Indonesia

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

In general, Indonesian employment law is governed by Law No. 13/2003, dated 25 March 2003, regarding labour (the Labour Law). The two other main statutes are Law No. 2/2004, dated 14 January 2004, regarding industrial relations dispute settlement and Law No. 21/2000, dated 4 August 2000, on labour unions.

In addition to the above laws, employers and employees are also subject to company regulations (or work rules) or a collective labour agreement (CLA), if applicable, as well as the express provisions of the employment agreement between the employer and the employee.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Labour Law does not regulate protection from harassment for employees. However, the company regulation or CLA will normally contain provisions regarding harassment and its sanction. Indonesian case law also protects workers from harassment. However, the Indonesian court system is based on a civil law system and does not follow the rule of *stare decisis* (a legal principle under which judges must respect the precedents established by prior decisions).

In practice, employees wishing to take action against harassment experienced in the workplace can file a claim by civil tort law. The labour laws and regulations are silent on this matter.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agency for manpower matters in Indonesia is the Ministry of Manpower (MOM). Any dispute settlement between employers and employees will be made at the Labour Court.

Worker representation

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

There are laws that allow the establishment of a bipartite cooperation institution (LKS bipartite) and a labour union.

An LKS bipartite is established based on article 106 of the Labour Law and MOM Regulation No. Per.32/Men/XII/2008 regarding procedures for the establishment and membership composition of a bipartite cooperation institution. An LKS bipartite is made up of members of management and employees at a ratio of 1:1 regardless of the number of unions. It shall have at least six members.

A group of at least 10 workers may establish a labour union. The notification and registration of labour unions is governed by MOM Decree No. Kep-16/MEN/2001. According to this Decree, unions and federations of labour unions must give written notification to the local MOM office in order to be registered.

5 What are their powers?

An LKS bipartite serves as a forum for communication and consultation between management and employees, and performs the following duties:

- to convene periodic, and as required, meetings;
- to communicate the policies of the company and the aspirations of the employees in the framework of preventing any industrial relations disputes at the company; and
- to exchange advice and opinions between the company and employees in stipulating and implementing the policies of the company.

Law No. 21/2000 states that the objective of a labour union is to improve the members' skills, knowledge and productivity, and improve the protection of members. A union is obliged to be free (ie, not subject to another's influence or pressure), open (to all and not based on political ideology, religion, ethnicity or gender), and independent (ie, acting on its own volition and not being controlled by a party outside the union).

A registered union can:

- represent workers in labour disputes;
- negotiate a CLA with the employer;
- establish institutions or undertake activities to improve the welfare of workers;
- plan, implement and take responsibility for workers' strikes; and
- represent workers in attempting to obtain shared ownership in the company.

Law No. 21/2000 imposes criminal sanctions on anyone who engages in certain anti-union activity, including:

- preventing workers from forming a union, becoming members of a union or conducting union activities;
- terminating an employee or reducing his or her salary for engaging in union activities;
- conducting an anti-union campaign; or
- intimidation in any form.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There is no prohibition against background checks on applicants. Employers in Indonesia can perform background checks on applicants themselves or by using a third-party service. Certain background checks are, in practice, subject to the consent of the applicant.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

An employer can require a potential employee to undergo a medical examination as a condition of employment, as long as the same treatment is applied to all potential employees. The potential employee should give his or her written consent to both the examination and the release of the results to the employer. An employer can refuse to hire an applicant who does not submit or agree to the release of the results to the employer.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Drug and alcohol testing can be carried out only in limited circumstances; for instance, where working under the influence of drugs or alcohol could give rise to health and safety considerations (eg, where employees drive or operate machinery) or serious damage to the employer's business. The applicant must consent to the test. Drug and alcohol testing should be carried out during employment only if justified, necessary and proportionate, and with the consent of the employee.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The Labour 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 disabled persons. It is not considered discriminatory for an employer to select candidates based on abilities required for the job (ie, employing a person with a certain language ability to serve customers speaking that language or dialect).

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

An employment relationship between an employee and an employer must be documented in a contract.

In general, an employment contract in Indonesia can either be a fixed-term (definite) or an indefinite-term (permanent) contract. Fixed-term employment agreements are subject to stricter requirements than indefinite-term employment agreements. A fixed-term employment agreement must be in writing and in the Indonesian language. If it is not made in writing, a fixed-term employment agreement is deemed an indefinite-term employment agreement. Additionally, a fixed-term employment agreement cannot include a probationary period. Indefinite-term employees are employees who do not fall into the category of fixed-term employees. This type of worker is also known as a permanent worker.

11 To what extent are fixed-term employment contracts permissible?

A fixed-term employee is also known as a contract worker. Based on the Labour Law, the types of work that can be performed by a fixed-term employee under a fixed-term employment agreement are as follows:

- work to be performed and completed at once, or temporary work;
- work that is estimated to be accomplished within three years;
- seasonal work; and
- work that is related to a new product, new activity or a product that is still in the experimental stage.

A fixed-term employment agreement that is based on a certain period may last for up to two years, and may be extended once for a maximum period of one year. Then, after a grace period of at least 30 days, it can be renewed one time for a maximum of two years.

12 What is the maximum probationary period permitted by law?

Only a permanent employment agreement may provide for a probationary period. A fixed-term employment agreement cannot include probation.

The Labour Law allows a maximum probationary period of three months, during which time the employer can terminate the employee without having to follow the termination procedures as prescribed by law.

A probationary period of employment applies only if it is specified in writing to the employee when he or she is hired. The duration of the probation for any employee must be communicated in advance to the employee concerned. A probationary period can be neither extended nor repeated. Violation of this restriction will mean that the employee automatically acquires permanent status.

13 What are the primary factors that distinguish an independent contractor from an employee?

An employer and employee relationship is a relationship between a superior and a subordinate governed by the Labour Law. The relationship between a company and an independent contractor is a relationship between contracting parties governed by contract law and other applicable legislation. In an employment relationship, the employee is entitled to a salary or wage, where the payment of the salary does not require an invoice. In the case of an independent contractor, the terminology of the payment is 'fee', where the independent contractor agreement will usually require a contractor to submit an invoice for payment of the fees.

14 Is there any legislation governing temporary staffing through recruitment agencies?

Article 65 of the Labour Law expressly prohibits the use of outsourced employees to perform core activities in a company. If a company violates this requirement the outsourced employees will become, by law, employees of the company using the outsourcing services.

In the framework of outsourcing, outsourced employees do not have an employment relationship with the company using the outsourcing services where the outsourced employees are placed, but rather with the outsourcing company. The outsourced employees shall enter into an employment contract with the outsourcing company, which may be a permanent employment contract or a fixed-term contract.

If a company wishes to use outsourced employees to perform certain non-core activities in the company, the company will enter into an outsourcing service agreement with the outsourcing company, and not an employment contract directly with each outsourced employee.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerial limitations on short-term visas, other than the limit of one per expatriate. There are four types of visas referred to in Law No. 6/2011, dated 5 May 2011 (the Immigration Law) and its implementing regulation, Government Regulation (GR) No. 13/2013, dated 16 April 2013, as amended by GR No. 26/2016, dated 28 June 2016:

- diplomatic visa;
- official visa;
- visitor visa; and
- limited-stay visa (VITAS).

Only the visitor visa and VITAS are relevant in this context.

A visitor visa is given to a foreign citizen visiting Indonesia for governmental, educational, sociocultural, tourism, business, family, journalistic or transit purposes. There are different types of visitor visas, namely single-entry and multiple-entry visitor visas and the visa on arrival. The purpose of the visit to Indonesia and the intended length of stay will determine which type of visitor visa the foreign citizen is eligible for and required to obtain.

A single-entry visitor visa is valid for a maximum of 60 days and a multiple-entry visa is valid for a maximum of 60 days for each visit (a multiple-entry visa is valid for five years). The visa on arrival, which only citizens from certain countries are eligible to obtain, can be obtained at certain airports in Indonesia and is valid for a maximum of 30 days, and is extendable up to four times for 30 days each.

In practice, visitor visas used for business purposes are often referred to as business visas, even by Indonesian embassies or consular offices. However, the text of the applicable regulations uses the term visitor visa.

According to the Ministry of Law and Human Rights (MOLHR) Regulation No. 24/2016, dated 19 October 2016, regarding technical procedures for applying for and granting visitor visas and VITAS, a VITAS is intended for foreign citizens who intend to reside in Indonesia for a limited period of time.

The VITAS is issued to foreign citizens for working (working VITAS) or non-working (non-working VITAS) purposes. A working visa covers activities related to:

- work as an expert;

- work on board a vessel, floating device or installation operating in Indonesian waters, territorial seas, continental shelf or exclusive economic zone;
- activities related to the holder's profession for which he or she receives money;
- making commercial films, as authorised by the relevant institution;
- supervising the quality or production of goods;
- conducting an audit or inspection of the company's branch in Indonesia;
- after-sales service;
- installing or repairing machinery;
- conducting temporary construction work;
- conducting art, music or sports shows;
- playing in a professional sports activity;
- work related to the provision of medical treatment or medical activities; and
- the activities of an expatriate worker during his or her probation period.

A non-working VITAS is for:
- conducting foreign investment;
- participating in scientific training and research;
- attending an educational institution;
- family reunions;
- former Indonesian citizens planning a permanent return to Indonesia; and
- extended stays of up to two years by foreign tourists above the age of 55.

Pursuant to MOLHR Regulation No. 24/2016, a non-working VITAS can be issued for two years, one year, six months, 90 days or 30 days. A two-year non-working VITAS can only be given to the following types of foreigners:
- investors;
- students; or
- experts who work in an international organisation under the auspices of the United Nations.

Since 11 July 2018, the application and issuance of working VITAS has referred to MOLHR Regulation No. 16/2018, dated 27 July 2018, regarding procedures for granting visas and stay permits for expatriate manpower. Based on MOLHR Regulation No. 16/2018, the validity period for a working VITAS depends on the employment period stated in the employment contract, but shall not exceed two years.

Once a foreign citizen arrives in Indonesia with a non-working VITAS, he or she must report to the immigration office within seven days to process his or her limited-stay permit (ITAS). Expatriates who enter Indonesia with a working VITAS process their ITAS directly at the airport upon arrival.

There is no visa available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction.

16 Are spouses of authorised workers entitled to work?

It is a general principle that every foreign worker must have his or her own work permit organised by his or her employer. This general principle applies regardless of marital status. Therefore, assuming the spouse is not an Indonesian citizen, or in other words, the spouse is also an expatriate, he or she needs his or her own work permit to be eligible to work in Indonesia.

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Pursuant to MOM Regulation No. 10/2018, dated 11 July 2018, regarding procedures for the utilisation of foreign manpower, employers intending to employ expatriates must have a manpower utilisation plan (RPTKA). The RPTKA is a plan to employ expatriate manpower in certain positions for a certain period of time that is approved by the MOM. An RPTKA approved by the MOM serves as a work permit for expatriates.

However, an approved RPTKA does not automatically grant employers the right to employ expatriates. Employers must also obtain a document called a notification from the MOM that basically approves the employment of expatriates in Indonesia. A notification also serves as the basis to obtain a VITAS or an ITAS.

Employing expatriates without first fulfilling the above requirements would subject the company to administrative sanctions in the form of postponement of service, temporary suspension of the work permit application, revocation of notification or other sanctions in accordance with the prevailing laws and regulations.

18 Is a labour market test required as a precursor to a short or long-term visa?

No labour market test is required in applying for a visa. A labour market test is used by the MOM only to determine positions that expatriates are allowed to hold.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Normal working hours are prescribed by the Labour Law as not more than seven hours per day and 40 hours per week based on a six-day working week. With the written agreement of employees (and the union, if the employees are unionised), a five-day working week, with eight hours per day and 40 hours per week, can be used. Wages of employees who work five days per week must not be less than the wages of employees who work six days per week.

The five-day working week has become common among private companies since the government applied a five-day working week for civil servants and employees of state-owned businesses. Regardless, after four hours of continuous work, an employee is entitled to at least 30 minutes of rest time. Employers must also provide reasonable time to perform religious observances, including Muslim prayers, which are performed five times each day.

20 What categories of workers are entitled to overtime pay and how is it calculated?

Overtime is regulated under MOM Decree No. KEP.102/MEN/VII/2004 (Decree 2012) regarding overtime work and overtime pay, and is payable at the rate of one and one half times the hourly wage for the first hour and twice the hourly wage thereafter. Overtime pay is calculated based on an employee's monthly wage, with the hourly wage being equal to 1/173 of the monthly wage.

Under Decree 102, a company is required to pay overtime to all employees. However, certain categories of employees are not entitled to receive overtime payment provided that they receive higher salaries. These employees are, literally translated, employees with responsibilities as thinkers, planners, executors and controllers of the company's operations whose working hours cannot be limited. It is widely thought that employees with these responsibilities are those at or above the management level or professional employees.

21 Can employees contractually waive the right to overtime pay?

The overtime pay requirement as explained above cannot be waived contractually.

22 Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to one day of leave with pay for every 23 working days, with a minimum of 12 days per year. If the employee does not take his or her leave entitlement within six months of earning it, the vacation leave will be forfeited. The employer can decide a suitable time for the employee to take his or her leave. These provisions also apply to fixed-term employees.

23 Is there any legislation establishing the right to sick leave or sick pay?

Full wages must be paid for the first four months of sick leave, 75 per cent of the full wage for the second four months, 50 per cent for the third four months and 25 per cent thereafter until the employer terminates the employee.

Further, female employees are not obliged to work on the first and second days of menstruation if they feel sick, and inform the employer.

However, this provision should be further regulated in the employment agreement, company regulation or CLA.

24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

In general, the Labour Law allows employees to take paid leave under the following circumstances:

- marriage: three days;
- marriage of employee's child: two days;
- circumcision or baptism of employee's child: two days;
- employee's wife giving birth or experiencing miscarriage: two days;
- death of employee's spouse, parent, parent-in-law, child or step-child: two days;
- death of other family member living in employee's household: one day;
- miscarriage: one and a half months; and
- maternity leave for female employee: one and a half months before the birth and one and a half months after delivery.

The company regulations or CLA may provide additional items under which employees would be allowed to take paid leave.

25 What employee benefits are prescribed by law?

In addition to wages, employees are generally entitled to certain social security benefits administered by the Social Security Administration Board (BPJS), which mainly consist of the BPJS health programme and the BPJS employment programme. Under the health programme, BPJS manages the health insurance of employees, while under the employment programme it manages old-age security, occupation accident and illness, life insurance and pension benefits. Employers must register their employees in both programmes but the contributions are payable by both employers and employees, except for occupational accident or illness and life insurance, where all contributions are paid by employers.

There are other mandatory benefits as well, such as the religious holiday allowance that employers must pay for one religious festival per year, in the amount of one month's salary, and secured salary for employees who are unable to work owing to illness (see question 23).

26 Are there any special rules relating to part-time or fixed-term employees?

The Labour Law and other applicable labour regulations do not recognise the concept of a part-time worker. Therefore, a part-time worker will be entitled to the same rights as a regular worker (either a permanent or fixed-term worker).

27 Must employers publish information on pay or other details about employees or the general workforce?

In Indonesia, there is no requirement for employers to publish information on pay (eg, as to gender equality or executive remuneration) or other details about employees or the general workforce.

Post-employment restrictive covenants

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

The Labour Law and other applicable labour regulations are silent with regard to non-compete clauses. However, non-compete and non-solicitation clauses are common in Indonesia. Very little is known about whether they are enforceable, as they have not been tested in the courts and there is little scholarly comment.

In practice, the enforcement of such agreement would likely depend on the particular factual context. We are not aware of jurisprudence (ie, scholarly comment or cases) on this point. An employee or a job candidate could raise issues with respect to her or his right to obtain a proper job, as protected by Indonesia's Constitution and the Human Rights Law. Therefore, it is possible that the Indonesian government or an Indonesian court would view such an agreement as contrary to public policy if it prevented an individual from earning a living.

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no requirement under the Labour Law or other applicable labour regulations for an employer to continue to pay a former employee while they are subject to post-employment restrictive covenants.

Liability for acts of employees

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

Article 1367 of the Indonesian Civil Code provides that employers and those who have been assigned to manage the affairs of other individuals shall be responsible for the damage caused by their employees or subordinates in the course of the duties assigned to them, as long as the employees or subordinates are acting in the interests of the employer.

Taxation of employees

31 What employment-related taxes are prescribed by law?

Under article 21 of the Income Tax Law, employers are obliged to deduct income tax due from employees' remuneration at the source and pass the sums withheld to the tax authorities. Income tax rates are progressive, as specified in the Income Tax Law.

Employee-created IP

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

Employees own any industrial design or copyrighted work they create during the course of their employment, unless agreed otherwise contractually. Employers can include a standard provision in the employment contract to assign ownership of all IP rights that their employees create during the course of employment to the employer.

33 Is there any legislation protecting trade secrets and other confidential business information?

With the passage of Law No. 30/2000, dated 20 December 2000, regarding trade secrets, employers enjoy protection of their trade secrets regarding:

- methods of production;
- methods of processing;
- methods of sale; and
- other information in the area of technology or business that has economic value and is not otherwise available to the general public.

To enjoy such protection, the entrepreneur must actively take certain steps to identify and protect such secrets.

Data protection

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

There is no specific legislation governing employee data protection in Indonesia. However, all persons have a broad constitutional right to privacy and there is various industry-specific legislation concerning data privacy.

Law No. 11/2008, dated 21 April 2008, regarding electronic information and transactions (the ITE Law), as amended by Law No. 19/2016, dated 25 November 2016, prohibits the use of information acquired through electronic media containing personal data related to an individual without the consent of the person. The ITE Law further provides that anyone with intent and without valid rights shall be prohibited from changing, adding, reducing, transmitting, destroying, eliminating, transferring or hiding electronic information or electronic documents owned by another person or owned by the public.

In practice, employers in Indonesia regulate the privacy and data protection rights of their employees by way of unilateral employee consent, employment agreements, company regulations and CLAs (each called a consent). Such consent permits the collection, retention, disclosure and use of the employee's personal data or other confidential information. Such consent is justified by the freedom of contract

principle under the Indonesian Civil Code. Based on the foregoing, it is recommended that employers obtain a written consent from each employee regarding the use of personal data.

Based on Law No. 24/2009, dated 9 July 2009, regarding the national flag, language, emblem and anthem, as well as Minister of Communication and Informatics Regulation No. 20/2016, dated 1 December 2016 regarding protection of personal data in electronic systems, such consent should be in the Indonesian language or in a bilingual format. If bilingual, the consent should provide that the English version prevails in the event of a conflict or inconsistency between the Indonesian and English versions.

Business transfers

35 Is there any legislation to protect employees in the event of a business transfer?

If employees are transferred from one company to another without dismissal, the new company must provide at least the same remuneration as the previous company. The new company must also recognise the length of service of employees.

In the event of a change of ownership in an employing entity, article 163(1) of the Labour Law confers upon employees a right to resign and receive termination benefits. The Labour Law is silent as to whether the right to a termination benefits package in the event of a change of ownership applies only to permanent employees or also to fixed-term employees. However, it is generally understood that the right in law applies only to permanent employees. Article 62 of the Labour Law provides that, if a fixed-term employment contract is terminated before the expiry of the contract, the terminating party must compensate the other party in the amount of the salary and other benefits that should have been paid under the fixed-term employment agreement until the date on which the contract would otherwise have expired. This right to be paid out the remaining term of an unexpired fixed-term employment agreement, rather than a termination benefits package, is generally accepted by the MOM.

Article 163(1) of the Labour Law provides that, in the event a permanent employee exercises his or her right to resign following a change of ownership of the company, the employee is entitled to one severance pay, one service pay and compensation, calculated as provided in article 156(2) to (4) of the Labour Law.

Termination of employment

36 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The basic policy of Indonesian labour law is that the dismissal of an employee should be prevented or even, in some cases, prohibited. The general principle is that the relevant authorities must approve every termination of employment. Exceptions to the general principle of approval being required to terminate an employment relationship include, among others, termination during a probationary period or the voluntary resignation of the employee.

It is essential to understand that the employer does not have the power to unilaterally terminate any employee in any circumstances. The employer can either:

- suspend employees on full salary and go through the mandatory non-binding mediation process with the Ministry of Manpower, which is followed by a Labour Court trial to obtain approval of the proposed terminations; or
- successfully negotiate and settle a separation benefits package with the employee and sign a mutual termination agreement (MTA).

In practice, settling all employee terminations with an MTA is the only cost-effective alternative prior to, during or after the transfer process.

37 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

The notice of termination or pay in lieu of notice concept does not apply in Indonesia. Unless settled by an MTA at any time during the process, all terminations involve:

- bipartite negotiation;
- non-binding mediation; and
- Labour Court approval.

Update and trends

The MOM is currently drafting a decree that will list the positions in different business sectors that are open to expatriates. The MOM had previously issued 19 sectorial decrees listing permitted positions for 19 different business sectors. Several MOM officials have said that positions not included in the decree may not be filled by expatriates working in Indonesia. MOM officials have also said that if a particular business sector is not covered by the decrees, companies in that sector are not necessarily free to hire expatriates for any position they wish. Rather, officials will refer to the decree for the most similar business sector. The officials conveyed that they have the discretion to decide whether a sectorial decree is relevant.

38 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Under the Labour Law and other prevailing labour laws and regulations, employment-at-will and termination upon simple notice are not recognised in Indonesia. Employment terminations must follow the procedures under the Labour Law and Law No. 2/2004.

39 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Termination of employment gives rise to termination entitlements, which include:

- severance pay;
- long-service pay;
- other compensation as described below; and
- if applicable, separation pay.

Article 156 of the Labour Law provides the following calculation of the minimum statutory termination benefits:

Completed years of service	Severance pay
Less than 1 year	1 month's salary
1 year or more, but fewer than 2 years	2 months' salary
2 years or more, but fewer than 3 years	3 months' salary
3 years or more, but fewer than 4 years	4 months' salary
4 years or more, but fewer than 5 years	5 months' salary
5 years or more, but fewer than 6 years	6 months' salary
6 years or more, but fewer than 7 years	7 months' salary
7 years or more, but fewer than 8 years	8 months' salary
8 years or more	9 months' salary

Completed years of service	Long-service pay
3 years or more, but fewer than 6 years	2 months' salary
6 years or more, but fewer than 9 years	3 months' salary
9 years or more, but fewer than 12 years	4 months ' salary
12 years or more, but fewer than 15 years	5 months' salary
15 years or more, but fewer than 18 years	6 months' salary
18 years or more, but fewer than 21 years	7 months' salary
21 years or more, but fewer than 24 years	8 months' salary
24 years or more	10 months' salary

Other compensation payable to the employee includes:

- compensation for annual leave to which the employee is entitled but that has not been taken or forfeited;
- any costs or expenses incurred in returning the employee and his or her family to the place where he or she was recruited (if applicable);
- compensation for housing, medical and hospitalisation (which is deemed to be 15 per cent of the severance pay or service pay, or both, to which the employee is entitled); and
- any other matters agreed to in the employment agreement, company regulation or CLA.

40 Are there any procedural requirements for dismissing an employee?

Before terminating an employment relationship, the parties (employee, employer, and, if applicable, labour union) are required to meet in an attempt to reach an amicable termination settlement. This meeting is known as bipartite negotiation. Such negotiations should be completed within 30 days, and minutes of each negotiation must be drafted and signed by all parties.

If a settlement is reached, an MTA should be executed and then registered at the relevant labour court. A settlement that is documented as a resignation does not require registration.

If the negotiations fail, the employer or employee may file the dispute with the relevant office of the MOM, along with supporting documents to show that bipartite negotiations have been attempted. A MOM official will ask the parties whether the dispute should be resolved through non-binding conciliation with private conciliators, mediation with a MOM mediator or arbitration. The parties should respond within seven days, and if they do not, the dispute automatically goes to mediation.

If the non-binding written recommendation of the mediator is rejected, then the matter must be brought by either party to the Labour Court.

41 In what circumstances are employees protected from dismissal?

Article 153 of the Labour Law provides that an employer is prohibited from terminating an employment relationship in the following circumstances:

- the employee is unable to work owing to illness based on a doctor's statement, for a period not exceeding 12 consecutive months;
- the employee is prevented from working because he or she is fulfilling state duties in accordance with the provisions of the prevailing laws and regulations;
- the employee performs religious rites prescribed by his or her religion;
- the employee marries;
- a female employee is pregnant, gives birth, miscarries or is nursing her baby;
- the employee has a blood or marital relationship with another employee in the same company, except where this is regulated in the employment agreement, company regulation or CLA;
- the employee establishes or becomes a member or executive of a labour union, or conducts labour union activities outside of working hours or during working hours with the agreement of the employer or pursuant to the provisions in the employment agreement, company regulation or CLA;
- the employee reports the employer to the authorities for a criminal act committed by the employer;
- because of differences in ideology, religion, political leaning, ethnic group, skin colour, social group, gender, physical condition or marital status; or
- the employee is permanently disabled or injured in a work accident, or is injured owing to the employment relationship where, based on a doctor's statement, the recovery period required cannot be predicted.

42 Are there special rules for mass terminations or collective dismissals?

Based on the Labour Law, the termination benefits for termination owing to downsizing are as follows:

- for downsizing because of the company suffering losses for a continuous period of two years or owing to force majeure, employees are entitled to basic severance pay, basic service pay and compensation (article 164(1) of the Labour Law); or
- for downsizing for efficiency reasons (ie, not owing to financial losses or force majeure), employees are entitled to double severance pay, basic service pay and compensation (article 164(3) of the Labour Law).

43 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

The Labour Law allows employees on a collective basis to conduct strikes, following certain procedures as prescribed by law. Otherwise, the strike would be considered an illegal strike.

A strike is a basic right of employees and labour unions that must be conducted lawfully, in an orderly manner and peacefully, which means it must not disrupt public safety and orderliness or endanger people's safety, the assets of the company or of other people or public property. A strike is called as a consequence of the failure of negotiations with the employer, which may be owing to the employer being unwilling to conduct negotiations even though the labour union or the employees have requested such negotiations in writing twice within a period of 14 working days, or the negotiations are deadlocked, as stated by the parties.

The employees or labour union, or both, must notify the employer and the local competent authority for labour affairs in writing at least seven business days before a strike is conducted.

44 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

From 1 January 2019, the retirement age is 57. It will rise by an additional year every three years until the retirement age reaches 65 in 2043.

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Dispute resolution

45 May the parties agree to private arbitration of employment disputes?

Law No. 2/2004 provides for private arbitration of employment disputes as an alternative method of settlement only for union–employer disputes over interests (ie, amendment of work conditions) or disputes between labour unions in the same company. Law No. 2/2004 reasserts that any dispute over dismissal or termination is under the sole jurisdiction of the Labour Court.

46 May an employee agree to waive statutory and contractual rights to potential employment claims?

There is no restriction under Indonesian law on an employee waiving his or her contractual rights to potential employment claims. Any written agreement that includes such waiver will not form a basis for cancellation of the agreement or be considered null and void. Although such waiver should be enforceable, in practice, the Labour Court would most likely still agree to hear claims from an employee even though he or she has contractually waived his or her rights to such employment claims.

47 What are the limitation periods for bringing employment claims?

An employee involved in a voluntary resignation or termination owing to a criminal proceeding may file a claim with the Labour Court within a year of the date of termination. Article 96 of the Labour Law originally stipulated a two-year statute of limitations to bring claims for payments arising out of the employment relationship, but the Constitutional Court nullified the two-year limit in 2012 (Decision No. 100/PUU-X/2012). In practice, the limitation period for bringing employment claims is similar to that for civil claims, whereby article 1967 of the Indonesian Civil Code stipulates that a potential claim expires after 30 years.