



Employment Law: Quarterly Review Fourth Quarter 2017 - Indonesia

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Amendment of Work Accident Security and Death Security Implementation for Daily Employees and Fixed-Term Employees in the Construction Sector

Amendment of Work Accident Security and Death Security for Daily Employees and Fixed-Term Employees in the Construction Sector as the result of a new regulation on the mandatory social security program.

Ministry of Manpower Regulation No. 44 of 2015 dated 31 December 2015 regarding the Implementation of Work Accident Security and Death Security for Daily Employees and Fixed-Term Employees in the Construction Sector (“Reg. 44”).

Reg. 44 revokes and replaces Ministry of Manpower Regulation No. KEP-197/MEN/1999 dated 29 September 1999 regarding the Implementation of Mandatory Social Security for Daily Employees and Fixed-Term Employees in the Construction Sector (“Reg. 197”). Reg. 44 was issued following the introduction of a new social security law.

This new regulation does not change the contribution employers must make to the employment social security agency, or BPJS Ketenagakerjaan. The employer contribution for daily employees, contract employees and fixed-term employees is as follows:

- Work Accident Security, amounting to 1.74% of the employee’s monthly wage; and
- Death Security, amounting to 0.30% of the employee’s monthly wage.

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Governor of the Jakarta Special Capital City Region Regulation No. 8 of 2016 dated January 14, 2016 regarding 2016 Minimum Wages for the Industrial Sector (“Reg No. 8”)

Jakarta’s monthly minimum wage for 2016 has been set at **Rp 3.1 million**, based on Governor of DKI Jakarta Regulation No. 230 of 2015 dated October 30, 2015.

However, under Reg No. 8, the 2016 monthly minimum wage for workers in several industrial sectors in Jakarta ranges from **Rp 3.2 million to Rp 4 million**.

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Minister of Manpower Regulation No. 6 of 2016 dated April 14, 2016 regarding Religious Holiday Allowance for Employees (“MOM No. 6”)

MOM No. 6 requires all employers to provide a religious holiday allowance, known in Indonesia as THR, to employees with at least one month of service, regardless of whether the worker is employed on a permanent or temporary basis. Previously, the obligation to provide THR only applied to workers with more than three months of service.

THR must be paid once a year, within a maximum of seven days of a given religious holiday, as follows:

- Idul Fitri for Muslim employees;
- Christmas Day for Christian employees;
- Hindu Day of Silence for Hindu employees;
- Buddhist Waisak Day for Buddhist employees; and
- Chinese New Year for Confucianist employees.

THR is equal to a minimum of one month’s salary (basic salary plus any fixed cash monthly allowances) for workers with a minimum 12 months of service. Employees with more than one month but less than 12 months of service will receive THR on a pro rata basis.

Employers who do not meet their THR payment obligations in due time are subject to a fine amounting to 5% of the total THR amount payable, as well as administrative sanctions in accordance with the applicable employment laws and regulations.

MOM No. 6 revokes and replaces the 1994 Regulation regarding the same.

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Joint Decree of Minister of Religious Affairs, Minister of Manpower, and Minister of State Apparatus Empowerment and Bureaucratic Reform No. 135 of 2015, No. SKB 109 of 2016, and No. 01/SKB/MENPANRB/04/2016 dated April 14, 2016 regarding National Public Holidays and Joint Leave Days for 2017 (“Decree on Holidays”)

There are 14 public holidays in 2017, as follows:

Day	Date
New Year’s Day	January 1
Chinese New Year	January 28
Hindu Day of Silence	March 28
Good Friday	April 14
Ascension Day of Prophet Muhammad	April 24
International Labor Day	May 1
Buddhist Waisak Day	May 11
Ascension Day of Jesus Christ	May 25
Idul Fitri	June 25- 26, plus 3-day bridge holiday
Indonesian Independence Day	August 17
Idul Adha	September 1
Islamic New Year	September 21
Birth of Prophet Muhammad	December 1
Christmas	December 25, plus 1-day bridge holiday

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Law No. 8 of 2016 dated April 15, 2016 regarding Persons with Disabilities (“Law No. 8”)

Law No. 8 replaces Law No. 4 of 1997 regarding the same.

Article 67 of the Indonesian Manpower Law stipulates that protections for disabled people should be regulated by law. Law No. 8, specifically Articles 45 to 60, provides protections and a guarantee of non-discrimination in the workplace for people with disabilities.

Article 53 of Law No. 8 requires private sector companies to meet a 1% (one percent) disability employment quota. Employers must provide accommodation and facilities to enable access by employees with disabilities. Employers who fail to provide proper accommodation and facilities are subject to administrative sanctions in the form of:

- Written warning;
- Cessation of operations;
- Business license suspension; and
- Revocation of business license.

More...

Minister of Manpower Issues New Regulation on Procedures for Sanctioning Employers that Violate Wage Requirements

The Minister of Manpower (MOM) has issued MOM Regulation No. 20 of 2016 dated June 6, 2016 regarding Procedures for the Imposition of Administrative Sanctions as Stipulated in Government Regulation No. 78 of 2015 on Wages (“Reg. No. 20”). Reg. No. 20 implements Article 59 (3) of Government Regulation No. 78 of 2015 on Wages, which sets out procedures for imposing administrative sanctions on employers that are non-compliant with wage requirements. Four types of administrative sanctions can be imposed on employers, as follows:

- Written warnings;
- Limitation of employer business activities, including (i) limitation of an employer’s production capacity for a certain period; and/or (ii) postponement of the issuance of business permits for employers with business operations in several locations;
- Temporary suspension of an employer’s right to use part or the entirety of its production equipment; and

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d. Temporary suspension of all business activities.

Reg. No. 20 clarifies that employers are subject to administrative sanctions if they do any of the following:

- a. Fail to pay employees their religious holiday allowance (*Tunjangan Hari Raya* or “THR”) a minimum of seven days before the religious holiday takes place;
- b. Fail to distribute service tips to employees at hotels or hotel restaurants (if applicable);
- c. Fail to draw up relevant wage structures and scales and to share this information with employees;
- d. Fail to pay weekly or monthly wages on time;
- e. Fail to pay any fines resulting from violations of employment agreements, company regulations or collective labor agreements; and/or
- f. Withhold employee wages by more than 50% of the total wage amount per wage payment.

New Regulation on the Coordination of Benefits under the National Health Insurance Program

Companies in Indonesia are required to register employees in the Indonesian Government’s health and employment social security programs, part of a Government effort to expand social security benefits to more of the population. Questions remain, however, about the implementation of the new programs and their effect on business.

A number of issues, including coordination of dues, claims and registration, must still be clarified between the Social Security Agency (BPJS) for Health and the Indonesian Life Insurance Association (AAJI).

BPJS Health Regulation No. 4 of 2016 dated June 28, 2016 regarding Technical Guidelines for the Implementation of the Coordination of Benefits under the National Health Insurance Program (“Reg. No. 4”) clarifies that any coordination relating to benefits is possible only for BPJS Health participants that obtain additional coverage from insurance companies that are cooperating with BPJS Health.

Under Reg. No. 4, participants may choose to pay their BPJS Health insurance contributions directly to BPJS Health or to an insurance company. If to an insurance company, participants must pay their contributions along with the premium for the additional health insurance coverage. The insurance company must then transfer any such contributions to BPJS Health through its virtual account by no later than the 10th day of each month.

Participants with additional health insurance coverage from more than one insurance company may pay their contributions directly to BPJS Health without having to pay through each insurance company.

Constitutional Court Decision on Deferral of Minimum Wage

Indonesia’s Constitutional Court has issued Decision No. 72/PUU-XIII/2015 dated 29 September 2016 regarding Judicial Review of the Employment Law. The Constitutional Court found the phrase “but is not required to comply with the prevailing minimum wage provision for the period of deferment” in the elucidation of Article 90(2) of the Employment Law to be unconstitutional and not legally binding. Article 90(2) of the Employment Law provides that if an employer is unable to pay the applicable minimum wage, then the employer can defer payment of such minimum wage. The elucidation suggests that when the period of deferral of the relevant minimum wage ends, the employer must start paying the minimum wage but is not required to pay the minimum wage during the period of deferral (i.e., the employer is not obligated to later pay the applicable minimum wage in arrears). With this decision, it would appear that even when an employer obtains approval to defer the implementation of a new minimum wage, the employer must later pay the applicable minimum wage in arrears for the period of deferral when the deferral period ends. Recognizing that employers are only able to obtain approval to defer the application of a new minimum wage based on clear evidence of financial necessity, this decision is very controversial.

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Governor of Jakarta Issues New Regulation on Minimum Wage for 2017

Wording: The Governor of the Special Capital City Region of Jakarta has issued Regulation No. 227 of 2016 dated 27 October 2016 regarding the Jakarta Provincial Minimum Wage for 2017 ("Reg. No. 227"). Beginning 1 January 2017, the minimum wage in the Special Region of Jakarta will be IDR 3,355,750 per month.

Under Reg. 227, companies in Jakarta are prohibited from paying workers less than IDR 3,355,750 per month. Companies can, however, seek to defer the application of the new minimum wage by submitting an application for postponement to the governor's office no later than 10 days before 1 January 2017.

The Jakarta minimum wage is going up 8.25% in 2017 from the previous year.

Ratification of 2006 Maritime Labour Convention

Wording: The Indonesian government and the House of Representatives have agreed to ratify the Maritime Labour Convention ("MLC"), an International Labour Organization convention first established in 2006, through the issuance of Law No. 15 of 2016 ("Law 15/2016").

Law 15/2016 covers, inter alia, salaries, work requirements, working hours and breaks, medical treatment, and social and healthcare security for seafarers and maritime workers.

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