labor Code related to working conditions and labor relationship (“Decree 145”), effective from 01 February 2021.

The purposes of promulgating Decree 145 include:

1. Supplement the additional benefits for employees, especially female employees;
2. Amending the basis of income for calculation of the remaining days of annual leave for terminated employees;
3. Regulates certain added requirements with respect to some specific occupations in the event of terminating employment relationship;
4. Responsibilities of government bodies and the employers in providing support to the employees.

In this Alert, Deloitte Vietnam summarizes some of the main contents of Decree 145 for your reference.



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## Main points in Decree 145 related to working conditions and labor relationship

### Amend the regulation of salary payment

According to Labor Code 2012, the employers have the right to decide the method of salary payment following the working time, products or piecework. However, as Decree 145, the method of salary payment shall be based on the employment agreement between the employers and the employees to protect the employee's right during their employment period.

### Expenses on opening salary bank account

According to the former regulations, the payment of bank account opening fee and bank transfer fee shall be based on the agreement between the employer and the employee. Nevertheless, Decree 145 stipulated that such fee shall be fully born by the employer.



### Regulations on notice period for termination of labor contract with respect to special sectors, occupations and jobs

***The special sectors, occupations and jobs according to Decree 145 are as follow:***

- Air crew members; aircraft maintenance technician, aviation instrument repair specialist; dispatchers;
- Enterprise managers as prescribed by the Law on Enterprises; the Law on Management and use of State capital invested in production and business at enterprises;
- Crew members working on Vietnamese ships operating abroad; crew members are hired by Vietnamese enterprises to work on board foreign seagoing ship;
- Other cases as provided by law.

***According to above special sectors, occupations and jobs, the notice period for termination of labor contract is as below:***

- At least 120 days for an indefinite-term labor contract or labor contract with the term of 12 months or more;
- At least a quarter of the term of the labor contract for the contract with a term less than 12 months.

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## Main points in Decree 145 related to working conditions and labor relationship (cont.)

### Supplement the working time for salary entitlement

According to Article 58, Decree 145, the working time to be included into the working hours for salary entitlement are as following:

- Time for the apprentice or on the job trainee to directly carry out or participate in labor activities in as prescribed in Clause 5, Article 61 of the Labor Code;
- Time for the employee who is a member of the leadership board of the grassroots level employee representative organization used to perform the tasks as specified in Clauses 2 and 3, Article 176 of the Labor Code;
- Time of medical examination, occupational disease check-up, medical examination to determine the level of working ability loss due to labor accident or occupational disease, if such time is taken according to employer's arrangements/request;
- Time for registration, examination and health check for military services, if that time is entitled to full salary in accordance with the law on military services.





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## Main points in Decree 145 related to working conditions and labor relationship (cont.)

### Supplement the benefits for female employees

- Prioritize to employ the female employees if they meet necessary conditions for the work suitable for both female and male employee;
- Prioritize to extend the validity of labor contract for female employees in case the labor contract is expired;
- Encourage to extend the leave days for prenatal check-up of pregnant female employees from five (05) times and above during the maternity period with one (01) leave day for each time of prenatal check-up. In the event medical institution is being distant or having abnormal pregnancy, two (02) leave days for each time of prenatal check-up shall be applied;
- The female employees in their menstrual cycle have the break time with thirty (30) minutes per day during their working hour with full salary entitlement. The number days being entitled to menstrual cycle break time shall be based on mutual agreement between the female employees and the employer, but no less than three (03) working days per month. In case the female employees still work in such break time, they shall be received the additional payment corresponding to the break time period;
- The female employees who are nursing children under twelve (12) month age shall have break time of sixty (60) minutes per day with full salary entitlement. In case the female employees still work during such break time, they shall be received the additional payment corresponding to the break time period;
- Encourage the employer to install the lactation room for female employees. For the employers with over 1,000 female employees, the installation of such lactation room is compulsory;
- Encourage the employers to enable female employees nurturing child from 12 months of age to express milk and do milk storage. Such rest time shall be based on mutual agreement between the female employees and employer.



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## Main points in Decree 145 related to working conditions and labor relationship (cont.)

### Regulations on organizing the kindergartens for the employees' children

- The Provincial People's Committees are responsible for allocating construction land for building nurseries and pre-primary classes in labor intensive areas, create favorable conditions in terms of land, loans and administrative procedures for employers investing in construction of nurseries and pre-primary classes to meet the needs of employees;
- Encourage the employers to construct or partially support the People's Committees in its construction expenses for building nurseries and pre-primary classes.

### Tax incentive for the employers, who employed many female employees

- Apply tax reduction for the employers who employed many female employees;
- The expenses relating to additional benefits for female employees, promotion of gender equality, sexual harassment combating is entitled to corporate tax deduction following the guidance from the Ministry of Finance.

### Clearly regulate the minimum job-loss allowance payment

In case the employee worked regularly for the employer from 12 months or more and the working period used to calculate the job loss allowance is less than 24 months, the employer is responsible to pay job-loss allowance to employees at least equal to two (02) months' salary.

### Amending the basis of salary for calculation of unused annual leave for terminated employees

The employers have responsibility to pay income relating to unused annual leave for the employees in the event of job loss, resignation or employment cessation due to other reasons.

The basis of salary for calculation of unused annual leave compensation is the salary of the month prior to the month that employee resign or loss the job as agreed in the labor contract.

Regarding the changes in the New Labor Code, it is expected that the current **Internal Labor Regulations (ILR) and Collective Labor Agreements (CLA)** of the enterprises and organizations have to be revised in order to be aligned with this New Labor Code from 01 January 2021.

Deloitte Vietnam's Global Employer Services professionals have extensive practical experiences in supporting enterprises complying with Labor Code, drafting and amending the Internal Labor Regulations, Collective Labor Agreements, and other internal policies of the company, as well as other services related to local immigration and Personal Income Tax filing requirements. Should you wish to learn more about Decree 145 and New Labor Code or have any questions, please contact with our team for advice and support.



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