

Employment law in Indonesia – an overview



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Introduction

Although still a largely agrarian economy, Indonesia is rapidly industrialising and diversifying into other spheres. The continuous and steady growth of the country makes Indonesia an attractive place for business in the coming years. It is important that organizations currently doing business in the country or considering doing so are aware of the often strict employment laws in Indonesia. This in-brief provides a snapshot of some of the key aspects of employment law in Indonesia.

Our Hong Kong office coordinates employment and immigration/global mobility support across the Asia Pacific region (including Indonesia).

This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Our Hong Kong office can source Indonesian advice through its links with local firms in Indonesia.

The employment law landscape

Indonesia has a civil law system. The principal legislation governing employment law is Law No. 13 of 2003 on Employment, which has been further amended by Law No. 11 of 2020 on Job Creation (Job Creation Law). For ease of reference, both laws will hereinafter be referred to as Employment Law. Although the Job Creation Law has been formally issued on 2 November 2020, most of the application of the amended employment provisions will be further regulated under government regulations within three months of the effective date of the Job Creation Law (i.e. by no later than 2 February 2021).

Until the implementing government regulations are enacted, the current implementing regulations will remain in effect to the extent that they do not contradict the Job Creation Law provisions. Nonetheless, the Employment Law is complemented by other relevant laws, and supplemented by government regulations and presidential decrees, ministerial regulations, circulars and instructions.

Indonesian employment law is generally considered to be pro-employee. It is difficult to terminate an employment contract and the law defines employment broadly, extending labour protection to a large number of workers.

It is important to note that the Employment Law applies to Indonesian citizen employees only (whether employed by foreign or Indonesian entities). For foreign nationals working in Indonesia, the employment relationship is regulated by the terms agreed in the employment contract. Unless stipulated to be governed by foreign law, the employment contract for a foreign national will be governed by the principles of freedom of contract as provided under the Indonesian Civil Code ("ICC"). The requirements of the Employment Law which are discussed in this in-brief will only apply to a foreign national where this has been agreed by both parties to the employment contract.

Commencing employment

Structuring the employment relationship

There is no specific requirement under the Employment Law for a foreign employer to set up a local entity to employ local workers. Local employees may be hired directly by a foreign entity or indirectly through agencies. This structure may raise tax issues if the foreign employer is considered to have a permanent establishment.

Types of employment

Employment contracts are either for an indefinite or a defined (fixed term) period. An employment contract for a fixed term may only be used where the work: is one-off and temporary in nature; will be completed within a certain period of time that is not too long (potentially will be limited to up to 5 years); is seasonal work; is related to a new product, new activity or additional product that is still in the experimental stage or try-out phase; or other work that is not permanent in type, nature and activity. Further details on the fixed term arrangement will be regulated in a government regulation.

A defined-period employment contract must stipulate the conditions when the engagement would be considered completed (either for a certain period or for completion of specified work). Once the conditions for completion are fulfilled, the contract will be terminated by operation of law. However, if the work cannot be completed due to certain circumstances, the employment may be renewed. The renewal/extension of an employment fixed-term agreement will be further regulated under the government regulation.

The rules on defined-period contracts do not apply to expatriate employees; the general principle being that an expatriate employee is permitted to work in Indonesia only for a specified position and term and is restricted from holding any position relating to human resources/personnel. The expatriate is only allowed to work in a position/capacity that has been planned to be filled in by expatriates and detailed in an expatriate utilisation plan or known locally as RPTKA prepared by the employer and approved by the Manpower Office.



Presidential Regulation No.20 of 2018 on the Utilisation of Foreign Workers and Minister of Manpower (MoM) Regulation No.10 of 2018 on the Procedures for the Utilisation of the Foreign Workers provide that the RPTKA shall contain information on the length of time the employer intends to utilise foreign workers. Accordingly, the maximum work period that will be defined by the term of the expatriate's employment agreement shall be within the term stated in the RPTKA.

Fixed-term and part-time employees are generally entitled to the same rights as employees on an indefinite contract, including wages, overtime pay, work rest (leave) and social security. It is worth noting that the amended Employment Law provides that fixed-term employees would be entitled to receiving compensation upon completion of either the relevant fixed term employment agreement or the specified work, in an amount that will be linked to the employee's service period.

The use of agency (outsourced) workers is no longer limited to "supporting activities" but also for essential/main work. Further, the law distinguishes employees from independent contractors. Independent contractors enter into service and consulting agreements governed by the ICC.

The employment contract

There is no requirement for an indefinite-term contract to be in writing. Where an oral contract has been agreed upon, a letter of appointment must follow to address the basic terms of employment. A fixed-term contract, on the other hand, must be in writing. All written employment agreements with Indonesian citizens must be in Bahasa Indonesia (the Indonesian language). Where the fixed-term employment agreement is bilingual, the Bahasa Indonesia version will prevail.

Under the Employment Law, specific terms and conditions must be included in an employment contract. Parties are generally free to negotiate the terms and conditions of the contract, provided that they comply with the minimum statutory standards or they are no less favourable than what is prescribed by law.

Probationary periods of up to three months are permitted only for employees on indefinite-term contracts, provided that the probationary period cannot be extended and has been agreed upon in writing between the parties. An employer cannot impose a probationary period on an employee on a fixed-term contract. Any probationary period stipulated under a fixed-term employment agreement would be null and void by law and the extended period of such probation would be deemed by law as an employee's working period.

Key minimum employment rights

Leave

In addition to statutory public holidays, which are determined annually by the government, employees are entitled to (at the very least) 12 working days of paid vacation per year after one year of service.

Employers must also provide paid sick leave to employees with a medical certificate, without limit as to the number of days per year. During absence due to long-term illness, employees are entitled to 100% of salary for the first four months, 75% for the second four months, 50% for the third four months, and 25% for subsequent months, until termination.

Female employees are entitled to maternity leave of three months, where they are paid full wages. One and a half months are taken in the period leading up to the birth and the remaining one and a half months are taken after giving birth. Male employees are entitled to two days paid paternity leave.

An employee is entitled to three days of paid leave if he/she gets married. An employee is also entitled to two days paid family leave where the employee's child gets married, circumcised or baptised, and one day paid family leave in the event of the death of an employee's family member or the death of family members living under one roof.

An employee is also entitled to take a one-off paid leave for religious purposes, generally used for Muslims to go on the pilgrimage to Mecca.

The employer may provide the employee with sabbatical leave in accordance with the

employment agreement, company regulations or CLA. However, the Employment Law does not set the minimum period of sabbatical leave.

Working time

Working hours are seven hours per day and a maximum of 40 hours per week (for a six-day work week) or eight hours per day and a maximum of 40 hours per week (for a five-day work week). Overtime work must be subject to employee consent and must be limited to four hours per day and 18 hours per week. All employees working outside of normal working hours on weekdays will be entitled to overtime pay. The overtime pay will be further regulated by a government regulation, that has not yet been issued.

MoM Regulation No.102/MEN/VI/2014 of 2014 on Overtime Work and Overtime Pay provides that overtime payment is an exception for the employees who hold certain positions that require them to have responsibility of being a thinker, planner, executor, and controller to run the office, whose working hours cannot be limited based on the working hours determined by the prevailing laws and regulations.

Pay and social security

There is no national minimum wage. Employees are entitled to receive the minimum salary stipulated annually by the authorities in each region/municipality, taking into account various factors, including regional/municipal economic growth or inflation. Small or medium sized businesses are exempted from the minimum wage requirements which will be further regulated under the government regulations.

Where the salary is composed of basic wages and fixed allowances, the former must not be less than 75% of the total amount.

Apart from the non-mandatory private medical insurance package, employees must be enrolled by the employer in the social security agency (known locally as BPJS) Health and Labour Programs. The BPJS Health Program covers healthcare facilities and services as well as medical expenses. On the other hand, the BPJS Labour Program covers occupational accidents,



death, retirement, old age and employment termination security. The policy premiums for workplace accidents, and death security are borne entirely by the employer, whereas those for retirement, old age and medical expenses are borne partly by the employer and partly by the employee. The policy premiums for employment termination security will be borne by the central government (subject to pending issuance of implementing regulations).

The contribution fee for BPJS participation would be calculated based on a certain percentage of the employee's monthly salary. Such percentage comprises part of the contribution being borne by the employer and partly borne by the employee, in which for each program, a percentage of contribution fees from the employer and employee are different. However, an employer is obliged to withhold part of the employee's contribution and subsequently pay it to the BPJS office and pay its part of the contribution to the BPJS office.

Terminating employment

In general, an employer may terminate an employment relationship if both the employer and employee agree on such termination or, otherwise the employer has a prior order from the Industrial Relations Court (IRC).

If the employer and employee fail to reach a consensus on termination, the matter must go through the formal dispute resolution procedures regulated under Law No.2 of 2004 of the Industrial Dispute Resolution. The matter must then be taken to conciliation or mediation under the supervision of the relevant Ministry of Manpower office, and only if this fails, may either party apply to the IRC for the order. Until such an order is obtained, the employment relationship (and the employer's obligation to pay wages) continues.

An employment agreement may be terminated without cause where the dismissal of the employee cannot be avoided due to a re-organisation of the company or a change in circumstances that results in a redundancy, including if the employer suffers losses and believes that terminations are necessary to maintain efficiency, without needing to

shut down its operations or -the employer is undergoing suspension of debt payment proceedings.

An employment agreement may also be terminated with cause where the employee has breached the employment agreement, company regulations or collective labour agreement (CLA), where the employee has engaged in gross wrongdoing, where the employee has been unable to work for six months due to being detained by the authorities, or where the employee has been absent from work for five or more consecutive working days without providing a valid reason and written supporting evidence after two or more requests for such documentation had been made by the employer. The employers are also permitted to include in the employment agreements, company regulations or CLA other reasons for termination outside those set out in the Employment Law. Further, an employer that fails to pay a terminated employee's severance package will now risk significant criminal penalties as well as fines.

In cases where the employee has breached the employment agreement, company regulations or the CLA, the employment may be terminated after three consecutive warning letters, each of which is valid for at most six months. In other cases, the employer must first engage in negotiations with the employee about its intentions to terminate the employment agreement. If parties agree to the terms, a mutual termination agreement will be signed and registered with the IRC. If the parties are unable to reach an agreement, the case will be escalated to alternative dispute resolution facilitated by the Ministry of Manpower. If this does not resolve matters, the employer may then be able to apply for a termination order from the IRC. This lengthy process means that parties usually prefer a negotiated, mutually agreed termination.

The Employment Law provides that to terminate the employment, the employer is obliged to serve notice to the employee, which contains the reason for termination –although, this would not have any effect on the termination as a termination would be effective only if the parties agree or has obtained prior order from

the IRC in accordance with the procedure as described above.

The law stipulates levels of severance pay depending on the basis of dismissal. The employee may be entitled to receive: standard severance pay of one month's salary for every year of service (up to nine months); service appreciation pay which includes two months' salary for the first three years of service (up to a maximum of 10 months' salary for 24 years of service or more); and compensation for accrued allowances and benefits including untaken annual leave.

Employers are generally prohibited from terminating employees on the grounds of pregnancy, long-term illness of less than 12 months, becoming a union member, leave to fulfil religious or state obligations, getting married, blood or marriage relationships with another employee (unless this is specifically prohibited under the work agreement), becoming a whistle-blower, or disability or illness owing to a work accident.

Discrimination

Discrimination on the grounds of sex, ethnicity, race, religion or political views, skin colour and disability is prohibited and employers who engage in discriminatory conduct may be liable to pay damages to an employee under the ICC. The Employment Law does not explicitly stipulate protection from harassment, but an employee may bring a claim against an employer through criminal or civil law proceedings.

Protecting the business

Employers may restrict employees' activities post-termination of employment as long as the employer and employee have entered into a formal non-competition and non-solicitation agreement. There is no statutory maximum period but standards of reasonableness still apply, meaning that a court may revoke a post-termination covenant if challenged by an employee.

Resolving disputes

Where the employer and the employee are unable to negotiate terms of termination after 30 days, the dispute will be referred to the Ministry of Manpower for conciliation, mediation or arbitration. If either or both parties are again unable to reach a settlement, the case may then be brought to the IRC.

Employee representation

Employees have the right to form labour unions, which have to be registered with the government and regulated under Law No. 21 of 2000 on Labour Union. A union may carry out several functions, including negotiating a CLA, representing the union or employees in industrial relations disputes, and creating fair industrial relations in accordance with the law. The Employment Law also requires companies with at least 50 employees to establish a Bipartite Forum, consisting of employer and employee representatives to oversee employment issues.

Business transfers

Employees are not automatically transferred to the new employer. Where both the new employer and the employee are willing, the employment will continue on the same terms and conditions as before the transfer (provided that the relationship with the old employee has been terminated first). However, if the employee is unwilling to continue their employment with the new employer and if there is no vacancy available with the existing employer which the employee could accept, the employee may seek termination and will be entitled to severance pay. In this case, the employee will be entitled to receive twice the severance pay, and a service appreciation payment and compensation pay.

Data protection

There is no comprehensive law which specifically deals with the issue of data privacy and the obligation of employers to provide information to employees informing them on how their data will be collected, stored, used or disclosed. However, it would be prudent for the employer to notify the employee of its intention before collecting and using employee data. There are also government regulations and laws that cover data protection in relation to electronic information and records on employees, under which employee consent is required for the transfer of data to any third party.

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