



## INDONESIA

# A Guide to Indonesia's Labour Law

The recent announcement of Indonesia's new Cabinet (hailed as the "Onward Indonesia Cabinet") will see more focus being placed on human development, job creation and boosting opportunities for the Small and Medium-sized enterprises.

This is an opportune time to review and better understand Indonesia's Labour Law ahead of the possible changes in policies that will likely arise.

### 1. Minimum Wage

- Currently set as 3.9 million rupiah (USD260) for Jakarta
- Adjusted annually, based on a required formula
- Differs by regions
- Total number of regions in Indonesia: 34

### 2. Workers protected by Indonesia's Labour Law

Fixed-Term	Permanent	Foreign
<ul style="list-style-type: none"><li>• Employment agreement required in written form.</li><li>• Otherwise they will automatically become a permanent employee.</li></ul>	<ul style="list-style-type: none"><li>• Employment agreement in written form or verbal</li><li>• Only permanent work agreements may include a probationary period, which cannot exceed three (3) months.</li><li>• Probationary workers must not receive less than the minimum wage</li></ul>	<ul style="list-style-type: none"><li>• Employment agreement required in written form.</li><li>• Otherwise they will automatically become a permanent employee.</li></ul>

### 3. Minimum Employment Terms & Conditions

These should include :

- Name, address and line of business
- Name, gender, age and address of employee
- Occupation / type of job
- Place where employment (job) will be carried out
- Amount of wages and how wages will be paid
- Job requirements, including rights and obligations of employer and employee
- Commencement date of work agreement and period of effectiveness
- Place and date where work agreement is made
- Signatures of parties concerned in the work agreement

### 4. Daily / Hourly Rated Employees

(a) Overtime on ordinary workdays

- 1.5x the hourly pay for the first hour of overtime work
- 2x the hourly pay for each additional hour worked

(b) Where monthly wages comprise basic wages and fixed allowances, 100% of the monthly wage is included when calculating overtime wages.

(c) If monthly wages also include non-fixed allowances and the basic wage plus the fixed allowance is less than 75% of the total wage, the monthly wage used to calculate overtime payments is 75% of total wages.

### 5. Overtime

Article 77 of the Labor Law regulates the amount of working hours. In general, an employee can have either:

(a) A work week of six working days, comprising

Seven hours per day and a maximum of 40 hours per week (six-day work week)

(b) A work week of five working days, comprising

Eight hours per day and a maximum of 40 hours per week (five-day work week)

(c) Any extra hours in a day/week are considered overtime hours. Overtime work can be performed by an employee for maximum three hours per day and 14 hours per week. This restriction is not applicable to overtime performed on public holidays or weekly rest days.

### 6. Overtime Pay

Employers are required to pay overtime based on these rates :

Based on 40 hours of regular work implemented in six (6) workdays				Based on 40 hours of regular work implemented in five (5) workdays	
OT on weekly rest day or national holiday but not on the shortest working day of the week		OT on weekly rest day or national holiday and on the shortest working day of the week			
Hour of OT work	OT Rate (x regular hourly wages)	Hours of OT work	OT Rate (x regular hourly wages)	Hours of OT work	OT Rate (x regular hourly wages)
1 – 7 <sup>th</sup> hour	2x	1 – 5 <sup>th</sup> hour	2x	1 – 8 <sup>th</sup> hour	2x
8 <sup>th</sup> hour	3x	6 <sup>th</sup> hour	3x	9 <sup>th</sup> hour	3x
9 – 10 <sup>th</sup> hour	4x	7 – 8 <sup>th</sup> hour	4x	10 – 11 <sup>th</sup> hour	4x

## 7. Social Security (BPJS Ketenagekerjaan)

(a) All workers and their families (including spouses and up to three children below the age of 21 years who are not married and not working) are entitled to social security.

(b) Under new regulations, it is mandatory for expatriates working in Indonesia for more than six (6) months to participate in both the health care and security programs

(c) Due to the lack of a comprehensive social security system, the BPJS Ketenagekerjaan represents the worker's social security program and provides work accidents protection, death insurance, old-age savings, healthcare and pension. This program is maintained by the designated, state-owned company BPJS Ketenagekerjaan

Areas covered	As a percentage of regular salaries/wages	
	Borne by employer(%)	Borne by employee(%)
Working accident protection	0.24-1.74	-
Death insurance	0.3	-
Old age saving	3.7	2
Healthcare	4	1
Pension	2	1

- Calculation base is basic salary plus fixed allowance
- Maximum calculation baes is updated annual by BPJS regulation

## 9. Maternity and Family Leave

(a) Maternity Leave

- 90 days before birth
- 90 days after birth
- Can be further extended depending on the medical condition as certified by a Doctor
- Entitled to full salary (includes basic salary and allowances) and medical reimbursement
- Additional rights may be regulated in the employment agreement, company agreement or Collective Labour Agreement (CLA)

(b) Paternity Leave

- Two (2) days, excluding annual leave
- Other paternity rights apply

## 10. Termination of Employment

Indonesia does not recognise termination at will. Termination must be with cause and must be in accordance with the procedures under the Labour Law.

(a) Termination Notice

- No termination notice under Indonesia Law
- Companies must obtain approval from the IRC or if they have signed a Mutual Agreement, this must be registered with the Industrial Relations Court (IRC).

(b) Gardening Leave

- Not recognized under Indonesia Law
- Similar to a notice period given by the company during the termination process, companies are still obliged to pay the employee's salary.

(c) Termination of Employees

- Employees cannot be terminated unilaterally.

- Termination can only be done after approval is obtained by the Industrial Relations Court (IRC).
- The Employer and Employee may settle the dismissal by signing a Mutual Termination Agreement registered with the Industrial Relations Court (IRC), failing which a lawsuit can be filed.

(d) Special Protection Against Dismissal

i. Indonesia Law prohibits dismissing employees for the following reasons :

- Employee is absent from work due to illness (as attested by a Doctor who has treated the Employee), provided the employee has not been absent for from work for a period of twelve (12) months consecutively.
- Employee is absent from work to fulfil obligations required by the State in accordance with
- Employee is absent from work in practicing his/her religion
- Employee is getting married
- Employee is absent due to pregnancy, the birth of a child, has suffered a miscarriage or breast-feeding
- Employee is a member of the Labour Union
- Employee reports any crimes committed by the employer / organization
- Discrimination related to the employee's personal beliefs, race, gender, marital status, etc
- Employee is permanently disabled or ill as a result of a work accident, or ill because of an occupational disease where the recovery cannot be ascertained in writing by a Doctor treating the employee.

ii. Employers may terminate employees for the following reasons :

- Violation of the Employment Agreement or Collective Labour Agreement (CLA)
- Employee has been detained by the Authorities and after six (6) months is still unable to return to work due to criminal proceedings
- Employee is ill for 12 consecutive months (as certified by a Doctor)
- Employee has been absent from work for five (5) days without notifying the Employer, and has been served notice twice
- Employee has reached the retirement age
- Demise of the employee

iii. In the event of business-related reasons, employers may terminate employees :

- Change of status, change of ownership, M&A, consolidation
- Insolvency
- Employer has suffered continuous losses of two consecutive years, as proven by its financial reports (audited by a Public Accountant)
- Permanent closure of business by the employer

## 11. Severance Pay and Compensation

The settlement and compensation for the termination of an employment relationship can be divided into four (4) types of compensation :

- Severance Pay

Paid by the employer to the employee as a result of the termination of employment

- Long-service Pay

Paid by the employer to the employee as a reward based on the length of service

- Compensation rights

Paid by the employer to the employee to compensate for annual leave which has not been taken yet, long leave, return travel expenses to the original point of hire, medical facilities, housing facilities, etc

- Separation Pay

Voluntary award provided by the employer to the employee as compensation for the employees service to the employer.

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**Severance Pay**

**Long-service Recognition Payment**

<b>Service Period</b>		<b>Service Period</b>	
< 1 year	= 1 month salary	> 3 years, but < 6 years	= 2 months salary
> 1 year, but < 2 years	= 2 month salary	> 3 years, but < 9 years	= 3 months salary
> 2 years, but < 3 years	= 3 months salary	> 9 years, but < 12 years	= 4 months salary
> 3 years, but < 4 years	= 4 months salary	> 12 years, but < 15 years	= 5 months salary
> 4 years, but < 5 years	= 5 months salary	> 15 years, but < 18 years	= 6 months salary
> 5 years, but < 6 years	= 6 months salary	> 18 years, but < 21 years	= 7 months salary
> 6 years, but < 7 years	= 7 months salary	> 21 years, but < 24 years	= 8 months salary
> 7 years, but < 8 years	= 8 months salary	> 24 years	= 9 months salary
> 8 years	= 9 months salary		

**12. Useful Pointers**

- The basic policy of Indonesia Labour Law is that the termination of an Employee should be prevented where possible.
- Before dismissing an Employee, it is important to hold “bipartite” negotiations between the Employer and Labour Union (or with the Employee if he/she is not a member of a Labour Union.
- The Labour Union must be registered with the Manpower Department.
- Bipartite negotiations must be settled within 30 calendar days from the commencement of negotiation. Once a settlement consensus has been reached, a Mutual Agreement is then drawn up and signed. This Mutual Agreement along with all relevant evidence must be registered by both parties with the Industrial Relations Court.
- Therefore, ample care and consideration must be given prior to the termination / dismissal of any employee.

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