



**CIRD**

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DEVELOPMENT

*Bulletin*

# INDUSTRIAL RELATIONS

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DEVELOPING INDUSTRIAL RELATIONS IN THE CONTEXT OF THE INTERGRATION

## Vietnam to ratify ILO Convention No. 98

On June 14, 2019, in the seventh session, the XIV National Assembly approved the Resolution to ratify International Labour Convention No. 98 in 1949 of the International Labour Organization (ILO) on the Right to Organize and Collective Bargaining, affirming Vietnam’s determination to integrate and develop sustainably



### Key mandates on industrial relations in 2019

1. Concluding 10 years of implementing Directive 22-CT/TW dated June 5, 2008 by the Party Central Committee’s Secretariat on strengthening leadership and providing direction for the development of harmonious, stable and progressive industrial relations.
2. Strongly focusing on completing the Draft Labour Code (amended).
3. Accelerating the national legalization of international labour standards.
4. Implementing Party’s Resolution No. 27-NQ/TW on wage policy reform in the enterprise sector.

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## Looking back on 10 years of developing harmonious, stable and progressive industrial relations in Vietnam

*Year of 2019 marks 10 years of the implementation of Directive 22-CT/TW dated 05/6/2008 by the Party Central Committee’s Secretariat on strengthening leadership and providing direction for the development of harmonious, stable and progressive IR in enterprises. After 10 years of implementing Directive 22, IR in Vietnam have been transformed with positive results. However, in the new context of industrial relations in the international integration, year of 2019 can be considered as a pivotal year marking a new turning point in IR in Vietnam*

### 1. Fundamental achievements

The awareness of social partners about industrial relations (IR) in the market economy has been increasingly improved, particularly employers and employees. Since the early 2000s, the new generation of workers has matured and changed in quality, particularly regarding their awareness about labour rights and how to organize industrial actions.

The basic IR mechanisms have been initially implemented and brought about positive results. Many labour-intensive enterprises have actively implemented a system of effective dialogue channels. This contributes to stabilizing IR, reducing job turnover and limiting the risk of strikes.

The role of state management on IR has been initially strengthened. The legal system is gradually approaching international labour standards. In some provinces, where IR are tense, the Departments of Labour, Invalids and Social Affairs (DOLISAs) have initially promoted the initiative in managing and supporting IR within enterprises.

Activities of Trade Union are gradually reformed. The most prominent feature is the change of approach in admitting new union members and establishing grassroots trade unions (GTU) under the new method. The upper level trade union does not establish GTU but only recognizes

the GTU established by workers led by elected officials.

The role of the employer’s representative organizations is initially effective thanks to the Bureau for Employer’s activities in Vietnam - BEA) (Vietnam Chamber of Commerce & Industry - VCCI), and a number of local employers’ councils and business associations such as the Japan Business Association, Korean Business Association, Taiwan Business Association, Textile Association, Footwear Association, etc.

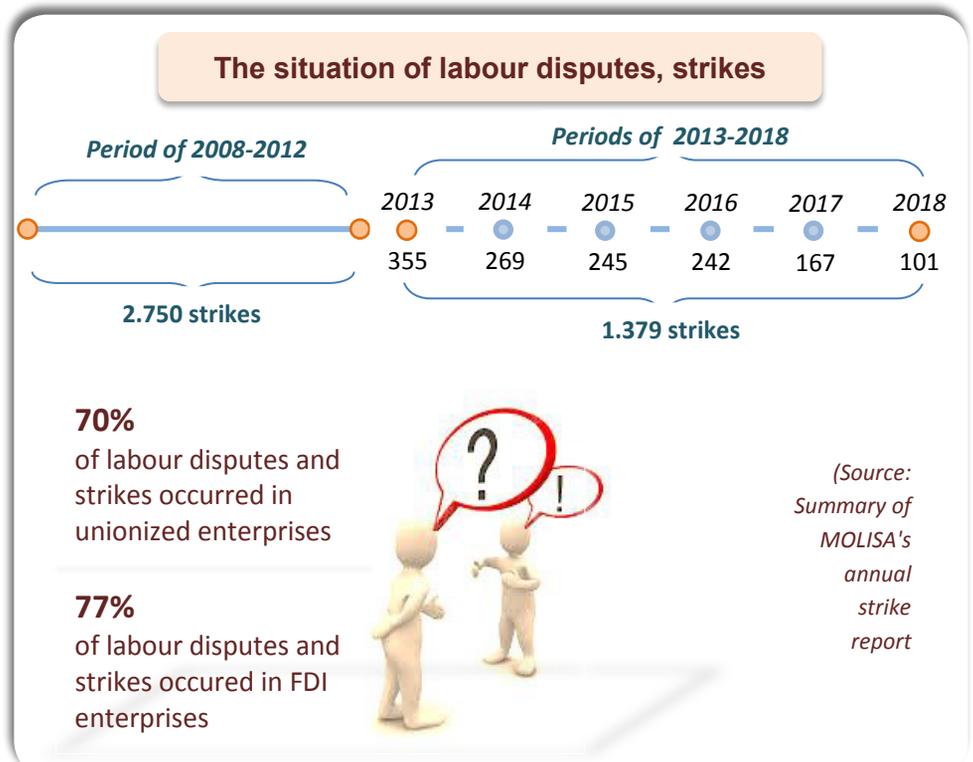
A number of policies related to the development of a social environment that supports the development

of IR have been deployed and brought about positive results, particularly social housing policies for workers. By the end of 2018, 100 social housing projects had been completed with more than 41,000 houses for industrial zone workers.

This development has been accelerated by the development of the market. As a result, working conditions have been constantly improved, especially in labour-intensive FDI enterprises.

### 2. Some shortcomings

In addition to success, there are fundamental limitations in IR. In particular, there is not a sufficient



**Activities of labour mediators and labour arbitration councils**

*By the end of 2018, 1,420 labour mediators had been appointed nationwide.*

*The role of mediators is limited to passive dispute resolution whenever requested. There is yet an obligation to support both parties in the enterprise to develop industrial relations to prevent disputes.*

*The general requirement of the mediator is to ensure their independence and neutrality, but now 100% of the mediators double up. Some appointed mediators are officials of representative organizations of the disputing parties who do not guarantee objectivity and neutrality.*

*The network of mediators has not been uniformly managed and connected from the central to local levels. Training, retraining, management and evaluation of the quality of mediation activities of labour mediators also have not yet been given adequate attention.*

*Regarding the institution of labour arbitration council: The arbitral tribunal, which is not different from the role of the conciliator, only serves to reconcile the two parties, which limits their power compared to the common practice.*

level of IR awareness on the part of some individuals and organizations in the market economy. This may slow down the renovation process and development of IR under the market economy, particularly regarding awareness of collective labour management mechanisms.

There remains various shortcomings of IR state management, especially regarding the competency of local officials in managing and supporting IR. The role of state support for IR has not been properly addressed.

Activities of GTUs reform in enterprises are slow, who serves more as mediators rather than representatives to protect workers' rights. Many GTU Executive Committees remain strongly influenced by employers.

The mechanism of dialogue, negotiation, and settlement of collective labour disputes stipulated in the law has not yet been implemented in accordance with actual needs. Many collective labour agreements remain superficial. In particular, strikes are not in accordance with the procedure prescribed in the law, and legal procedures remain complicated.

Although housing policies for workers are being addressed, in general, foundational policies for migrant workers' permanent housing and employment (legal, infrastructure, social services, etc.) remain inadequate.

**3. Rising problems**

In addition to the above-mentioned IR issues, IR in Vietnam need drastic changes in order to meet new development requirements, which are:

Improving the institution of the socialist-oriented market economy. IR is essentially the relationship between labour supply and demand, which needs to be stable to boost production capacity.

International integration and commitments are the motivation for Vietnam to innovate the IR system. However, the implementation of international labour standards is also a condition for Vietnamese enterprises to effectively participate in the global supply chain.

The labour market has shifted strongly. The demand for labour is increasing while many factories have

difficulties in recruiting workers, especially in industrial zones and labour-intensive industries.

The strong development of technology revolution 4.0 and social networking has spawned various challenges. Apart from the risk of losing jobs, the development of social networks and the Internet also helps employees easily access information resources and networks to forge collective strength in negotiations. Social networks and the Internet do not only help to raise employees' awareness, but also create a virtual space for employees' association.

**4. Some suggestions**

The development of industrial relations to meet new requirements should be focused on the following key points:

**Firstly**, continuing to boost awareness of the parties on developing IR in the economy of an international integrated market.

**Secondly**, finalizing the IR legal framework, so that IR mechanisms are in line with market laws and effectively implemented in practice, especially regarding collective labour representation in negotiating and settling labour disputes.

**Thirdly**, in addition to improving the capacity of state management on IR, it is necessary to pay special attention to the supporting role of the state to the parties in IR, especially to support the representative organizations of workers.

**Fourth**, continuing to vigorously innovate trade unions to enhance their capacity to represent and protect workers' rights at work, especially in non-state enterprises.

**Fifth**, consolidating and renewing the system of settling labour disputes towards being compact, professional and effective, particularly regarding labour mediators and labour arbitration councils.

## International Labour Organization's Convention No.98 on Rights to Organize and Collective Bargaining

### - Significance for Vietnam and approval roadmap



Currently, Vietnam's efforts to ratify Convention No. 98 are necessary and meaningful in all of its political, legal and socio-economic aspects.

First of all, the access to C098 is in line with the policy of our Party and State regarding our integration into international labour force and society, affirming our determination and efforts in implementing the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Vietnam's obligations as an ILO member; at the same time, facilitating our participation in the EU-Vietnam Free Trade Agreement (EVFTA).

Joining C098 will contribute to strengthening the legal foundation for workers and employers to bargain collectively, sign more effective collective labour agreements, contributing to building harmonious, stable and progressive industrial relations.

The effective collective bargaining mechanism will contribute to minimizing negative effects of globalization, positively influencing labour productivity, helping the economy to develop sustainably and ensuring stronger social justice, and contributing to stabilizing security-politics and socio-economy.

### Three basic contents of Convention No. 98

1. *Workers shall enjoy adequate protection against discriminatory acts related to all aspects of their employment by reason for union membership (Article 1).*
2. *Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration (Article 2).*
3. *Establishing a voluntary and goodwill principle in collective bargaining, at the same time mentioning the State's responsibility to encourage and promote the development of a voluntary collective bargaining mechanism.*

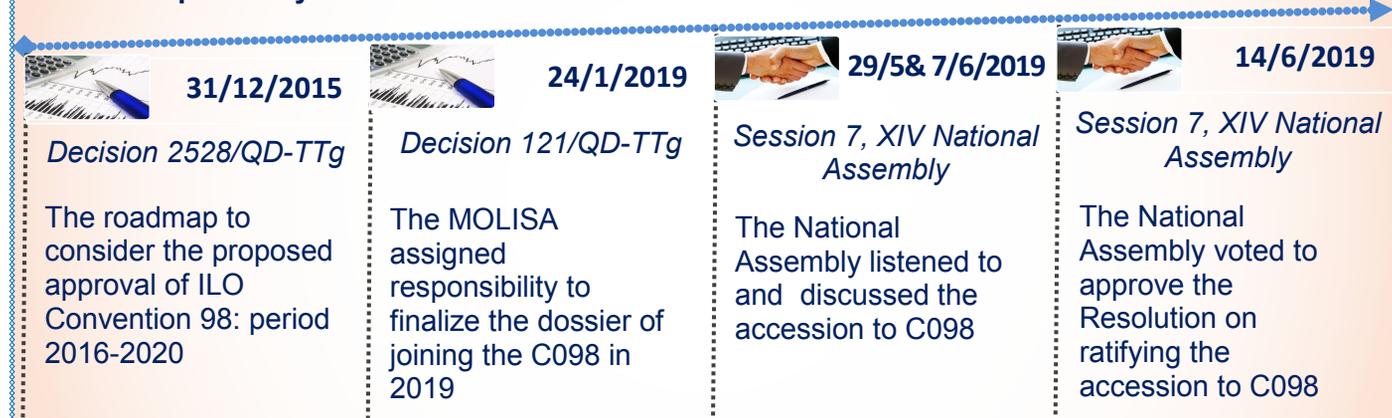
Joining and implementing Convention No. 98 is also a specific solution to implement the policies of Resolution No. 27-NQ/TW dated May 21, 2018 of the Party on reforming wage policy, whereby wages in the enterprise shall be decided through negotiation by both parties in the industrial relations.

On the other hand, the provisions in C098 are not in conflict with the 2013 Constitution of Vietnam. The principles of organization and

collective bargaining provided in the Convention are fundamentally consistent with Vietnamese law.

However, in order to ensure the full and effective implementation of the Convention, Vietnam needs to continue legalizing the provisions of C098. The legal system should continue to approach international standards that suit the conditions and level of national economic, political and social development.

### Roadmap to ratify ILO Convention No. 98





Source: @ ILO

## Labour administration to develop effective national industrial relation policies

The New IR Framework Project in Respect of the ILO Declaration on Fundamental Principles and Rights at Work (NIRF/USDOL Project) was designed to support the development of a new IR framework focused on three objectives: (i) Ensuring national labour laws and legal instruments are consistent with the ILO Declaration on FPRW; (ii) The labour administration developing effective national industrial relations policy; (iii) The labour inspectorate effectively enforcing and promoting compliance with national labour laws.

During the implementation process, the ILO Office in Hanoi worked closely with agencies at the Ministry of Labour, Invalids and Social Affairs, the Vietnam General Confederation of Labour and the Vietnam Chamber of Commerce and Industry. In particular, the activities with partners under

the Ministry of Labour, Invalids and Social Affairs such as the Department of Industrial Relations and Wages, the Legal Affairs Department and the Inspectorate are considered key activities.

Component 2 of the Project is designed to support the labour administration system in Vietnam in order to develop effective industrial relations policies. Throughout the year 2018 and the first half of 2019, the Project has implemented many effective activities, contributing to the reform of the legal framework and a management system of industrial relations to be in line with the market economy and Vietnam's international commitments.

### The three outstanding activities of the Project are:

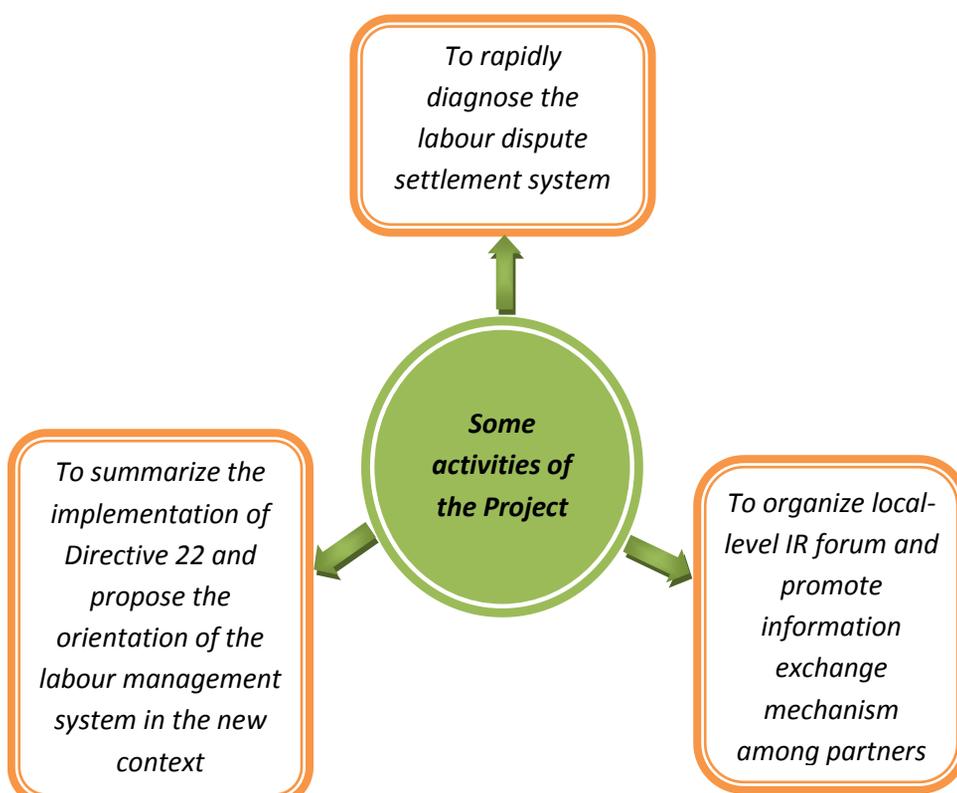
#### 1. Cooperating with the Department

**of Industrial Relations and Wages** (Ministry of Labour, Invalids and Social Affairs) to prepare a rapid diagnostic report on the system of labour dispute settlement, and organize assessment workshops on labour dispute settlement system in Vietnam. The results of the operation will directly contribute to promoting new ideas on the labour dispute settlement system in Vietnam, particularly to reorganize and develop a labour mediator system that operates professionally, effectively and substantially.

**2. Providing technical input** of experts and prepare a quick assessment report on industrial relations in Vietnam.

The project organized activities to support the development of the impact assessment report of Directive 22-CT/TW dated June 5, 2008 of the Party Central Committee's Secretariat on strengthening leadership and providing direction for the development of harmonious, stable and progressive industrial relations within the enterprise. On the basis of assessing the impact of Directive 22 and analyzing the new industrial relations context, the authorities have proposed major orientations towards which to manage an effective industrial relations system in the next period.

**3. Supporting the organization of industrial relations forums in provinces and cities** (Bac Ninh, Da Nang and Binh Duong in September 2018) in order to pilot and strengthen the effective exchange of information among partners in the management and support system for industrial relations development.



## Some achievements in the state management of industrial relations in Dong Nai province



*The survey team of the Ministry of Labour, Invalids and Social Affairs worked with Dong Nai province on April 16, 2019 on the implementation of Directive No. 22-CT/TW dated June 5, 2008 of the Party Central Committee's Secretariat on strengthening leadership and providing direction for the development of harmonious, stable and progressive industrial relations within the enterprise.*

Implementing Directive No. 22-CT/TW and the guiding documents of the Government, on June 3, 2014, Dong Nai Provincial People's Committee issued their IR Master Plan (IRMP): "Developing industrial relations in enterprises in Dong Nai province period of 2014 - 2020". During their IRMP implementation process, on the state management on IR, Dong Nai has achieved the following results:

### **(1) Consolidating the organizational structure of the state management on IR**

In order to effectively implement the State management work on IR, Dong Nai Department of Labour, Invalids and Social Affairs (DOLISA) has arranged 2 staffers (1 leader and 1 official) on the payroll of the Labour-Wages and Social Insurance Division to implement IR-related activities concurrently. These officials will be the focal point responsible for implementing, monitoring as well as advising and proposing activities to promote harmonious, stable and progressive IR within the enterprise in the province. In addition, according

to a report by Dong Nai Federation of Labour, the number of fulltime TU officials at upper-level TUs based in the whole province is over 100, of which the total number of full-time TU officials at the district level accounts for about 80%, while officials at the branches, industrial parks and provincial public sector union account for about 20%. Among them, the total number of fulltime TU officials in charge of IR is over 25.

### **(2) Improving management capacity and supporting IR within the enterprise for State management officials in labour and IR**

Dong Nai DOLISA organized training and refresher courses in order to strengthen and improve professional capacity for staff working in IR and labour mediators through its coordination with the Department of Industrial Relations and Wages to organize training on IR and relevant legal regulations, as well as to provide relevant documents, knowledge and other necessary skills. In addition, the DOLISA also reviewed, arranged and supplemented the team of labour

mediators in the province, ensuring the adequate quantity and quality of mediators, which can timely meet the needs of the province.

### **(3) Initiating and improving upon the effectiveness of dialogue, negotiation and signing of collective bargaining agreements (CBAs) activities**

The DOLISA organized a pilot study in order to introduce an authentic dialogue model, which serves as the basis for negotiating the signing of CBAs within the enterprise by means of upper-level trade unions, State management agencies in charge of labour, as well as employer-representing organizations directly supporting enterprises in initiating dialogue, negotiation and signing of CBAs in a number of enterprises in the province.

In addition, the province cooperated with relevant agencies to pilot the enterprise-group dialogue. In order to implement this activity, it is necessary to first develop a set of guidelines and manuals as well as organize skill-training courses for parties involved in the implementation of dialogue, negotiation and signing of CBAs within the enterprise.

### **(4) Proactively minimizing collective labour disputes and strikes**

On June 16, 2016, the province issued Decision No. 39/2016/QĐ-UBND on procedures for resolving strikes that do not follow the statutory procedures prescribed by law. The DOLISA organized a pilot activity in Long Thanh and Nhon Trach districts, as well as Bien Hoa city and a number of other enterprises in order to assess and improve upon the strike resolution process, which do not follow the statutory procedures prescribed by law and expand its application in the province.

### New regulations on outsourcing



On March 20, 2019, the Government issued Decree No. 29/2019/ND-CP providing guidelines for implementation of Clause 3, Article 54 of the Labour Code on licensing outsourcing services, deposit payment, and the list of permissible outsourced jobs. The main provisions of the Decree are as follows:

#### Purpose of outsourcing

- 1 Temporarily satisfy the sudden increase in demand for human resources in a specific period.
- 2 Replace employees during maternity leave, suffering occupational accidents, occupational diseases, or having to implement citizen's obligations.
- 3 Have demand on use of employees with high technical and professional qualification.



#### Licensing requirements

##### Legal representative of the enterprise:

- a) Being the manager of the enterprise;
- b) Possessing no criminal records;
- c) Having working experience in the field of outsourcing or labour supply of at least 03 years (or 36 months) or more during the last 05 years preceding the date of submission of the application for the license.

The enterprise has made **payment of deposit of VND 2,000,000,000** (two billion dong) at a commercial bank or a foreign bank's branch duly established and operating in Vietnam.

**Chairperson of the People's Committee of the province or central-affiliated city** where the head office of the enterprise is located shall be competent to issue, extend, re-issue or revoke the license for outsourcing service from that enterprise.

#### Payment of deposits by outsourcers

##### Use of deposits:

- Payment of wage, benefits, social insurance, health insurance, unemployment insurance, and occupational accident and disease insurance premiums; or
- Compensation for the outsourced employees in case the outsourcer breaks the labour contracts signed with these employees or cause damage to them due to the outsourcer's failure to ensure legitimate rights and interests of the outsourced employees.

##### Outsourcer may withdraw deposits in the following cases:

- a) Encountering temporary difficulties and is incapable of paying amounts in accordance with the law for the outsourced employees after 30 days from the due date of payment; or
- b) Encountering temporary difficulties and is incapable of paying compensation to the outsourced employees.

**Deposits of the outsourcer shall be used to pay interests and benefits to the outsourced employees** as regulated in Article 14 hereof in case the outsourcer neither makes payment nor submits a request for withdrawal of deposits for making payments to the outsourced employees after 60 days from the due date of payment.

#### Permissible outsourced jobs

**20 permissible outsourced jobs** are provided in Appendix 1 hereto.

##### Cases where outsourcing is not allowed:

- \* Either the outsourcer or outsourcing party is involved in labour disputes or strikes.
- \* To replace the outsourced employees who are exercising right of strike or settling labour disputes.
- \* The outsourcer does not enter into an agreement with the outsourcing party about the responsibilities for paying occupational accident or disease compensations for the outsourced employees.
- \* No approval is made by the outsourced employees.
- \* To replace employees who are dismissed due to restructure, changes of technologies or merger, consolidation, division, separation of enterprises or due to economical reasons.

## HIGHLIGHT

### Some socio-economic development targets and indicators of the labour, invalids and social affairs sector in 2019

- 
- Gross domestic product (GDP) growth rate: approximately 6.8%
  - Consumer price index (CPI) growth rate: under 4%
  - Urban unemployment rate: under 4%
  - Trained labour rate: 60 - 62%
  - Percentage of employees participating in social insurance: above 60%
  - Creating new jobs for: above 1.65 million worker
  - Average monthly income of wage-earning employees: above VND 7 million

## ABOUT THIS ISSUE

Dialogue in the workplace is the best way to build harmonious, stable and progressive industrial relations, and to minimize the conflict between employees and employers. In fact, enterprises focusing on dialogue with employees see an increase in labour productivity and production efficiency.

The Center for Industrial Relations Development and Department of Industrial Relations and Wages issues this Handbook on Dialogue in the Workplace to introduce basic knowledge on establishing, maintaining and strengthening effective some popular dialogue channels at the workplace that hopefully can help enterprises implement dialogue at the workplace more effectively.

The book also hopefully provides more knowledge about workplace dialogue for interested readers and contributes to their work.

Sincere thanks,



*"Funding for this publication was provided under the framework of NIRF/USDOL Project. This publication does not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the corresponding U.S. government. One hundred percentage of the total costs of NIRF/USDOL project is funded by the Federal Fund, for a total of 4 million dollars."*

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