LSM LUBIS · SANTOSA & MARAMIS LAW FIRM

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INDONESIA'S NEW REGULATION ON EMPLOYMENT TERMINATION COMPENSATION

In the framework of performing one of the provisions of Law Number 11 of 2020 concerning Job Creation ("***Omnibus* Law**"), particularly relating to the protection of rights and welfare of worker/labor, either during employment or post-employment, the Government issued the Government Regulation Number 35 Year 2021 regarding Fixed-Term Employment Contract, Outsourcing, Work Time, Rest Time and Termination of Employment ("**GR 35/2021**").

Based on its duration, there are 2 (two) types of Employment Contracts, namely the Fixed-Term Employment Contract/*Perjanjian Kerja Waktu Tertentu* ("**PKWT**") and the Indefinite-Term Employment Contract/*Perjanjian Kerja Waktu Tidak Tertentu* ("**PKWTT**").

Below are the compensation that must be provided by the business enactor to worker/labor under PKWTs, subject to employment period and the severance payment that must be provided by business enactor in the event of employment termination.

Compensation by Business Enactor to Worker/Labor under PKWT

Under Article 15 of GR 35/2021, after the expiration of PKWT contract, the business enactor shall provide compensation to its worker/labor related to his/her employment period under the following provisions (Article 16 paragraph (1)):

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PKWT Period (X)	Compensation Formula
12 consecutive months	1 month wages
1 month ≤ X < 12 months	PKWT Period / 12 x 1 month wages
≥ 12 months	

Wages used as basis for calculating compensation pay comprises:
a. principal wage and fixed allowance;
b. wages without allowance if the Company does not use the component of principal wage and allowance; or
c. principal wage in the company comprises principal wage and non-fixed allowance.

Grounds of Employment Termination and Worker/Labour's Entitlements

In addition to the above, GR 35/2021 also regulates employment termination between business enactor and worker/labor. Employment termination may only be performed with the following reasons (Article 36):
a. the company engages in merger, consolidation, acquisition, or spin-off and the worker/labor is unwilling to continue his/her employment or business enactor is unwilling to accept the worker/labor;
b. the company carries out efficiency followed by company dissolution or not being followed by company dissolution due to company suffering loss;
c. the company is dissolved due to 2 (two) years of continuous losses;
d. the company is dissolved due to *force majeure*;
e. the company is under the condition of postponement of debt settlement obligation/*penundaan kewajiban pembayaran utang*;
f. the company is bankrupt;
g. request for employment termination by worker/labor on the grounds that the business enactor undertakes the following:
    1. assaulting, rudely insulting, or threatening worker/labor;
    2. persuading and/or ordering worker/labor to commit acts that violates laws and regulations;
    3. not paying salaries on time for 3 (three) consecutive months or more, despite the business enactor providing on time payments thereafter;
    4. not performing obligations to worker/labor as promised;
    5. ordering worker/labor to carry out work outside of his/her agreed scope of work; or
    6. ordering work that threatens life, safety, health, and morality of worker/labor in which such work is not specified in the employment contract;
h. a decision of the Industrial Dispute Settlement Institution which declares that the business enactor did not commit acts as mentioned in point (g) above;
i. worker/labor voluntarily resigns, whereas such worker/labor must satisfy the following requirements:
    1. submitting a resignation letter in writing no later than 30 (thirty) days prior to the date of resignation;
    2. not bound under any employment commitment clause; and

3. continuing to carry out obligations up to the date of resignation;

j. worker/labor consecutively absent for 5 (five) business days or more without permission in writing accompanied by valid evidence and has been duly summoned by the business enactor 2 (two) times in writing;
k. worker/labor violates provisions set forth in the employment contract, company regulations, or collective labor agreement and have been warned 3 (three) times consecutively, each applicable for the maximum of 6 (six) months unless determined otherwise in the employment contract, company regulations, or collective labor agreement;
l. worker/labor cannot perform work for 6 (six) months due to detention by the law enforcer due to an alleged criminal act;
m. worker/labor suffers prolonged-illness or disability due to a work accident and cannot perform any work after exceeding 12 (twelve) months;
n. worker/labor enters retirement age; or
o. worker/labor passes away.

In the event of employment termination, business enactor shall provide the severance pay (*uang pesangon*) and/or service reward pay (*uang penghargaan masa kerja*), as well as compensation of rights (*uang penggantian hak*) on the following provisions:

Article 40 paragraph (2)	
Service Period (X)	**Severance Pay Formula**
X < 1 year	1 month wages
1 year ≤ X < 2 years	2 months wages
2 years ≤ X < 3 years	3 months wages
3 years ≤ X < 4 years	4 months wages
4 years ≤ X < 5 years	5 months wages
5 years ≤ X < 6 years	6 months wages
6 years ≤ X < 7 years	7 months wages
7 years ≤ X < 8 years	8 months wages
X ≥ 8 years	9 months wages

Article 40 paragraph (3)	
Service Period (X)	**Service Reward Pay Formula**
3 years ≤ X < 6 years	2 months wages
6 years ≤ X < 9 years	3 months wages
9 years ≤ X < 12 years	4 months wages
12 years ≤ X < 15 years	5 months wages
15 years ≤ X < 18 years	6 months wages
18 years ≤ X < 21 years	7 months wages
21 years ≤ X < 24 years	8 months wages
X ≥ 24 years	10 months wages

While **compensation of rights** consists of the following (**Article 40 paragraph (4)**):

a. annual leave that has not been taken and still exist;

b. transportation cost of Worker/Labor to return back home;
c. other matters set forth in the Employment Contract, Company Regulations, or Collective Labor Agreement.

It is worth noting that the number of severance pay and service pay may be greater or lower subject to the reasons of employment termination, namely:

Employment termination reasons	Severance Pay	Service Reward Pay	Compensation of Rights	Separation Pay (*uang pisah*)
The company engages in merger, consolidation, or spin-off (Art. 41)	1X	1X	Art. 40 para. (4)	Not Entitled
The company engages in acquisition (Art. 42 para. (1))	1X	1X	Art. 40 para. (4)	Not Entitled
Acquisition of company that causes job terms and conditions to change and worker/labor being unwilling to continue employment relations (Art. 42 para. (2))	0.5X	1X	Art. 40 para. (4)	Not Entitled
Company carrying out efficiency due to company suffering losses (Art. 43 para. (1))	0.5X	1X	Art. 40 para. (4)	Not Entitled
Company carrying out efficiency to prevent loss (Art. 43 para. (2))	1X	1X	Art. 40 para. (4)	Not Entitled
Company dissolution due to continuous losses for 2 (two) years or suffering non-continuous loss for 2 (two) years (Art. 44 para. (1))	0.5X	1X	Art. 40 para. (4)	Not Entitled
Company dissolution not due to company losses (Art. 44 para. (2))	1X	1X	Art. 40 para. (4)	Not Entitled
The company is dissolved due to *force majeure* (Art. 45 para. (1))	0.5X	1X	Art. 40 para. (4)	Not Entitled
Termination of worker/labor on grounds of *force majeure* that does not cause company dissolution (Art. 45 para. (2))	0.75X	1X	Art. 40 para. (4)	Not Entitled
Company being in the condition of suspension of debt payment obligations due to company losses (Art. 46 para. (1))	0.5X	1X	Art. 40 para. (4)	Not Entitled
Company being in the condition of suspension of debt payment obligations not due to company losses (Art. 46 para. (2))	1X	1X	Art. 40 para. (4)	Not Entitled
The company is bankrupt (Art. 47)	0.5X	1X	Art. 40 para. (4)	Not Entitled
Worker/labor petitions termination of employment on grounds that the Business Enactor committed acts	1X	1X	Art. 40 para. (4)	Not Entitled

Employment termination reasons	Severance Pay	Service Reward Pay	Compensation of Rights	Separation Pay (*uang pisah*)
specified in Article 36 letter g (see page 2) (Art. 48)				
Decision by an industrial relations dispute settlement body declaring that the business enactor did not commit acts as intended in Article 36 letter g against the petition by Worker/Labor (Art. 49)	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation, or collective labour agreement
Worker/labor voluntarily resigns and in compliance with conditions in Article 36 letter i (see page 2) (Art. 50)	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation, or collective labour agreement
Worker/labor absent for 5 (five) consecutive working days or more without reason in writing (Art. 51)	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation, or collective labour agreement
Worker/labor violates provisions set forth in employment contract, company regulations, or collective labor agreement and has previously	0.5X	1X	Art. 40 para. (4)	Not Entitled

Employment termination reasons	Severance Pay	Service Reward Pay	Compensation of Rights	Separation Pay (*uang pisah*)
been given the first, second, and third warning letters consecutively (Art. 52 para. (1))				
Worker/labor commits violations that are qualified as urgent reason set forth in the employment contract, company regulations, or collective labor agreement (Art. 52 para. (2))	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation, or collective labour agreement
Worker/labor not being able to carry out work for 6 (six) months due to being detained by the law enforcer for having committed a crime as intended in Article 36 letter I that caused harm to the Company (Art. 54 para. (1))	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation, or collective labour agreement
Worker/labor not carrying out work for 6 (six) months due to detention by the law enforcer for alleged crimes as intended in Article 36 letter I that does not cause harm to the Company (Art. 54 para. (2))	Not Entitled	1X	Art. 40 para. (4)	Not Entitled
If the court adjudicates a criminal case prior to the end of the 6 (six)-month period and finds the worker/labor guilty of a crime that causes harm to the company (Art. 54 para. (4))	Not Entitled	Not Entitled	Art. 40 para. (4)	In accordance with the amount regulated under the employment agreement, company regulation,

Employment termination reasons	Severance Pay	Service Reward Pay	Compensation of Rights	Separation Pay (*uang pisah*)
				or collective labour agreement
If the court adjudicates a criminal case prior to the end of the 6 (six)-month period as intended in paragraph (2) and finds the worker/labor guilty of a crime that does not cause harm to the company (Art. 54 para. (5))	Not Entitled	1X	Art. 40 para. (4)	Not Entitled
Worker/labor experiencing prolonged illness or disability due to work accident and cannot continue to carry out work beyond the period of 12 (twelve) months (Art. 55 para. (1))	2X	1X	Art. 40 para. (4)	Not Entitled
Worker/labor requesting termination of employment from the business enactor on grounds of worker/labor suffering from prolonged illness or disability due to work accident and cannot continue with work after a period of 12 (twelve) months (Art. 55 para. (2))	2X	1X	Art. 40 para. (4)	Not Entitled
Worker/labor enters retirement age (Art. 56)	1.75X	1X	Art. 40 para. (4)	Not Entitled
Worker/labor passes away (Art. 57)	2X	1X	Art. 40 para. (4)	Not Entitled