



Indonesian Investment Updates – Omnibus Law and
Changes to the Labour Law



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INDONESIAN INVESTMENT UPDATES – OMNIBUS LAW AND CHANGES TO THE LABOUR LAW

Posted on January 29, 2021

Category: [CNPupdates](#)

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This article is a follow up to the Indonesian Investment Updates – A quick introduction to Indonesian Labour Law published 21 July 2020.

Introduction

The RUU Cipta Kerja (the “**Omnibus Law**”) is the latest of a series of effort from Indonesia in improving the ease of doing business and attractiveness of Indonesia as an investment destination. The Omnibus Law, enacted as Law No. 11 of 2020, came into effect on 2 November 2020 upon receiving the President’s sign-off. The implementation of the changes will be subject to the relevant provisions in subsequent governmental regulations.

This article aims to highlight selected changes made to the Indonesian Labour Law, Law No 13 of 2003 on Manpower (“**Law 13**”), brought forth by the Omnibus Law.

A. Foreign Employees

(1) Permits and Licences

Pre-amendment

The process of employing a foreign employee had formerly consists of:

- obtaining a written licence (“**IMTA**”) to utilise and employ a foreign employee; and
- submitting and obtaining approval for the Foreign Worker Utilisation Plan

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(“RPTKA”).

Post-amendment

The process has now been consolidated and simplified to remove the need for an employer to possess the IMTA. Subject to exemption, the employer may be required to present the RPTKA.

(2) Exemption from RPTKA requirement

Pre-amendment

Foreign employees employed by foreign representative offices for diplomatic and consular roles were exempted from the requirements of having RPTKA.

Post-amendment

Further categories were included for exemption; namely foreign employees in the following activities:

- emergency maintenance of production machinery;
- business visits;
- start-ups;
- extended period of research; and
- members of the board of directors or members of the board of commissioners with the prescribed share ownership.

B. Fixed Term Contracts

Pre-amendment

Fixed term contracts were limited to a maximum of 2 years for the initial contract, and up to an aggregate of 5 years, including renewal and extension.

Foreign employees may only be employed under a fixed term contract of up to 2 years. Upon expiration of the employment term, the foreign employee may not be replaced by another foreign employee.

Probationary period is prohibited in fixed term contracts.

Post-amendment

The maximum duration of a fixed term contract is removed and may be extended as needed, unless otherwise prescribed by an implementing regulation. The Omnibus Law no longer differentiate extendibility of fixed term contract between local and foreign employees.

The prohibition on replacement of foreign employees with another is now removed. Probationary periods remain prohibited, but inclusion of such term will no longer void the employment contract. Any probationary periods in a fixed term contract shall constitute towards the employee’s total employment period.

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C. Outsourcing and Subcontracting

Pre-amendment

Work that may be outsourced were limited to supporting activities or activities not related to the production or core business activities.

A presumption of employer-employee relationship arises between the company and the outsourced employee in the event of non-compliance with the regulations on outsourcing.

Post-amendment

The relevant provisions on outsourcing has been revoked, thus allowing core business activities to be outsourced.

The presumption of employer-employee relationship is similarly removed. The employment relationship is strictly between the outsourcing company and the outsourced employee. The duty to ensure compliance with the welfare and protection of the employee falls with the outsourcing company.

D. Terms of Employment

(1) Working Hours

Pre-amendment

Working hours were stipulated to be not more than:

- 7 hours a day for 6 days work week; or
- 8 hours a day for 5 days work week.

In any case, aggregate hours in a week shall not exceed 40 hours.

Overtime hours, subject to the employee's agreement, is capped at 3 hours a day and an aggregate of 14 hours a week.

Post-amendment

The working hours has been simplified to provide a limit of 8 hours a day and 40 hours a week, regardless of the number of working days in a work week. Note, however, that working hours exceeding the prescribed limit may be imposed subject to the work/business sectors, and applicable government regulations.

Overtime hours is amended to cap at 4 hours a day and 18 hours a week.

(2) Leave and Time Off

Pre-amendment

Weekly time off:

- 1 day for 6 days work week; or

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- 2 days for 5 days work week.

1 month of long-term leave, or sabbatical, is provided for in both the seventh and eighth year of continuous service.

Post-amendment

2 days weekly time off for 5 days work week was removed.

The provision governing sabbatical is removed, and will be subject to the respective employment contracts and/or collective labour agreements, as the case may be.

(3) Minimum Wage

Pre-amendment

The Government Regulation No. 78 of 2015 on Wages had governed the regulations on wages, where the formulation of minimum wage accounts for inflation and % GDP increase in the preceding year.

Post-amendment

The Omnibus Law consolidates the regulation on wages by inserting 7 new articles detailing the determination and application of minimum wage. The new formulation will also account for regional economic growth.

Micro and small enterprises, as defined and prescribed by government regulations, are exempted from the minimum wage requirements.

(4) Termination and Severance

Pre-amendment

The methods of discontinuing working relations were:

- by way of employer-employee or employer-union negotiation, as the case may be; or
- where negotiation fails, settlement through the appropriate industrial relations dispute process.

Negotiation and agreement are not required in the limited cases of employee being on probation, upon resignation, attaining mandatory retirement age, or their demise.

Severance package comprises severance pay, service pay and compensation.

- Severance pay provides for 1 month's wage for every year of service, capped at 9 months' wage after 8 years.
- Service pay of 2 months' wage is payable after 3 years of service, increasing with every additional 3 years of service, capped at 10 months' wage after 24 years of service.
- Compensation includes, amongst others, 15% of the total severance and service

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pay, as medical and housing allowance.

Post-amendment

Inserted scenarios where negotiation and agreement are not required, including:

- employee violating employment contract or collective work agreement after 3 instances of warning given by way of letter;
- company winding up due to force majeure; and
- company entering insolvency upon decision of the commercial court.

A list of grounds for termination, as was lacking before, was also introduced.

The calculation of severance pay remains unchanged, while the service pay is amended to cap at 8 months' wage after 21 years of service. Notably, the medical and housing allowance was removed as compensation and compensation is now only provided for rights that are stipulated for in their respective agreements or company regulations.

Conclusion

Foreign investors seeking to enter the Indonesia market would no doubt be relieved to find several layers of red tape removed by the Omnibus Law. Amendments to the regulation of foreign employees and fixed term contracts provide potential employers with the much-needed flexibility in managing the composition of their workforce.

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