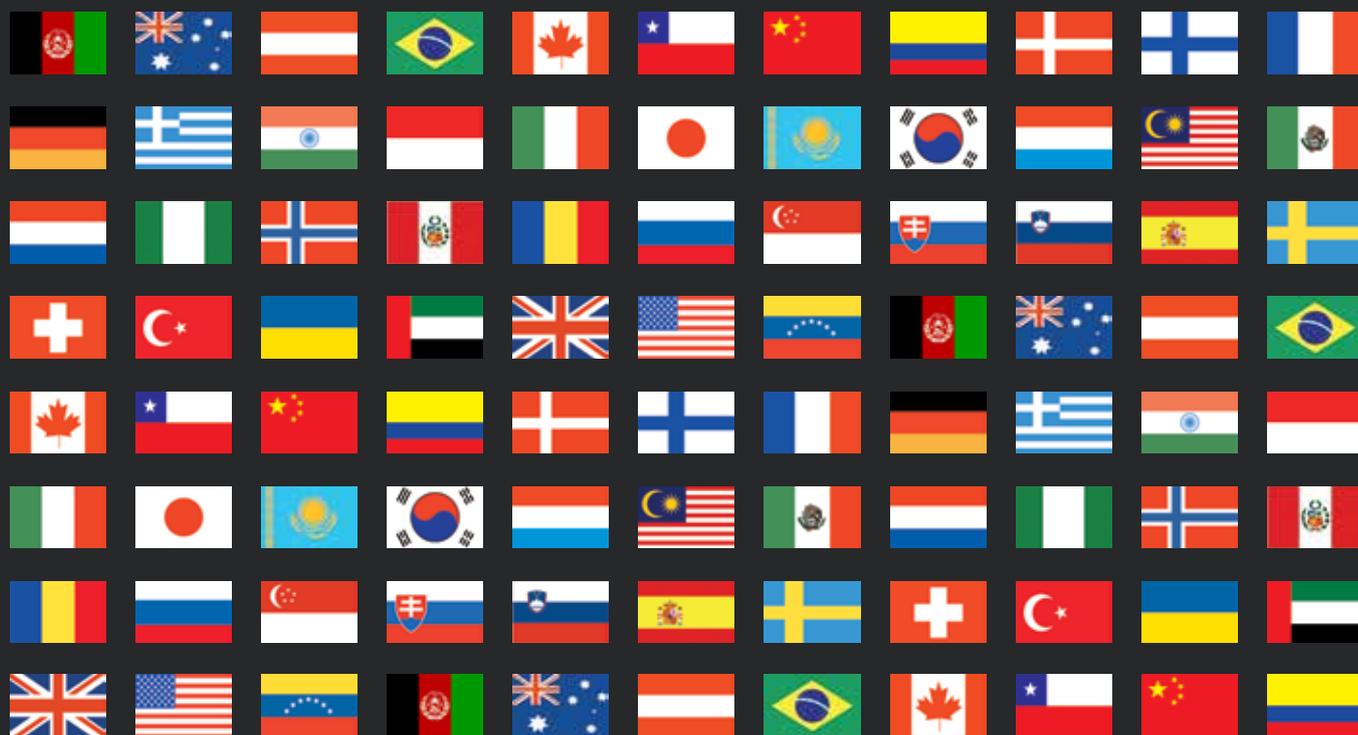


Labour & Employment

In 40 jurisdictions worldwide

Contributing editors

Mark Zelek, Matthew Howse, Sabine Smith-Vidal and Walter Ahrens



2015

GETTING THE
DEAL THROUGH

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Labour & Employment 2015

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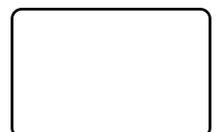


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CONTENTS

Global Overview	7	Indonesia	104
Mark E Zelek Morgan, Lewis & Bockius LLP		Pheo M Hutabarat and Asido M Panjaitan Hutabarat Halim & Rekan	
Using non-competes and other restrictive covenants globally	9	Italy	110
Matthew Howse Morgan, Lewis & Bockius LLP		Valeria Morosini Toffoletto De Luca Tamajo e Soci – <i>member of Ius Laboris</i>	
Afghanistan	11	Japan	117
Ghazi Khan and Muhammad Ismail Legal Oracles		Motoi Fujii and Tomoko Narita TMI Associates	
Australia	16	Kazakhstan	127
Charles Power and Michael Selinger Holding Redlich		Klara Nurgaziyeva and Marat Mukhamediyev Morgan, Lewis & Bockius LLP	
Austria	23	Korea	133
Thomas Boller BLS Rechtsanwälte Boller Langhammer Schubert GmbH		Milosz Zurkowski, Sun Ha Kweon and Sung Il Yoon Kim & Chang	
Brazil	30	Luxembourg	139
Fabio Medeiros Machado Associados Advogados e Consultores		Guy Castegnaro and Ariane Claverie Castegnaro – <i>member of Ius Laboris</i>	
Canada	36	Malaysia	147
Craig T Munroe, Roy L Heenan and Andrea L Zwack Gall Legge Grant & Munroe LLP		Selvamalar Alagaratnam Skrine	
Chile	44	Mexico	153
Enrique Munita and Paola Casorzo Philippi, Prietocarrizosa & Uria		Jorge de Presno Arizpe and Alvaro González-Schiaffino Basham, Ringe y Correa SC	
China	50	Netherlands	159
Min Duan Morgan, Lewis & Bockius LLP		Johan Nijmeijer Greenberg Traurig, LLP	
Colombia	57	Nigeria	166
Carolina Camacho and Ana Lucía Fernández de Soto Posse Herrera Ruiz		Adekunle Obebe and Dayo Adu Bloomfield Law Practice	
Denmark	63	Norway	170
Morten Langer Norrbon Vinding		Tore Lerheim and Ole Kristian Olsby Hombre Olsby advokatfirma AS	
Finland	70	Peru	176
Seppo Havia Dittmar & Indrenius		Alberto Varillas and Sara Kalinicos García Sayán Abogados	
France	76	Romania	181
Sabine Smith-Vidal and Charles Dauthier Morgan, Lewis & Bockius LLP		Șerban Pâslaru Țuca Zbârcea & Asociații	
Germany	82	Russia	186
Walter Ahrens Morgan, Lewis & Bockius LLP		Bela Pelman and Dmitry Dmitriev Morgan, Lewis & Bockius LLP	
Greece	89	Singapore	193
Theodoros Skouzos Iason Skouzos & Partners		Ian Lim, Nicole Wee and Mathias Goh TSMP Law Corporation	
India	98	Slovakia	201
Manishi Pathak Kochhar & Company		Pavol Rak and Lucia Trnková Noerr s.r.o.	

Slovenia	207	Ukraine	238
Darja Miklavčič and Svit Senkovič Odvetniki Šelih & partnerji, o.p., d.o.o.		Oksana Voynarovska and Oleksii Dorogan Vasil Kisil & Partners	
Spain	213	United Arab Emirates	244
Iñigo Sagardoy and Ricardo García Fernández Sagardoy Abogados – <i>member of Ius Laboris</i>		Charles Laubach Afridi & Angell	
Sweden	219	United Kingdom	250
Robert Stromberg and Jonas Lindskog Cederquist		Matthew Howse, Sarah Ash and Nick Hobson Morgan, Lewis & Bockius LLP	
Switzerland	225	United States	257
Roberta Papa and Thomas Pietruszak Blesi & Papa		David A McManus and Michelle Seldin Silverman Morgan, Lewis & Bockius LLP	
Turkey	231	Venezuela	264
Nilgün Serdar Şimşek, Çağrı Şahin Sünbül and İpek Okucu GSG Attorneys at Law		Pablo Benavente, John D Tucker and María Elena Subero Hoet Peláez Castillo & Duque	

Indonesia

Pheo M Hutabarat and Asido M Panjaitan
Hutabarat Halim & Rekan

Legislation and agencies

1 What are the main statutes and regulations relating to employment?

Basic provision on manpower issues in Indonesia is generally stipulated in Law No. 13 of 2003 regarding Manpower (the Employment Law), which came into effect on 25 March 2003, replacing 15 laws and their implementing regulations dating back to Ordinance 8/1887. Unless stated otherwise, the answers in this chapter are based on the Employment Law.

Disputes arising from an employment relationship are resolved by the Industrial Relations Court (PHI), established under Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes (the Dispute Resolution Law), which came into effect on 14 January 2006.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Articles 5 and 6 of the Employment Law provide that every employee has the same opportunity to obtain a job without discrimination. It clearly stipulates that every employee has the right to obtain employment without being discriminated against on the grounds of sex, ethnicity, race, religion or political affiliation. The employer must provide identical rights and obligations for employees without discriminating on those grounds.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Department of Manpower and Transmigration regulates all labour affairs in Indonesia. It determines the policies in labour matters and issues regulations. Labour inspections are carried out by a separate working unit within the department; the unit's scope of responsibility covers the central government, provincial governments and district or city governments.

The PHI is a quasi-judicial power that focuses on labour cases. It is authorised to examine, adjudicate and impose sanctions on cases related to employment in Indonesia. The tribunal's decision is deemed final, binding and permanent, if no appeal against the decision is made to the Supreme Court within the period stipulated by the prevailing laws and regulations.

Worker representation

4 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

Trade union matters are largely regulated by Law No. 21 of 2000. Unions may be set up 'to struggle for, defend and protect the rights and interests of workers and to improve the welfare of workers and their families'. They may be set up within one company or across several companies.

Trade unions may be parties to collective labour agreements and represent workers in the settlement of industrial disputes. Unions must have a membership of at least ten persons, and must register with the district agency responsible for employment, which in turn must report to the Ministry of Manpower.

In addition to the trade union, there are two other means of representation for employees:

- a bipartite cooperation institution – a forum for communication and consultation on labour issues in the company, consisting of employer

and employee representatives. Every company with 50 employees or more is required to establish a bipartite cooperation institution; and

- a tripartite cooperation institution, consisting of government, labour union and employer organisation representatives.

Background information on applicants

5 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The Employment Law and other labour regulations do not specifically regulate the requirement for background checks. In practice, a potential employer may ask an applicant to provide a statement demonstrating:

- that he or she has no criminal record;
- clearance from the relevant police office; and
- a medical examination or psychological test.

6 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

The Employment Law is silent on this matter. In practice, the employer has the right to refuse an applicant who does not submit to a medical examination.

7 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions on the employer conducting drug and alcohol testing on applicants.

Hiring of employees

8 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Article 5 of the Employment Law states that each person has an equal opportunity to obtain work without discrimination. Each employee has the same rights and opportunities to obtain a decent job and livelihood without discrimination by sex, ethnic group, race, religion or political affiliation, in accordance with the interests and abilities of the employee, including equal treatment for the disabled. The employer must provide identical rights and obligations for employees without discriminating on the same grounds.

9 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Only fixed-term employment agreements have to be in writing, and such agreement must be made in the Indonesian language. The written contract must contain at least the following information:

- name, address and type of business of the company;
- name, gender, age and address of the employee;
- position or type of work;
- place of work;
- amount of salary and method of payment;
- employment conditions containing employer and employee's rights and obligations;
- commencement date and term of effectiveness of employment agreement;

- place and date the employment agreement was made; and
- signatures of the parties to the employment agreement.

Provisions in any employment agreement must not contradict any stipulations contained in Company Regulations or a Collective Employment Agreement.

10 To what extent are fixed-term employment contracts permissible?

Articles 56 to 59 of the Employment Law provide for employment agreements for a limited period. Such employment agreements must be made in writing and in the Indonesian language (and may also be bilingual, as long as a full version exists in Indonesian), and this agreement must be registered with the Department of Manpower.

The fixed-term employment agreement may only be made for a specific type of work which, according to its purpose and nature, will be completed within a certain period, for example:

- one-off projects that are temporary in nature;
- projects expected to be completed within three years;
- seasonal work; or
- work relating to new products or activities that is still at an experimental phase.

The maximum length of a fixed-term contract is two years with the possibility of a one-off extension for a maximum of one year – three years in total. The employee should be notified of such an extension at least seven days before the expiration of the employment agreement, and the extension must be made within 30 days of the expiration of the first agreement.

A fixed-term employment agreement may be renewed once, but only after a break of 30 days following the end of the first agreement. The agreement can be renewed for a maximum of two years.

Any deviation from the above requirements shall cause the employment agreement to be regarded as an employment agreement lasting for an indefinite period.

The party unilaterally terminating the employment agreement before its expiration shall be obliged to pay to the other party a sum equal to the wage that should be received by the employee in the remaining period of the employment agreement, unless the termination arises from a ruling of the industrial court.

11 What is the maximum probationary period permitted by law?

Article 60 of the Employment Law clearly stipulates that the maximum probationary period is three months, during which time the salary must match or exceed the minimum wage.

12 What are the primary factors that distinguish an independent contractor from an employee?

The following table sets out the criteria distinguishing employees from independent contractors:

Criteria	Employee	Independent contractor
Contract	Employment agreement	Independent contractor agreement
Social security	Must be enrolled by the employer in the mandatory manpower social security programme	Not necessary for the employer to enrol the independent contractor in the mandatory manpower social security programme
Payment	Salary or wages, not requiring an invoice	Fee, usually requiring the contractor to submit an invoice for payment
Income tax	Paid by withholding at source under article 21 of the Income Tax Law	Paid under article 23 of the Income Tax Law or other applicable tax regime depending on the nature of the services
Relationship with employer	Superior and subordinate, governed by labour laws	Contracting parties, governed by contract law and other applicable legislation

Criteria	Employee	Independent contractor
Disputes	Parties must go to labour court (Industrial Relations Court) with specific procedures under the Dispute Law	Parties can go to district court under the rules of civil procedure or arbitration
Termination of contract	Employee is entitled to severance pay, service pay or other compensation, depending on the nature of the termination under the Employment Law	Provisions of the independent contractor agreement will prevail, subject to other applicable laws

Foreign workers

13 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

According to Regulation of Minister of Law and Human Rights No. M 01-IZ 01 10 of 2007, the available periods for the limited-stay visa (for work purposes) are as follows:

- six months for holders of a passport with at least one year left before expiration;
- one year for holders of a passport with at least 18 months left before expiration; and
- two years for holders of a passport with at least 30 months left before expiration.

The limited-stay visas are available for employees transferred to Indonesia, but must be renewed annually.

14 Are spouses of authorised workers entitled to work?

Visas and work permits are unique licences for individual foreigners wanting to work in Indonesia. It is therefore prohibited for a spouse to work in Indonesia without a proper visa or work permit as granted by the authorised government institution.

15 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Article 42 in conjunction with article 185 of the Employment Law clearly stipulates that every employer of foreign workers must have a permit in writing from the Minister of Manpower and Transmigration. Individual employees are prohibited from employing foreign workers. Anyone violating this regulation is subject to a prison sentence of between one and four years or a fine of between 100 million and 400 million rupiahs, or both.

The requirement for foreign workers to obtain a limited-stay visa and a limited-stay permit to work in Indonesia is also regulated under Law No. 6 of 2011 concerning immigration affairs. Based on this law, a foreign worker may be subject to sanctions, including deportation, if he or she is working in Indonesia without the proper visa or work permit.

16 Is a labour market test required as a precursor to a short or long-term visa?

According to the Employment Law, employers have the right to hire foreign workers to facilitate the transfer of technology and relevant skills and expertise. The Law states that a foreign worker is not allowed to work in personnel or in any other role that can be performed by local employees.

Terms of employment

17 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

- In general, maximum working hours may be either:
- seven hours a day and 40 hours a week for six working days per week; or
 - eight hours a day and 40 hours a week for five working days per week.

Employees may, however, carry out overtime work for a maximum of three hours per day and 14 hours per week.

A permit shall be required in the event that a company wishes to operate around the clock.

Employers may not employ female employees under 18 years of age between 11pm and 7am, and pregnant employees who, according to a doctor's statement, are at risk of damaging their health or harming their own or their unborn baby's safety if they work between 11pm and 7am.

18 What categories of workers are entitled to overtime pay and how is it calculated?

Depending on the normal working week, anything more than seven or eight working hours a day will be deemed overtime.

For the purposes of calculating overtime, the basic hourly salary for a permanent employee is $1 \div 173 \times$ basic monthly salary. Basic salary excludes any allowances as long as it is at least 75 per cent of the total remuneration.

Overtime payment is calculated based on the following formula:

Working days/week days	
First hour overtime	1.5 x basic hourly salary
Subsequent hours overtime	2 x basic hourly salary
Weekend (Saturday and/or Sunday) and public holidays	
First to seventh or eighth hour overtime	2 x basic hourly salary
Next hour overtime	3 x basic hourly salary
Subsequent hours overtime	4 x basic hourly salary

An overtime policy and practice must be set out and agreed by both parties.

19 Can employees contractually waive the right to overtime pay?

Employees can contractually waive the right to overtime pay in the collective labour agreement. However, based on article 124 of the Employment Law, the contents of such agreement must not be lower in terms of quality or quantity than the prevailing laws and regulations.

20 Is there any legislation establishing the right to annual vacation and holidays?

Employers must allow their employees to take annual leave.

Article 79 paragraph 2(b) of the Employment Law stipulates that, after an employee has worked at an organisation for 12 consecutive months, he or she has the right to 12 working days' holiday per year. The policy regarding annual leave must be made clear to the employee.

21 Is there any legislation establishing the right to sick leave or sick pay?

Employees have the right to sick leave and are entitled to receive a salary for its duration. The law also grants sick leave to female employees during the first and second days of her menstruation.

The calculations of pay for employees taking sick leave are as follows:

- for the first four months: 100 per cent of the salary;
- for the second four months: 75 per cent of the salary;
- for the third four months: 50 per cent of the salary; and
- for subsequent months thereafter: 25 per cent of the salary until the employer terminates the employment.

Salary payments may consist of basic salary and fixed allowances, but the basic salary must represent at least 75 per cent of the total remuneration package.

22 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

An employee who does not work has no right to a salary (article 93 of the Employment Law), except in the following circumstances:

- if ill (which may include menstruation);
- if granted special leave for marriage;
- for family occasions and eventualities, including circumcisions, baptisms, birth or death;
- if required to perform state duties;
- if satisfying compulsory religious obligations;
- if placed on standby by the employer;
- during approved leave or public holidays;

- if undertaking union duties with the approval of the employer; or
- if required to undertake studies.

An employee may take a leave of absence and is entitled to receive such payment in the following circumstances (article 93(4) of the Employment Law):

- if an employee gets married: three days;
- if the employee's child gets married: two days;
- if the employee's child is circumcised: two days;
- if the employee's child is baptised: two days;
- if the employee's wife gives birth or miscarries: two days;
- if the employee's husband or wife, parent or parent-in-law, child, or daughter-in-law or son-in-law dies: two days; and
- if the employee's family member living in the same house dies: one day.

23 What employee benefits are prescribed by law?

Minimum wages (UMPs) are as specified by a provincial governor using recommendations from the Wages Board in a province, district or city. Employers who are already paying salaries higher than the minimum wage are not allowed to reduce employees' salaries.

Minimum wages may be paid as a basic salary plus fixed allowances, as long as the basic salary is at least 75 per cent of the total wage (the mandatory wage threshold).

In practice, most employers would like to set their employees' basic salary as low as possible without violating this mandatory wage threshold. Keeping the basic salary to the minimum possible will be advantageous to the company when providing severance payments in future cases of termination of employment. For this issue, it is important to understand the following definitions and categories (see Circular Letter of Minister of Manpower of the Republic of Indonesia No. SE-07/MEN/1990):

- basic salary or wage: the basic payment made to an employee based on his or her level or type of work, the amount of which shall be determined by the management;
- fixed allowance: a regular and fixed payment of an allowance made to the employee, as determined by the company's management in relation to the work. This allowance is paid at the same time as the basic salary. Fixed allowances may include, for example, spousal allowance, dependant allowance, housing allowance and death allowance; and
- unfixed allowance: a direct or indirect payment of an allowance related to the performance of work, which is given on a non-permanent basis to the employee. Unfixed allowances may include transport and meal expenses, if payment of such is subject to the attendance of the employee.

If the fixed allowance is in excess of the mandatory wage threshold, namely more than 25 per cent of the total wage, the company should restructure its wage and allocate some of the allowances under the unfixed allowance to comply with this mandatory threshold. For example, if the transport allowance is paid based on the attendance of the employee, legally speaking this allowance should not fall under the 'fixed allowance' category, but may be recategorised as an 'unfixed allowance'. To enable the company to set the basic salary as low as possible in line with the mandatory wage threshold, the payments under the 'fixed allowance' category, insofar as it is possible, should be categorised as 'unfixed allowances'.

Religious holiday allowance (THR) must be paid by the employer before the relevant holiday. A 'thirteenth month' salary or annual religious holiday allowance is granted to employees who have been working with a company for a period of at least three consecutive months (Manpower Regulation 4 of 1994).

The religious holiday allowance is calculated according to the following criteria:

- employees who have been working for at least 12 consecutive months are granted one month's salary; and
- employees who have been working for three or more consecutive months (but less than 12) are granted an allowance in proportion to their length of service (ie, their length of service multiplied by their monthly salary).

Article 99 of the Employment Law gives employees an entitlement to social security.

Based on Law No. 40 of 2004 regarding National Social Security System that has been further regulated in Government Regulation No. 84

of 2013 regarding The Ninth Amendment of Government Regulation No. 14 of 1993 on the Implementation of Social Security Programme, it is stipulated that the social security programme be divided into:

- security in the form of money, which covers:
 - occupational accident security;
 - death security; and
 - old age security; and
- security in the form of services, namely health-care security.

Any organisation with more than 10 employees (or which pays more than 1 million rupiahs in wage costs) is obliged to participate in the social security programme and is deemed to still be participating even if the company has not yet fulfilled the requirement.

24 Are there any special rules relating to part-time or fixed-term employees?

In general, the benefits paid to permanent employees are similar to those paid to part-time or fixed-term employees. Should there be a termination of the working relationship without cause, the fixed-term employee is entitled to the payment of his or her salary up to the end of the period agreed upon in the employment contract.

Post-employment restrictive covenants

25 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

These will be subject to the terms and conditions as agreed upon by both parties in the agreement, on the condition that such covenants do not violate the prevailing laws and regulations.

As the Employment Law is silent on this issue, where both parties agree to regulate such covenants in their agreement, the implementation of this depends wholly on the good faith of both parties. Clarification on the scope and duration of restriction in the agreement, before commencing the working relationship, can help both parties to settle any dispute that may arise regarding this issue.

26 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

This is solely based on the terms of the agreement (see question 25).

Liability for acts of employees

27 In which circumstances may an employer be held liable for the acts or conduct of its employees?

Based on the prevailing laws and regulations in Indonesia, the employer is responsible for the damage caused by their employee in the course of duties assigned to them.

Taxation of employees

28 What employment-related taxes are prescribed by law?

Law No. 36 of 2008 on Income Tax regulates that all the income of an employee is subject to income tax at the following rates:

Employee's income	Tax rate
Up to 50 million rupiahs	5%
50 million to 250 million rupiahs	15%
250 million to 500 million rupiahs	25%
Over 500 million rupiahs	30%

Employers are required to withhold the income tax at source, and pay the withheld tax to the Tax Office.

Employee-created IP

29 Is there any legislation addressing the parties' rights with respect to employee inventions?

Article 12 of Law No. 14 of 2001 on Patents stipulates that, unless agreed otherwise in an employment contract, the party entitled to obtain a patent on an invention is the employer. The employee will be entitled to fair compensation, taking into account the economic benefit obtained from said invention.

Data protection

30 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Employment Law, and its related laws and regulations, are silent on the issue of protecting employee privacy or its personnel data.

Article 32 of Law No. 39 of 1999 concerning human rights clearly stipulates that freedom and confidentiality in correspondence (including communication through electronic media) may not be disturbed, unless based on a judge's instruction or any other authorised power in line with prevailing laws and regulation; however, there is no direct sanction that has been regulated for whosoever violates this article of Law.

Business transfers

31 Is there any legislation to protect employees in the event of a business transfer?

The three options in relation to permanent employees in the event of a business transfer are as follows:

- employees are not willing to continue their employment with the new employer, in which case they must be paid a severance payment;
- the new employer is not willing to take on the employees, in which case the employees concerned are entitled to twice the stipulated severance pay, plus the other standard remuneration (ie, compensation pay and service appreciation pay); and
- both the new employer and the employees are willing to continue the employment as if no business transfer has occurred. In this case, the employment relationship continues on the basis of the same terms and conditions as before the transfer.

Non-permanent workers whose employment is not continued by the new employer are entitled to receive the wages for the remaining period of their contracts; however, with all dismissal claims, an industrial relations court's approval is required before an employee can be dismissed (see question 36).

Termination of employment

32 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

There are two kinds of employment termination.

Termination without cause

This is termination where the employee is not at fault. Termination without cause may be triggered by a merger, a reorganisation of the company or bankruptcy of the employer, and it is prudent for the employer to explain the circumstances to the Ministry of Manpower and Transmigration in advance.

Termination with cause

This is termination where the employee is at fault, and can be either:

- termination due to the employee's violation of the employment contract or company regulation; or
- termination due to the employee's gross wrongdoing or commission of a major fault.

The Decision of the Constitutional Court of Indonesia in Case No. 012/PUU-I/2003, dated 26 October 2004, declared the provision in relation to 'major fault' as being in contravention of article 27, paragraph 1 of the Indonesian Constitution, with the result that it is not applicable to the employee's employment termination. The Minister of Manpower's subsequent Decision No. 13 of 2005 regulates that such termination can take place, but only if a final and binding verdict confirming the employee's wrongdoing has been obtained from a criminal court judge.

33 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

If termination cannot be avoided, and the terms cannot be agreed upon by the employer and employee (ie, a dispute has arisen), the termination may be carried out after three warning letters have been issued by the

employer to the employee. It is also necessary to issue a notice of termination. However, there is no concept of pay in lieu of notice in Indonesia.

34 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Permits to terminate are not required. The termination of an employee's contract can be conducted, without notice, in the following circumstances:

- if the termination takes place within the probationary period;
- if the terms of the termination are agreed upon;
- if the employee resigns of his or her own will, or is absent for five or more consecutive days without informing his or her employer;
- if the employee has been guilty of a crime, or has been under arrest for six months (article 160 of the Employment Law);
- if the employee has reached retirement age, as stipulated in the agreement, the company regulations or the collective employment agreement;
- if the employee is found to have wrongfully accused the employer of mistreatment (article 169 of the Employment Law); or
- at the end of a limited-period contract.

35 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The Employment Law establishes the right to severance pay for employees upon termination of employment. Severance pay is calculated on the basis of the period of service, as follows:

Period of service	Severance pay
Less than 1 year	1 month's wages
1 year or more but less than 2 years	2 months' wages
2 years or more but less than 3 years	3 months' wages
3 years or more but less than 4 years	4 months' wages
4 years or more but less than 5 years	5 months' wages
5 years or more but less than 6 years	6 months' wages
6 years or more but less than 7 years	7 months' wages
7 years or more but less than 8 years	8 months' wages
8 years or more	9 months' wages

In addition to the above severance pay, there are two other components that can be calculated and shall be paid by the employer to employee. The first of these, service pay, is calculated as follows:

Period of service	Service pay
3 years or more but less than 6 years	2 months' salary
6 years or more but less than 9 years	3 months' salary
9 years or more but less than 12 years	4 months' salary
12 years or more but less than 15 years	5 months' salary
15 years or more but less than 18 years	6 months' salary
18 years or more but less than 21 years	7 months' salary
21 years or more but less than 24 years	8 months' salary
24 years or more	10 months' salary

The second of these is compensation pay, which may comprise the following:

- annual leave that has not been taken by the employee;
- fares and expenses for the employee and his or her family to travel to where the employee was recruited;
- compensation for housing, medical treatment at 15 per cent of separation and appreciation pay for those eligible; and
- anything else provided for in the agreement, company regulations or collective agreement.

For the purposes of calculating severance pay, service pay and compensation, the monthly wage is defined as:

- the basic salary (gross);

- any kind of regular fixed allowance granted to the employee and his or her family; and
- the cost of rations supplied by the employer to the employee free of charge, or if supplied at a discount, the difference between the cost price and discounted price paid by the employee.

36 Are there any procedural requirements for dismissing an employee?

Article 151 of the Manpower Law generally imposes an obligation on the employer to prevent termination of employment (PHK).

If termination cannot be avoided, the following procedures must be followed by the employer:

Warning letters

Article 161 of the Employment Law clearly stipulates that the employer must issue three warning letters to the employee, in the instance that the employee has violated the employment agreement, the company regulation, the collective labour agreement or Indonesian labour laws.

Bipartite negotiation

An attempt must be made first to settle the dispute by consensus between the employer and the employees (on a bipartite basis).

Settlement procedures

If an amicable settlement has not been reached, the termination must be conducted according to the settlement procedures. In the case of a dispute, the termination of an employment contract by an employer is null and void by operation of law if it is done without the matter being decided through the settlement procedures – for example, a decision from the Labour Court. The employment relationship, including the obligation to pay wages, continues until the decision is granted.

37 In what circumstances are employees protected from dismissal?

Employees are protected from dismissal in the following situations:

- the employee is absent due to illness according to a doctor's statement for a period of less than 12 months;
- the employee is unable to carry out his or her work due to the fulfilment of his or her state duties in accordance with the prevailing laws and regulations;
- the employee is performing religious rituals;
- the employee gets married;
- the female employee is pregnant, experiences a miscarriage or is breastfeeding her baby;
- the employee has a blood relationship or a marital relationship with another worker within one company, except if it has been stipulated in the employment agreement, company regulations or the collective labour agreement;
- the employee forms or becomes a member of the management of a union, and carries out activities of the union outside working hours, or during working hours with the consent from the employer or based on the provisions of the employment agreement, the company regulations or the collective labour agreement;
- the employee has reported the employer to the authorities concerning commission of a criminal action;
- as a result of a difference in ideology, religion, political affiliation, race, skin colour, group, sex, physical condition or marital status; or
- the employee is permanently disabled or is ill due to a work-related accident, and the recovery period, according to a physician's statement, cannot be determined; the Labour Law, however, allows an employer to terminate the contract of an employee who has a permanent disability or is ill for 12 consecutive months.

38 Are there special rules for mass terminations or collective dismissals?

Based on the Employment Law in conjunction with Law No. 2/2004, there is no difference between mass dismissals and individual dismissals. In practice, any termination of an employee's contract will be subject to the procedure as explained in question 36, unless such termination dispute can be settled in writing by the disputed parties at any stage of the process.

39 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Law No. 2/2004 recognises that disputes may arise during an employment relationship and from termination, and may involve an employer or group of employers, an employee or group of employees, or one or more trade unions. Therefore, employees may also assert their labour and employment claims as a class action through the trade union in their company. Disputes can be settled through the bipartite cooperation institution or the labour court.

40 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

The Employment Law states that employees will reach the retirement age as provided for in their employment agreement, company regulations, the collective labour agreement or any other applicable regulations.

Dispute resolution**41 May the parties agree to private arbitration of employment disputes?**

Disputes may concern the implementation or interpretation of agreements, company regulations, collective labour agreements or legislation (ie, rights disputes); or disputes about drafting or amending agreements, company regulations or collective labour agreements (ie, interests disputes). Disputes may also arise between trade unions within one company.

The parties may freely choose whether they agree to use conciliation or arbitration processes to settle their dispute. Without such agreement, however, the labour disputes must firstly be put through the mediation process and, following that, to the labour court.

In the event that the disputed parties agree on an arbitration process for settling their labour disputes, the following issues must be considered:

- the disputed issues that can be brought to this forum can relate only to interests disputes and disputes between unions in a company. The termination of an employment cannot be brought through the arbitration process;
- the disputed parties must agree to appoint a single arbiter, or maximum of three arbiters, registered with the Department of Manpower. The award issued by the arbiter(s) will be a final and binding decision; however, either party may still have the chance to appeal this decision before the Indonesian Supreme Court; and
- if no agreement between the parties can be reached, either party may put the dispute through the mediation process and subsequently to the Labour Court.

42 May an employee agree to waive statutory and contractual rights to potential employment claims?

In practice, Indonesian contract law has implemented the principle of Freedom of Contract (article 1338 of the Indonesian Civil Code) in drafting and implementing a labour contract to stipulate the rights and obligations of employees and employers; however, it is mandatory that the employee must at least have rights based on the statutory or positive laws in Indonesia.

43 What are the limitation periods for bringing employment claims?

A labour lawsuit must be brought in front of the relevant labour court with the jurisdiction over the area in which the employee works. A labour lawsuit will be barred and lapsed one year after the employer's decision on the matter has been communicated to, or accepted by, the employee.

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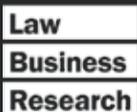
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