Legal Updates:
Employment Dismissal Procedures

BETTER WORK Indonesia

Dear Valued Partners,

We would like to inform you about the Employment Dismissal Procedures according with Indonesia Law and Better Work Indonesia perspective on the issue, based on our discussion with a team from Ministry of Manpower of the Republic of Indonesia.

A. Dismissal

The principle of National Labour Regulations on workers dismissal is that it should be prevented or in some conditions, prohibited. Nonetheless, if it is inevitable, the relevant authorities must approve every termination of employment. Exceptions to approval for termination noted in Labor Law No. 13 / 2013 are the following:

- Workers are on probation
- Worker submitted a resignation request in writing based own their free will.
- Workers have reached retirement age
- Workers passed away
- Workers face criminal proceedings for more than six months and cannot perform their work, or are found guilty by the court before the end of the six-month period

According to Labor Law No. 13/2013, workers dismissal is prohibited if the reason for dismissal relates to the following:

- Workers activities in a labour union.
- Workers report any illegal action conducted by the employer to the authorities.
- Workers ideology, religion, race, gender, physical condition, marital status, etc.
- Workers are being ill continuously for less than 1 year as stated in a physician's certificate.
- Workers become permanently disabled or sick for work-related reasons and the healing period is unpredictable.
- Workers are being on State duty.
- Workers are required to carry out religious duties as approved by the authorities.
- Reasons of marriage, pregnancy, birth or miscarriage for female workers.

The Labour Law No. 13 of 2013 stipulates permissible causes for termination. These include "regular" reasons such as breach by an employee of his or her employment contract, company regulation or collective labor agreement, upon due warning and "serious" reasons including theft, providing false information to the employer, dangerous or immoral conduct or similar behaviors. National Labour Regulations previously expressly permitted termination for such "serious" reasons without a court order or automatic dismissal. However, by the provision of the Constitutional Court (Mahkamah Konstitusi) No. 012/PUU-I/2003, termination based on "serious" reasons requires approval of the Industrial Relations Court (PHI); thus, workers who were alleged conducting serious offense could not be automatically dismiss

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The Manpower Law also recognizes certain economic imperatives as well. An employer is entitled to dismiss an individual employee in the event of bankruptcy, or upon a change of status, merger, or consolidation of the employer.

A similar entitlement to terminate exists under Article 164(3) of the Labour Law No. 13 of 2003, where a company is closed down for reasons of efficiency (i.e., without two consecutive years of financial losses) or due to two consecutive years of financial losses or *force majeure.* The Article goes on to stipulate higher termination benefits for termination for reasons of efficiency without such financial losses.

From the date of Labor Law No. 13/2003 issuance until 2012, Article 164(3) has been used to justify downsizing a part of the workforce for reasons of efficiency, whereas the Article actually expressly contemplates the closing of the company as the triggering event. There is no other provision of the Labour Law that expressly permits downsizing the workforce for reasons of efficiency. However, based on the Constitution Court decision on 20 June 2012 (Case No. 19/PUU-IX/2011), the inclusion of the word "efficiency" in Article 164(3) cannot, in and of itself, be interpreted as the basis or right for a company to terminate an employee in Indonesia. The desire of an employer to make labor costs more efficient through the reduction of the workforce is not a proper legal basis for termination in Indonesia.

The Constitutional Court decision also addressed the meaning of Article 164(3) directly. In a move to remove any uncertainty or ambiguity in the Article, the Court stated that the provisions could only be invoked where the company in question needed, in fact, to be permanently closed down. Temporary or threatened closure was not sufficient to allow an employer the termination rights specified in the Article. In the view of the Court, any contrary interpretation would be inconsistent with the Constitution.

Under Article 156 of Labour Law No. 13 of 2003, termination of the employment relationship gives rise to termination payments that include severance pay and /or long service pay, as well as compensation pay for entitlements required under a collective agreement.

The extent of the termination package depends on the circumstances of termination. In the event of a termination on the grounds of grave wrongdoings or absence for five consecutive workdays without explanation, the worker is not entitled to any severance pay or long service pay. However, if a termination conducted on the grounds of violation of the terms of employment, the worker is entitled to severance pay and rewards.

Components of Termination Payment under Labor Law No. 13 / 2003

1. Severance Pay (Article 156.2)

• 1 month salary for a service period of less than 1 year;

• 2 months salary for a service period of 1 year but less than 2 years;

• 3 months salary for a service period of 2 years but less than 3 years;

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• 4 months salary for a service period of 3 years but less than 4 years;

• 5 months salary for a service period of 4 years but less than 5 years;

• 6 months salary for a service period of 5 years but less than 6 years;

• 7 months salary for a service period of 6 years but less than 7 years;

• 8 months salary for a service period of 7 years but less than 8 years;

• 9 months salary for a service period of 8 years or more ;

2. Long Service Pay (Article 156.3)

• 2 months salary for a service period of 3 years or more, but less than 6 years;

• 3 months salary for a service period of 6 years but less than 9 years;

• 4 months salary for a service period of 9 years but less than 12 years;

• 5 months salary for a service period of 12 years but less than 15 years;

• 6 months salary for a service period of 15 years but less than 18 years;

• 7 months salary for a service period of 18 years but less than 21 years;

• 8 months salary for a service period of 21 years but less than 24 years;

• 10 months' salary for a service period of 24 years or more.

3. Compensation of Rights (Article 156.4)

• Compensation for annual leave to which the employee is entitled, but which is not taken by the employee;

• Compensation for travel expenses or costs for the employee and his/her family to return to the original location of hire;

If the plan to terminate an employee is disputed, the termination process may take up to 140 working days to complete, from bipartite negotiations through to a Supreme Court decision (i.e., if the Industrial Relations Court decision is appealed). Under Article 155, during the termination process, the employer is still required to pay salary and other benefits to employee. However, under Article 93, if the worker stops working, the employer is not required to continue paying. Prior to terminating employment, there are several steps to be taken.

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1. **Bipartite Negotiations**
   This is the first step that should be taken prior to employment termination. Employer and workers (or if applicable the union representative) should meet and negotiate to reach an amicable termination settlement. The bipartite negotiation process must be settled at the latest within 30 calendar days after negotiations start.

   Anything agreed or disagreed in the negotiations should be recorded in detail in Minutes of Meeting signed by both parties. The Local Manpower office can provides a sample of Minutes of Meeting.

   If a settlement is reached, a Collective Agreement (Kesepakatan Bersama) is established and signed. The Collective Agreement must be drawn up, signed by the parties, and witnessed by the mediator. The Collective Agreement, together with relevant evidence, must be registered by both parties to the Industrial Relations Court (PHI).

   If no consensus is reached in the negotiations, one or both parties must submit a dispute letter together with the relevant evidence to the Local Labour Office.

2. **Conciliation**

   Should bipartite negotiations fail to reach a mutual agreement and employement termination is inevitable, both parties will be offered by the Local Labour Office to settle the dispute through Conciliation. If the parties refuse to settle the dispute through Conciliation, the Local Manpower Office will transfer the dispute to a mediator (mediation process).

   The parties must submit a written application to the conciliator whom they have agreed to from the list of conciliators published in the Local Manpower Office. Within seven working days after the application is submitted, the conciliator must review the dispute. At the lastest on the eighth working day, the conciliator must hold the first conciliation session. This conciliation process should take place within 30 days after receipt of the application.

   The conciliator then will issue a recommendation to settle the dispute to both parties. If both parties agree to the recommendation, within 3 days the conciliator must assist the parties to prepare a collective agreement, which should be registered to the Industrial Relations Court (PHI).

   If one of the parties does not accept the recommendation, a lawsuit to the Industrial Relations Court (PHI) can be filed.

3. **Mediation**
   If bipartite negotiations fail to reach an agreement and the parties refused to settle through a conciliation process, the relevant Local Manpower Office officials will transfer the dispute to mediation.

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Within 7 days after a request for mediation is received, the intermediary officer from the Local Manpower Office should review the case and immediately commence a mediation process which should be completed within 30 days.

The mediator will issue a recommendation to both parties. If both parties agree, within 3 days the mediator must assist the parties to prepare a collective agreement, which should be registered to the Industrial Relations Court (PHI).

If one of the parties does not accept the recommendation, a lawsuit to the Industrial Relations Court (PHI) can be filed.

4. Industrial Relations Courts (PHI)

A lawsuit filed to the Industrial Relations Court (PHI) must be supplemented with the minutes of mediation or conciliation process. The plaintiff may revoke the lawsuit at any time before the defendant gives a response. At the latest within seven working days, the Chairman of the Industrial Relations Court (PHI) should select a panel of judges, consisting of one chairperson and two members. The decision of the Industrial Relations Court (PHI) can be appealed to the Supreme Court at the latest 14 working days after the court decision is notified to the parties.

The decision of the Industrial Relations Court (PHI) is binding if there is no written request of appeal submitted by any of the parties within 14 days.

B. Resignation

Under the Labor Law No. 13/2003 there are two type of resignations. The first one type is voluntary resignation as stipulates on Article 162 of Labor Law No. 13/2003. Workers who want to resign from a company should submit a resignation letter 30 days prior the last day of employment. The second type is qualified as resign. Article 168 of Labor Law No. 13/2003 stipulated that when workers absent from work without specific written reason for five consecutive days, a company can qualifies that workers in question are resigned. For the second type of resignation, a company should properly summon the workers in writing to come back to work before qualifies workers are resigning.

Labor Law No. 13/2003 does not specifically stipulates “qualify as resign” required a decision of the Industrial Relations Court (PHI). Nonetheless, there is other legal opinion stating that although absent for five consecutive days without written reason is qualified as resign, the word qualify implies that it is not a voluntary resignation. In addition the Labor Law No. 13/2003 on Article 168 verse (3) also implying that qualifies as resign as dismissal of employment. This legal opinion then states that a decision may not be needed; however, a registration of dismissal of employment agreement between a company and worker who qualified as resign should be submitted to the Industrial Relations Court (PHI), similar as collective employment dismissal agreement.

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Workers who voluntarily resign or qualify as resign are entitled for compensation pay as stipulated on Article 156 verse (2) and separation or detachment money. The compensation pay that the dismissed worker shall includes

a. Annual leaves that have not expired and not have taken.

b. Costs or expenses for transporting the worker and his or her family back to the point of hire.

c. Compensation for housing allowance, medical and health care allowance is determined at 15% (fifteen percent) of the severance pay and or reward for years of service pay for those who are eligible.

d. Other compensations that are stipulated under the work agreement, company regulations or collective bargaining agreements.

In 2005, the Ministry of Manpower issued a Circulation Letter No. 600/2005 which states that workers who resigned do not get severance payment and reward for years of service pay (as Labor Law No. 13/2003 stipulates only dismissed or terminated workers the payment in question); thus, workers will not get replacement housing and care as well as treatment provision (amount of 15%) in Article 156 verse (4) point c. The Circulation Letter has not yet revoked. As Circular Letter is not part of Indonesia legal hierarchy, but it is adhered and imposed by Local Manpower officials, any issue on the different interpretations of the Circular Letter No. 600/2005 should be resolved by the Industrial Relations Court (PHI)

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