

NEWSLETTER

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JOB CREATION LAW: THE EMPLOYMENT LAW REFORM

After a prolonged discussion, the Job Creation Bill was finally promulgated as Law No. 11 of 2020 concerning Job Creation ("**Job Creation Law**") on 2 November 2020. This Job Creation Law is over 1.187 pages long, consists of 186 articles, which ultimately amends 78 prevailing legislations.

It is common knowledge that the enactment process of such an umbrella law was far from smooth, where it has been the subject of a heated debate among the society, let alone some of its provisions have even led into some massive strikes/demonstrations, particularly those relating to the workforce sector. The labor reforms under the Job Creation Law have been mainly controversial due to introducing some fundamental shifts around employee protection issues. Considering that the employment sector has been one of the hottest topics under the Job Creation Law regime, this Newsletter will focus on some of the changes and adjustments upon the employment sections based on such a constitution.

Some Key Features

Generally, the Job Creation Law restructures numerous provisions related to employment under four different statutes, i.e.:

1. Law No. 13 of 2003 on Manpower ("**Manpower Law**");
2. Law No. 40 of 2004 on the National Social Security System;
3. Law No. 24 of 2011 on the Social Security Agency; and
4. Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers.

The following are the several substantial adjustments outlined in the Job Creation Law:

1. Employment of Expatriate

Since the enactment of the Presidential Regulation No. 20 of 2018 on Foreign Worker Utilization ("**PR No. 20/2018**") and Ministry of Manpower No. 10 of 2018 on Procedures for Foreign Workers Utilization ("**Manpower Reg. No. 10/2018**"), the requirement for an employer to obtain a license to employ a foreigner (*Izin Mempekerjakan Tenaga Asing* or "**IMTA**") has been abolished.

To be in line with the foregoing abolishment, the Job Creation Law has eliminated the IMTA requirement on the Manpower Law. Many believe such amendment was made to harmonize the relevant laws and may be seen as a mere administrative change. As a matter of fact, this

policy has been around since the enactment of the PR No. 20/2018 and Manpower Reg. 10/2018, so it is unlikely to have any practical implication.

The Job Creation Law still retains the requirement for the employer to hold the Foreign Employment Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or “**RPTKA**”), which is approved by the central government. Nonetheless, the employers can be exempted from seeking RPTKA if the foreign national is hired (i) for a production activity that has been stopped due to an emergency situation, (ii) in a vocational activity, (ii) in a “technology-based” start-up company, (iii) for a business visit; and (iv) for research activity at a definite time. This exemption of RPTKA also applies to a foreign director or commissioner with a certain amount of shares owned by his/her in the relevant company.

Moreover, the Job Creation Law also retains several provisions, among others, (i) the prohibition in hiring an expatriate in a human resources position, (ii) the requirement to employ a foreigner under a definite-term employment agreement; and (iii) the employer’s obligation to appoint Indonesian workers as a companion for foreign workers and pay the compensation for each foreign worker.

2. Outsourcing

Through the Job Creation Law, the government has eased down the arrangement on outsourcing by taking out the stipulations that limiting the types of work, which can be conducted by the outsourced worker.

Nonetheless, the law requires the outsourcing company to employ the relevant workers under a fixed-term or permanent employment agreement that should be made in writing. Besides, the outsourcing company must be a limited liability company and is obliged to obtain a business license issued by the central government.

3. Fixed-Term Employment

It is safe to say that this Job Creation Law has revoked some restrictions around the fixed-term employees’ related matters.

Previously, a fixed-term employment contract could be made a maximum of 2 years and may be extended once for a 1-year period. After the lapse of one month as from the expiration of the term period, such contract may be renewed 1 time for a maximum of 2 years period. Failure to comply with such provision would cause a fixed term employment contract to be deemed as a permanent employment contract, whereby this provision has been deleted in the Job Creation Law. Nonetheless, the type and nature of the work, as well as the term period for fixed-term employment will be further regulated under the government regulation.

While Job Creation Law retains the limitation to the type of work to be performed by the temporary workers, the employers should also note that compensation must now be paid upon expiry of the fixed-term employment contract in a certain condition.

4. Overtime

The employees currently may carry out overtime works longer up to 4 hours a day and 18 hours a week with the employee's consent upon the overtime works.

5. Wages Arrangement

The Job Creation Law grants the provincial government the power to set the minimum wages and shall comprise of provincial and district/city-based sectoral minimum wages. Nevertheless, the public still has to wait for the related supporting/follow-up regulation to be implemented to determine the formula of the said minimum wage calculation.

Aside from the above, the Job Creation Law has also provided a minimum wage exemption toward micro and small enterprises since it will be based on employer-employee's agreement. Additionally, the payment of the wage to the employee takes precedence prior to the payment to all creditors if the company is declared bankrupt or liquidated.

6. Employee's Termination Matters

As commonly known, since the house of Representatives passed the bill of Job Creation Law, the provision regarding employee's termination is one of the topics that has been closely monitored by the public. The law adds, amends, and revokes several provisions concerning employee's termination on the Manpower Law, among others:

a. New Ground for Employee's Termination

The Job Creation Law gives the leeway to the employer to terminate an employee without court approval. Therefore, 3 warning letters to terminate the employee as a consequence of the violation of the employment agreement, company regulation, and/or collective labor agreement mentioned in the Manpower Law are no longer required.

Further, the Job Creation Law keeps the extensive list of employment termination reasons, and even adds another aspect that previously has not been covered, i.e.: (i) company's merger, spin-off or acquisition; (ii) on the verge of debt suspension payment petition; (iii) the bankruptcy process against the company; and (iv) company closes down because of force majeure.

Unfortunately, the Job Creation Law does not further elaborate the procedures for the abovementioned termination, including the termination payment since such matters will be further regulated in the government regulation.

b. Termination Payment

The labor reform on the termination payment under the Job Creation Law can be seen by the elimination of the formula of termination package that entitles the employee to receive severance pay (*uang pisah*), tenure award (*uang penghargaan masa kerja*),

and/or compensation of right (*uang penggantian hak*), depending on the relevant termination reasons. We assume that the employer may calculate the formula of termination package by referring to the employment agreement, collective agreement, and/or collective labor agreement until the government regulation concerning this matter is issued.

Further, the compensation of right for housing allowance, medical and health care allowance in the amount of 15% of the severance pay and/or tenure award are also removed in this Job Creation Law.

7. Social Security

The Job Creation Law has added a new feature to the social security sector, i.e. unemployment insurance benefits. Although the future implementing regulation will determine the eligibility criteria and details of the relevant benefits, the Job Creation Law has provided some preliminary views on the unemployment benefits, which will include cash payment, access to job recruitment information, and employment training courses.

Note: The content of this article does not constitute legal advice and should not be relied upon since there will be implements regulation(s) to be further issued. The judge's opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email through info@yangandco.com.