

# Indonesia

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## 1 Terms and Conditions of Employment

### 1.1 What are the main sources of employment law?

The main sources of employment law in Indonesia are:

- Law No. 13 of 2003 (March 25, 2003) on Manpower (the Manpower Law), as amended by Constitutional Court decision No. 012/PUU-I/2003 of October 28, 2004;
- Law No. 2 of 2004 (January 14, 2004) on Industrial Relations Dispute Settlement (Law No. 2); and
- Law No. 21 of 2009 (August 4, 2000) on Labour Unions (Law No. 21).

### 1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Manpower Law protects all employees which is any person working in return for a salary or compensation in another form. Certain rights, such as overtime pay, are not available to manager-level employees. The statutory minimum termination benefits are not payable to an employee who is a shareholder (excluding employees holding shares due to employee stock benefit plans).

### 1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Only fixed-term employment agreements have to be in writing and in the Indonesian language. If there is a written employment agreement, it must at least contain the following:

- name, address and type of business of the company;
- name, gender, age and address of the employee;
- position or type of work;
- place of work;
- amount of salary and method of payment;
- employment conditions containing employer and employee's rights and obligations;
- commencement date and term of effectiveness of employment agreement;
- place and date of the employment agreement was made; and
- signatures of the parties to the employment agreement.

For permanent employment, the Manpower Law simply requires an employer to issue a letter of appointment as an employee (article 63 of the Manpower Law).

### 1.4 Are any terms implied into contracts of employment?

Yes, all statutory rights pursuant to the prevailing laws and regulations are effectively considered to be implied into contracts of employment.

### 1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

There are minimum terms and conditions set down by law including the following:

- mandatory termination benefits (see question 6.5);
- minimum annual leave (12 days);
- minimum wages are stipulated by regional government decrees based on location and industry;
- Religious Holiday Allowance (*Tunjangan Hari Raya* or "THR"): The THR payment is payable to employees who have worked for at least three consecutive months. The THR is paid *pro rata* if an employee has worked for three months but less than 12 months. If an employee has worked for 12 months, he/she will get the full THR payment in the amount of 1 month's salary (basic salary plus fixed cash allowances); and
- Manpower Social Security Scheme (*Jaminan Sosial Tenaga Kerja* or "Jamsostek"): Under Law No. 3 of 1992 Regarding Jamsostek, all employers employing ten or more employees are required to participate in the Jamsostek programme. Under this Law, those employers are obligated to cover their employees through the Jamsostek programme and make contributions to the programmes for the benefit of the employees: (i) Work or Occupational Accident Security; (ii) Death Security; (iii) Old Age Security; and (iv) Healthcare Security.

An employer who has implemented its own healthcare programme for workers with benefits better than the basic healthcare package under the Jamsostek programme is not obligated to participate in the Healthcare security. The other three programmes are mandatory.

### 1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

In general, the vast majority of Indonesian workers are not unionised. This may in part be attributable to the fact that the Indonesian employment standards legislation provides very generous benefits and requires Labour Court approval for all

employee terminations except where the employee accepts the termination by written agreement or resignation.

Any group of at least 10 employees can register a union. One or more unions representing more than 50% of all employees have the right to negotiate a Collective Labour Agreement which is binding on all employees. Bargaining in Indonesia takes place at the company level as industry level negotiations are not well developed.

## 2 Employee Representation and Industrial Relations

### 2.1 What are the rules relating to trade union recognition?

The Manpower Law and Law No. 21 recognise trade unions. Law No. 21 protects the employees' right to form a "labour union" and imposes criminal sanctions on anyone, including the employer, who engages in certain anti-union activity, for example:

- preventing employees from forming a labour union, becoming a member of a labour union or conducting labour union activities;
- terminating an employee or reducing their salary for conducting labour union activities;
- conducting an anti-labour union campaign, and
- intimidation in any form.

As noted above, any group of at least 10 employees can establish a labour union if they wish to do so. There is no concept of a "bargaining unit" based on specific trades and there is no real certification process *per se*. As long as the employees submit the requisite application and provide that there are at least 10 employee members, the application for trade union registration will be accepted.

### 2.2 What rights do trade unions have?

According to Law No. 21 the rights of a labour union are:

- to formulate collective labour agreements with an employer;
- to represent employees in employment-related disputes;
- to represent employees in labour-related institutions;
- to participate in such counsels and other activities for the welfare of the employees; and
- to conduct other activities in accordance with the prevailing laws and regulations.

### 2.3 Are there any rules governing a trade union's right to take industrial action?

Employees and labour unions may strike in an orderly and peaceful manner in the event there is a breakdown of negotiations on an outstanding matter in dispute. Such breakdown must be documented by the employer being unwilling to continue negotiations despite two written requests from the union or employee within 14 days or such breakdown being acknowledged by the minutes of a meeting between the management and labour. The union or employees must give at least 7 working days' prior written notice of a strike to the company and Ministry of Manpower. Employees are entitled to statutory entitlements under applicable laws and such greater benefits under contract, Company Regulation or Collective Labour Agreement ("CLA") while on a lawful strike.

### 2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

In Indonesia, a "bipartite cooperation" council is a communication and consultation forum for manpower-related matters within the company, while a "tripartite cooperation" council is a forum among employees, employers and relevant government officials to provide considerations, suggestions, and opinions to the government and related parties in drawing up policy and resolving manpower issues.

A bipartite cooperation council is mandatory for companies with 50 (fifty) or more employees. Employees' representatives on bipartite cooperation councils are nominated by the head of the labour union or by election amongst fellow employees if there is no labour union, while employer's representatives are selected by the management.

### 2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

If one or more unions represent more than 50% of the employees, then such union or unions collectively are entitled to represent and bind all employees in a CLA and appoint the employee representatives to bipartite or tripartite councils. Such bipartite council or, if applicable, tripartite council may play a role in the negotiation of the CLA but the rights of employees is governed by the CLA.

### 2.6 How do the rights of trade unions and works councils interact?

As per question 2.5 above, the council itself does not exercise any rights but serves as a body to facilitate negotiations and, in some cases, settlement of disputes depending on the terms of the CLA and applicable laws.

### 2.7 Are employees entitled to representation at board level?

No, employees are not entitled to representation on either the Board of Directors (which is the day-to-day senior executive management) or the Board of Commissioners (which supervise the Board of Directors on behalf of the shareholders).

## 3 Discrimination

### 3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Yes, the Manpower Law provides that each employee shall be entitled to equal treatment from the employer without discrimination. Each employee has the same rights and opportunities to obtain a decent job and livelihood without discrimination by sex, ethnic group, race religion or political orientation, in accordance with the interests and abilities of the employee, including equal treatment for the disabled.

### 3.2 What types of discrimination are unlawful and in what circumstances?

Any discrimination based on sex, ethnic group, race, religion, skin colour or political orientation is unlawful under any circumstances.

### 3.3 Are there any defences to a discrimination claim?

Discrimination claims in Indonesia are rare and thus the law and practice is not well developed. The burden of proof rests with the complainant. The law does not clarify any available defences. It is conceivable that the courts may accept the defence that discrimination is justifiable in certain very specific circumstances (e.g., recruiting from a particular ethnic group to manage corporate social responsibility programmes for that ethnic group).

### 3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

All disputes, including discrimination, are handled by (i) bipartite negotiations, (ii) non-binding mediation with the Ministry of Manpower (or, in theory, arbitration or conciliation), and (iii) Labour Court (please see question 8.2).

Claims may be settled at any time during the process.

### 3.5 What remedies are available to employees in successful discrimination claims?

The employee is entitled to reinstatement, if applicable, or double severance pay, ordinary service pay and ordinary compensation. These terms are discussed in further detail below. The Manpower Law does not expressly recognise other damages such as loss of reputation and mental suffering but these may be recognised in a civil action.

## 4 Maternity and Family Leave Rights

### 4.1 How long does maternity leave last?

Maternity leave lasts for 3 months; one-and-a-half months before delivery and one-and-a-half months after the delivery.

In a case of miscarriage, a female employee is entitled to one-and-a-half months off after the miscarriage.

### 4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

A female employee is entitled paid time off during her maternity leave. The same applies in a case of miscarriage.

### 4.3 What rights does a woman have upon her return to work from maternity leave?

If applicable, a female employee who is still nursing her child must be given an appropriate time and facility to nurse her child if it has to be done during working hours.

### 4.4 Do fathers have the right to take paternity leave?

Yes, if the male employee's wife gives birth or miscarries, he may take two days' paid leave.

### 4.5 Are there any other parental leave rights that employers have to observe?

Yes, article 93 (4) of the Manpower Law provides, among others,

the following parental paid leave rights:

- if an employee's child gets married, two days;
- if an employee's child is circumcised, two days;
- if the employee's child is baptized, two days;
- if the employee's husband or wife, parent or parent-in-law, child, or daughter-in-law or son-in-law dies, two days; and
- if the employee's family member living in the same house dies, one day.

### 4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependents?

A female employee who is still nursing her child must be given an appropriate opportunity to nurse her child if this has to be done during working hours.

## 5 Business Sales

### 5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

No. In a share sale, the employer entity remains the same. In an asset sale, the transfer of employees may be agreed with the buyer and employees but is not automatic.

### 5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

The Manpower Law provides that employees have a right to resign due to change of control (which in practice means a change of more than 50 per cent of the shares in the employer) in a company and are entitled to enhanced resignation benefits.

The Manpower Law is silent on transfers of employees due to an acquisition of assets. It is necessary for all parties, including the employee, to agree that his or her employment will be transferred to the acquirer either as a successor employer or as a fresh employment. In the latter case, the employees shall be paid their termination benefits and their employment period with the acquiring company starts anew.

Alternatively, the employees may agree to start employment with the acquiring company and their existing employment period with the transferring company will be transferred to the acquiring company. In this case, the employees should not receive the termination benefits.

### 5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Yes, Law No. 40 of 2007 on Limited Liability Companies (the Company Law) provides that employees must be provided with written announcement 30 days prior to the General Shareholders' Meeting (GMS) with regard to the business sale plan. Any objections will be settled in the GMS.

The failure to provide such information to the employees would subject the business sale to challenge by the employees.

### 5.4 Can employees be dismissed in connection with a business sale?

In a sale of shares, the employer has no right to terminate

employees due to change of control. On the other hand, if a business sale is conducted by sale of assets then in the event that there is no transfer of employment agreement reached between the seller, buyer and the employees, the seller may terminate the employees upon payment of enhanced benefits with either the agreement of the employee or Labour Court approval.

### 5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

In a share sale, there is no change to the employer entity or terms and conditions of employment. In an asset sale where the employer voluntarily accepts the buyer as a successor employer, the terms and conditions of employment with the successor employer may not be identical. As a matter of Ministry of Manpower policy, the value of salary and benefits with the successor employer should not represent a reduction.

## 6 Termination of Employment

### 6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The notice of termination or pay in lieu of notice concept does not apply in Indonesia. Instead, all terminations involve (i) bipartite negotiation, (ii) non-binding mediation and (iii) Labour Court approval unless settled by agreement in writing at any time during the process.

### 6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes, employers can require employees to serve a period of "garden leave" in a form of suspension pending the outcome of mediation and Labour Court proceedings. During such period the employees are still entitled to their salary.

### 6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

An employer is prohibited from terminating an employment relationship based on the following reasons:

- an employee is prevented from attending work due to illness based on a doctor's statement, for a period not exceeding 12 consecutive months;
- an employee is prevented from carrying out his/her work due to fulfilling state duties in accordance with the provisions of the prevailing laws and regulations;
- an employee performs religious rites prescribed by their religion;
- an employee gets married;
- a female employee is pregnant, gives birth, miscarries or is nursing her baby;
- an employee has a blood and/or marital relationship with another employee in the same company, except where this is regulated in the employment agreement, company regulation or collective labour agreement;
- an employee establishes, and/or becomes a member of, the management of a labour union, or an employee conducts

activities for a labour union outside working hours or during working hours with the agreement of the employer or pursuant to the provisions regulated in the employment agreement, company regulation or CLA;

- an employee reports the employer to the authorities for a criminal act committed by the employer;
- differences in ideology, religion, political leaning, ethnic group, skin colour, group, gender, physical condition, or marital status; or
- an employee is permanently disabled, injured due to a work accident or injured due to the employment relationship where, based on a doctor's statement, the recovery period required cannot be predicted.

An employment termination conducted for one of the reasons above shall be void by law and the employer must rehire the employee.

Under the Manpower Law and other prevailing labour laws and regulations, termination at will is not recognised in Indonesia, and termination must be 'with cause'. The termination of employment relationship must follow the procedures under the Manpower Law and Law No. 2.

Causes for termination are as follows:

- "ordinary" cause (i.e., violation of the employment contract, company regulation or collective labour agreement) after 3 warning letters; and
- "serious" cause including theft, providing false information harmful to the company, dangerous or immoral conduct etc. We note that the "serious" cause provision of the Manpower Law was revoked by a Constitutional Court decision in 2003. However, in 2005 the Minister of Manpower and Transmigration issued Circular Letter No. SE.13/MEN/SJ-HK/I/2005 which mentions that a company may terminate an employment relationship for an "emergency reason", subject to approval from the Labour Court. This is intended to reinstate termination for serious cause provided that the employer obtains Labour Court approval.

### 6.4 Are there any categories of employees who enjoy special protection against dismissal?

No, there is not.

### 6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer is entitled to dismiss an employee for reasons related to that individual employee when:

- there is a cause as explained in question 6.3;
- the employee resigns;
- in the event of death of the employee; or
- the employee reaches retirement age.

An employer is entitled to dismiss an individual employee for the following business-related reasons:

- upon a change in status, merger or consolidation of the company;
- if the company (or a division thereof) is closed down with or without losses being suffered by the company for a continuous period of 2 (two) years or due to *force majeure* (losses or *force majeure* impacts on entitlement); or
- if the company goes bankrupt.

Termination of employment relationship gives rise to termination benefits which include severance pay, service pay, other

compensation and separation pay (*uang pisah*). An employee's termination entitlement depends upon the circumstances of his/her separation. In each case, all references to a "month's wages" means the sum of the fixed cash monthly salary and other monthly fixed cash benefits payable to the employee during his/her last month of employment, and does not include any non-cash benefits or discretionary bonus arrangement.

#### Severance Pay:

Completed Years of Service	Benefit
less than 1 year	1 month's wages
1 year or more but less than 2 years	2 months' wages
2 years or more but less than 3 years	3 months' wages
3 years or more but less than 4 years	4 months' wages
4 years or more but less than 5 years	5 months' wages
5 years or more but less than 6 years	6 months' wages
6 years or more but less than 7 years	7 months' wages
7 years or more but less than 8 years	8 months' wages
8 years or more	9 months' wages

#### Service Pay:

Completed Years of Service	Benefit
3 years or more but less than 6 years	2 months' wages
6 years or more but less than 9 years	3 months' wages
9 years or more but less than 12 years	4 months' wages
12 years or more but less than 15 years	5 months' wages
15 years or more but less than 18 years	6 months' wages
18 years or more but less than 21 years	7 months' wages
21 years or more but less than 24 years	8 months' wages
24 years or more	10 months' wages

#### Other Compensation:

- Compensation for annual leave to which the employee is entitled but which has not been taken and which has not been forfeited.
- Any costs or expenses incurred in returning the employee and his/her family to the place where he/she was recruited.
- Compensation for housing, medical and hospitalisation (which is deemed to be 15 percent of the severance pay and/or service pay to which the employee is entitled).
- Other matters agreed in the employment agreement, company regulation or collective labour agreement.

#### Separation Pay (*Uang Pisah*)

The Manpower Law contemplates another form of compensation called 'separation pay' which is, in effect, a fourth category of termination entitlement. For non-management employees only, they may be entitled to a certain amount of separation pay (*uang pisah*) for resignation (Article 162 of the Manpower Law), serious cause termination (Article 158 of the Manpower Law) and/or termination due to absence without leave (Article 168 of the Manpower Law) only if so specified in the respective company regulation, CLA or employment contract.

#### 6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Yes. Before terminating an employment relationship, the parties (the employer and the employee or, if applicable, the union representative) are required to meet in an attempt to reach an amicable termination settlement. If negotiations fail, the employer may only terminate the employee after obtaining approval from the Labour Court with few exceptions. The exceptions are:

- an employee is still in his/her probationary period;
- an employee who has submitted a resignation request in writing of his/her own accord without any conditions;
- an employee who has reached the retirement age stipulated in the employment contract, company regulation or CLA;
- an employee whose employment contract terminates after a fixed period (i.e., a fixed term contract employee);
- an employee who dies;
- an employee who faces criminal proceedings for more than six months or who is found guilty by the court before the end of the six-month period; or
- if in a dispute brought an employee against the employer, the claim filed by the employee against the employer is not proven.

In case the plan to terminate an employee is disputed, then the termination process may take up to 140 working days to complete, from bipartite negotiations through to a Supreme Court decision (i.e., if the Labour Court decision is appealed). During the termination process the employer is still required to pay salary and other benefits to employee.

#### 6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

With regard to his or her termination, an employee can bring the following claim:

- termination is without a valid cause;
- termination is conducted in a manner not in conformity with the prevailing laws and regulations; or
- the termination benefit is less than the mandatory amount (please see question 6.5).

Remedy for successful claim can be in the form of rehiring or enhanced termination benefit.

#### 6.8 Can employers settle claims before or after they are initiated?

Yes, employers can settle claims at any time during the above-noted process.

#### 6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

No, the prevailing laws and regulations do not differentiate based on the number of employees dismissed.

#### 6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The prevailing laws and regulations do not differentiate between mass dismissals and individual dismissals therefore all dismissals

are subject to Labour Court approval unless settled in writing at any stage of the process.

## 7 Protecting Business Interests Following Termination

### 7.1 What types of restrictive covenants are recognised?

The most common restrictive covenants recognised are non-competition and non-solicitation (customers, employees, or suppliers). The restrictive covenants are mostly available in executive employment contracts to provide that employees are prohibited, directly or indirectly, from soliciting or diverting any customers, business employees, or suppliers of the employer with whom they became acquainted as a result of their employment.

### 7.2 When are restrictive covenants enforceable and for what period?

The enforceability of restrictive covenants is unclear. It is preferable to limit the same reasonably in geographic location and duration, and to provide compensation.

### 7.3 Do employees have to be provided with financial compensation in return for covenants?

Compensation is the best way to ensure enforceability.

### 7.4 How are restrictive covenants enforced?

In practice, enforcement of non-competition and non-solicitation would likely depend upon the facts of the case (i.e., scope and duration of restrictions) which should not interfere with a person's right to gainful employment under Indonesian Law and should not interfere with the nation's development. There has been almost no jurisprudence on this point.

## 8 Court Practice and Procedure

### 8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The Labour Court has the jurisdiction to hear employment-related complaints. The Labour Court is composed of 3 judges, one judge sits as the chairman of the panel and two *ad-hoc* judges sit as members of the panel.

### 8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?

The Law No. 2 sets the category for employment-related complaints or disputes as follow:

- dispute on rights;
- dispute on interest;
- dispute on termination of employment relationship; and
- dispute between workers union/labour union within the same company.

All disputes must first be settled through bipartite negotiation to reach a mutual agreement. If settlement through bipartite negotiation fails, then parties have the option to try to settle their dispute through arbitration (for disputes over interest or disputes between labour unions) or conciliation (for disputes other than disputes over rights). If neither of the parties chooses their dispute settlement method then the dispute will be settled through mediation (for all disputes). Only when the arbitration or conciliation or mediation fails, may one of the parties bring their case to the Labour Court.

### 8.3 How long do employment-related complaints typically take to be decided?

Employment-related complaints typically take up to 140 days to be decided, from bipartite negotiations process through to a Supreme Court decision (i.e., if the Labour Court decision is appealed). The process may take longer if the parties choose to settle through arbitration which is rare.

### 8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Except for decisions toward disputes on interest and disputes among workers union/labour unions, the decision of the first instance can be appealed directly to the Supreme Court.

An arbitration award in an employment dispute may also be appealed to the Supreme Court.

Appeals to the Supreme Court should take 30 days.



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