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**DECREE No. 109/2002/ND-CP OF DECEMBER 27, 2002 AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE GOVERNMENT'S DECREE No. 195/CP OF DECEMBER 31, 1994 WHICH DETAILS AND GUIDES THE IMPLEMENTATION OF A NUMBER OF ARTICLES OF THE LABOR CODE ON WORKING TIME AND REST TIME**

THE GOVERNMENT

*Pursuant to the December 25, 2001 Law on Organization of the Government;*

*Pursuant to the June 23, 1994 Labor Code and the April 2, 2002 Law Amending and Supplementing a Number of Articles of the Labor Code;*

*At the proposal of the Minister of Labor, War Invalids and Social Affairs,*  
DECREES:

**Article 1.-** To amend and supplement a number of articles of the Government's Decree No. 195/CP of December 31, 1994 detailing and guiding the implementation of a number of articles of the Labor Code on working time and rest time, based on the Law Amending and Supplementing a Number of Articles of the Labor Code (hereafter referred collectively to as the amended and supplemented Labor Code) as follows:

1. To amend and supplement Article 1 as follows:

**"Article 1.-** The working time and rest time are applicable to laborers working in the following enterprises, agencies and organizations:

1. Enterprises set up and operating under the State Enterprise Law;
2. Enterprises set up and operating under the Enterprise Law;
3. Enterprises operating under the Law on Foreign Investment in Vietnam;
4. Enterprises of political organizations and socio-political organizations;
5. Cooperatives operating under the Cooperative Law, which employ laborers according to the regime of labor contracts;
6. Educational, medical, cultural and sports establishments set up under the Government's Decree No. 73/1999/ND-CP of August 19, 1999 on the policy of encouraging socialization of educational, medical, cultural and sports activities;
7. Cooperative teams, individual business households, households and individuals that hire laborers;

8. Vietnam-based international or foreign agencies and organizations which employ Vietnamese laborers, except otherwise provided for by the international treaties which the Socialist Republic of Vietnam has signed or acceded to.

This Decree also applies to public servants and employees in the administrative and non-business agencies, persons holding the elected or appointed posts in political organizations, socio-political organizations and mass organizations, and members of the People's Army and People's Public Security forces, except otherwise prescribed for different subjects by separate legal documents.

2. To amend and supplement Article 5 as follows:

**"Article 5.-** The overtime under Article 69 of the amended and supplemented Labor Code is prescribed as follows:

1. The overtime must not exceed 50% of the working hours provided for each type of work in each day. In cases where the working time is prescribed on the basis of working weeks, the total regular working time and overtime must not exceed 12 hours a day. The total overtime must not exceed 200 hours a year, except for special cases prescribed in Clause 3 of this Article.

2. The employers and employees may agree on overtime which must not exceed 200 hours a year according to the provisions of Clause 1 of this Article in the following cases:

- Handling production incidents;
- Settling urgent problems which cannot be delayed;
- Handling in time fresh commodity items, construction projects and products which, due to strict technological requirements, cannot be left unfinished;
- Settling problems which require laborers of high professional and technical qualifications while the labor market cannot supply them adequately and promptly.

3. For special cases, the overtime of no more than 300 hours a year may be permitted, which is prescribed as follows:

a/ For enterprises and production and/or business establishments which produce or process export goods, including textile, garment, leather, shoe and processed aquatic products, if they must settle urgent work which cannot be delayed due to urgent requirements or to the seasonal nature of production, or which cannot be foreseen due to objective factors, the overtime of between 200 and 300 hours a year may be permitted, but the following stipulations must be strictly complied with:

- Agreement must be reached with laborers;

- If laborers work 10 hours or more a day, the employers must arrange for them an additional rest time of at least 30 minutes in the working hours beside the regular rest time in the normal working shift;

- During 7 consecutive days, the employers must arrange for laborers to have at least 24 consecutive hours of rest.

b/ For other enterprises and production and/or business establishments with the same conditions as those of the enterprises and establishments prescribed at Point a of this Clause, which require the overtime work for between 200 and 300 hours a year:

- For enterprises and production and/or business establishments managed by ministries and branches, they must obtain the consent of their managing ministries or branches;

- For other enterprises and production and/or business establishments, they must obtain permission of the People's Committees of the provinces and centrally-run cities.

4. In cases where serious consequences of natural disasters, fires and epidemics must be overcome within enterprises, agencies or organizations, the employers may mobilize laborers to work overtime beyond the overtime limit prescribed in Clause 1 of this Article, but with the consents of the laborers."

3. To amend and supplement Article 12 as follows:

**"Article 12.-** The working time and rest time of laborers engaged in jobs under Article 80 of the Labor Code is prescribed as follows:

For jobs of special nature such as land road, railway, waterway and airline transport; oil and gas prospection and exploitation on sea; art work; use of radiation and nuclear technologies, and high-frequency wave techniques; jobs of divers; jobs of pit-miners; production jobs of seasonal nature and exports processing on goods orders; and 24/24 hour jobs, the ministries and branches directly managing them shall specifically prescribe the working time and rest time after reaching agreement with the Ministry of Labor, War Invalids and Social Affairs."

**Article 2.-** This Decree takes effect as from January 1, 2003.

To annul the Government's Decree No. 10/1999/ND-CP of March 1, 1999 supplementing the Government's Decree No. 195/CP of December 31, 1994 which details and guides the implementation of a number of articles of the Labor Code on working time and rest time.

**Article 3.-** The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, and the presidents of the

People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government  
Prime Minister

*PHAN VAN KHAI*