

DECREE OF GOVERNMENT N_o 109/2002/N§-CP Dated 27 December 2002
**On amending and supplementing some articles of the Governmental Decree
No.195/CP dated 31 December 1994 regulating in details and instructing
the implementation of some articles of the Labour Code
on working and resting time**

GOVERNMENT

Pursuant to the Law on Governmental Organization dated 25 December 2001;
Pursuant to the Labour Code dated 23 June 1994; Law on amending and supplementing
some articles of the Labour Code dated 02 April 2002;
According the recommendation of the Minister of Labour, Invalids and Social Affairs;

DECREEs

Article 1. Amending, supplementing some articles of the Governmental Decree No.195/CP dated 31 December 1994 regulating in details and instructing the implementation of some articles of the Labour Code on the time of work and of rest based on the amended, supplemented law on some articles of Labour Code (hereinafter generally called amended and supplemented Labour Code) as follows:

1. Amending and supplementing the Article 1 as follows:

“**Article 1.** Working and resting time applied to the employees who work for the following enterprises, bodies, organizations:

1. Enterprises set up and operating under the Law on State-run Enterprise
2. Enterprises set up and operating under Enterprise Law
3. Enterprises operating according to Foreign Investment law to Vietnam
4. Enterprises belonging to political organizations, social-political organizations
5. Cooperatives operating in accordance with the Co-op Law and employing workers according to regime of Labour contract.
6. Education, Health, Culture and Sport undertakings set up in accordance with the Decree No. 73/1999/ND-CP dated 19 August 1999 on policy for promoting the socialization of activities in the said fields.
7. Co-op team, Private business household, family household and individuals who are employing Labours;
8. International or Foreign organizations & bodies located in the territory of Vietnam employing Vietnamese workers, excluding other regulations applied to International treaties signed with or joined in by the Socialist Republic of Vietnam.

This Decree shall also be applied to civil servants and public employees working in administrative, non-productive organs, elected, appointed or assigned people of political organization, social-political organization, mass organization, those belonging to the People’s Armed Forces, the People’s Public Security, except where other legal text applied for each category provides otherwise.”

2. Amending, supplementing the Article 5 as follows:

“**Article 5.** The additional working hours specified in the Article 69 of Amended, Supplemented Labour Code shall be regulated as follows:

1. The additional working hours shall not exceed 50% of the regulated working hours per day for specific type of work. In case of working hours are calculated per week, normal working hours and additional working hours per day shall not exceed 12 hours. The total working hours in per year shall not exceed 200 hours, excluding special cases as stipulated in clause 3 of this Article.

2. Employer and employee shall discuss for an agreement on additional working hours not exceeding 200 hours per year as stipulated in clause 1 of this Article in following cases:

- To settle troubles arisen in the production;
- To solve urgent works which can not be delayed;
- To process timely fresh goods, construction works and products which can not be left unfinished as strictly requested by the technology.
- To carry out the works requiring high qualified employees that the Labour market can not sufficiently and immediately supply.

3. In special cases, additional working hours can not be exceeded 300 hours per year and is regulated as follows:

a) If the enterprises, business, production units producing or processing export goods including: Textile, garment, leather, footwear and processing aquatic products, have to settle urgent mission which can not be delayed by pressing and necessary requirement or by seasonal characteristics of production or by unforeseen factors, the acceptable additional working hours is exceeding 200 hours upwards to 300 hours per year provided that it will have to strictly comply with the following regulations:

- Shall get agreement with workers;
- If the workers working from 10 hours upwards a day, the employer has to give them an additional break of at least 30 minutes which is calculated on the working hours out of break time regulated in ordinary working shift;
- For 07 consecutive days, the employer has to make all the necessary arrangements to enable the workers to take a rest at least 24 continued hours;

b) If other enterprises, business production units having such conditions as the enterprises and units mentioned in paragraph a of this Clause, have the demand of additional working hours exceeding 200 hours to 300 hours per year, that:

- Enterprises, business production units under administration of the Ministry and the Industry have to apply for and get authorization of those ministry and industry;
- Other enterprises, business production units have to apply for and get permission of the People's Committee of the provinces, cities directly dependent on the central government.

4. As having to overcome serious consequences caused by natural calamities and war, fire and epidemic diseases within the operating area of the enterprises, bodies and organizations, the employer is allowed to mobilize the extra working hour beyond hours regulated in Clause 1 of this Article, provided it has to be agreed by the employees.”

3. Amending, supplementing Article 12 as follows:

“Article 12. The working and resting time of employees engaged in the works specified in the Article 80 of the Labour Code is regulated as follows:

For the works with special characteristics such as: Road, railway, maritime and air transport action; petroleum investigation and exploitation in the sea; in the art fields; using radiate and nuclear technique, application of high frequency wave technology, diver’s work; pit miner’s work; seasonal production works and export processing works according to the orders; the work requiring the employee to be on duty 24/24 hours, Ministries and Industries who directly administrate the above said works shall regulate specifically working and resting hours upon reaching an agreement with the Ministry of Labour, Invalids and Social Affairs.”

Article 2. This decree comes into effect counting from 01 January 2003.

Revoke the Governmental Decree No.10/1999/ND-CP dated 01 March 1999 on supplementing the Governmental Decree No.195/CP dated 31 December 1994 regulating in details and instructing the implementation of some articles of the Labour Code on the working and resting time.

Article 3. Ministers and Heads of Ministerial institutions, Heads of Governmental bodies, Chairmen of Provincial & Municipal People’s Committee belonging to the Central management are responsible for implementing this decree.

On behalf of the government

Prime minister

Phan Van Khai

(Signed)