



Omnibus Law on Job Creation Overview on Employment Cluster

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General Overview on certain Amendments of Employment-related Laws and Regulations in Indonesia's Omnibus Law

In the efforts to boost investment and push for greater job creation, Law No. 11 of 2020 on Job Creation or what is publicly-known as Omnibus Law ("Omnibus Law") has been finally enacted and came into force on November 2, 2020.

The Omnibus Law consists of 10 (ten) clusters, among others, cluster related to employment. The Omnibus Law amends, deletes, and/or stipulates new provisions under various existing laws and regulations, including employment-related laws and regulations, namely (i) Law No. 13 of 2003 on Employment (Indonesian Employment Law – "IEL"); (ii) Law No. 40 of 2004 on National Social Security System ("Social Security Law"); (iii) Law No. 24 of 2011 on Social Security Provider (*Badan Penyelenggara Jaminan Sosial* – "BPJS") ("BPJS Law"); and (iv) Law No. 18 of 2017 on Protection of Indonesian Migrant Employees ("Law 18/2017").

Key Points on Employment Cluster

Set out below are the key points that are worth to note from the employment cluster, as follows:



Utilization of Foreign Employee



Employment Agreement for
Specified Period of Time



Outsourcing



Working Time and Rest Period



Wages



Employment Termination



Social Security



Protection of Indonesian Migrant
Employees

Utilization of Foreign Employee

Topic	IEL	Omnibus Law
Requirement to obtain Manpower Utilization Plan (<i>Rencana Penggunaan Tenaga Kerja Asing – “RPTKA”</i>)	In order to utilize a foreign employee, an employer is required to obtain a written permit and RPTKA that has been ratified by the Minister of Manpower.	A written permit is no longer required for the utilization of foreign employee. The employer is only required to obtain RPTKA. In this regard, we understand that the RPTKA that has been ratified by the Minister of Manpower shall serve as a work permit for the foreign employee.
Exemption on the RPTKA obtainment requirement	Government institutions, international agencies and representative of foreign countries are exempted from obtaining the RPTKA.	Omnibus Law has expanded the scope of exemptions. The following are exempted from obtaining the RPTKA: <ol style="list-style-type: none">member of Board of Directors or Board of Commissioners with shares ownership (in the company) or shareholders;diplomatic and consular officials at representative offices of foreign countries;foreign employee who works in types of production activities that have ceased due to an emergency situation, vocation, technology-based start-up, on business visits, and conducting research for a certain period of time.

Employment Agreement for Specified Period of Time

Topic	IEL	Omnibus Law
Maximum period of Employment Agreement for Specified Period of Time <i>(Perjanjian Kerja Waktu Tertentu – “PKWT”)</i>	In principle, the term of PKWT may not exceed 2 (two) years and may be extended only once, and this extension must not exceed 1 (one) year. Furthermore, the PKWT may be renewed only once, and this renewal must not exceed 2 (two) years.	Omnibus Law has removed the provisions on the maximum period of PKWT. However, it will be further stipulated under a Government Regulation.
Mandatory compensation pay in the event of expiration of PKWT and completion of certain work	The IEL does not require the employer to provide a compensation pay to an employee in the event of expiration of PKWT and completion of certain work.	In the event of expiration of PKWT and completion of certain work, the employer is required to provide a compensation pay to the relevant employee, which shall be provided in accordance with the relevant employee's years of service. The provisions on such compensation pay will be further stipulated under a Government Regulation.

Outsourcing

Topic	IEL	Omnibus Law
Terminology and limitation on type of work	The IEL recognizes 2 (two) terminologies for outsourcing, namely contract of work (<i>pemborongan</i>) and the provision of labor (<i>penyediaan jasa pekerja</i>). Furthermore, the IEL provide the limitation on the type of works that may be carried out under contract of work arrangement and provision of labor arrangement.	The Omnibus Law only recognizes 1 (one) terminology for outsourcing, namely <i>alih daya</i> . Moreover, it is noteworthy that the Omnibus Law has removed the provision which stipulates that the outsourcing may only be carried out for certain type of works. We understand that the implementing regulations related to outsourcing still stipulate the limitation on the type of works for outsourcing (i.e. contract of work and provision of labor). However, we also understand that such implementing regulations may be amended or revoked to reflect the provisions under the Omnibus Law.

Working Time and Rest Period

Topic	IEL	Omnibus Law
Overtime	Overtime may only be performed for a maximum period of 3 (three) hours per day and 14 (fourteen) hours per week.	Omnibus Law has extended the permissible overtime period. Overtime may be performed for a maximum of 4 (four) hours per day and 18 (eighteen) hours per week.
Long Rest Period	An employee is entitled to a long rest period for at least 2 (two) months in the event that the said employee has been working for 6 (six) consecutive years at the same company. This rest period shall be awarded in the seventh and eighth year of work. Each long rest period can be taken for a period of 1 (one) month.	Omnibus Law has removed the provisions on the employer's obligation to provide a long rest period to an employee. However, the employer may still be required to provide a long rest period to its employees in the event that such long rest period entitlement is stipulated in the relevant employment agreement, company regulation, or collective labor agreement.

Wages

Topic	IEL	Omnibus Law
Minimum wages	Minimum wages consists of: (i) provincial or regency/regional-based minimum wages; (ii) sector-based minimum wages within a province or regency/regional.	The Omnibus Law only recognizes provincial and regency/regional-based minimum wages. It has removed the provision on sector-based minimum wages within a province or regency/regional.
Exemption on the minimum wages requirement	The IEL does not provide any exemption on the minimum wages requirement. Every employer is prohibited to pay wages less than the minimum wages.	Omnibus Law provides that the provisions on the minimum wages are exempted for Micro and Small Enterprises (<i>Usaha Mikro dan Kecil</i>). Wages for Micro and Small Enterprises are determined based on the agreement between the employer and the employee.

Employment Termination

Topic	IEL	Omnibus Law
Basis of employment termination	<p>The basis of employment termination under the IEL are as follows:</p> <ul style="list-style-type: none">a. employee's death;b. expiration of PKWT;c. employee is detained for committing a crime;d. employee violation of the employment agreement, collective labor agreement, and company regulation;e. employee absence for 5 (five) days with 2 (two) summons;f. continual losses or force majeure;g. efficiency;h. bankruptcy;i. retirement;j. corporate action (i.e. merger, consolidation or acquisition);k. employee's resignation;	<p>Omnibus Law has added new valid causes/reasons that can be used as a basis of employment termination, namely (a) spin-off; and (b) suspension of debt payment obligations. Furthermore, other causes/reasons that can be used as a basis of employment termination may be stipulated under an employment agreement, company regulation or collective labor agreement.</p>

Employment Termination (cont'd)

Topic	IEL	Omnibus Law
Criteria that links the termination payment formula with the cause/reason of termination	I. employee's request for termination due to employer action; m. employee's lengthy illness.	Omnibus Law has removed the criteria that links the termination payment formula with the cause/reason of termination. However, the matrix of severance package formula based on Article 156 of IEL is retained.

Employment Termination (cont'd)

Topic	IEL	Omnibus Law
Components of compensation pay (uang penggantian hak)	<p>The entitlement of compensation pay includes the following:</p> <ul style="list-style-type: none">a. annual leave that has not been taken;b. travel expenses for employees and their families to their home town;c. compensation for housing and medical allowance, which is equal to 15% of severance pay and/or service pay for those who are entitled to severance pay and service pay;d. other compensation as determined in the employment agreement, company regulation, or collective labor agreement.	<p>Omnibus Law has removed compensation for housing and medical allowance from one of the components of compensation pay.</p>

Social Security

Topic	Social Security Law and BPJS Law	Omnibus Law
Social Security Programs	<p>The social security programs shall consists of:</p> <ul style="list-style-type: none">a. healthcare security;b. occupational accident security;c. old-age security;d. pension security; ande. death security.	<p>Omnibus Law has added a new social security program, namely job loss security (<i>jaminan kehilangan pekerjaan</i>), that will be administered by BPJS Ketenagakerjaan and the Central Government. The premium for job loss security shall be borne by the Central Government.</p> <p>The benefits of job loss security include cash, access to job market information, and job training. The maximum amount for the benefits of job loss security is 6 (six) months salary.</p> <p>The provisions on job loss security will be further stipulated under a Government Regulation.</p>

Protection of Indonesian Migrant Employees

Topic	Law 18/2017	Omnibus Law
The issuing authority for License of Indonesian Migrant Workers Placement Agency (<i>Surat Izin Perusahaan Penempatan Pekerja Migran Indonesia – “SIP3MI”</i>)	SIP3MI shall be issued by Minister of Manpower.	SIP3MI shall be issued by the Central Government.
Validity Period of SIP3MI	Law 18/2017 provide provisions on the validity period as well as the extension of SIP3MI.	Omnibus Law has removed the provisions on the validity period as well as the extension of SIP3MI.



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