



Statutory Holiday Allowance (THR): Only negligible relief for employers!

What is the new THR policy?

On 12 April 2021, the Manpower Ministry (**MM**) issued Circular Letter M/6/HK.04/IV/2021 to all governors in Indonesia on the Implementation of Payment of Religious Holiday Allowances in 2021 for Company Employees (**new THR policy**).

What does the new THR policy mean for you?

In brief, the new THR policy provides “guidance” on the payment of the 2021 THR to employees by:

1. reaffirming the current regulated position that employers must pay the full THR amount to their employees at least seven days before the relevant religious holiday date (**Holiday Date**); and
2. providing an option for employers who have been impacted by the Covid-19 pandemic to cause them to be financially unable to pay employees the 2021 THR at least seven days before the Holiday Date, to negotiate a written agreement with employees to defer such payment (**Agreement**), provided that the payment deferral date is no later than the Holiday Date.

Despite the very limited flexibility given to employers under the new THR policy, the flexibility is narrowed even further by the following measures, also set out in the new THR policy:

1. Employees cannot be forced or obliged to accept an employer’s delayed THR payment proposal, which means they have the option to reject such proposal.
2. Employers:
 - (a) cannot reduce the amount of THR to be paid and may only negotiate a THR payment schedule that must be fully realised by no later than the Holiday Date;
 - (b) who wish to enter into an Agreement are obliged to “prove” to employees their inability to pay the 2021 THR on time (that is, at least seven days before the Holiday Date) based on their financial statements; and
 - (c) are required to report any Agreement to the local Manpower Office at least seven days before the Holiday Date.

Can employers still negotiate an agreement to pay THR after the Holiday Date?

Under last year’s equivalent circular letter that set out last year’s THR policy, employers who were financially unable to pay the THR to employees could negotiate for THR payment to be made by installment or deferred payment. Last year’s THR policy also contemplated that negotiation may include terms on the agreed penalty. Therefore, it was contemplated that a new THR payment timetable could be agreed between employers and employees that extended beyond the Holiday Date (**Extended Agreements**).

(For your reference, please see our last year’s Client Update on THR [here](#).)

The new THR policy appears to be more rigid than last year’s and does not provide the possibility of negotiating Extended Agreements. While the parties may attempt to agree on Extended Agreements, they may be subject to challenge by the regulator, and potential late THR payment penalties.

Despite the Employment Minister having emphasised the necessity for employers to pay the full THR amount on time, we carried out research with the MM to find out whether it would still be acceptable for employers and employees to enter into Extended Agreements due to special circumstances. Unfortunately, at this stage the MM has not given us a definitive

answer to this question.

Background to the THR payment requirement

According to Government Regulation No.36 of 2021 on Wages (**GR 36/2021**), employers in Indonesia are obliged to pay THR to their employees by no later than seven days before their annual Holiday Date (unless otherwise agreed in the employment agreement, company regulations or collective labour agreement).

In 2021, the Muslim religious holiday is at the end of Ramadhan (Eid al Fitr, which is based on the lunar calendar, and likely to occur on 13 May 2021). Therefore, the relevant regulations require employers to pay THR to all of their Muslim employees by no later than 6 May 2021, unless if they have entered into an Agreement, in which case the THR payment deadline will shift to the Holiday Date at the latest.

According to MM Regulation No.6 of 2016 on THR for Company Employees, permanent or fixed-term employees who have been working continuously for at least:

1. 12 months or more, are entitled to THR equal to one month's salary (consisting of basic salary and fixed allowances); and
2. one month but less than 12 months, must be paid a proportional THR amount based on the employee's service period.

Daily workers are also entitled to receive THR if their service period is:

1. 12 months or more, in which case THR is based on the average monthly salary received by the employee during the past 12 months before the Holiday Date; and
2. less than 12 months, in which case THR is based on the average monthly salary received during their service period.

Penalties

An employer that makes late THR payments to its employees may be subject to escalating administrative sanctions in the form of:

1. written warnings;
2. restrictions on business activities;
3. temporary suspension of part or all of a company's production (including postponement of the issuance of its business licence); and
4. suspension of business activities.

If an employer makes any late THR payment, the employer may also be exposed to a fine of 5% of the total THR amount due to be paid, without relieving the employer from its obligation to make the full THR payment.

Comments

In the midst of the COVID-19 crisis this year, employers were looking to the government for an offering of significant relief or flexibility in their obligation to pay annual THR to their employees. Unfortunately, in 2021, when many businesses are still seriously suffering cash flow problems due to the COVID-19 crisis, the government has provided negligible flexibility on the payment of THR.

Compared to last year's THR circular letter, the government appears to have become more "pro-employee" under the new THR policy, by providing only minimal flexibility for employers on the timing to pay the full amount of THR to their employees.

We will continue to monitor the implementation of the new THR policy. Meanwhile, please do not hesitate to contact us if you need more information on the above development.



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If you would like to discuss any aspect of this update, or your employment activities or plans, please feel free to contact us.



Retno A.D. Muljosantoso
Partner
r_muljosantoso@soemath.com



Robert Reid
International Counsel
robert_reid@soemath.com



Oene J. Marseille
Foreign Counsel
oene_marseille@soemath.com



Dimas Koencoro Noegroho
Senior Associate
dimas_koencoro@soemath.com