The Legal 500 Country Comparative Guides

Indonesia: Employment & Labour Law

This country-specific Q&A provides an overview to employment & labour law laws and regulations that may occur in Indonesia.

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1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful?**

Yes, an employer needs a reason in order to lawfully terminate an employment relationship. In principle, Law No. 13 of 2003 on Manpower ("**Labour Law**") discourages employment termination. The company is expected to use its best efforts to avoid termination by providing guidance to the employee(s) concerned and by improving working conditions and efficiency.

If termination is inevitable despite all efforts, a permit from a competent institution for the settlement of labor disputes i.e., the Industrial Relations Court (*Pengadilan Hubungan Industrial*), is required for termination of the employment relationship by the company. If termination is effected without the required court approval, it will be deemed null and void by operation of the law. However, termination of employment for the following reasons does not require court approval:

1. The employee is still on probation, and the probationary period is stipulated in the respective employment agreement;
2. The employee has voluntarily resigned;
3. The employee has reached retirement age stipulated in the respective employment agreement, Company Regulation, or Collective Labor Agreement;
4. The employment is for a definite period and the period has expired; or
5. The employee has died.

The Labor Law also stipulates several causes for employment termination by the employer, as well as the formula for a severance package:

1. **Termination due to an employee's violation of an Employment Agreement, or Company Regulation/Collective Labour Agreement**If an employee violates the provisions that are specified in an Employment Agreement, Company Regulation, or Collective Labour Agreement, the company may terminate their employment after the company has preceded it with by issuing first, second and third warning letters, consecutively. A permanent employee whose employment is terminated for this reason is entitled to a severance package that consists of one–time Severance Pay, and one–time Service Appreciation Pay and Compensation.
2. **Termination of employment due to change of status, merger, consolidation, or change in the ownership of the company**In the event of a change of status, merger, consolidation or change in the ownership of the company, an employee may choose not to continue their employment with the new management/owner. In this situation, the employer may terminate the employment relationship and the employee will be entitled to a severance package of one–time Severance Pay, and one–time Service Appreciation Pay and Compensation.

In the event of a change of status, merger, or consolidation of the company, and the new management/owner is not willing to accept the continuation of employment of an employee, that person may also be terminated. Here, the employee will be entitled to a severance package of two–times Severance Pay, and one–time Service Appreciation Pay and Compensation.

3. **Termination of employment due to closing down of the company** The company may terminate the employment relationship because the company must be closed down due to continuous losses it has been suffering for 2 consecutive years, or *force majeure*. Here, the employee will be entitled to a severance package of one–time Severance Pay, and one–time Service Appreciation Pay and Compensation.

   The company may terminate the employment relationship because the company must be closed down due to efficiency. Here, the employee will be entitled to a severance package of two–times Severance Pay, and one–time Service Appreciation Pay and Compensation.

4. **Termination due to bankruptcy** The company may terminate employment if the company is declared bankrupt. The employee will be entitled to one–time Severance Pay, and one–time Service Appreciation Pay and Compensation.
5. **Termination due to retirement** The company may terminate employment if the employee reaches retirement age. If the company did not include the employee in a retirement benefit program, they will be entitled to two times Severance Pay, and one–time Service Appreciation Pay and Compensation.
6. **Termination due to absence of the employee** The company may terminate the employment relationship if the employee is absent from work for 5 consecutive working days or more without any written notification along with valid evidence, and the company has issued 2 consecutive written summonses to the employee to return to work. Following such summonses, if the employee concerned fails to respond to them the company may deem the employee to have voluntarily resigned.
7. **Termination due to continuous sick leave of the employee** An employee who is continuously ill for a very long time, who is disabled as a result of a work accident and is unable to perform their work may, after they have been in this condition for more than 12 consecutive months, be terminated by the employer upon which they will be entitled to receive two–times Severance Pay, and two–times Service Appreciation Pay and Compensation.
8. **Termination due to Employee's Death** If employment is terminated due to the death of an employee, the heir of the late employee is entitled to two–times Severance Pay, and one–time Service Appreciation Pay and Compensation.
9. **Termination due to legal proceedings of the employee** If the employee is detained by the authorities because they are alleged to have committed a crime, the company is not obliged to pay the employee's wages but is obliged to provide financial assistance to the members of their family who are their dependents. The financial assistance should be provided for no longer than 6 (six) months, starting from the first day the employee is detained by the authorities.

If an employee is detained for longer than 6 months and the proceeding is still ongoing, the employee may be terminated. However, if the court declares the employee not guilty within the 6–month detainment period, the company must re-employ the employee. The employee may also be terminated if the court declares the employee guilty within the 6–month detainment period, and the company may terminate the employee. For both conditions of termination, the employee is only entitled to one-time Service Appreciation Pay and Compensation.

The Labor Law specifies the calculation for Severance Pay and Service Appreciation Pay based on the years of service of the employee.

2. **What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?**

   The Labour Law does not specifically regulate the procedure for mass employment termination. Therefore, the termination should follow the procedure for individual termination as provided under the Labour Law.

3. **What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

   The are two types of business sales in Indonesia, which are change of ownership due to share transfer and asset sale. In a change of ownership, the employer does not have any rights to terminate employment, however if the employer wants to initiate termination, it must do so on the basis of mutual termination of employment and pays the employee the highest termination formula under the Labour Law. Whereas, for an asset sale, employees are not regarded as assets that can be transferred in an asset sale transaction. As such, the purchaser in the asset sale must :

   - transfer the employees to the new company (with the consent of the employees) or
   - conduct a termination and rehire. In scenario,
   - the purchaser would consider in the years of service or seniority of the employees in determining [new employment terms and conditions]. In scenario,
   - the old employer (i.e., the seller) would terminate the employees and then the purchaser would hire the employees with 0 years of service.

4. **What, if any, is the minimum notice period to terminate employment?**

   Indonesian laws and regulations do not regulate notice period before terminating the employment relationship with an employee, except for resignation
   by an employee. The Labor Law stipulates that the resignation letter must be submitted no later than 30 days before the last day of employment.

Is it possible to pay monies out to a worker to end the employment relationship

5. **instead of giving notice?**

   No, termination of the employment relationship must be conducted based on the causes and procedure as regulated under the Labour Law. This means that the employment relationship may not be terminated at the employer's will without any cause, regardless that the employer has provided a certain amount of money to the relevant employee.

   Furthermore, in Indonesia, a notice period is not mandatory in the termination of an employment relationship. However, should a notice period be regulated under a Company Regulation, Collective Labour Agreement, or employment agreement, the employer must honour it. If the company intends to terminate the employee prior to the end of the stipulated notice period, it may negotiate to provide payment of compensation in lieu of notice to the employee, where the notice period will be waived by such payment.

6. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to say at home and not participate in any work?**

   Yes, Indonesian Labour Law allows suspension of employment during the employment termination process, provided that the employee pays full salary and benefits to the employees.

7. **Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

   Yes, employer must follow a prescribed procedure to achieve an effective termination of the employment relationship.

   In principle, all efforts must be made to prevent employment termination, e.g., re-arranging working time, taking cost-efficiency measures, improving working methods, and providing guidance to develop employees' performance. If the termination is inevitable, the employer must observe termination procedure under the Labour Law and Industrial Relations Law before making any termination.

   A unilateral employment termination of a permanent employee, without any reason whatsoever, is prohibited under the Labour Law. To terminate the employment, the employer must either (a) refer to the predetermined termination causes under the Labour Law, Company Regulation, and/or Collective Labour Agreement, (b) negotiate a mutual termination with the employee, or if the negotiation fails (c) seek an approval from the Industrial Relations Court (*Pengadilan Hubungan Industrial* or "PHI") or the Supreme Court,

in a certain case.

Efficiency, office/factory relocation, redundancy, and/or organizational restructuring are not acceptable causes to unilaterally terminate permanent employment relationship under the Labour Law. Consequently, the employment termination must be agreed by the permanent employee or permitted by the PHI or Supreme Court.

To obtain the permanent employee's agreement, the Company and the affected permanent employee must negotiate on a mutual termination. The process is called a Bipartite negotiation. If the termination is agreed, the parties must execute a Mutual Employment Termination Agreement (the "META") and register the META with the Industrial Relations Court.

If the termination is not agreed by the permanent employee, either party may invite a Mediator, who is an officer of Ministry of Manpower, to mediate the termination. If the mediation is successful, the parties must execute the META. If not, the dispute may be submitted to the Industrial Relations Court and ultimately to the Supreme Court for termination approval. During the termination process, the employee may be put under suspension with full salary and benefits paid by the company.

8. **If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?**

The Labour Law strictly regulates that any termination of the employment relationship that is undertaken not in accordance with the regulated procedure will be deemed null and void. This means that the employer is still obliged to pay the employee's wages and provide other entitlements of the employee.

9. **How, if at all, are collective agreements relevant to the termination of employment?**

We assume the collective agreement shall mean the Collective Labour Agreement or Company Regulation, i.e., the regulation applied within the company that regulates the rights and obligations of the employer and the employee, employment conditions, and rules of conduct. The Company Regulation is drafted by the company and should be ratified by the relevant manpower office to be applicable to the company. A Collective Labor Agreement is based on agreement between the Labour Union and the Company and should be registered with the relevant manpower office.

Although not specifically regulated, the Company Regulation or Collective Labour Agreement may regulate the details for termination procedure as well as the calculation of severance package, which should not violate the standard prescribed under the Labour Law.

10. **Does the employer have to obtain the permission of or inform a third party (eg local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

    Yes, certain termination of employment requires a permit from the Industrial Relations Court or Supreme Court, if not agreed by the employee. If the termination is effected without the required court approval, it will be deemed null and void.

11. **What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

    The Labour Law stipulates that an employer is prohibited from terminating an employee for discriminatory reasons such as difference in belief, religion, political orientation, ethnicity, colour, race, group, sexual orientation, physical condition or marital status. It also regulates that employees may apply for termination of employment to the relevant institutions if the employer is torturing, rudely humiliating or threatening an employee.

12. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

    The employer might be brought to trial before the Industrial Relations Court and up to the Supreme Court, should the employee apply for termination of employment, as a right of the employee has been violated.

    In addition, a discriminatory act by an employer might also lead to administrative sanctions in the form of rebuke, warning letter, limitation to certain business activities, a freeze of business activities, and some extent, revocation of license or business permit.

13. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

    The Labour Law stipulates that the employer is prohibited from terminating the employment of the employee for the following reasons:

    1. Absence due to illness for less than 12–consecutive months, as attested to by a written statement from a doctor;
    2. Absence due to obligations to the State as required by the applicable laws and regulations;
    3. Absence due to a religion obligation;
    4. Absence due to employee’s wedding;
    5. Absence due to pregnancy, giving birth, experiencing a miscarriage, or breast-feeding;
    6. The employee is related by blood and/or through marriage to another employee in

the company;

7. The employee establishes, or becomes a member of and/or an administrator/ management of a labour union; the employee carries out labor union activities outside working hours, or during working hours with permission from the company, or as regulated under the employment agreement, company regulation, or the collective labor agreement;
8. The employee reports to the authorities a crime committed by the company;
9. The employee has a difference in understanding/belief, religion, political orientation, ethnicity, color, race, sex, physical condition or marital status;
10. The employee is permanently disabled, ill as a result of a work accident, or ill due to an occupational disease whose period of recovery cannot be ascertained, as attested to by a written statement made by a doctor.

14. **Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

In general, Law No. 13 of 2006 on Protection of Witnesses and Victims ("**Protection of Witness and Victim Law**") protects any employee who becomes a witness (in the public interest) in a case. Such law stipulates that any person who causes a witness, a victim or his/her family to lose their job because the witness and/or victim testifies in a court proceeding, will be liable to imprisonment and certain fines.

Specifically, under the Labour Law, should an employee make a disclosure/report to the relevant institution that his/her employer committed a crime, the employer is prohibited from terminating the employment of that employee.

15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

Under the Labour Law, certain employment termination requires the payment of a severance package to the employee. Severance package consists of three components: (a) severance pay, (b) service appreciation pay, and (c) compensation. The calculation of each of the components must be made by using the formulas stipulated in the Labour Law. However, a company may provide a different formula to calculate a severance package as stipulated under its Company Regulation or Collective Labour Agreement (but it must not be less than those prescribed by law).

Please refer to our answer in point 1 on the calculation of severance package as provided under the Labour Law.

16. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes,**

describe any limitations that apply.

As mentioned above, in principle, unilateral employment termination of a permanent employee, without any reason whatsoever, is prohibited under the Labour Law. Therefore, mutual termination does not give rise to entitlement for the employee, as it must be one of the approaches for termination of employment.

Nonetheless, as termination of employment creates the right to severance package for an affected employee, the employer and employee may reach an agreement to waive an employee's right to severance package.

17. **Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

Yes, it is possible. However, the restriction must be based on an agreement between the parties to be applicable.

Although the Labour Law is silent on this matter, the Indonesian Civil Code ("ICC") regulates a general term on post-employment restrictions, including a non-competition clause. Article 1601 (x) of the ICC provides that an employer may restrict its employee from performing work in a certain manner after his/her employment with the employer has ended, by observing the following:

1. The agreement is valid only if it is made in writing;
2. The court is allowed to nullify all or part of such agreement if a claim is made by an employee, by reason that the employee is damaged unfairly by the agreement. In this situation, the worst-case scenario for the employer is that the judge nullifies the non-competition clause as agreed between the parties.

In practice, a non-competition clause may be waived under an employment agreement by the employer and the employee, or a standalone agreement between the parties. If the non-competition clause is to be stated in the employment agreement, it needs to survive termination of the agreement. This is to avoid any misunderstanding that all clauses of the employment agreement, are terminated because the employment relationship is ended.

In addition to the above, enforcement of the violation of the restriction is difficult to implement. Although the agreement might have been mutually agreed, the agreed terms and conditions will be binding upon the parties (*pacta sunt servanda* principle), and Indonesian Courts should honor, apply, and uphold such agreed terms and conditions, should the employee breach the agreement on non-competition and the employer seek monetary damages/compensation. If the employer files a claim with the court on the basis of breach of contract, the employer should provide evidence that the employer has suffered losses based on such violation. In practice, losses incurred by an employer based on this issue would be

hard to identify, leaving the employer limited protection from an employee's breach of the restriction.

18. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Yes. The requirement must be based on an agreement between the parties. In practice, it is common that a non-disclosure agreement is provided under an employment agreement or agreed by the parties under a separate non-disclosure agreement.

However, the same issue still applies to enforcement of the confidentiality provisions as other post-restriction agreements, i.e., the employer should provide evidence that the employer has suffered losses based on the breach of the agreement on confidentiality. Please refer to our answer to No. 17 for more detail on this issue.

Nonetheless, should disclosure of an employer's confidential information occur via any electronic medium whatsoever, the employee concerned may be subject to the sanctions as provided under the laws and regulations in relation to electronic information, as well as data privacy.

Minister of Communication and Informatics (MCIT) Regulation No. 20 of 2016 on Personal Data Protection on Electronic Systems ("MCIT Reg. 20/2016") defines Personal Data as any genuine, factual information that is inherent and may be related, either directly or indirectly, to an individual, and is kept, cared for and safeguarded and protected with confidentiality. Although MCIT Reg. 20/2016 is silent on who would qualify as an individual, we are of the view that the definition "individual" may be stretched to a legal entity (*rechtpersoon*) as a separate body. Given this interpretation, companies should also be considered as individuals, and any genuine, factual information that may be identified against it would be confidential.

Further, under Law No. 11 of 2008 on Electronic Information and Transactions as amended by Law No. 19 of 2016 ("Law 11/2008"), an item of personal data must only be disclosed following consent of the owner of the data. The owner may file a lawsuit over any material or non-material harm caused by violation or failure to protect such confidential information by the disclosing party. This may also be true, to the extent applicable, for any party involved in aiding the disclosure of such information. In addition, Law 11/208 prohibits anyone from transmitting any kind of electronic information or documents that do not belong to them without prior permission from the owner of such information or documents. Any violation could lead to a criminal sanction of 8 years of imprisonment and/or penalty of a maximum of IDR2 billion.

19. **Are employers obliged to provide references to new employers if these are requested?**

The Labour Law is silent on this matter. Therefore, it would be the employer's absolute decision whether or not to provide the reference.

20. **What, in your opinion, are the most common difficulties faced by employers when terminating employment and how do you consider employers can mitigate these?**

The most common difficulties faced by employers in terminating employment relate to grave wrongdoing by an employee, as currently, there is no basis provided by the law on termination of employment due to grave wrongdoing.

Initially, the company may unilaterally terminate the employee if the employee is deemed to have carried out a grave wrongdoing as regulated under Article 158 of the Labour Law. However, under the decision of the Constitutional Court, Article 158 of the Labour Law has been declared in contravention of the Indonesian Constitution, and therefore, has no authority to bind companies by terminating employee(s) that have engaged in grave wrongdoing, without a final and binding decision from a criminal court.

The company would need to regulate actions that are considered to be grave wrongdoings within a company under an employment agreement, company regulation or collective employment agreement. Therefore, if an employee is considered to have carried out a grave wrongdoing as defined internally, the company may issue in sequence first, second and third warning letters, which may lead to the termination of employment.

21. **Are any legal changes planned that are likely to impact on the way employers approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

The Indonesian Government has been working intensively on the draft of a Job Creation Law, commonly known as the "Omnibus Law" – a draft of which will most likely amend and revoke dozens of bills, including the Labour Law, if it is issued.

In the Omnibus Law, the provisions on termination are expected to have a major impact on companies, as it changes and eliminates the general provisions on termination that are currently regulated by the Labour Law.

The law is expected to be enacted this year, and the implementing regulations should follow a month later, without precluding the possibility that the draft could still be changed further before its enactment.

When issued, it will be advisable for companies to prepare amendments to their company regulations or collective labor agreements, as well as their employment agreement templates for new employees, to be in accordance with the new law.