

New Regulation on Termination of Employment and Severance Payment

In February 2021, the Government of the Republic of Indonesia issued Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreement, Outsourcing, Working Time and Rest Time, and Termination of Employment (“**GR 35/2021**”). GR 35/2021 is one of the implementing regulations of Law No. 11 of 2020 concerning Job Creation (“**Job Creation Law**”) which has been promulgated since 2 November 2020.

The Job Creation Law and GR 35/2021 stipulate several provisions which amend provisions under the Law No. 13 of 2003 concerning Manpower (“**Law 13/2003**”) especially regarding the Termination of Employment (*Pemutusan Hubungan Kerja* – “**PHK**”) and the amount of compensation for the employees affected by the termination.

A. Procedure of Termination of Employment

The spirit of Indonesian labor law is to prevent PHK. Under the Law 13/2003, PHK is possible only with the consent of an institute of settlement of industrial disputes (in the form of the Industrial Relation Court) (“**Tribunal**”). By the issuance of the Job Creation Law and GR 35/2021, in the event that PHK cannot be prevented, the employer may terminate the employment relationship with the following procedure:

1. Providing notification letter with regards to the termination from the employer to the employees, by fulfilling the following conditions:
 - a. No later than 14 (fourteen) days prior to PHK for employee or labor union; and
 - b. No later than 7 (seven) days prior to PHK for employee on probation.
2. Upon the notification, if there is no refusal/rejection from the employees, the employer must report the PHK in question to the local Manpower Office.

However, if the employees refuse or disagree with the termination, the parties must resolve the dispute through the industrial relations settlement mechanism, i.e., bipartite negotiation, non-binding mediation, and/or through industrial relation court.

The abovementioned procedure shall apply to employment relationship under a Fixed-term Employment Agreement (*Perjanjian Kerja Waktu Tertentu* – “**PKWT**”) or a Permanent Employment Agreement (*Perjanjian Kerja Waktu Tidak Tertentu* – “**PKWTT**”).



B. Compensation for Employees

1. Compensation for Employee with PKWTT

The Job Creation Law revokes provisions under Law 13/2003 regarding the calculation of severance and compensation package. Further, provisions regarding the calculation of the severance and compensation package for PKWTT's employees are stipulated under GR 35/2021. The severance and compensation package for PKWTT's employees shall consist of:

- a. Severance Payment (*Uang Pesangon*);
- b. Reward of Service Payment (*Uang Penghargaan Masa Kerja*, commonly called "Gratuity");
- c. Compensation Rights (*Uang Penggantian Hak*); and/or
- d. Separation Payment (*Uang Pisah*).

The total compensation for the terminated PKWT employees generally varies depending on the reasons of termination. There are several amendments to the severance package formula which previously were stipulated under the Law 13/2003, among others:

Merger, Consolidation, or Spin-off of the Company (Employer is not willing to employ the employees)		
	Law 13/2003	GR 35/2021
Severance Payment	2x severance payment	1x severance payment
Gratuity	1x Gratuity	1x Gratuity
Compensation Rights	✓	✓
Separation Payment	-	-

The Company Bankruptcy		
	Law 13/2003	GR 35/2021
Severance Payment	1x severance payment	0.5x severance payment
Gratuity	1x Gratuity	1x Gratuity
Compensation Rights	✓	✓
Separation Payment	-	-

GR 35/2021 also stipulates that for micro and small businesses, the calculation of Severance Payment, Gratuity, Compensation Rights, and Separation Payment for terminated employees, are to be granted based on the mutual agreement between the employer and its employee.



2. Compensation for Employee with PKWT

Previously, Law 13/2003 only regulates that if a PKWT is terminated before its expiry date, then the party that terminates the agreement is obligated to pay the balance of the payment to the other party until the expiration of the agreement.

GR 35/2021 stipulates additional provisions, in the event of the PKWT is terminated or completed, the employer is obligated to pay compensation to the employees, with the following requirements:

- a. The compensation payment must be paid at the end of or on completion of the PKWT;
- b. The compensation payment is payable to the terminated employees who have worked for at least 1 (one) month continuously;
- c. If the PKWT is extended, the compensation payment will be payable when the initial PKWT term is completed, and the next compensation money will be payable when the extended PKWT term is completed;
- d. The compensation payment is not applicable to expatriates;
- e. If the PKWT is terminated before the intended contract period under the PKWT, the compensation payment is calculated based on the actual work period the employee has completed;
- f. The compensation payment for the micro and small enterprises' employees is based on agreements between the employer and its employees;
- g. If one party terminates the employment before the expiration of the period as stipulated under PKWT, the employer must pay compensation payment calculated based on the employee's period of employment.

The compensation's calculation for PKWT's employee pursuant to the GR 35/2021:

Completed PKWT's Period	Amount of Compensation Payment
12 months consecutively	1 month's salary
1 month or more but less than 12 months	$\frac{\text{work period (in month)}}{12} \times 1 \text{ month's salary}$
More than 12 months	

This client alert is intended to provide a brief overview only on several provisions and may not cover all provisions of Law 13/2003 as amended by Job Creation Law and GR 35/2021, thus,



cannot be deemed as a legal advice. Please do not hesitate to contact us if you need a more detailed discussion and/or advice and/or have specific questions.

BRIGITTA I. RAHAYOE & PARTNERS

Emails: Brigitta I. Rahayoe

brigitta@brigitta.co.id

Ahmad Fadli

ahmad.fadli@brigitta.co.id

Michael H. Giovanni

michael.giovanni@brigitta.co.id