

New government guidelines for working during the COVID-19 pandemic: changes to employment conditions are fine - as long as employees consent

Overview

The Indonesian government recently issued new guidelines on employment practices during the COVID-19 pandemic, which aims to provide guidance to both employers and employees.

These guidelines, issued by the Manpower Minister (**MM**) in the form of Decree No. 104 of 2021 on Guidelines for Employment Practices during the Coronavirus Disease (COVID-19) Pandemic (**Guidelines**), became effective on 13 August 2021.

Key points in the Guidelines

The Guidelines are divided into three broad areas, as outlined below.

1. Work arrangements during the COVID-19 pandemic

This section deals with “Working From Home” (**WFH**) and “Working From the Office” (**WFO**) arrangements, including giving employees a leave of absence by sending them home temporarily. The Guidelines set out examples of WFH and WFO capacities in an effort to demonstrate how employees can be given the same opportunity to work during a month, taking into account such measures as rotating schedules and reducing working hours by rearranging working time into shifts.

The objectives of such work arrangements appear to be to avoid employment terminations and control the spread of COVID-19 in the workplace, while at the same time maintaining employee wage continuity and compliance with the changing government policies on percentage capacity limitations.

2. Remuneration and other employee rights

In this section, the Guidelines emphasise that employers unable to afford to pay employees (whether on WFH or WFO arrangements) due to the COVID-19 pandemic may enter into negotiations with the employees in an effort to reach an agreement to adjust the salary arrangements (Temporary Adjustment Agreements). The negotiations between employer and employees must be conducted in “an amicable and transparent manner and in good faith”.

Temporary Adjustment Agreements must be made in writing and include the adjusted salary amount, payment method and validity period. The employer must submit all Temporary Adjustment Agreements online to the relevant Manpower Office for the purpose of “data collection, guidance, supervision and law enforcement”. Importantly, employers are prohibited from using the adjusted salary amount set out in a Temporary Adjustment Agreement as the basis for making social security payments (BPJS) on behalf of employees or termination severance packages, both of which must be based on the **original** agreed monthly salary amount.

3. Employment termination prevention measures

The Guidelines emphasise dialogue between employers, employees and the government to seek the “best” solution to maintain business and employment continuity for employers experiencing industrial relations issues due to the COVID-19 pandemic.

Employers impacted by COVID-19 are invited under the Guidelines to make the following efforts to prevent employment termination (where appropriate):

- (a) changing the workplace to include WFH arrangements;
- (b) adjusting the working hours (such as work shifts, limiting or eliminating overtime and reducing working hours/working days);
- (c) giving employees a leave of absence using a temporary rotation system;
- (d) adjusting the amount and method of employee salary payment;
- (e) reducing employee facilities and/or other allowances in stages;

- (f) not renewing expired fixed-term employment agreements; and/or
- (g) offering retirement for those employees who have satisfied the relevant requirements or early retirement.

Again, the important takeaway is that the above employment termination prevention efforts can only be implemented **after** the relevant employer and employees have reached agreement as a result of bipartite meetings. However, if termination is the only viable option, the termination procedure must be carried out in accordance with the relevant regulations. As readers may be aware, commencing on 2 February 2021 the termination provisions for employees in Indonesia were significantly revamped under Government Regulation 35 of 2021 on Fixed Term Employment Agreements, Outsourcing, Working Hours and Rest Periods and Termination of Employment.

Conclusion

The Manpower Ministry Guidelines mainly focus on measures that should be considered by employers to prevent employee terminations due to the financial burden brought about by the COVID-19 pandemic (and also stop the spread of COVID-19 in the workplace). Although the Guidelines set out several alternative measures for companies impacted by COVID-19 or that are currently struggling with financial issues brought about by the COVID-19 pandemic, including permitting employers to adjust their employees' salary entitlements, application of any adjustment is subject to **employee consent** following bipartite discussions.

We are continuing to monitor any developments in relation to these Guidelines and will issue any further updates on the government's administration of employment practice during the COVID-19 pandemic as soon as more information becomes available.



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