

COMMENTS ON MOLISA'S RECENT DRAFT DECREES

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<i>No.</i>	<i>Reference</i>	<i>Comments</i>	<i>Recommendations</i>
<i>I. Draft Decree amending some articles of Decree 05/ND-CP dated 12 Jan 2015 detailing implementation some contents of Labor Code</i>			
1.	Supplement to Article 14a	“within 7days...” is not complying with payment schedule of social insurance instructed by insurance office (1644/BHXH-QLT) and company’s salary payment schedule. Therefore, it causes extra burden for business to calculate and pay salary and others to the employee who terminates labour contract.	should settled due date for making payment following due dates of each payment items and company’s regulated payment schedule
2.	Article 11. Unilateral termination of labor contracts by employee 2. Employee has right to unilaterally terminate the labor contract in accordance with Point d, Clause 1, Article 37 of the Labor Code in the following cases: b) Employee leave for abroad living or working;	It is unreasonable for business to accept employee’s termination of labor contract by such reason such as the case when an employee finds a job in abroad by his/her personal interest.	Should abolish the article, or should specify the case that the article is applied such as government appointed the person for living or working in abroad.
3.	Article 29. Dealing with labor discipline for employee raising children under 12 months	Should abolish this article. This article encourages evil minded employee to conduct wrong doings during the period, then disappear from working place before ending the period.	Should abolish this article but can consider providing other merit such as increasing annual leave days for such employees.

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II. Draft Decree amending some articles of Decree 60/2013/ND-CP dated 19 June 2013 detailing Article 63.3/Labor Code on implementing democratic mechanism at workplace			
4.	<p>“Article 23a. Develop, promulgate and implement grassroots democracy at workplace</p> <p>1. Enterprises with 10 or more employees shall have to elaborate, promulgate and organize the implementation of grassroots democracy regulations at their workplaces.</p>	<p>So far no-any employee at company is happy to establish or join labour union due to none of benefit but needs to pay fee.</p> <p>Also there is no rational reason for the company to pay labour union fee even when not having internal labour union.</p>	<p>Should consider nature of labour union as voluntary organization and re-consider benefits so that employee becomes willing to establish and join labour union and company also becomes willing to pay labour union fee to supervising labour union.</p> <p>Or should raise minimum number of employees to 300 or more. In such case company needs representative organization of labourers to discuss issues. At the current case of 10 employees, employer can directly communicate with each employee easily and it’s more flexible.</p>
III. Draft Decree on administrative sanctions for violations in labour, social security, and sending Vietnamese labors abroad			
5.	To all the articles	<p>There is no procedure for the business or employee to claim the decided penalty by each authorities. There will be the case that officials may misunderstand or intentionally sacrifice business by imposing penalty to business.</p>	<p>There should be article which describe procedure for business to claim changes or abolishment of decision made by authorities.</p> <p>Also there should be requirements for obtaining acceptance from business to come to final decision of applying each article.</p>
IV. Draft Decree amending some articles of Decree 49/2013/ND-CP dated 14 May 2013 detailing implementation some articles of Labor Code regarding salary issues			
6.	1. Amendment and	Current issue is not the ratio of 5%. But the issue is that	Should stipulate that amount on the salary table is

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	supplement to item 2, Article 7, Chapter III as follows:	current regulation stipulates that basic salary should follow salary table. Then, company has no way to raise the salary other than promoting the employee. As the result, employee needs to wait for long-time until be promoted.	minimum basic salary at the grade, and company can raise basic salary according to company's evaluation of the employee
7.	3. Amendment and supplement to Point c Item 3 Article 7, Chapter III	Issue is that compensating employee who is working at hazardous work by higher salary. It should be compensated not by salary but by allowance. Because job position may be changed according to company's business plan and hazardous environment will be improved after technical investment.	Should stipulate not as salary but as allowance so that company can flexibly compensate the employee who works at such job