



GUIDE TO GOING GLOBAL EMPLOYMENT

Indonesia



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit www.dlapiper.com or contact:

Brian Kaplan
Co-Chair, Global Employment practice
brian.kaplan@dlapiper.com

Ute Krudewagen
Co-chair, International Employment practice
ute.krudewagen@dlapiper.com

Pilar Menor
Co-Chair, Global Employment practice
pilar.menor@dlapiper.com

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.

INDONESIA



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Indonesian Rupiah (IDR). The official language is Bahasa Indonesia.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company cannot directly engage employees in Indonesia without having a presence there – for example, a corporate or tax presence. A tax presence requires a permanent establishment, as defined in the relevant legislation, in Indonesia and will commonly take the form of a representative office. The most common structure is to establish a local Indonesian subsidiary in the form of a limited liability company.

An employer must set up payroll in Indonesia and make withholdings for income taxes and social charges under the National Social Security (*Sistem Jaminan Sosial Nasional* or SJSN) program.

PRE-HIRE CHECKS

Required

Indonesian legislation is silent on pre-hire checks. Thus, there are no requirements or prohibitions on background checks for applicants.

Permissible

Yes.

IMMIGRATION

All expatriates coming to Indonesia require a visa, and those working in the country additionally require a ratification of the employer's utilization of foreign manpower and a stay permit. Fines and imprisonment may be imposed on those who breach immigration requirements.

HIRING OPTIONS

Employee

In December 2022, the Government of Indonesia issued Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation which revokes Law No. 11 of 2020 on Job Creation and amends Law No. 13 of 2003 on Manpower (Manpower Law), among other laws.

The Manpower Law divides employees into two categories:

- Indefinite-term employees (also known as permanent workers): employees who do not fall into the category of definite-term employees or foreign employees.
- Definite-term employees: employees under a definite- or fixed-term employment agreement (“FTC”), also known as contract workers. These employees may perform work to be performed and completed at once or work which is temporary; work whose completion is estimated within a certain period of time (up to 5 years); seasonal work; work that is related to a new product, new activity or additional product that is still in the experimental stage or tryout process; or work involving activities whose kind or nature is non-fixed. At the end of the definite- or fixed-term employment agreement, if the employee has worked for at least 1 month the employee is entitled to compensation according to the term of employment as follows:
 - 12 months continuously: 1 x the monthly salary
 - 1 month but less than 12 months: the service period/12 x the monthly salary
 - more than 12 months: the service period/12 x the monthly salary

Moreover, if either the employer or the employee terminates the FTC before its expiry, the employer must pay the compensation calculated as above and the service period is calculated as the period for which the employee has worked.

A foreigner may only work under a definite term of employment and cannot therefore be a permanent worker but does not otherwise fall under the above rules. For example, a foreigner may fill a position which is open under a Minister of Manpower regulation and is required to perform a transfer of knowledge to Indonesian employee(s). Further, a foreigner is not entitled to compensation according to the term of employment. Their unpaid salaries act as compensation for the remaining term of their work permit.

Employees may be engaged on a full-time or part-time basis.

Independent contractor

May be engaged but should not be provided with fees or benefits which could be deemed as salary or employment benefits as they may be deemed to be employees. The independent contractor should also not be treated as an employee (eg, by imposing statutory working hours). Not separately regulated but will fall under general contract law.

Agency worker

No restrictions apply to activities or manpower regarding what may be outsourced. However, further technical requirements (eg, rights and obligations of an outsourcing company towards its employees) apply to outsourcing companies under a government regulation. One of the protections provided under the government regulation is that if an outsourcing company employs FTC employees, the FTC must regulate the protection of the employees in case of a change to the outsourcing company, provided that the work still exists. Further, an outsourcing company is obliged to fulfill its employees' statutory entitlements.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

FTCs (ie, those for definite-term employees) must be made in writing and registered with the local Manpower office within:

- 3 days of the signing, if the agreement is registered through online registration; or
- 7 days of the signing, if the agreement is registered through manual registration.

Indefinite-term employment agreements may be made either orally or in writing. Both must contain certain required provisions.

Probationary periods

Any employment relationship that includes a probationary period must be documented in writing, and the probationary period cannot be longer than a single period of 3 months. A FTC cannot contain a probationary period; otherwise, the probationary period will be null and void.

Policies

No mandatory policies, but the following clauses and policies are recommended: gifts and favor policies for compliance with anti-bribery rules; policies on conflicts of interest with external parties; policies on electronic communications, email and internet abuse and software copyright; policies on code of conduct; policies on data privacy and changes in personal data; clauses in contemplation of natural disaster; clauses related to political activities; clauses related to rotation and relocation (*mutasi*); clauses related to demotion; clauses related to suspension without termination; and clauses related to personal leave.

Third-party approval

Subject to the Employment Contracts section, there is generally no requirement to lodge employment contracts or policies with, or receive approval from, any third party. However, company regulations, similar to an employee handbook, and collective labor agreements (if there is a labor union) are filed with and approved by the authorities. Company regulations are valid once they are approved by the authorities, while collective labor agreements come into force based on the date agreed by an employer and labor union(s) as stated in the agreement or when the date it is signed.

LANGUAGE REQUIREMENTS

Written agreements must be in the Indonesian language, using the Latin alphabet, as Article 28 (1) of Presidential Regulation No. 63 of 2019 on the Use of the Indonesian Language requires such language to be used in official communications in the workplaces of government offices and private entities. The regulation is silent on any sanction for failing to comply. However, the Indonesian language will prevent employees from claiming that they do not fully understand the information or that they were not informed by the company properly. Dual-language contracts may be prepared, but the Indonesian language provisions will prevail.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All, with certain exceptions in respect to expatriate employees.

Working hours

Limit of 7 hours a day, or 40 hours a week, in a 6-day week; or 8 hours a day, or 40 hours a week, in a 5-day week. In this case, the employees will be entitled to 1 day of weekly rest if the employees work for 6 days a week, and to 2 days of weekly rest if the employees work for 5 days a week.

These working hours do not apply in certain sectors or types of work, which may be shorter or longer than the above working hours and must be regulated in the employment agreement, the company regulations, or the collective labor agreement.

In relation to the above, companies which apply shorter working hours have the following characteristics:

- a. completion of work is less than 7 hours in 1 day and less than 35 hours in 1 week;
- b. flexible working hours; or
- c. work may be performed outside of work location.

Certain sectors or types of work that apply longer working hours than as set forth above will be regulated further under minister regulations, but no new ministerial regulations have been issued to date regarding this matter after the enactment of the Job Creation law.

Overtime

An employer who employs workers in excess of the standard work hours is obliged to pay overtime, with limited exceptions. Under current regulations, an employer is not obliged to pay overtime to those in certain positions of responsibility which must be expressly regulated. Under the Manpower Law, the overtime payment rate depends on how many hours are worked overtime and the timing of such overtime work. Except for certain sectors of business or work, overtime may be performed for up to 4 hours a day or up to 18 hours a week, and an employer that employs workers beyond their working hours is required to pay overtime wages with the following conditions:

- I. for the first hour of overtime work, 1.5 times the hourly wage; and

2. for each subsequent hour of overtime work, 2 times the hourly wage.

If the overtime work is carried out on weekly rest days and/or official holidays for 6 (six) working days and 40 (forty) hours a week, then:

1. Calculation of overtime pay for the first hour up to the seventh hour, paid 2 times the hourly wage; eighth hour, paid 3 times the hourly wage; and the ninth hour, tenth hour, and eleventh hour, paid 4 times the hourly wage;
2. If the official holiday falls on the shortest working day, the calculation of the overtime wage is carried out as follows: the first hour up to the fifth hour, paid 2 times the hourly wage; the sixth hour, paid 3 times the hourly wage; and the seventh hour, the eighth hour, and the ninth hour, are paid 4 times the hourly wage.

If overtime work is carried out on weekly rest days and/or official holidays for 5 working days and 40 hours a week, then: calculation of overtime wages for the first hour up to the eighth hour, paid 2 times wage hourly; the ninth hour, paid 3 times the hourly wage; and the tenth hour, the eleventh hour, and the twelfth hour, are paid 4 times the hourly wage.

Wages

Wages are established based on a certain period or unit of return. There is no national minimum wage. Provinces or regencies/cities settle their own minimum wage every year. The minimum wage is intended to cover employees working a 40-hour week in the formal sector – that is, any job sector or industry that is recognized, monitored and regulated by the government. The minimum wage does not apply to micro- and small businesses.

Vacation

Minimum of 12 days of paid vacation or annual leave per year after 12 months of uninterrupted service.

Muslim employees may take special leave in order to fulfill religious duties (ie, a pilgrimage to Mecca). In practice, this entitlement only applies once after the employee has worked for a certain period in accordance with the company regulations or collective labor agreement. In practice, pilgrimage leave is usually up to 40 days.

Sick leave & pay

Sick leave is not recognized under the Indonesian Manpower Law and by regulation. When sick, employees are entitled to rest while receiving their usual pay, and the number of paid sick days is not limited.

The employee receives 100 percent of their salary for the first 4 months of the sickness; the percentage of pay decreases thereafter. If the sickness continues after 12 consecutive months, the employee may be terminated with severance payment. Female employees are additionally entitled to 2 days of menstrual leave during the first and second day of menstruation if they do not feel well. Female employees generally do not take such leave.

Maternity/parental leave & pay

Pregnant employees are entitled to 3 months of fully paid maternity leave (rest), of which 1.5 months is to be taken in the prenatal period and the remaining 1.5 months in the post-natal period. The timing of maternity leave is often flexible in practice. A period of 1.5 months of fully paid rest must be given to those who have miscarried.

A male worker is entitled to 2 days of paid paternity leave if his wife gives birth or miscarries.

An employee is entitled to 2 days of paid leave for their child's wedding, circumcision, baptism or death.

Other leave/time off work

An employee is entitled to paid leave in other circumstances, such as if:

1. the employee is getting married
2. the wife or husband or children or children-in-law(s) or parent or parent-in-law(s) of the employee or a member of the employee's household dies
3. the employee is performing religious obligations ordered by their religion
4. the employee is exercising their right to take a rest and
5. the employee is undergoing an education program required by their employer.

DISCRIMINATION & HARASSMENT

Characteristics protected from unlawful discrimination include sex, ethnicity, race, religion and political orientation.

No regulated protection from harassment for employees. Employees who wish to take action against sexual harassment in the workplace may file a claim on the basis of the civil tort law, or the employee may file a criminal report against the party who committed the criminal offense.

WHISTLEBLOWING

The Indonesian Employment law does not explicitly address whistleblowing. However, it provides protection for employees who have knowledge of a criminal act of the employer by prohibiting the employer from terminating the employee for the reason that the employee reports to the authorities the alleged crime committed by the employee.

The employer may establish whistleblowing protections under their company regulations or a collective labor agreement, as applicable.

BENEFITS & PENSIONS

It is mandatory for every company or individual employer to register its employees with the SJSN programs, subject to the minimum number of employees below. The SJSN programs are divided into 2 main categories:

- Public health security, which is applicable for all Indonesian citizens and

- Social security, which covers occupational accident security, death security, old-age security, pension security and loss of job security.

The programs are run by the Social Security Agency (BPJS). The public health security program is managed by BPJS Kesehatan, whereas the social security programs, including occupational accident, death, pension, old-age and loss of job securities, are managed by BPJS Ketenagakerjaan. Employers should register their employees with the BPJS Ketenagakerjaan social security programs which are relevant to the employer's business scale. All employers should register their employees with the BPJS Kesehatan public health security program regardless of the number of employees in their company. The SJSN programs also extend to cover foreign employees who work in Indonesia for at least 6 months. For the loss of job security, the benefits of the program includes cash, access to job market information and job training.

DATA PRIVACY

Law No. 27 of 2022 on Personal Data Protection regulates that personal data subjects have the right to obtain information regarding identity clarity, basis of legal interest, purpose of requesting and using personal data, and accountability of parties that request personal data. In conducting personal data processing, the personal data controller must obtain proof of consent given by the personal data subject.

Under Law No. 39/1999 on Human Rights, each individual has the right to their own privacy and cannot be subjected to an investigation in relation to personal data without their agreement, except on the order of a court or other legitimate authority under prevailing legislation.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employees are not automatically transferred on a business transfer, which includes a merger. Indonesia does not have TUPE or TUPE-style regulations. Employees should be consulted, and the following 3 options are possible in relation to permanent employees:

- The employee is not willing to continue their employment with the new employer.
- The new employer is not willing to accept the employee.
- The new employer and the employee are willing to continue the employment as if no business transfer has occurred, with the employment relationship continuing on the basis of the same terms and conditions (or better) as before the transfer, and usually carrying forward accrued seniority. Employees cannot be given less beneficial terms unless they are terminated by the former employer or made redundant and rehired by the new employer. In that case, the new employer may rehire on its own terms.

Regardless of the reason for termination, in the event of a business transfer as explained above, the employee must be paid a certain amount in severance pay plus a term of service recognition payment, if applicable, and compensation, if applicable.

A non-permanent worker who chooses not to accept a transfer of employment offer, or who is not offered a transfer, is generally entitled to receive the wages for the remaining period of their FTC.

No protection against dismissal for employees in a business transfer. However, as with nearly all terminations of employment, unless the employer and employee reach agreement, the termination must follow the industrial relations dispute settlement procedure before the employee's employment may be terminated, and severance entitlements must be paid.

EMPLOYEE REPRESENTATION

Any group of at least 10 employees may establish a labor union which will have the right to:

- Enter into a collective labor agreement with the employer
- Represent workers in industrial disputes and at manpower institutions
- Establish institutions (eg, cooperatives) or carry out activities relating to the improvement of the welfare of the workers and
- Carry out other legal activities in the area of industrial relations.

Criminal sanctions may be imposed on anyone, including the employer, who engages in certain anti-union activity.

TERMINATION

Grounds

A termination must be mutually agreed by the employer and employee, and upon the grounds outlined below, as well as following the industrial relations dispute settlement procedure. The procedure starts from serving a mandatory termination notice within 14 business days prior to the termination (7 business days if the employee is still in probationary period). The termination notice is not required if the termination is due to an urgent reason.

If the employee does not agree with the termination, he/she should convey his/her written objection to the employer no later than 7 business days upon receipt of the notice.

If the termination dispute arises, the subsequent settlement procedure will be: bipartite, if no settlement is reached, the dispute goes to tripartite negotiations (the most common method is mediation conducted in the local manpower office) and, if no mutual agreement is reached, a lawsuit can be filed to the Industrial Relations Court (IRC) and the court proceedings should be attended until a court ruling is handed down. An appeal to the Supreme Court is possibly submitted. Unless a termination is mutually agreed, a final and binding court ruling should be obtained for a valid termination.

- Termination without cause (ie, where dismissal cannot be avoided, such as in the case of a merger, an acquisition, a reorganization of the company, the employer taking efficiency measures with or without closing down the company (ie due to losses it has suffered or to prevent losses), force majeure, the employer being under a delay of payment process or bankruptcy of the employer; note that the employer still must show grounds for termination).

- Termination with cause (eg, where the employee breaches the employment contract, company regulations or collective labor agreement and commits gross misconduct (termination due to urgent reasons), or other reasons for the termination of the employment relationship that may be stated in the employment agreement, company regulations or collective labor agreement).
- Where the employee has been unable to work for over 6 months due to legal proceedings brought against them, either for a crime that causes the company to suffer a loss or otherwise; however, if the court finds the employee not at fault, the employer must re-employ the employee.
- Where the employee has been absent from work for 5 or more consecutive working days without providing reasons or evidence, and 2 written notices have been given.
- Where the employee has a prolonged sickness for 12 consecutive months.
- The employee has submitted an application to terminate the employment relationship due to the faults of the employer.
- Retirement.
- The employee passes away.
- Voluntarily resignation.

Employees subject to termination laws

All employees are subject to termination provisions under the Manpower Law.

Restricted or prohibited terminations

Termination cannot be on the basis of the following circumstances: a worker being absent due to illness according to a physician's statement for a period of not more than 12 months; a worker having a permanent disability or being ill due to a work accident or due to the employment relationship where, according to a physician's statement, the recovery period cannot be determined; a worker being unable to carry out work due to the fulfillment of state duties; a worker performing their religious rituals; a worker getting married; a female worker being pregnant, in delivery, experiencing a miscarriage or breastfeeding her baby; a worker having a blood relationship and/or a marital relationship with another worker within a single company; a worker having reported the employer to the authorities alleging criminal activity by the employer; or a worker forming, becoming a member and/or the manager of a union, or carrying out activities of the union outside working hours, or during working hours with consent from the employer or based on the provisions of an employment agreement, company regulations or a collective agreement.

If the employer purports to terminate an employee's employment under any of the circumstances above, such termination is void by law, and the employer must continue to employ such employee.

Third-party approval for termination/termination documents

In addition to serving a notice to the employee and if the employee rejects the termination in writing, employers generally must first undergo the industrial relationship termination procedure which starts from having bipartite meeting(s) with the employees, followed with tripartite negotiations (which can be through mediation, conciliation, or arbitration procedures, but mediation is commonly opted by the disputing parties) if bipartite meetings fail to arrive at an agreement. If mutual agreement is not reached in tripartite negotiations, a lawsuit should be filed to the IRC. Employers should obtain a favorable decision on the termination of employment from the IRC or the Supreme Court if the IRC ruling is appealed to the Supreme Court (depending on the type of dispute which can be appealed).

Exceptions to the above apply if a FTC expires, the termination of employment occurs during the probation period of the worker (save for the mandatory termination notice, and as long as the probation period is specifically provided in writing and the termination procedure is expressly agreed in employment agreement, company regulations or collective labor agreement – although it is now subject to uncertainty due to Law No. 11 of 2020 on Job Creation), due to the worker's voluntary resignation without pressure or intimidation from the employer, due to a mutually agreed termination or due to the worker reaching retirement age.

There is no applicable pension age for private sector employers. Currently, 58 years is the minimum age to obtain pension security from BPJS Ketenagakerjaan. However, a company may set a different retirement age to apply within the company under the employment agreement, company regulations or collective labor agreement (eg, 55 years).

Mass layoff rules

No specific definition of redundancy or layoff. Employers seeking to make employees redundant should ensure that they provide valid evidence as grounds for the redundancy. Employers must attempt to negotiate a proposed termination with an employee or relevant labor union, as all dismissals on redundancy grounds must follow industrial relations dispute settlement procedures if not mutually agreed. A consultation process must be completed before notice of termination is given to employees. Where a redundancy occurs, the employer must pay the employee severance pay, service pay (if applicable) and compensation pay.

Notice

Although employment cannot be terminated unilaterally through notice, the Indonesian manpower laws and regulations recognizes the concept of a notice period for termination particularly for permanent employees. A notice of termination must be drawn up in writing specifying the grounds for termination and compensation payable (eg severance package) to the terminated employee. It must be delivered officially and properly by employer to the employee no later than 14 business days prior to the termination.

If the termination is conducted in the probationary period 7 business days' notice prior to the termination is required. No compensation is payable to a terminated employee during the probationary period.

A termination notice is not required if the termination is due to an urgent reason.

Written notice does not negate the legal requirement to perform the termination procedures as explained under "Third-party approval for termination/termination documents" if the termination is not mutually agreed.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice is not a recognized concept under the Manpower Law but if agreed by the employee and employer, it may be given in addition to the statutory termination package.

Employers may require employees to serve a period of garden leave in a form of suspension pending the outcome of industrial relations dispute settlement proceedings. During such period, employees are still entitled to their salary and usual entitlements.

Severance

The Manpower Law provides a single severance package formula which applies to most grounds for termination of permanent employees. The Manpower Law provides the following single severance package formula that applies to every lawful termination of employment:

- Standard severance pay: 1 month's salary for every year of service, up to 9 months' salary.
- Service appreciation pay: 2 months' salary for the first 3 years of service, followed by an additional month's salary for every 3 years of service thereafter, up to a maximum of 10 months' salary for 24 years of service.
- Compensation: to cover annual leave that has not expired or been taken, relocation expenses (to return the employee and their family to the place from which they were recruited, if applicable).
- Other benefits under the employment agreement, company regulations or collective labor agreement, if applicable.

If the termination is without cause or there is termination on retirement, the employee is entitled to the severance pay amount plus the standard service appreciation pay (if applicable) and compensation. If contested, a termination without cause may result in reinstatement.

POST-TERMINATION RESTRAINTS

Enforceable by virtue of the principle of freedom of contract, adopted in the Indonesian Civil Code. However, in practice, they are very difficult – and sometimes impossible – to enforce.

Non-competes

Permissible in theory, but very difficult – and likely impossible – to enforce.

Customer non-solicits

Permissible in theory, but may be difficult to enforce.

Employee non-solicits

Permissible in theory, but may be difficult to enforce.

WAIVERS

The general freedom of contract provisions of the Indonesian Civil Code allows parties to waive rights; however, the operation of such waiver is not permitted if it results in a violation of public policy or order, or is not applied in good faith.

REMEDIES

Discrimination

The employee is entitled to reinstatement, if applicable, or severance pay, ordinary service pay and ordinary compensation. The Manpower Law does not expressly recognize other damages such as loss of reputation and mental suffering, but these may be recognized if a separate, civil action is raised.

Unfair dismissal

Reinstatement or termination benefit, such as compensation, which includes back pay.

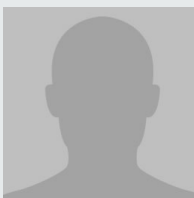
Failure to inform & consult

Employees are entitled to voice their concerns, but no remedial action will be taken.

CRIMINAL SANCTIONS

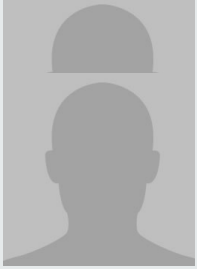
Imposed on employers who breach the Manpower Law, including where employers participate in anti-union activity; intentionally and without any rights or illegally access computers and/or electronic systems owned by somebody else for the purpose of obtaining electronic information and/or electronic documents; violate workplace health and safety regulations; fail to submit written annual reports on their industrial relations to the Minister of Manpower; or fail to pay severance pay, the term of service recognition payment and/or compensation as entitlements that should have been received upon termination of employment or overtime due; employing the employees for overtime without the their' consent or exceeding the statutory maximum overtime.

KEY CONTACTS



Lia Alizia
Makarim & Taira S.
lia.alizia@makarim.com

Candace Anastassia Limbong
Makarim & Taira S.
candace.limbong@makarim.com



Golden Mandala
Makarim & Taira S.
golden.mandala@makarim.com

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