



INDONESIA

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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Bibliographical information

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Manpower Act (Law No. 13 of 2003)
2. Regulation concerning the procedure of proposing candidates for membership of the National Wage Council
3. Regulation regarding implementation and component of achievement scale on adequate living needs (ALN)
4. Government Regulation on Wages (No.78 of 2015)
5. Regulation of the Manpower Minister No. 7/2013 about Minimum Wage
6. Minimum Wages Regulation of the Manpower Minister No. Per-01/Men/1999 - revoked by Regulation of the Manpower Minister No. 7/2013 about Minimum Wage
7. Government Regulation on the Protection of Wages (No. 8 of 1981) - revoked by Government regulation 78/2015
8. Manpower Minister Regulation of Structure and scale of wages No 1/2017
9. Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)
10. Ministerial Decision concerning the obligation of entrepreneurs who employ female workers/labourers between 11pm and 7am (Decree No. 224 of 2003)
11. Joint decision on National Holidays and Collective Leave in 2017 (No. 135 of 2016)
12. Manpower Minister Regulation No 6/2016 on Holiday Allowances
13. Ministerial Decision implementing Work Agreement for Specified Period of Time (Decree No. 100 of 2004)
14. Indonesia Constitutional Court Verdict No. 7/2014 about “Phrase by Law in Article 59 Law No 13/2003”
15. Work Safety Law 1970
16. Manpower Regulation (No 5/2018)
17. National Social Security System Act (Law No. 40 of 2004)
18. Government Regulation No. 44/2015 about work accident insurance and fatalities
19. Law No 24/2011 about BPJS
20. Government Regulation No. 45/2015 about retirement/pension program of BPJS
21. Government Regulation No. 46/2015 about JHT program of BPJS
22. Indonesian Constitution 1945, last amended in 2002
23. Guidelines on Sexual Harassment Prevention at Workplace 2011
24. Penal Code 1982
25. Persons with Disabilities Act (No. 4 of 1997)
26. Ministerial Decision regarding jobs that jeopardize the health, safety or morals of children (Decree No. 235 of 2003)
27. Child Protection Act (No. 23 of 2002)
28. Act on the National Education System (No. 20 of 2003)
29. Eradication of the Criminal Act of Trafficking in Persons (Law No. 21/2007)
30. Trade Union Act (No. 21 of 2000)
31. Decree No. Kep. 187/MEN/X/2004 Regarding Member of Labour Union Contribution Fees Decree No. Kep-16/MEN/2001

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Indonesia has not ratified the Conventions 95, 117 & 131.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Manpower Act (Law No. 13 of 2003)
- Regulation concerning the procedure of proposing candidates for membership of the National Wage Council
- Regulation regarding implementation and component of achievement scale on adequate living needs (ALN)
- Government Regulation on Wages (No.78 of 2015)
- Regulation of the Manpower Minister No. 7/2013 about Minimum Wage
- Minimum Wages Regulation of the Manpower Minister No. Per-01/Men/1999 - revoked by Regulation of the Manpower Minister No. 7/2013 about Minimum Wage
- Government Regulation on the Protection of Wages (No. 8 of 1981) - revoked by Government regulation 78/2015
- Manpower Minister Regulation of Structure and scale of wages No 1/2017

Minimum Wage

Minimum wage rate is determined annually in accordance with the National Government's wage policy to ensure decent living taking into account productivity and economic growth. Minimum wage is generally set at provincial level, district level and sometimes at sectoral levels by the Governor, following recommendations from the Provincial and/or District Wage Councils.

Under Government Regulation No 78/2015, Provincial Governors can determine the provincial minimum wage (without considering the recommendations of Wage Councils), which is calculated based on a formula for calculation of the minimum wages each year. The formula requires minimal wage to be adjusted every year based on an accumulation of inflation rate and economic growth figures.

A Presidential Decree of 2004 on Wage Councils provides for National, Provincial and District Wage Councils which are advisory in nature. National Wage Council provides suggestions and considerations to the central government in formulating the wage policy and developing a national wage system.

The District Wage Councils sent their proposals to the Mayor who forwards it to the Provincial Governor. This proposal is shared with the Provincial Wage Council which sends final recommendation to the Provincial Governor.

National, Provincial, and District Wage Councils are tripartite in nature. The membership of universities/experts, employer's association, Trade Union are ensured in all three levels. Government representation in all these councils is equal to the collective representation of worker and employers while membership of universities and experts is adjusted based on the needs.

Under the Government Regulation No 78/2015, Provincial Governors can determine the provincial minimum wage (without considering the recommendations of Wage

Councils), which is calculated based on a formula for calculation of the minimum wages each year. However, Wage Council still have a role in providing advice and recommendation to the government in terms of wages, such as helping to monitor the implementation of pay scale in each company and conduct decent living needs survey once every 5 years.

Factors that are considered while determining minimum wage rate include: living requirements of the worker and their family; cost of living; level of economic development and per capita income; inflation rate; conditions of the labour market; and corporate capability, development and sustainability.

The living requirement components (food, housing, clothing, education, health, transportation, recreation & savings related expenses) and type of living needs are adjusted every five years in the index for minimum decent living costs (KHL), which is determined by the national wage council, made up of representatives from regional administrations, employer's associations and labour unions.

Minimum wage can also be set by collective agreement between employer and employee, provided that the amount of wage may not be less than what is determined by the government. Any agreement that specifies wages lower than those determined by Government is considered null and void.

Minimum wage is applicable only to single workers and workers with less than one year of service. Wages for workers with more than one year of service are discussed on a bipartite basis worker or their union and the relevant company management.

Under the Government Regulations No 78/2015 regulated on wage components. The wage components consist of basic wages, fixed allowances, and non-permanent allowances. The amount of basic wages must be at least 75 % of basic wages plus fixed allowances.

Provinces are entitled to set separate minimum wages for each sector on the basis of agreements between corporate organisations and worker federations. Several provinces have set sectoral minimum wages for agriculture, mining, manufacturing, utilities, and forestry and rubber ware industries among others. However, some provinces have set a basic minimum wage which applies to all sectors.

Wages may be paid on a weekly or fortnightly basis, provided that the calculation is based on the monthly wages. Wages may also be set and paid on piece rate basis.

Entrepreneurs who are unable to pay minimum wages may be allowed to postpone the payment of such minimum wages once they have submitted a written request to the provincial government. Such request must be based on a written agreement between employers and worker or their unions representing at least 50% of the workers.

Compliance with the statutory minimum wages is ensured by the labour inspectorate. In the case of violation on the part of employer, a worker may file a complaint with the labour inspectorate. The Manpower Act on article 185 provides for criminal sanctions as follows: whosoever violates the provisions of law regarding payment of minimum wage is liable to a punishment of imprisonment ranging from one to four years and a fine of a minimum of Rp100,000,000 (one hundred million rupiah) and a maximum of Rp400,000,000 (four hundred million rupiah).

Source: §88-92 & 185 of the Manpower Act (Law No. 13 of 2003); Regulation concerning the procedure of proposing candidates for membership of the National Wage Council; §1-4 of the Regulation regarding implementation and component of achievement scale on adequate living needs (ALN); §43-44 of Government Regulation on Wages (No.78 of 2015); Presidential Decree No. 107 Year 2004 on Wage Council

For more information on updated minimum wage rates, please refer to the section on minimum wages.

Regular Pay

A wage (upah) is the right of the worker/ labourer that is received and expressed in the form of money as remuneration from the entrepreneur or the employer to workers/ labourer, whose amount is determined and paid according to a [formal and written] work agreement (perjanjiankerja), a deal (kesepakatan), or laws and regulations, including allowances for the worker/ labourer and their family for a job and or service that has been performed or will be performed.

Wages may be paid on a weekly or fortnightly basis on the condition that the wage calculation is based on the monthly wages. The maximum wage period is one month.

Wages generally are to be paid in cash, legal tender. Wages must be determined in Rupiah, although they can be expressed as the Rupiah equivalent of a foreign currency. Certain other forms of payment may be used, as long as they do not take the form of alcohol or drugs. The non-cash portion (in kind payment) may not exceed 25% of the total wages. These in-kind payments may be in the form of cost of meals, housing or childcare

Where wages are comprised of basic wages and fixed allowances, the basic wage must make up at least 75% of the total wage (basic wages + fixed allowances).

The employer should not make deductions from wages that are not authorized by law, company regulations or collective bargaining agreement. Employers must properly inform workers about their wage payments and deductions. The wage deductions for lost or damaged goods cannot exceed 50% of the worker's total monthly wage. Employers are prohibited from restricting workers' freedom to use their wages (pressuring workers to buy goods from the enterprise store or shop or to other services such as meals or housing).

Employers who pay their workers' wages late either by wilful misconduct or negligence have to pay a fine whose amount corresponds to a certain percentage from the worker wages. A worker may file an official request to the institution for the settlement of industrial relations disputes to terminate his/her employment relationship with his/her employer if the employer did not pay wages at a prescribed time for three months consecutively or more.

Employers are required to keep payroll, which includes the total regular hours worked, total overtime hours worked, and any other period of time for which premium pay is required (for each worker). Workers must be provided with clear individual wage statements (pay slips) including wage deductions.

In March 2017, the Ministry of Manpower issues Regulation (No. 1 of 2017) on Wage Structure and Scale under the Government Regulation No. 78/2015 on Wages. It requires employers to determine the structure and scale of wages taking into account class, position, employment, education and competence of workers. Wages that are set out in the wage structure and scale are basic wages and thus do not include any allowances. Employers are required to inform workers about the structure and scale of wages. The Regulation further requires employers to submit wage structure and scale to the Ministry of Manpower at the time of ratification or renewal of company regulations or registration, extension or renewal of collective bargaining agreement. A grace period was provided till 23 October 2017.

An employer may face the following sanctions if they do not prepare a wage structure and wage scale and does not inform employees about the wage structure and scale:

- i. Written warning letters;
- ii. Restrictions on business activities;
- iii. Temporary suspension of business activities; and/or
- iv. Revocation of the business license

Source: §01, 54, 94, 95(2), 169 of the Manpower Act (Law No. 13 of 2003); §5 (2), 13, 22, 55, 57 Government Regulation on Wages (No.78 of 2015); Regulation of the Manpower Minister No. 7/2013 about Minimum Wage; Regulation No. 1 of 2017 on Wages Structure and Scale

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Indonesia has not ratified the Conventions 01 & 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Manpower Act (Law No. 13 of 2003)
- Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)
- Ministerial Decision concerning the obligation of entrepreneurs who employ female workers/labourers between 11pm and 7am (Decree No. 224 of 2003)

Overtime Compensation

Normal working hours prescribed in labour law are 40 hours per week and 07 or 08 hours per day according to the spread of the working week. Where a worker is engaged by an entrepreneur to work a 6-day week, the daily limit is 7 hours where the worker is engaged by an entrepreneur to work a 5-day week, the daily limit is 8 hours.

Rulings related to the daily working hour limits is not applicable to certain business sectors or certain types of work, to be regulated with a Ministerial decision.

Workers may be required to work beyond the weekly or daily hours limit only after written agreement. The employer may prepare a list of employees who are willing to work overtime, signed by both workers and employer. When a worker agrees to work overtime, the employer must ensure that overtime limit must not exceed 03 hours per day and 14 hours per week. Overtime work performed on weekly rest day or public holidays are not included in this limit. In accordance with the Manpower Act, some sectors or categories or workers are exempted from the limitation on overtime, as determined by Ministerial decision.

An employer is required to pay at least 150% of the hourly wage for the first overtime hour and 200% of the normal wage for the following overtime hours. Hourly wages are calculated by multiplying 1/173 times the monthly wage. If the overtime hours of work exceed 03 hours, the worker is also required to provide meals and drinks of at least 1400 calories to the worker. Meals and drinks cannot be replaced by money. Overtime pay is not provided to the workers with high-level responsibilities, provided that they receive higher wages. A worker is provided with sufficient rest for performing overtime.

Source: §77 & 78 of the Manpower Act (Law No. 13 of 2003); §3-11 of the Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)

Night Work Compensation

Law has not provided any special pay premium for employees working overnight. Restrictions and obligations apply with regards to the employment of young women and juvenile workers (under 18) at night.

Employer, who employs female workers for night work (between 23:00 and 07:00) are required to provide them with nutritious food and drinks; and to maintain decency /

morality and security in the workplace. Employers are obliged to provide return/round trip transport for female workers/labourers who work between 11 pm until 5 am.

Source: §76(3 & 4) of the Manpower Act (Law No. 13 of 2003); §2-8 of the Ministerial Decision concerning the obligation of entrepreneurs who employ female workers/labourers between 11pm and 7am (Decree No. 224 of 2003)

Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. However, the law does not provide any compensatory holiday/rest day.

Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances, workers are entitled to premium pay for work as it is considered as overtime. However, the normal overtime rates are not applicable on it.

Weekend and public holiday work compensation depends on the total working days in a week. If a six-day work week is followed, the overtime rates vary whether the weekly rest day or public holiday fell on the shortest working day of the week or not.

If the overtime is worked on the shortest working day of the week (which happened to be weekly rest day or a public holiday), the overtime rate is double (200% of the normal hourly wage rate) for the first 5 hours; triple (300% of the normal hourly wage rate) for the 6th hour; and quadruple (400% of the normal hourly wage rate) for 7th and 8th hour. If a worker had to work on a weekly rest or a public holiday which did not fall on the shortest working day of the week, the overtime rate is double (200% of the normal hourly wage rate) for the first 7 hours; triple (300% of the normal hourly wage rate) for the 8th hour; and quadruple (400% of the normal hourly wage rate) for the 9th and 10th hour.

If a five-day work week is implemented and a worker has to work on a weekly rest day or a public holiday, the overtime rate is double (200% of the normal hourly wage rate) for the first 8 hours; triple (300% of the normal hourly wage rate) for the 9th hour; and quadruple (400% of the normal hourly wage rate) for the 10th and 11th hour.

Source: §85(3) of the Manpower Act (Law No. 13 of 2003); §1(1) & 11(b & c) of the Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Indonesia has ratified the Convention 106 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Manpower Act (Law No. 13 of 2003)
- Joint decision on National Holidays and Collective Leave in 2017 (No. 135 of 2016)
- Manpower Minister Regulation No 6/2016 on Holiday Allowances

Paid Vacation / Annual Leave

The Manpower Act provides for fully paid annual leave to all workers on completion of one year of service. Workers are entitled to at least 12 working days of annual leave per year. Full wages are provided to the workers who used his right to take the period of annual rest.

After every 6 years of consecutive service with the same enterprise, workers can be awarded long period of rest during the seventh and eighth year of service (one month each) provided that workers are not entitled to their usual annual leave during this time. This ruling is applicable to the certain establishments determined and specified with a Ministerial Decision.

The application of the ruling concerning annual leave may be determined and specified in a work agreement, the enterprise' rules and regulations or a collective work agreement.

Source: §79 & 84 of the Manpower Act (Law No. 13 of 2003); §3 of Ministerial Decision concerning Long Period of Rest in Certain Enterprises. (Decree No. 51 of 2004)

Pay on Public Holidays

Public holidays are specified by annual joint decree. Joint decree of the Minister of Religious Affairs, Minister of Labour and Transmigration and State Minister for Administrative and Bureaucratic Reforms of the Republic of Indonesia set the number and dates of national holidays and collective leave. The dates of these holidays may vary from year to year.

In accordance with the Joint Decision of the Minister of Religious Affairs, Minister of Manpower and Transmigration and Minister of State Apparatus Empowerment and Bureaucratic Reform (Joint Decision), 15 public holidays in 2018 are as follows:

New Year's Day (January 1); Chinese New Year; Hindu Day of Silence; Good Friday; Ascension Day of Prophet Muhammad; International Labour Day (May 1); Buddhist Waisak Day (May 11); Ascension Day of Jesus Christ (May 25); IdulFitri/Feast of the Breaking of the Fast; Independence Day (August 17); IdulAdha/Feast of the Sacrifice; Islamic New Year; Birthday of Prophet Muhammad; Christmas Day (December 25).

Muslim holidays depend on the sighting of the moon (lunar calendar) and thus are liable to change.

If a public holiday falls on weekend, they are not moved to the nearest workday. The government declares certain bridge holidays, also known as collective leave, to extend holidays that fall on weekends.

Collective leave is not mandatory. However, government offices treat collective leave as mandatory and consequently reduce the annual leave entitlement of their employees. However, most private sector enterprises do not follow this. Indonesian manpower laws do not impose or recognize collective leave in the privates. Taking collective leave must be voluntary.

Entrepreneurs be under an obligation to pay Religious holidays allowances called “**TUNJANGAN HARI RAYA/ THR**” (Idul Fitri Day, Christmas Day, Waisak Day) to their worker once a year, according to Manpower Minister Regulation No 6/2016. The amount of THR is depends to working period of the workers. If the workers has been working for more than 1 (one) year, then the workers get THR for 1 month salary. But, if the workers has been working less than 1 (one) year, the amount of THR will calculated on average.

Example:

Mr. A has been working for 6 months, and his salary/months is 5.000.000 Rupiah. So the calculation of THR is : $6/12 \times 5.000.000$ Rupiah = Rp 2.500.000,-. But if Mr. A has been working for more than 1 years, the amount of his THR is Rp 5.000.000,- (1 months' salary).

Source: §85 of the Manpower Act (Law No. 13 of 2003); Joint decision on National Holidays and Collective Leave in 2017 (No. 135 of 2016); Manpower Minister Regulation No 6/2016.

Weekly Rest Days

Workers are entitled to weekly rest of one day after 06 working days in a week or 02 days after 05 working days in a week.

Source: §79(2) of the Manpower Act (Law No. 13 of 2003)

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Indonesia has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Manpower Act (Law No. 13 of 2003)
- Ministerial Decision implementing Work Agreement for Specified Period of Time (Decree No. 100 of 2004)
- Indonesia Constitutional Court Verdict No. 7/2014 about “Phrase by Law in Article 59 Law No 13/2003”

Written Employment Particulars

An [individual] work agreement (*perjanjiankerja*) is an agreement made between a worker/ labourer and an entrepreneur or an employer. The agreement specifies work requirements, rights and obligations of both sides. An employment relation or relationship (*hubungankerja*) is a relationship between an entrepreneur and a worker/ labourer based on a work/ employment agreement, which deals with aspects relating to the job [that the worker has to do], the worker’s wage, and orders and instructions [that the worker has to carry out].

The employment contract can be written or oral and it is determined by mutual consensus. The work agreement can be for either fixed or indefinite term and it is based on capability or competence to take legally-sanctioned actions; the availability/ existence of the job which both sides have agreed about; and the notion that the job which both sides have agreed about does not run against public order, morality and what is prescribed in the valid legislation. Otherwise, the agreement is considered null and void by law.

The employment contract must include the following information: The name, address and line of business [of the enterprise]; the name, sex, age and address of the worker; the occupation or the type of job; the place, where the job is to be carried out; the amount of wages and how the wages are paid; job requirements stating the rights and obligations of both the entrepreneur and the worker; the date the work agreement starts to take effect and the period during which it is effective; the place and the date where the work agreement is made; and the signatures of the parties involved in the work agreement.

The contract is drawn in two equally legally binding copies, 01 of which is kept by the employer and the other by the worker. It can be withdrawn and/or changed by mutual agreement, and also the employment contract must be notified to Indonesia labour offices

If an employment contract is made orally, the employer is obliged to issue a letter of appointment for the worker. The appointment letter must at least contain the following information: the name and address of the worker; the date the worker starts to work; the type of job or work that the worker is supposed to do; and the amount of wage that the worker is entitled to. But, if the employer didn’t issue a letter of appointment for the worker, the status of the workers turned into permanent workers by the law.

The employment contract may only be done within 2 (two) years, and can be extended in 1 (one) years, and also can renewed for 1 (one) time with a period of 2 (two) years. So the maximum contract must be 5 years. If, the company applied the contract many times over the period, then the contract workers by law being a permanent worker. (article 59 paragraph 7, Law 13/2003)

On 2014, the article of 59 Law 13/2003, has been Judicial Reviewed by Indonesia Constitutional Court by No 7/2014, the panel of judges stated that “if the company applied the contract for many times over the period, then the contract workers by the law being a permanent worker, based on an inspection note from the labour inspector. The inspection note can be requested for approval through District Court”.

Source: §01, 50-55 & 63 of the Manpower Act (Law No. 13 of 2003)

Fixed Term Contracts

Indonesian law does not allow hiring of fixed term contract workers for tasks of permanent nature. Employment contract for the specified period of time are based on a term or the completion of a certain job. The agreement is made in writing and it must be written in the Indonesian language with Latin alphabets. If a work agreement is written in both the Indonesian language and a foreign language and then differences in interpretation arise, then the Indonesian version of the agreement is regarded as the authoritative one. If the contract is not written in Indonesian Language, then the contract is null and void.

An employment agreement for fixed term contract can only be made for a certain job, including: work to be performed and completed at one go or work which is temporary by nature; work whose completion is estimated at a period of time which is not too long and no longer than 3 (three) years; seasonal work; or work that is related to a new product, a new [type of] activity or an additional product that is still in the experimental stage or try-out phase.

Law allows both extension and renewal of fixed term contracts. A single fixed term contract may not exceed a period of 02 years. It can be extended once for another period that is no longer than 01 year. If an employer wants to extend the contract, he/she must notify the employees in writing at least 07 days prior to the expiration of the employment contract.

The renewal of a work agreement for a specified period of time may only be made on completion of 30 (thirty) days after ending of a fixed term contract. The renewal period cannot exceed 2 years. In this way, the total length of fixed term contract including its extension is three years.

A fixed term employment contract that does not fulfil the requirements specified by the law, become an agreement of indefinite period.

In accordance with the Decree No. 100 of 2004, the maximum validity of an initial fixed term contract and the possibility for its extension or/and renewal depends on the type of work. If the work is of temporary nature and can be completed once and for all, the initial contract period is 3 years and has no possibility for extension. This type of contract can be renewed for a further 2 years after 30-day break. If the work is seasonal in nature, the initial contract period depends on weather, or season or order/target. If the work is related to a new product. activities or supplemental products (in experimental or in the exploration stage), the initial contract period is 2 years and possibility of extension for one year.

The foreign workers'/expatriates employment is regulated under article 42 of the Manpower Act. Employer wishing to engage foreign workers have to ask for a permission from the Ministry of Manpower. The foreign workers are allowed to work in Indonesia on fixed term contracts only, and have special expertise. Thus, they are not eligible for the rights related to contract termination especially severance pay and long service pay. In line with the Supreme Court Order issues for the Labour Court, foreign workers can be engaged only for certain positions and for fixed term contract only; legal protections are available to a foreign worker only if they have work permit; and if the work permit of a worker has expired however the fixed term employment contract is still effective, the remaining period of fixed term employment is not protected by law.

On Presidential Decree no 2018, on article 4 forbid foreign workers to be a personal officer or any other HR position which has been set out by Minister of Manpower. Every employer of foreign workers is obliged to prioritize Indonesian worker.

Labour Inspector with Indonesia immigration officer takes on Supervision of foreign workers.

Taking these guidelines into account, a Presidential Regulation was issued in March 2018 (applicable from June 2018) on the use of foreign workers in Indonesia. The new regulation requires the following:

- i. Every company which wants to hire a foreign worker should check first if the position can be filled first by a local worker instead of hiring a foreign worker;
- ii. Foreign workers are prohibited to be engaged in human resource department or other jobs as determined by the government;
- iii. Every employer, with expatriate workforce, is required to have an Expatriate Employment Plan (Rencana Penggunaan Tenaga Kerja Asing (RPTKA) ratified by the Ministry. The plan, once approved, allows employers to engage foreign workers;
- iv. In addition to the requirement to annually report the utilization of foreign workers, the new Decree requires employers to report completion of a fixed term contract or termination of the same before its expiry date. The report must be submitted to the Ministry of Manpower.
- v. The new Regulation further requires employers to register those foreign workers with more than 6 months of employment in the Manpower Social Security Insurance (BPJS Ketenagakerjaan).

- vi. The regulation requires employers of expatriate workers to provide education and training to their Indonesian employee, appoint Indonesian employees as associate for each foreign worker hired, and facilitate the education and training of Bahasa Indonesia to the foreign workers;
- vii. Every company which hire a foreign worker should make a report about the implementation of using foreign workers every once a year to Manpower Minister

Source: §56-59 of the Manpower Act (Law No. 13 of 2003); Ministerial Decision implementing Work Agreement for Specified Period of Time (Decree No. 100 of 2004); Presidential Regulation Number 20 of 2018 on the Use of Foreign Workers; Ministry of Manpower Regulation No. 10 of 2018

Note: The Constitutional Court's Verdict No. 7/PUU-XII/2014 has stated that if a worker's job description is included to the company's business core, he/she can demand supervision by the labour inspector, and if the inspection report's conclusion decided that the worker's job relates to the core of business, the report can be taken to the District Court for legalization. However, no implementing regulation has been framed yet.

Probation Period

In accordance with the Manpower Act, an indefinite-term employment agreement/permanent contract may provide for a probation period of up to three months. During probation, a worker is entitled to wages which cannot be less than the applicable legal minimum wage. The worker engaged on fixed term contract cannot be subject to probation.

Source: §58 & 60 of the Manpower Act (Law No. 13 of 2003)

Notice Requirement

The employment contract ends if the worker dies; or the work agreement expires; or a court ruling and/ or a decision or a resolution of the institute for the settlement of industrial relations disputes, which has permanent legal force, ends the agreement; or there is a certain situation or incident prescribed in the work agreement, the enterprise's rules and regulations, or the enterprise's collective work agreement which may effectively result in the termination of employment. Valid grounds of dismissal include gross misconduct (grave wrongdoings); absence from work for more than 5 days without justified reason, and violation of the provisions specified in the work agreement, the company regulations or the collective agreement.

Employment may be terminated due to inability to work for reasons related to legal criminal proceedings or economic reasons including change of status of the enterprise, closing down due to continuous losses, or bankruptcy.

It is not obligatory for the employer to state the reasons for dismissal. However, the employer must negotiate directly with the worker (who is not unionized) or the trade union the worker belongs to about his/her intention to carry out the dismissal. Such bipartite negotiations should be completed within 30 days. If a settlement is reached, a Mutual Agreement should be registered at the relevant labour court and then executed. If a settlement is documented as a resignation, it does not require registration.

If the negotiations fail, the employer or employee may file the dispute along with supporting documents, with the relevant office of the Ministry of Manpower (“MOM”), to show that bipartite negotiations have been attempted. The manpower official asks both parties whether the dispute should be resolved through non-binding conciliation with private conciliators, mediation with a MOM mediator, or arbitration. The parties should respond within seven days, and if they do not, the dispute automatically go to mediation. If the non-binding written recommendation of the mediator is rejected, then the matter must be brought to the Industrial Relation court by the party who rejected the recommendation.

A worker, who resigns, must submit a resignation letter no later than 30 days prior to the date of resignation. Law does not provide any provision related to payment in lieu of notice period.

In the following cases, there is no requirement to obtain permission from the industrial court before terminating an employment contract:

- during the probation period;
- worker’s voluntary resignation (without any pressure/intimidation from the employer);
- expiry of the worker’s employment agreement;
- reaching the retirement age as specified in law, enterprise regulations, employment contract or collective agreement;
- worker’s death; or
- criminal proceedings against the worker (restricting the worker to work for 6 consecutive months).

Source: §61 of the Manpower Act (Law No. 13 of 2003)

Severance Pay

The severance of an employment relationship (pemutusan hubungan kerja) is termination of employment relationship because of a certain event that results in the coming of an end of the rights and obligations of the worker and the entrepreneur.

In accordance with the Manpower Act, termination of an indefinite employment contract gives rise to termination payments that include severance pay, long service pay, compensation of rights, and separation pay (uangpisah).

The amount of severance pay is equal to the one month's wages for each year of service, up to a maximum of nine months' pay for a service of 8 years or more. One-month salary is granted for a service period of less than one year. Furthermore, there is a payment for reward of service (service pay) that consists in adding one month's pay for every three years of employment, starting with two months' pay for 3-6 years, up to a maximum of 10 months' wages for 24 years or more of service. Compensation of rights includes compensation for leave which was not taken by the employee, compensation for travel expenses to return to the hiring location, housing and medical cost compensation (15% of total severance and long service payment) and other compensation as stipulated under employment contract, enterprise regulations or collective agreement.

The separation payment (uangpisah) is applicable where the employment is terminated by the employee (voluntary resignation) or where the employment was terminated for absence without leave for five consecutive working days or more. The amount of separation pay is stipulated under employment contract, enterprise regulations or collective agreement. "separation pay" is granted to the worker whose duties and functions do not "directly represent" the company's interest which may include members of the Board of Directors or even managerial level employees.

No termination payment is admissible for termination of a definite term employment contract before its expiry. In such instance, the party that terminates a definite term employment contract before its expiry is obligated to pay to the other party compensation in the amount equal to the employee's salary up until the date the contract should have expired.

The extent of the termination package depends on the circumstances of termination. In the following cases, workers are granted severance pay, long service pay and compensation of rights:

- a. employee violation of employment contract, enterprise regulations or collective agreement (after three consecutive warning letters);
- b. change of employer's status, ownership and merger or consolidation of the employer, and the worker is not willing to continue employment;
- c. closure of the enterprise for financial reasons (loss for two consecutive years) and force majeure;
- d. employer bankruptcy

In the following cases, severance pay and long service pay are not provided:

- a. worker resignation;
- b. worker absence without leave for five or more consecutive days;
- c. employee reaching the pensionable age (if employer enrolled the worker in a pension plan);
- d. termination in case where employee made allegations against the employer that were not proven;

In the following cases, only severance pay is not provided (long service pay and compensation for rights are still provided):

- a. worker's inability to work for 6 consecutive months due to detention by the authorities;
- b. worker found guilty by a court within 6 months of detention by the authorities

In the following cases, double severance pay is provided:

- a. change of employer's status, ownership and merger or consolidation of the employer, and the employer is not willing to continue employment;
- b. closure of the enterprise for efficiency measures (not for financial reasons or force majeure);
- c. worker's death;
- d. employee reaching the pensionable age (if employer did not enroll the worker in a pension plan);
- e. termination in case where employee made allegations against the employer that were proven;

There is a provision for double severance pay and long service pay if employment contract was terminated due to worker's continuing illness after a period of 12 months.

Source: §01, 156-172 of the Manpower Act (Law No. 13 of 2003)

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

Indonesia has not ratified both the Conventions 156 & 165.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Manpower Act (Law No. 13 of 2003)

Paternity Leave

The Manpower Act provides paid paternity leave to a worker. Working men are entitled to 02 days of paternity leave on child's birth. Paternity leave is paid for by the employer.

Source: §93(2c & 4e) of the Manpower Act (Law No. 13 of 2003)

Parental Leave

No specific leave entitlements found in the law on parental leave.

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Indonesia has not ratified the Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Manpower Act (Law No. 13 of 2003)

Free Medical Care

Medical benefits are provided to an insured worker under national social security laws.

No Harmful Work

Employers are prohibited from employing pregnant workers at night (between 23:00 and 07:00) if they are at risk of damaging their health or harming their own safety and the safety of the babies that are in their wombs.

No provisions specific to the risks faced by pregnant or breastfeeding workers identified. However, generally, it is obligatory for all employers to ensure the health and safety of all workers.

Source: §76(2), 86 & 87 of the Manpower Act (Law No. 13 of 2003), Ministerial Decree concerning the obligation of entrepreneurs who employ female workers/labourers between 11 PM and 7 AM (Decree No. 224/2003)

Maternity Leave

The Manpower Act provides 03 months of maternity leave to all the female workers who work for a wage or other form of remuneration. There is no qualification condition specified by the law. Female workers are entitled to 45 days of antenatal leave (estimated by an obstetrician or a midwife to give birth to a baby) and another 45 days of postnatal leave.

Maternity leave can be extended in case of any complication or medical reasons. Attested written statement from the obstetrician or a midwife, specifying the medical condition, must be provided either prior or after the delivery.

Leave in case of any pregnancy-related illness or complication is not specified by the law. However, a female worker who has a miscarriage is entitled to a period of leave of 45 days, or a period of leave as stated in the medical statement issued by the obstetrician or midwife.

Source: §1(3) and 82 of the Manpower Act (Law No. 13 of 2003)

Income

Maternity leave is fully paid by the employer to a worker availing her right to take maternity leave. The cash benefit is provided for the whole duration of maternity leave, i.e., up to 03 months.

Source: §1(3) and 82 of the Manpower Act (Law No. 13 of 2003)

Protection from Dismissals

Labour law prohibits termination of a female worker when she is absent from work because she is pregnant, giving birth, having a miscarriage, or breastfeeding her baby, or because of the worker's sex or marital status (among other things).

The law further states that termination of employment that takes place for these reasons shall be declared null and void. The employer has to reinstate the dismissed worker.

Source: §1(5) & 153 of the Manpower Act (Law No. 13 of 2003)

Right to Return to Same Position

There is no specific provision in the labour law regarding a worker's right to return to same position after availing her maternity leave. However, it is mentioned that a worker cannot be terminated during the term of her maternity leave which means that right to return to work is implicitly guaranteed under the law.

Source: §1(5) & 153 of the Manpower Act (Law No. 13 of 2003)

Breastfeeding/ Nursing Breaks

Female workers are entitled to nursing breaks during working hours. The employer is obliged to provide proper opportunities to female workers to breastfeed their babies if that must be performed during working hours. Law has no clear provision on the duration (minutes or hours) or length (refers to the age of child in months) of nursing breaks.

Law also requires the employer to establish a childcare facility in an enterprise.

Source: §83 & 100 of the Manpower Act (Law No. 13 of 2003)

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Indonesia has ratified both the Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Work Safety Law 1970
- Manpower Act (Law No. 13 of 2003)
- Manpower Regulation (No 5/2018)

Employer Cares

In accordance with the Manpower Act 2003, every worker has the right to receive protection on occupational safety and health.

Law No. 1 of 1970 regarding Occupational Safety (Work Safety Law) sets out the basic principles in relation to the implementation of occupational safety. Measure should be taken to prevent accidents and explosions; to reduce the possibility of a fire and to extinguish fires; and any other measure mentioned in reference to the workplace. The law also has provisions related to the fire exits; first aid in case of injury, protection from pollutants such as gas, noise, etc; protection from occupational disease; and provisions of protective equipment to employees.

All accidents must be reported to an official appointed by the MOM. Work Safety Law specify list of industries that require pre-employment medical examination of employees. Annual medical examinations should also be performed.

An employer, with 100 or more workers engaged in high risk work/activities, must establish an occupational safety and health management system that complies with the legal requirements. An employees' representative must agree to the workplace occupational safety and health management system; which must also be explained to all the company's employees, suppliers and customers. The Ministry of Manpower and Transmigration must supervise the implementation of the system, and evaluate and assess the system on a regular basis.

MOM Regulation No. 7 of 1964 regarding Health and Hygiene Requirements, as well as Lighting in the Workplace, specify certain requirements on suitable workplaces. Measures should be taken to prevent fire, accident, poisoning, infection from occupational diseases, spread of dust, gas, steam, and unpleasant smells. Ministry of Manpower has issued new regulation on workplace health and safety which repeals the above 1964 regulation. The new regulation provides new guidelines for chemical and physical threshold value, and also provide the guidelines for indoor air quality to create a decent workplace.

The establishment must provide sufficient light, temperature control, and ventilation; cleanliness, storage and periodic removal of waste; establishment must be well constructed and made of non-flammable materials; periodic painting of walls and ceilings at least once every five years; separate lavatories for men and women (one lavatory for at every 15 employees); hygienic arrangements for the needs of personnel; beverages and meals; lodging of the personnel (if applicable); work stations and the seating arrangements; and emergency lighting at night in the workplace.

A worker/ labourer may make an official request to the institute for the settlement of industrial relation disputes (industrial court) to terminate his/her employment relationship with his/ her entrepreneur if the entrepreneur has ordered the worker to carry out work that puts the worker's life, safety, health and or morality in jeopardy, of which the worker is not made aware or informed at the time the worker/ labourer's employment agreement was made.

Source: §86(1) & 169 of the Manpower Act (Law No. 13 of 2003)

Free Protection

No specific provision in the laws on provision of clothing, however Manpower Act stated that employer is obliged to provide and administer health and safety schemes. The Work Safety Law 1970 however has provisions on self-protection equipment and requires employers to provide such equipment free of cost to the workers and necessary training on the use of such equipment. Workers are also under obligation to fulfil and obey all the health and safety requirements and use the self-protection equipment provided by the employer. Workers may raise the objection and stop work if necessary protective equipment is not provided.

Source: §86(2) of the Manpower Act (Law No. 13 of 2003); §9, 12 & 14 of Work Safety Law 1970

Training

Each form of business must have a health and safety system to be integrated into the management system of the company. It is the responsibility of an employer to provide instruction, training and supervision as is necessary to ensure health and safety at work of his employees.

Source: §87(1) of the Manpower Act (Law No. 13 of 2003)

Labour Inspection System

Regulation on Labour Inspection System:
Manpower Minister Regulation No 36/2016

Labour inspection (pengawasanketenagakerjaan) refers to the activity of controlling and enforcing the implementation of laws and regulations in the field of manpower.

Labour inspection is carried out by the government labour inspectors, determined by Minister or other government officials appointed to act on Minister's behalf, who have the competence and independency to guarantee the implementation of labour laws and regulations.

The Act requires a separate labour inspection unit in government office responsible for manpower affairs at the Central and Provincial levels, having the duty of submitting reports on labour inspections to the concerned Minister.

Labour Inspectors, in course of their duty, must keep everything confidential that, by its nature, needs or is worthy to be kept secret and refrain from abusing their authority.

In receiving complaints from the worker, in 30 days the labour inspectors must make an inspection note/reports, and give the note to the employers/entrepreneurs and the workers.

Labour Inspectors also can coordinate with Indonesian Police Investigators in terms of the issuance of the report/inspection note.

Employer cannot terminate the services of a whistle-blower if he/she reports to the authorities the crime committed by the entrepreneur.

Source: §01, 153, 176-181 of the Manpower Act (Law No. 13 of 2003); National Act No. 3 of 1951; National Act No. 1 of 1970; Act 23/2014 about Local Government.

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Indonesia has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Manpower Act (Law No. 13 of 2003)
- National Social Security System Act (Law No. 40 of 2004)
- Government Regulation No. 44/2015 about work accident insurance and fatalities

Income

Employers are entitled to paid sick leave in case of illness evidenced by a medical certificate or statement by the Physician treating the worker. Long-term paid medical leave can also be granted, provided that such leave is recommended in writing by a doctor and lasts for a period greater than one year.

In accordance with the Manpower Act, the amount of wages payable by the employer to workers who are ill is determined as follows:

- 100% wages first during first four months;
- 75% wages during next 4 months (5th to 8th month);
- 50% wages during next 4 months (9th to 12th month); and
- 25% wages for subsequent months, prior to the termination of employment by the employer.

Women workers are entitled to paid leave on the 1st and 2nd days of menstruation, if they are ill and they cannot perform their work.

Source: §93(3) of the Manpower Act (Law No. 13 of 2003)

Medical Care

Social security scheme includes health insurance. Health Insurance provides a comprehensive medical care to workers and their families. The types of medical services provided include ambulance care; hospitalization in public and private hospitals; maintenance of pregnancy and childbirth; provision of drugs; laboratory diagnosis; dental and eye care; and emergency care.

Job Security

The employer is prohibited from terminating the employment of a worker because the worker is absent from work or because of illness for a period under 12 months. If the term of sickness exceeds 12 months, employer may terminate the contract.

Termination of employment contract is prohibited for a worker who is permanently disabled, ill as a result of a work accident, or ill because of an occupational disease where period of recovery cannot be ascertained as attested by the written statement made by the physician.

Source: §153(1) of the Manpower Act (Law No. 13 of 2003)

The text in this document was last updated in February 2019. For the most recent and updated text on Employment & Labour Legislation in Indonesia in Bahasa, please refer to: <https://gajimu.com/garmen>

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker. A worker gets entitled to work injury benefit if he/she is assessed with a partial or total disability before age 56. There is no minimum qualifying period.

In case of temporary disability, 100% of the insured worker's wage in the month before the disability began is paid for the first four months; 75% for the next four months; and 50% thereafter until rehabilitation or the determination of permanent disability.

In case of permanent disability, a lump sum up to 70% of 80 months of the insured worker's wage in the month before the disability began is paid, plus 200,000 rupiah a month for 24 months is paid.

In case of permanent partial disability, the payment is equal to lump sum of 80 months of the insured worker's wage in the month before the disability began multiplied by the assessed degree of disability according to a schedule in law.

In all cases, the degree of disability is ascertained by a medical doctor.

In the case of fatal injury, dependents (spouse, children, parents, grandchildren, grandparents, siblings, and parents-in-law) receive survivors' pension. A lump sum of 60% of 80 months of the deceased worker's wage in the month before death is paid, plus 200,000 rupiah a month for 24 months. If there are no eligible survivors, the benefits are paid to any person named by the deceased.

A lump sum of 14,200,000 (14.2 million) rupiah plus 200,000 rupiah a month for up to 24 months is paid as a death grant.

There is provision of Scholarship grant with total of 12,000,000 (12 million) rupiah for the insured worker's children.

Funeral grant is a lump sum of 3 million rupiah. It is paid to the survivor eligible for the survivor benefit. If there is no eligible survivor, the funeral grant is paid to the person who pays for the funeral.

Source: §29-34 of the National Social Security System Act (Law No. 40 of 2004); Government Regulation No. 44/2015 about work accident insurance and fatalities

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Indonesia has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- National Social Security System Act (Law No. 40 of 2004)
- Manpower Act (Law No. 13 of 2003)
- Law No 24/2011 about BPJS
- Government Regulation No. 44/2015 about work accident insurance and fatalities
- Government Regulation No. 45/2015 about retirement/pension program of BPJS
- Government Regulation No. 46/2015 about JHT program of BPJS

Pension Rights

Old-age benefit (provident fund) is provided to the insured worker at the age of 56 years. The pensionable age is being raised to 57 years from January 2019. After that, there will be increase in the retirement age by one year every 3 years until the pension age reaches 65 years. The provisions regarding the retirement age are specified in the employment contract, enterprise regulations and collective agreement. Old-age benefit is a lump sum of total employee (2% of monthly wage) and employer (3.7% of monthly wage) provident fund contributions plus accrued interest. Members may opt for a periodic pension if they have more than 50 million rupiah in their provident fund account.

Drawdown payments is provided at any age if a worker is emigrating (leaving Indonesia) permanently, if starting work as a public employee or beginning military service, or if unemployed for at least six months after at least five years of fund membership. The amount of withdrawal/drawdown payment is the maximum lump sum of total employee and employer provident fund contributions plus accrued interest.

Source: §154 of the Manpower Act (Law No. 13 of 2003); §41 of the National Social Security System Act (Law No. 40 of 2004 revoked by Law No 24/2011 about BPJS)); ISSA Country Profile for Indonesia 2014-15; Government Regulation No. 45/2015 about retirement/pension program of BPJS; Government Regulation No. 46/2015 about JHT program of BPJS

Dependents' / Survivors' Benefit

Survivor's benefit is provided to the dependents including (in order of priority) the spouse, children, parents, grandchildren, grandparents, siblings, or parents-in-law. If there are no eligible survivors, the benefit is paid to a person named by the deceased. If there is no named survivor, only the funeral benefit is paid to the person who pays for the funeral. Eligible survivors are entitled to dependents' benefit if the deceased was younger than age 56 at the time of death or aged 56 or older and receiving a periodic pension at the time of death.

Survivor's benefit is a lump sum of total employee and employer provident fund contributions plus accrued interest is paid. Eligible survivors of deceased members may

opt for a periodic pension if they had more than 50 million rupiah in their provident fund account.

If the deceased was receiving a periodic pension, the survivor benefit is the total employee and employer provident fund contributions plus accrued interest minus the amount already paid to the deceased member.

A lump-sum of death grant is 14,200,000 (14.2 million) rupiah plus 200,000 rupiah a month for up to 24 months. A lump-sum of funeral grant is 2 million rupiah.

There is provision of scholarship grant with total of 12,000,000 (12 million) rupiah for the insured worker's children.

The benefit can be deferred. There is no maximum age for deferral. Social insurance benefits are adjusted every two years.

Source: National Social Security System Act No. 40, 2004 revoked by Law No 24/2011; ISSA Country Profile for Indonesia 2014-15; Government Regulation No. 44/2015 about work accident insurance and fatalities

Unemployment Benefits

No provision is specified in law for unemployment insurance and benefits. Law provides for severance and long service. For more information on this, please refer to the section on Termination Pay.

Employee Benefits

Since Indonesia has Law No 24/2011 about BPJS, every employer must be registered their employee to BPJS Ketenagakerjaan. BPJS Ketenagakerjaan provide many programs to employee, such as: accident assurance in the workplace, old age assurance, pension assurance, and also death assurance.

BPJS ketenagakerjaan obliged to give the workers number of registration in BPJS Card, and do some monitoring into employers. If the employers didn't want to registered and didn't want to pay BPJS, so the employers can be punished by the law.

Invalidity Benefits

Invalidity benefits are provided if a worker is younger than 56 years of age with a total permanent incapacity for work as a result of a work injury. The incapacity must be certified by a medical doctor. The amount of invalidity benefit is a lump sum of 70% of 80 months of the insured's wage in the month before the disability began is paid, plus 200,000 rupiah a month for up to 24 months.

Invalidity benefits includes the cost of examination, treatment, transportation and / or maintenance costs of rehabilitation, compensation in the form of money including benefits while unable to work, partial disability benefits, total disability benefits.

Source: National Social Security System Act No. 40, 2004 revoked by Law No 24/2011 about BPJS

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Indonesia has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Indonesian Constitution 1945, last amended in 2002
- Manpower Act (No. 13 of 2003)
- Guidelines on Sexual Harassment Prevention at Workplace 2011
- Penal Code 1982
- Persons with Disabilities Act (No. 4 of 1997)

Equal Pay

The Constitution supports the principle of equal pay for equal work. It states that every person has the right to work and to receive fair and proper remuneration and treatment in employment.

The Manpower Act guarantees every worker has the right to receive equal treatment without discrimination from their employer. Indonesia has ratified Equal Remuneration Convention (No. 100) which requires equal pay for work of equal value and prohibits discrimination in pay related matters on account of sex. Wage differentials, based on objective job appraisals, are not considered discrimination.

Source: §28D (2) of the Indonesian Constitution 1945, last amended in 2002; §6 of the Manpower Act (No. 13 of 2003); Ratification of ILO Convention 100 (Act No. 80 of 1957)

Sexual Harassment

Sexual harassment is considered a serious violation. However, there is no specific law that addresses forms of sexual harassment/sexual abuse, sanctions and ways to cope sexual harassment at workplace.

MoM has issued special guidelines on Sexual Harassment Prevention at Workplace. Sexual harassment is defined as “any unwanted conduct of a sexual nature, request for sexual favours, verbal or physical conduct or gesture of a sexual nature; or other behaviour of a sexual nature that makes the recipient feels humiliated, offended and/or intimidated, where such reaction is reasonable in the situation and condition; or made into working requirement or create an intimidating, hostile or inappropriate working environment”.

The guidelines define various forms of sexual harassment, which include physical, verbal, gestural, written or graphic and psychological or emotional harassment.

Penal Code does not explicitly mention any punishment for sexual harassment however; it prohibits indecent public acts and violence or threat of violence to have sexual intercourse. These provisions serve as a basis for criminal complaints stemming from workplace sexual harassment. The victim or another person aware of the incident must submit a formal complaint. Penal Code imposes penalties of up to two years and eight months and a monetary fine. In the event of violence for sexual intercourse, the punishment is raised to 12 years.

The text in this document was last updated in February 2019. For the most recent and updated text on Employment & Labour Legislation in Indonesia in Bahasa, please refer to: <https://gajimu.com/garmen>

A worker/ labourer may make an official request to the institute for the settlement of industrial relation disputes (industrial court) to terminate his/her employment relationship if entrepreneur has battered, rudely humiliated or intimidated the worker/ labourer.

An entrepreneur may also terminate the employment contract of a worker who has committed a gross misconduct examples of which include the following: the worker has committed immorality/ indecency or gambled in the working environment or has attacked, battered, threatened, or intimidated his or her co-workers or the entrepreneur in the working environment.

Source: §153 & 169 of the Manpower Act (Law No. 13 of 2003); Guidelines on Sexual Harassment Prevention at Workplace 2011; §281 & 285 of the Penal Code 1982

Non-Discrimination

In accordance with the Indonesian constitution, all persons are equal before the law and the government. Every person is entitled to work and to have a reasonable living standard.

Manpower Act also prohibits discrimination. Every worker has the same opportunity to get a job and to receive equal treatment without any discrimination from their employer. Termination of an employment contract is prohibited on the basis of ideology, religion, political inclination, ethnic group, race, colour, social group, gender, physical condition, or marital status of the employee.

Law on Disabled People requires an employer to hire at least one disabled staff member if he/she has 100 or more workers employed in an establishment. Entrepreneurs who employ disabled workers are under an obligation to provide protection to the workers in accordance with the type and severity of their disability.

Article 153 of the Manpower Act prohibited termination of employment contract of worker for having a marital bond and/or a blood relationship with another employee in the same company however there was an exception which provided that "*employment contract, company regulation or collective labour agreement may regulate otherwise*". The Constitutional Court, in a recent decision of December 2017, concluded that the proviso violated Constitutional provisions and was thus invalid. Thus, employers can no more add such proviso in company regulations, employment contracts or collective agreements threatening a worker with a job loss in the case of marriage with another worker in the enterprise or having a blood relationship with another worker in the enterprise.

Source: §5, 6 & 27 of the Indonesian Constitution 1945, last amended in 2002; §67 & 153 of the Manpower Act (Law No. 13 of 2003); Persons with Disabilities Act (No. 4 of 1997); No 13/PUU-XV/2017

Equal Choice of Profession

Women can work in the same industries as no restrictive provisions could be located in the law. Constitution grants the right to work in any profession to all the citizens. It says, "Every citizen shall have the right to work and to earn a humane livelihood." The Constitution further states, "Every person has the right to work and to receive fair and proper remuneration and treatment in employment."

Source: §27(2) & 28D(2) of the Indonesian Constitution 1945, last amended in 2002

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Indonesia has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Manpower Act (Law No. 13 of 2003)
- Ministerial Decision regarding jobs that jeopardize the health, safety or morals of children (Decree No. 235 of 2003)
- Child Protection Act (No. 23 of 2002)
- Act on the National Education System (No. 20 of 2003)

Minimum Age for Employment

Minimum age for regular employment is 15 years. Law prohibits employers from hiring children. In accordance with the law child is any person less than 18 years of age.

Young workers aged between 13 to 15 years can be employed for light work, provided that the job does not affect their physical, mental and social development. Light work requires written permission from parents/guardians and the employer must provide them with an employment contract; children can be employed only in day time for 03 hours (maximum) without disturbing their schooling; OSH requirements must be fulfilled; and wages are provided in accordance with the valid law. If a child works in a family business, parent/guardian consent, existence of a written employment contract and payment of wages is not a requirement.

Children aged 14 years or more can be employed at a workplace as part of their school's education curriculum or training which has been made legal by the authorities, provided that the children are given clear-cut instructions on how to do their job as well as guidance and supervision on how to carry out the work; and that the occupational safety and health of the children are protected.

Law also requires that children's workplace should be separate from that for adult workers/labourers. Also, children are considered to be at work if they are found at workplace unless there is evidence to prove otherwise.

The compulsory education age is 15 years.

Source: §68-73 of the Manpower Act (Law No. 13 of 2003); §48 of the Child Protection Act (No. 23 of 2002); §6 & 34 of the Act on the National Education System (No. 20 of 2003)

Minimum Age for Hazardous Work

Minimum age for employment in hazardous work is 18 years.

The law prohibits the employment and involvement of children in worst form of work, including: any kind of work taking the form of slavery or the like; any work exploiting, providing, or offering children for prostitution, pornographic production, pornographic shows, or gambling; any work exploiting, providing, or involving children in the

production and trading of liquor, narcotics, psychotropic substances, or other addictive substances; and/or any work endangering the health, safety, or morals of the child.

Children under 18 are prohibited from operating dangerous machinery or equipment (including cutting, sewing, knitting or weaving machines, boilers or lifts), or engage in heavy lifting (12 kgs for boys and 10 kgs for girls). Children should not be engaged in work that could expose them to harmful chemicals, electricity, high levels of dust or noise, extreme temperatures or heights. Similarly, working underground, in confined spaces, construction work.

Overtime and night work (18:00 to 06:00) is prohibited for children under 18.

Source: §74 of the Manpower Act (Law No. 13 of 2003); Ministerial Decision regarding jobs that jeopardize the health, safety or morals of children (Decree No. 235 of 2003)

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Indonesia has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Indonesian Constitution 1945, last amended in 2002
- Manpower Act (Law No. 13 of 2003)
- Eradication of the Criminal Act of Trafficking in Persons (Law No. 21/2007)
- Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)

Prohibition on Forced and Compulsory Labour

In accordance with the Constitution, every citizen has the right to work and earn a humane livelihood. The Constitution guarantees every individual the right to work and to receive fair and proper remuneration and treatment in employment. The Constitution further allows everyone to choose one's employment.

Forced or compulsory is prohibited and outlawed under the Labour Law. It is punishable by 03 to 15 years of imprisonment and a fine of IDR 120 million to 600 million (\$10,500 to \$52,500).

Source: §27(2), 28D(2) & 28E(1) of the Indonesian Constitution 1945, last amended in 2002; §32 of the Manpower Act (Law No. 13 of 2003); §1-2 of Eradication of the Criminal Act of Trafficking in Persons (Law No. 21/2007)

Freedom to Change Jobs and Right to Quit

The Indonesian constitution guarantees that every citizen has a right to choose his/her occupation.

Manpower Act states that workers have the right to change jobs. Worker who resigns on his/her own will is entitled to compensation pay. However, he/she must fulfil the following requirements: submit a resignation letter no later than 30 days prior to the date of resignation; not being bound by a contract to serve the company; and continue to carry out his/her obligations until the date of his/her resignation.

For more information on this, please refer to the section on employment security.

Source: §28E(1) of the Indonesian Constitution 1945, last amended in 2002; §162 of the Manpower Act (Law No. 13 of 2003)

Inhumane Working Conditions

Working time may be extended beyond normal working hours of 40 hours per week and 07 or 08 hours per day according to the spread of the working week. Workers may be required to work beyond the weekly or daily hours limit only after written agreement. When a worker agrees to work overtime, the employer must ensure that overtime limit must not exceed 03 hours per day and 14 hours per week. Overtime work performed on weekly rest day or public holidays are not included in it.

The maximum working hours inclusive of overtime are 54 hours (40 hours + 14 hours) per week.

For more information on this, please refer to the section on compensation.

Source: §77 & 78 of the Manpower Act (Law No. 13 of 2003); §3-11 of the Ministerial Decision concerning overtime work and overtime pay (Decree No. 102 of 2004)

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Indonesia has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Indonesian Constitution 1945, last amended in 2002
- Manpower Act (Law No. 13 of 2003)
- Trade Union Act (No. 21 of 2000)
- Decree No. Kep. 187/MEN/X/2004 Regarding Member of Labour Union Contribution Fees Decree No. Kep-16/MEN/2001

Freedom to Join and Form a Union

In accordance with the Constitution, every person has the right to the freedom to associate, to assemble and to express opinions.

A trade union (serikatpekerja)/labour union (serikatburuh) is defined as an organization that is formed [established] from, by and for workers/labourers either within an enterprise or outside of an enterprise, which is free, open, independent, democratic, and responsible in order to strive for, defend and protect the rights and interests of the worker/labourer and increase the welfare of the worker/labourer and their families.

Every worker has the right to form and join a trade union. Trade union has the right to collect and manage fund and be accountable for the union's finances, including for the provision of a strike fund. Employer must provide opportunity to the officials and members of a trade union to carry out trade union activities during working hours that are agreed upon by both parties and or arranged in the collective labour agreement.

A group of at least 10 workers is required to establish a labour union. The Ministry of Manpower (MOM) Decree No. Kep-16/MEN/2001 governs the notification and registration of labour unions. According to this regulation, unions and federations of labour unions must give written notification to the local MOM in order to be registered. A labour union must apply for registration by attaching its articles of association and by-laws, a list of the names of the management, the composition of the management, the members of the union, and its official name.

Decree No. Kep. 187/MEN/X/2004 Regarding Member of Labour Union Contribution Fees states that union membership fees can be paid by deduction from monthly salary, unless alternate method of payment is provided by the union. Employers can only collect such contributions from members of labour unions on the basis of a power of attorney from each union member employee.

Law states that the objective of a labour union is to improve the members' skills, knowledge, and productivity, and improve the protection of members. A union is obligated to be free (i.e., not subject to another's influence or pressure), open (to all and not based on political ideology, religion, ethnicity, or gender), and independent (i.e., acting on its own volition and not being controlled by a party outside the union).

Law further permits a union to be disbanded: if its members agree; if the enterprise goes out of business; or by court order if deemed in the interests of the state.

Law No. 21 imposes criminal sanctions on anyone who engages in certain anti-union activity. Such activities include preventing workers from forming a union, becoming a member of a union, or conducting union activities; terminating an employee or reducing his or her salary for conducting union activities; conducting an anti-union campaign; and intimidation in any form.

Source: §28E(3) of the Indonesian Constitution 1945, last amended in 2002; §01, 104 of the Manpower Act (Law No. 13 of 2003); §29 of the Trade Union Act (No. 21 of 2000); Decree No. Kep. 187/MEN/X/2004 Regarding Member of Labour Union Contribution Fees; Decree No. Kep-16/MEN/2001

Freedom of Collective Bargaining

A collective work agreement (*perjanjiankerjbersama*) is an agreement resulting from negotiations between a trade/labour union or several trade/labour unions and an entrepreneur or several entrepreneurs or an association of entrepreneurs. The agreement specifies work requirements, rights and obligations of both sides. The agreement usually provides better benefits to the worker than those provided in the law. If the agreement has provisions which are less favourable than those provided under the law, it cannot be enforced.

The collective work agreement is made in writing using Latin alphabets and in the Indonesian language. If the agreement is not written in Indonesian language, it must be translated into Indonesian by a sworn translator and the translation is considered to have fulfilled what is stipulated under the law.

A CBA may be concluded for definite or indefinite time period. The duration of a CBA signed for definite time period may not exceed 02 years but it can be extended for 01 more year on mutual agreement. Negotiations about next agreement may start 03 months prior to the expiration of existing agreement. If this negotiation fails, the existing agreement remains enforced for a period of one year at the longest. Single establishment can have only one collective work agreement that is applicable to all workers employed in that establishment.

A collective work agreement must contain the rights and obligations of the employer; the rights and obligations of the trade union and the worker; the period during which and the date starting from which the collective work agreement takes effect; and the signatures of those involved in making the collective work agreement.

Amendments can be made by mutual consensus, provided that the changes form an inseparable part of the ongoing, effective and valid collective work agreement. The

employer must inform all the workers about the agreement and any amendments made in it by printing and distributing its text.

The agreement becomes effective on the day it is signed unless stated otherwise. The signed agreement must get registered at a government agency responsible for labour/manpower affairs.

Provisions concerning the requirements and procedures for making, extending, changing and registering a collective work agreement are determined and specified by means of a Ministerial Decision. The implementation of manpower laws and regulations in order to realize industrial relations is the responsibility of the worker/labourer, the entrepreneur and the government.

A Presidential Decree of 2004 on Wage Councils provides for National, Provincial and District Wage Councils which are advisory in nature. National Wage Council provides suggestions and considerations to the central government in formulating the wage policy and developing a national wage system.

The District Wage Councils sent their proposals to the Mayor who forwards it to the Provincial Governor. This proposal is shared with the Provincial Wage Council which sends final recommendation to the Provincial Governor.

National, Provincial, and District Wage Councils are tripartite in nature. The membership of universities/experts is ensured in all three levels. Government representation in all these councils is equal to the collective representation of worker and employers while membership of universities and experts is adjusted based on the needs.

Source: §01& 116-132 of the Manpower Act (Law No. 13 of 2003)

Right to Strike

A strike (*mogokkerja*) is a collective action of workers/labourers, which is planned and carried out by a trade/labour union to stop or slow work. The strike must be carried out legally, orderly and peacefully only after all the methods of dispute resolution fail.

Strikers must notify the employers and the local government agencies responsible for labour affairs at least 07 days prior to the actual realization of a strike. The written notice must at least contain: the day and the date on which, and the hour at which they will start the strike; the venue of the strike; their reason for the strike and or their demand; the signatures of the chairperson and secretary of the striking union and/or the signature of each of the chairpersons and secretaries of the unions participating in the strike, who are held responsible for the strike. The strike is considered illegal if it does not comply with the regulation provided by the law.

During strike, the employers are prohibited from replacing striking workers with other workers from outside of the enterprise; or imposing sanctions on or taking retaliatory actions in whatever form against striking workers and union officials during and after the strike is performed. It is not allowed to arrest and/or detain workers/ labourers and union officials who are striking legally, orderly and peacefully in observance of valid legislation.

When the strike is legal and it is staged in order to demand the fulfilment of their normative rights violated by the employer, strikers are entitled to their full wages despite the period of time not worked because of the strike.

Source: §01, 137-145 of the Manpower Act (Law No. 13 of 2003)

Note: The Constitutional Court's Verdict No. 100/PUU-X/2012 has stated that if a worker has not yet received his/her rights, the worker can still demand his/her rights without expiry date, even after the worker no longer works in the company, and this include wage, overtime, annual leave, religious bonus (THR) and severance pay. However, there is no implementing regulation has been framed yet.



DECENT WORK QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

DecentWorkCheck Indonesia is a product of
WageIndicator.org and www.gajimu.com/main

National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





DECENTWORKCHECK.ORG

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Indonesia scored 42 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.