

DIALOGUE IN THE WORKPLACE AND DEMOCRACY REGULATIONS

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“Dialogue in the workplace”, according to current law, is a mandatory procedure in enterprises to build labor relations in the workplace, help employees and employers understand and trust together. In fact, not all enterprises strictly follow this supposedly useful procedure.

After two years of grappling with the Covid-19 pandemic and seeing the revenue chart gradually go down without any way to hold back such diminution, a large enterprise in province D decided to restructure its corporate organization in the hope of restoring operational efficiency and improving competitiveness in the market.

Up to the time of sending a notice to the local Department of Labor, War Invalids and Social Affairs as prescribed by law, the enterprise is reminded by the competent authority of its carrying out the procedures for “dialogue in the workplace” on the relevant issues thereto. At that point, enterprises in province D has not understood what their shortcomings are and what they need to do until they consult a law firm.

So what does it mean by “dialogue in the workplace” when the local labor management agency pays attention to reminding enterprises of its conduction? And perhaps not only large enterprises in province D, but also many other small and medium enterprises often commit this shortcoming.

Definition of the dialogue in the workplace

“Dialogue in the workplace” is a term defined for the first time in the Labor Code 2012 (“LC 2012”). Accordingly, the dialogue in the workplace is carried out through direct exchange between employees and employers, or between representatives of the labor collective and employers, in order to share information, enhance understanding between employers and employees to build labor relations in the workplace.

LC 2012 stipulates that the dialogue in the workplace is conducted every 3 months, or whenever there is a request from either party. The statutory contents may be brought into dialogue, including the employers’ production and business situations, performance of labor contracts, collective labor agreement, internal rules, regulations and other commitments and agreements in the workplace, working conditions, employees’ or labor collectives’ requirements toward employers, employers’ requirements toward employees and labor collectives, and other matters of interest to the two parties.

The dialogue in the workplace has been believed to become a useful activity, whereby helping to strike a balance of the interests of the two parties and avoid conflicts caused by excessive tension. However, due to some reasons, the course of implementing LC 2012, from May 1, 2013 until January 1, 2021 upon its expiry, did not make impressions on or mark the significant results of

the dialogue in the workplace. Perhaps that is why one of the new key points of Labor Code 2019 is the very changes related to the regulations on the activities of the dialogue in the workplace.

Changes in LC 2019

First of all, the activities under LC 2012 on the regulation on conducting the dialogue in the workplace every 3 months are considered too much, costly for employers and may make a dialogue informal with a lack of substance. LC 2019 was amended by only stipulating that the dialogue in the workplace will be held periodically at least once a year.

In addition to maintaining the dialogue in the workplace periodically and at the request of either party, LC 2019 supplemented a new regulation on the mandatory organization of the dialogue in the workplace for such cases as formulating the regulations on assessing the extent of job completion (Article 36); downsizing employees in case of any change in structure, technology or economic reasons (Article 42); elaborating a labor usage plan (Article 44); formulating salary scale, salary table and labor norms (Article 93); deciding on bonus regulations (Article 104); issuing internal labor regulations (Article 118) and suspending the employee's work (Article 128.)

Dialogue in the workplace must go hand-in-hand with democracy regulations

Apart from the aforesaid dialogue contents, Decree 145/2020/ND-CP dated December 14, 2020 of the Government detailing and guiding the implementation of a number of articles of the Labor Code on working conditions and labor relationships encourages the parties to dialogue on other matters agreed upon by the parties and specified in the grassroots democracy regulations in the workplace. This is considered a new and key regulation which may bring about a prominent change in the meaningful activities of the dialogue in the workplace. Such change may lead employers to go through more procedures (in order to hold a dialogue in the workplace) before promulgating the regulations on assessing the extent of the job completion by employees across departments, which the company will then rely on to exercise its right to unilaterally terminate the labor contract with employees.

Similarly, the formulation of a labor usage plan, the retrenchment of employees in case of a change in structure, technology or for economic reasons, and the issuance of bonus regulations will also have to go through many procedures as compared with before.

However, enterprises will reportedly have to accept following these regulations to ensure compliance and avoid legal risks in the future; for example, if the company unilaterally terminates the labor contract with the employee because the employee regularly fails to complete the work according to the labor contract, but the company has not held the dialogue in the workplace beforehand in order to exchange opinions with the grassroots representative organization of employees upon formulating the regulations on assessing the extent of work completion, such retrenchment may be considered illegal.

Role of the democracy regulations in conducting the dialogue in the workplace

The next issue of interest is whether the employer will organize in a manner that he considers appropriate, or must comply with the law in conducting the dialogue in the workplace. According to Decree 145/2020, the dialogue in the workplace must go hand-in-hand with the democracy regulations promulgated by the employer himself, which must contain the following main contents:

- Principles of the dialogue in the workplace
- Number and dialogue participants of each party;
- Number of times and time to hold an annual dialogue;
- How to organize a periodical dialogue, a dialogue at the request of either party or the parties, an ad-hoc dialogue;
- Responsibilities of the parties upon participating in the dialogue;
- Application of Article 176 of the Labor Code to the representative members of employees participating in the dialogue, but not members of the leadership of the grassroots representative organization of employees;
- Other content (if any).

Decree 145/2020 also stipulates that upon formulating, amending and supplementing the democracy regulations, the employer must consult the grassroots representative organization of employees (if any) and dialogue representative group of employees (if any.) The democracy regulations must be publicly communicated to employees.

As such, the democracy regulations are the key documents that define the manner in which employers and employees carry out the dialogue in the workplace, in the cases provided for by law and agreed between employers and employees (if any).

Conducting the dialogue in the workplace in the context of absence from or inconsistency with the democracy regulations is likely to lead to situations where employers are seen as non-compliant with the law, and may subject to certain sanctions. Therefore, companies are advised to develop and issue the “democracy regulations” as prescribed to serve as a basis for the implementation of the dialogue in the workplace, when necessary. During the drafting process, the contents of the democracy regulations should be carefully considered and studied to ensure appropriateness for the enterprise situation, avoiding the introduction of the regulations that are not suitable with reality, causing the company and employees to face obstacles upon practical application.