Legal 500
Country Comparative Guides 2026

Indonesia

Employment and Labour Law

Contributor

ABNR Counsellors at Law

Indra Setiawan

Partner | isetiawan@abnrlaw.com

Ridzky F. Amin

Partner | tamin@abnrlaw.com

Tifanny Natalia

Senior Associate | tnatalia@abnrlaw.com

Marintan Panjaitan

Senior Associate | mpanjaitan@abnrlaw.com

Abdurachman Sidik Alatas

Senior Associate | aalatas@abnrlaw.com

This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Indonesia.

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Indonesia: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

In principle, the prevailing Indonesian labour law and regulations discourage termination of employment. Employers, employees, labour unions, and the Indonesian Government are required to make every possible effort to avoid it.

If termination seems inevitable despite all of these efforts, it must be effected by following the rules and procedures prescribed in Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2003 on Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law ("Labour Law"), Law No. 2 of 2004 on Industrial Relations Dispute Settlement ("Industrial Relations Dispute Settlement Law"), and Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment ("GR 35").

According to the provisions of the Industrial Relations Dispute Settlement Law, an employment relationship can be terminated by virtue of a mutual agreement between the employer and the employee as a mutual employment termination agreement ("META"), regardless of the parties' reasons and considerations in reaching the mutual agreement. If the employer wishes to terminate an employee, termination must be for a reason specified in the prevailing labour law and regulations, Company Regulation ("CR"), Collective Labour Agreement ("CLA") or employment agreement.

Article 154A of the Labour Law, in conjunction with Article 36 of GR 35, specifies the following reasons for termination of employment:

a. The company has entered into a merger, amalgamation, acquisition, or separation and the employee is not willing to continue employment, or the company is not willing to accept the employee. The employee is entitled to request termination if the corporate action as mentioned above causes decrease the employee's wages and benefits;

b. The company implements: 1) measures to improve business efficiency, but this is followed by closure of the company; or 2) business efficiency measures not followed by closure, but the company experiences losses or seeks to prevent them;

c. Dissolution of company as the company experiences losses for 2 consecutive years;

d. Dissolution of company due to force majeure;

e. The employer is placed under suspension of payments procedure;

f. The employer is declared bankrupt;

g. An employee requests termination of employment on the grounds that the employer has:

1. persecuted, insulted, or threatened the employee;
2. persuaded or ordered the employee to act in contravention of the applicable law and regulations
3. not paid the employee's salary in a timely manner for 3 consecutive months or longer
4. not fulfilled promises made to the employee;
5. ordered the employee to work beyond the agreed scope of work; or
6. ordered the employee to do work that is injurious to the employee's life, safety, healthy, or dignity, and such work is not specified in the employment agreement.

h. An industrial relations court decision declares that the employer did not commit an act referred to in point (g) above but it decides to terminate the employee anyway;

i. The employee resigns voluntarily;

j. The employee is absent from work for 5 consecutive business days or more without written notification supported by valid evidence, and has been summoned to work twice by the employer properly, and in writing;

k. The employee violates the provisions of the employment agreement, CR or CLA, and has been served with first, second, and third written warnings consecutively. Each warning is valid for up to 6 months unless stipulated otherwise in the employment agreement, CR, or the CLA;

l. The employee was unable to work for 6 months due to

being held in police detention for an alleged criminal offense;

m. The employee suffers long-term sickness or disability due to a work accident and could not work for more than 12 months;

n. The employee has reached pensionable age; or

o. The employee has passed away.

GR 35 also stipulates an employer's right to terminate an employee due to expiry of a definite-term employment contract, or if the employee commits an act of gross misconduct.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Indonesian labour law and regulations do not specifically regulate the procedure for mass employment termination. Therefore, mass termination should follow the procedure for individual termination.

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

The Labour Law and GR 35 only cover termination for reasons of merger, consolidation, acquisition, or spin-off of the employer that causes an employee to terminate employment, or the employer to reject continuation of employment.

If the sale is only related to one or part of the businesses managed by the employer, the above reasons for termination will not be applicable. If the business sale constitutes sale of a majority of the shares of a company (share acquisition), the employees can be terminated if the employer no longer intends to continue their employment, or if the employees opt not to continue working for the buyer, for which employees are entitled to a severance package.

If the business sale is performed for the employer experiencing losses, or to prevent losses, the employer may terminate the impacted employees for reasons of business efficiency. For efficiency due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports.

Regarding efficiency to prevent losses, the employer must be able to prove that there is potential for reduced productivity or profit that will impact the employer's operations. GR 35 does not provide examples of proof that must be produced by the employer. This allows each employer to self-evaluate their circumstances and provide proof that is relevant to their business and operations.

Please note, however, that one may argue that termination for the reason of business efficiency cannot be done before the employer taking the following measures, as listed in the Indonesian Constitutional Court Decision No. 19/PUU-IX/2011:

a. Reducing wages and facilities of the top-level workers, such as managers and directors;

b. Reducing shifts;

c. Limiting / eliminating overtime work;

d. Reducing working hours;

e. Reducing working days;

f. Temporarily dismiss or lay off employees in rotation;

g. Not renewing or extending contracts for employees whose contracts have been expired; and

h. Providing pension for those who have met the requirements.

In practice, employees who are affected by a business sale will either be offered: (a) a new position in the seller's company, (b) transfer of employment to the purchaser (new owner of the business) or (c) mutual termination with the seller.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

If the employer carries out unilateral termination against permanent employees employed under an indefinite term employment agreement, the employer is obliged to pay a severance package, which shall in the minimum amount as regulated under the Labour Law and the GR 35, which consists of three components:

a. severance pay, in the amount is calculated as one month's wages for each year of service, with a maximum of 9 months' wages;

b. service appreciation pay, contingent on the employee's length of service; and

c. compensation of entitlements, consisting of (i) payment in lieu of untaken annual leave; (ii) relocation expenses, and (iii) other compensation as stipulated under the employment agreement, CR, or CLA.

According to GR 35, the terminated employee is entitled to receive the severance pay component in the amount of at least 1 month's wage if employed for less than 1 year. However, the employee is required to complete at least 3 years of employment to be entitled to receive the service appreciation pay component in the amount of at least 2 months' wage.

However, as opposed to the severance package designated for permanent employees, the laws obligate employers to provide compensation to fixed term employees employed under a definite term employment agreement in the event of employment termination. As per Article 62 of the Labour Law, if employers terminate a definite term employees before the agreement's expiry date, the employers shall pay to the employee an indemnification in the amount of the remainder of the employee's wage until intended expiry of the employment agreement. On top of that, as per GR 35, the employers must compensate the terminated definite term employees for the past period of the agreement. In this case, the fixed term employees must have worked for at least a month to benefit from such termination rights.

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

GR 35 stipulates that if an employer wishes to terminate an employee, it must serve on the employee and the labour union (if the employee is a member) written notification of its intention and the reason(s) for termination, at least 14 business days before the intended termination date, or 7 business days if termination is during a probationary period. The employee may reject the termination by serving on the employer a letter stating the employee's rejection with reasons within 7 business days of receiving notice of termination.

For employee resignation, written notice must be submitted by the employee at least 30 days before the last day of employment.

The Labour Law and GR 35 do not specify categories of employee entitled to a longer notice period. However, if the employment agreement, CR or CLA requires a longer notice period, the employer or the employee must comply with the required notice period.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

As described in our response to Question No. 5, GR 35 requires an employer intending to terminate to serve on the employee a written notice of termination at least 14 business days before the intended date, or 7 business days if the termination is to be made during the probationary period. The above notice requirement is mandatory and cannot be waived, except for termination for the following reasons where an employer is not required to serve notice of termination on the employee or their legal heirs:

a. employee has voluntarily resigned;

b. employee is contracted to work for a definite period and the period has expired;

c. employee has reached retirement age;

d. employee was terminated due to gross misconduct; or

e. employee has passed away.

If the employment agreement, GR or CLA stipulate a longer notice period and the employer has the contractual right to make payment in lieu of such notice, the notice period can be shortened to 14 business days (or 7 days if termination is during a probationary period), while a payment can be made in lieu of the notice period that remains.

Notwithstanding the foregoing, if the employer and the employee agree to mutually terminate their employment relationship by signing a META, both parties may waive the notice requirement, and the employer will make payment in lieu of notice.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

Yes, Indonesian labour law and regulations allow an

employer to require an employee to take garden leave (simply known as suspension of employment under Indonesian labour law) during termination process, provided that the employer pays full employee salary and benefits during the garden leave.

8. 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. Is an employee entitled to appeal against their termination?

Yes, an employer must follow a prescribed procedure to achieve effective termination of the employment relationship. Procedures for termination of employment are stipulated in the Labour Law, the Industrial Relations Dispute Settlement Law, and GR 35.

GR 35 stipulates that if employment termination seems inevitable, the employer must serve on the employee and the labour union (if the employee is a member) written notification of its intention and the reason(s) for it at least 14 business days before the intended termination date, or 7 business days if termination is during the probationary period.

If the employee receives notification and does not object to it, the employer must report the proposed termination to the Ministry of Manpower or Manpower Office with jurisdiction over the employee's work location. On the other hand, should the employee object to termination, the dispute must be resolved through bipartite negotiation between the employer and the employee (or the labour union). The employee's objection to the proposed termination must be conveyed to the employer in writing with reasons, within 7 business days of receiving notice of termination.

The main purpose of a bipartite negotiation is to resolve a termination of employment dispute. If the employer and employee agree to mutually terminate their employment, it is formalized as a META. The executed META is then registered with the relevant Industrial Relations Court. A duly executed META is valid and binding upon its execution and the payment of severance package. Registration of META is purely a procedural formality.

Should the employer and employee fail to reach agreement, the employer must undergo the termination of employment procedure stipulated in the Industrial Relations Dispute Settlement Law: mediation at the local Manpower Office and court proceedings at the Industrial Relations Court or, in certain cases, the Supreme Court.

Mediation will be carried out with the assistance of a Manpower Office mediator. If it is successful, the parties should execute a META. If not, the dispute may be submitted to the relevant and competent Industrial Relations Court, and ultimately, the Supreme Court, for termination approval. The Industrial Relations Court or Supreme Court may either: (a) approve the termination proposal and determine the amount of severance package; or (b) reject termination and order the parties to continue the employment.

Termination of employment not mutually agreed between the employer and the employee (an employee is deemed to have agreed to termination if they do not submit written rejection of the termination notice within the specified time limit), or made without the required final and binding court approval in accordance with the provisions of the Industrial Relations Dispute Settlement Law, will be deemed null and void by operation of law.

Notwithstanding the foregoing, regardless of an employer's stated grounds for terminating an employee, the relationship between the employer and the employee can be at any time terminated by way of mutual agreement, with the consent of both parties.

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

If the employer does not follow the prescribed procedure, the validity of the employment termination may be challenged by the terminated employee. In the event of challenge, if the court discovers that employment termination was not carried out in accordance with the prescribed procedure, the court will declare that the termination is null and void and order the employer to reinstate the employee to his/her previous position.

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

We assume that “collective agreements” means the CLA or CR: the regulation applied within the company that stipulates the rights and obligations of the company and the employees, their conditions of service, and rules of conduct. The CR is drafted by the company and ratified by the Manpower Office, whilst a CLA is an agreement by and between the Labour Union and the company and is subsequently registered with the Manpower Office.

The CR or CLA may regulate procedure for employment termination as well as the calculation of severance package. The provisions, however, should not violate the employment termination procedure as stipulated under the labour law and regulations. For example, if the CR stipulates a formula to calculate severance package and it is more beneficial for employees than the one stipulated under the labour law and regulations, it will prevail.

11. Does the employer have to obtain the permission of or inform a third party (e.g 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?

No, the labour law and regulations do not require an employer to obtain permission from or inform a third party before initiating employment termination. However, reporting or registration requirements exist following employment termination.

If an employee receives a notice of employment termination and does not object to it, the employer must report the termination to the Ministry of Manpower or Manpower Office with jurisdiction over the employee's work location. The report is purely a procedural formality and does not affect the validity of the termination.

If the employer and employee agree to mutually terminate their employment relationship by signing a META, it must be registered with the relevant Industrial Relations Court. A duly signed META is valid and binding upon its signing and the payment of severance package. Registration of a META is purely a procedural formality.

If the employee objects to the notice of employment termination or refuses to sign a META, termination will necessitate court approval. Otherwise, employment termination will be deemed null and void by operation of law.

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

The Labour Law guarantees protection from discrimination for any reason. All employees are entitled to fair treatment by an employer. The Labour Law also prohibits an employer from terminating an employee for discriminatory reasons, such as a difference in belief, religion, political orientation, ethnicity, colour, race, group, sexual orientation, physical condition or marital status. The Labour Law also regulates that an employee may apply for termination of employment to the relevant institution if the employer has physically abused, insulted or threatened the employee.

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

In the event of alleged discrimination or harassment by an employer, an employee may submit a request for termination of employment to the Industrial Relations Court and, ultimately, the Supreme Court. A discriminatory act by an employer might also lead to administrative sanction of a rebuke, warning letter, limitation or suspension of business activities, revocation of approval or registration, a temporary halt to part or all of the production machinery, or revocation of business permit.

The Labour Law does not specifically stipulate the damages/relief applicable in an anti-discrimination claim. Nevertheless, under a general tort provision in the Indonesian Civil Code ("ICC"), a person who commits an unlawful act that causes harm to another person must compensate that person for the damage caused. In addition, should the employer's discrimination and harassment be classified as a criminal offense, it might also lead to criminal sanction.

In the context of employment termination, if an employee is terminated for discriminatory reasons, the employee may challenge the validity of the employment termination. If the discrimination can be proven, the employment termination will be declared null and void, and the employer will be ordered to reinstate the employee to their previous position.

14. 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?

According to Article 153 of the Labour Law, an employer is prohibited to terminate an employee because the employee:

a. could not perform work due to illness, confirmed by a

doctor, for a period of less than 12 consecutive months;

b. could not perform their work as they had to fulfil state obligations in accordance with applicable law and regulations;

c. has engaged in acts of religious observance;

d. gets married;

e. becomes pregnant, experiences a miscarriage, or is breastfeeding;

f. has blood ties or marital ties with the other employee of the employer;

g. establishes, becomes a member or administrator of a labor union, and carries out labor union activities outside working hours, or during working hours as agreed by the employer or in accordance with the provisions stipulated in the employment agreement, the CR, or the CLA;

h. lodges a criminal report/complaint against the employer with the authorities over criminal action allegedly committed by the employer;

i. has a different understanding, religion, political orientation, race, skin colour, community group, gender, physical condition, or marital status; and/or

j. suffers permanent disability, sickness due to working accident, or sickness due to an employment relationship as confirmed by a doctor, recovery from which could not yet be confirmed.

Employment termination carried out for one of the above reasons shall be deemed null and void, and the employer is obligated to reinstate the employee to their previous position.

15. 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 (as amended by Law No. 31 of 2014) on Protection of Witnesses and Victims protects an employee who becomes a witness in a case (in the public interest). The law stipulates that anyone who causes a witness, a victim or their family to lose their job because the witness or victim testifies in a court proceeding can be held criminally liable. Sanctions of imprisonment and fines might be imposed on the person.

Specifically, under Article 153(1)(h) of the Labour Law, if an employee lodges a criminal report/complaint against the employer to the authorities regarding criminal actions allegedly committed by the employer, the employer is prohibited from terminating the employee for that reason.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

In the event of financial difficulties, if the employer needs to perform business efficiency due to (i) experiencing losses, or to (ii) prevent losses, the employer may terminate its employees for reasons of business efficiency. For efficiency due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports. As for efficiency to prevent losses, the employer must be able to prove that there is potential for reduced productivity or profit that will impact the employer's operations. In this employment termination, the employees will be entitled to receive severance package.

There is no provision under Indonesian labour law and regulations prohibiting the employer from rehiring the employees with different terms, as both are separate employment agreements.

Alternatively, the employer and the employee may mutually agree on lower wages or less favourable terms by making and entering into an amendment of the existing employment agreement. To implement this approach, however, the employee's consent is crucial because the Indonesian labour law explicitly states that changes of an employment agreement are prohibited unless mutually agreed upon by both parties.

17. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

Indonesian labour law and regulations are silent on the use of artificial intelligence (AI) in an employer's recruitment or termination decisions.

In terms of the risks associated with the use of AI, although there are no specific laws and regulations concerning its usage, we believe one potential risk associated with the use of AI in recruitment or

termination decisions may lie in the possibility of errors, leading to unjustified decision due to misinterpretation of certain data or algorithms concerning the employees, which may cause disputes. Given the sensitivity of human resources matters, direct review on any employment-related matters is still preferable to ensure accuracy and minimize potential risks.

Regarding decisions by an employer due to the existence of AI, it is possible that an employer, at its own discretion and consideration, decides not to recruit new employees or to recruit fewer employees if some parts of the employer's operations or activities can be completed with the use of AI. However, specifically on employment termination, the use of AI is not specified as a valid reason for an employer to terminate their employees. Therefore, an employer cannot use this reason to terminate its existing employees.

There is no precedent as of February 2026 wherein employers were challenged due to the use of AI as a decision-making tool in the termination process.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

In the event of termination of a permanent employee, the employer is obliged to pay a severance package, which comprises: (a) severance pay; (b) service appreciation pay; and (c) compensation of entitlements. The calculation of each must be made by using the formulas stipulated under GR 35 as a minimum, which amount will vary depending on the reason for termination, length of service, latest salary, fixed allowance, and balance of annual leave. The employer may opt to use its own formula as regulated in the employment agreement, CR or CLA, provided that the formula is more beneficial to the employee than that stipulated in GR 35.

In the event of termination of a definite-term employee, the employer must indemnify the employee in an amount equivalent to the remaining salary of the employee until expiry of the definite-term employment agreement. On the other hand, this payment obligation shall also apply for the employee if the termination is initiated by or based on the request of the employee. This payment obligation, however, can be waived and will not be applicable for certain conditions and events as stipulated under the employment agreement.

In addition, the employer is also obligated to pay an additional compensation, which will be calculated proportionately, based on the employee's period of service. The calculation formula for this additional compensation is:

a. 1 month's salary if an employee has worked for 1 year;

b. If less or more than 1 year but more than 1 month, proportionately as follows: (years of service (in months)) ÷ 12) × 1 month salary (basic salary and fixed allowances (if any)).

The additional compensation, as mentioned above, is not applicable to foreign employees.

19. 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, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Indonesian law, particularly the ICC, recognizes the concept of freedom of contract and provides that an agreement validly entered by the parties shall bind the parties as if it were a statute (also known as pacta sunt servanda). The labour law and regulations also allow the employer and employee to reach a mutual agreement to terminate their employment, and to determine the provisions that will apply regarding that termination. The mutual agreement will be documented/formulated in the form of a written META, to be registered with the Industrial Relations Court as a formality procedure.

The META can set forth all of the matters mutually agreed to by the employer and the employee upon the successful conclusion of the bipartite meeting, including the amount of severance package, waiver of notice period and payment in lieu of notice, clauses on confidentiality, non-competition, non-solicitation, effective termination date, and release of claims by the employee.

The Labour Law and GR 35 do not stipulate the amount of severance package payable under mutual termination. Therefore, the amount is a matter for mutual agreement between the employer and employee.

20. 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, provided it is agreed by the employer and the employee in the employment agreement, a separate non-competition agreement, or the META. It can be enforced should a breach occur.

The Labour Law is silent on non-competition obligations on employees and does not prescribe whether such an obligation could be inserted into an employment agreement or the META. The legality of non-competition obligations is generally regulated under the ICC.

In general, Articles 1338 and 1337 ICC allow parties to a contract to agree on matters they wish to be bound by, to the extent that such provisions do not contravene the law, as well general principles or public order (principle of freedom of contract). Consequently, the employer and employee should not be prevented from agreeing to include a non-competition clause in an employment contract or META, provided it does not contravene the law, general principles and public order. Article 1601 paragraph (x) ICC provides that an employer may restrict an employee from performing work in a certain manner after their employment with the employer has ended, provided that the agreement is made in writing. Court may nullify all or part of the agreement if a claim is made by an employee, on grounds that, after comparison between the interests of the employer to be protected and those of the employee, the employee has been unfairly disadvantaged by such agreement.

Article 1601 paragraph (x) ICC further stipulates that the employer cannot enforce its rights under the written agreement if: (a) the employer ends the employment relationship in a way that violates the law; (b) the employer, deliberately or due to the employer's fault, has provided urgent grounds for the employee to terminate their employment; or (c) if a court, at the request or pursuant to a claim by the employee, has declared termination of the employment agreement for urgent reasons given to the employee caused intentionally by or due to the fault of the employer.

Based on the foregoing, it can be concluded that a challenge to the validity of a non-competition clause may be made on grounds that the clause contravenes the law, general principles and public order, and in particular, that the employee has been unfairly disadvantaged by an agreement that contains a non-competition clause. To avoid this, it is recommended that the agreement clearly stipulate the validity period of the non-competition clause, the territory, the list of prohibited actions, as well as the types of company deemed competitors. The employer may also consider providing financial compensation during the validity period of the non-competition clause.

Moreover, if the clause is to be included in the employment agreement, it needs to survive termination of that agreement. This is to avoid a misunderstanding that all clauses of the employment agreement are terminated because the employment relationship itself has ended.

21. Is it possible to restrict a worker from soliciting customers or clients, or employees of the employer, after the termination of employment? If yes, describe any relevant requirements or limitations (including any payments that must be made to the worker for the restriction to be valid and enforceable).

Similar with non-competition obligations, yes, it is possible to restrict an employee from soliciting customers or clients, or employees of the employer, after the termination of employment, provided it is agreed by the employer and the employee in the employment agreement, a separate non-competition agreement, or the META. It can be enforced should a breach occur. Kindly refer to our answer to Question No. 20 above.

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

Yes, based on the provisions of Article 1601 ICC, an employer may require an employee to maintain the confidentiality of information relating to the employer after employment termination, provided it is agreed by both employer and employee in an employment agreement, a separate non-disclosure agreement, or the META.

If the confidentiality clause is to be included within an employment agreement, it must survive termination of the agreement. This is to avoid a misunderstanding that all clauses of the employment agreement are terminated because the employment relationship itself has ended.

23. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include? What duties apply to employers giving references?

The Labor Law is silent on this matter. Therefore, provision of a reference would be at an employer's absolute decision.

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

The most common difficulty faced by employers when terminating employment is inflexibility and the time to complete termination in Indonesia, especially in cases that involve employee violation.

For a permanent employee, even though an employee may have clearly violated the provisions of the employment contract, CR or CLA, before termination, the employer must serve: (i) first, second, and third written warnings consecutively or (ii) first and final written warnings, to the employee. Each warning is valid for up to 6 months unless stipulated otherwise, thus if a repeated violation occurs after this validity has ended, the written warning must be re-issued from the first warning.

GR 35 only allows termination with immediate effect for gross misconduct by the employee, but termination due to gross-misconduct is likely to be challenged by the employee and the employer must be able to present strong and sufficient evidence to prove the existence of gross-misconduct. Moreover, if the gross-misconduct also constitutes a criminal offense (embezzlement, fraud, theft, etc.), the Industrial Relations Court may require the employer to present a final and binding criminal court decision to prove the existence of gross-misconduct.

If the employer terminates an employee by way of serving a termination notice, the employee has the right to reject it. In the event of rejection, termination must follow the procedures stipulated in the Industrial Relations Dispute Settlement Law: bipartite mediation at the local Manpower Office, and court proceedings at the Industrial Relations Court or, in certain cases, the Supreme Court. During such process, the employer is obliged to continue paying the employee's salary and other rights as stipulated in the employment agreement until a mutual agreement is reached or the issuance of the final and binding Industrial Relations Court judgment.

To mitigate the above risks, it is recommended that the employer: (a) have a valid CR or CLA, which clearly and expressly stipulate the reasons of employment termination, which have not yet been specified under the Labor Law and GR 35; and (b) have a Human Resources Team understanding the employment termination procedures and implementation, so that the employer can correctly interpret the regulations and implement the employment termination properly. Additionally, for companies with labour unions, clear communication and a strong relationship between the employer and the labour union are essential to ensure that all employment terms and conditions are implemented in good faith, thereby mitigating potential risks and issues.

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

The Constitutional Court has issued Decision No. 168/PUU-XII/2023 ("Decision 168"), which reviews and emphasizes certain provisions of the Labour Law. Further, the Constitutional Court has indicated that legislators should draft a new manpower law within two years (i.e. in 2026). However, it is important to note that this directive is not explicitly stated in the official decision but rather in the section elaborating on considerations and legal basis. In addition to Decision 168, it is to note that the proposed amendment of the Labour Law is included in the priority list of the national legislation program for the years 2025-2029.

However, the draft amendments have not yet been made publicly available, and there have been no further updates or progress on the matter. As the process remains ongoing and no draft amendments to the current regulations have been introduced, employers should actively monitor developments regarding potential changes to employment laws. In the meantime, the existing employment law remains in effect. Employers should continue reviewing their current employment terms and conditions, making necessary adjustments to ensure compliance and create a mutually beneficial working environment for both employers and employees in Indonesia.

Contributors

Indra Setiawan
Partner
isetiawan@abnrlaw.com

Ridzky F. Amin
Partner
tamin@abnrlaw.com

Tifanny Natalia
Senior Associate
tnatalia@abnrlaw.com

Marintan Panjaitan
Senior Associate
mpanjaitan@abnrlaw.com

Abdurachman Sidik Alatas
Senior Associate
aalatas@abnrlaw.com