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COVID-19: CAN AN EMPLOYER FURLOUGH EMPLOYEES AND REDUCE THEIR WAGES?

Indonesia has officially entered into recession for the first time since the Asian financial crisis more than twenty years ago as the country still fighting to control the Covid-19 outbreak. In light of this severe financial impact and with the end of the pandemic nowhere in sight, many employers were forced to take measures to temporarily shut down offices and furloughed their employees in order to reduce expenses and keep the company afloat.

Since employment matters are sensitive issues and should be treated carefully, the question has arisen as to the appropriate approach for employers to put their employees on furlough. It is worth noting that Law Number 13 of 2003 on Manpower is silent as to whether an employer has the right to furlough employees, put them on unpaid leave of absence, or reduce their wages due to economic conditions. However, the Minister of Manpower issued three circular letters related to the economic situation namely:

I. Circular Letter Number SE-05/M/BW/1998 of 1998 regarding the Remuneration of Employees who are Temporary Laid Off is not towards Termination Employment Relationship;

II. Circular Letter Number: SE-907/MEN/PHI-PPHI/X/2004 regarding Prevention of Termination Mass Employment Relationship; and
III. Circular Letter Number: SE-643/MEN/PHI-PPHI/IX/2005 regarding Prevention of Termination Employment Relationship.

The above Circular Letters allow the employer to furlough the employees or to put the employees on rotating furlough to avoid employment termination. However, it is pivotal to understand that the wages (basic wages and fixed allowance) of those furloughed employees shall be paid in full during the period of furlough. If the employer wishes to not pay the wages in full, then the employer shall obtain employees' consent.

In addition to the above, the Minister of Manpower has issued Circular Letter Number M/3/HK.04/III/2020 on Protection of Workers and Business Continuity in Precaution and Prevention of Covid-19 as a response to the pandemic. In this letter, it is stated that if an employer is unable or constrained to conduct its business based on the respective regional government policy, which in turn results in all or some of the employees being unable to work, in consideration of business sustainability, such employer may amend or adjust wage amounts and the means of payment based on a mutual agreement between the employer and the employees.

Based on all the above mentioned Circular Letters, it should be noted that the employer is permitted to furlough the employees. However, the employees' consent is required in the event the employer wishes to reduce wages. This is because any policy affecting the wages of the employees would be considered as an amendment to the employment terms and therefore, it must be mutually agreed between the employer and the employees.