



## Overview on Definite-Term Employment Agreement Regulation

Indonesia's Omnibus Law, which was issued on November 2020, stipulates new standards for Indonesian employment terms and conditions by introducing new concepts and rules. The goals of the Job Creation Law are to bolster investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia. Moreover, several regulations were issued and set new rules and procedures for implementing regulations of Omnibus Law. These implementing regulations include Government Regulation Number 35 Year 2021 concerning Definite-term Employment Agreement, Outsourcing, Working and Resting Hours, and Termination of Employment ("**GR No. 35/2021**").

Stipulation on Definite-term Employment under GR No. 35/2021 are as follows:

### 1. Implementation on Definite-Term Employment Agreement

Pursuant to Article 4 of GR No. 35/2021, a Definite-term Employment Agreement (*Perjanjian Kerja Waktu Tertentu* or "**PKWT**") may be made based on (i) the period of work or (ii) the completion of certain work. A PKWT may not be made for the work that is permanent in nature. In addition, GR No. 35/2021 allows a PKWT to be made for any other types of work, if that the type and nature or activity of such work is temporary.

#### (i) PKWT that based on the period of work

A PKWT that based on the period of work may be made for the following types of work:

- a) Work that is estimated to be completed in a short period of time (a maximum of 5 (five) years);
- b) Seasonal work (i.e., work that depends on certain seasons, weather, or conditions); or
- c) Work related to development of a new product, activity or any additional products that are still in trial or exploration.

A PKWT based on the period of work may be made for a maximum of 5 (five) years. If the employee and the employer want to extend the contract, they may extend such PKWT, only that the contract extension is not more than 5 (five) years. In this regard, the period of work for the PKWT that has been extended as above, shall be calculated since the start of the initial PKWT.

#### (ii) PKWT that based on the completion of certain work

A PKWT based on the completion of work may be made for the following types of work:

- a) Work that may be completed in one exercise; or
- b) Work that is temporary (not permanent) in nature (this is referring to daily worker arrangements).



## 2. Outsourcing

An employment relationship between an outsourcing company and an employee is based on an employment agreement (i.e., Definite-term agreement or Indefinite term agreement) in writing. Protection of workers, wages, welfare, terms of work, and disputes that arise are carried out in accordance with the provisions of the regulations and shall be the responsible of the outsourcing company.

In the event that the outsourcing company employs workers based on PKWT then the Agreement must contain transfer protection of rights for workers in the event of change of outsourcing company. This is a form of guarantee of continuity of work for employees who work based on PKWT in outsourcing company.

## 3. Working and Rest Hour

### (i) Working Hour

An employer is required to implement the working hours for its employees. There are 2 (two) types of working hours, namely:

- a) 7 (seven) work hours in 1 (one) day or 40 (forty) work hours in 1 (one) week for 6 (six) working days a week; and
- b) 8 (eight) work hours in 1 (one) day or 40 (forty) hours in 1 (one) week for 5 (five) working days a week.

However certain sectors or jobs may govern differently. In line with the Omnibus Law, GR No. 35/2021 also recognizes business and work where the normal working hours can be more than 40 (forty)hours per week. Based on GR No. 35/2021, these sectors include energy and mineral resources in certain areas, general mining, upstream oil and gas, horticulture agribusiness and fishery in certain areas that will regulated by ministerial regulation.

### (ii) Rest Hour

An employer must provide weekly rest time of 1 (one) day for the 6 (six) working days a week or of 2 (two) working days for the 5 (five) working days a week.

## 4. Compensation Payment

Omnibus Law and Article 15 of GR No. 35/2021 requires employers to pay compensation to a Definite-term employee when the PKWT ends ('Compensation Payment'). The amount of Compensation Payment will depend on the employment period of the relevant Definite-term employee in the company. As the implementation of this requirement, GR No. 35/2021 stipulates the applicable formula for calculating the Compensation Payment only if the employee has worked for at least 1 (one) month continuously, as follows:



| Completed Contract Period               | Amount of Compensation Payment   |
|---|--|
| Less than 1 month                       | None   |
| 1 month or more but less than 12 months | $(\text{Work period in months}/12) \times (1 \text{ month's salary} + \text{fixed allowance})$ |
| 12 months consecutively                 | 1 month salary + fixed allowance   |
| More than 12 months                     | $(\text{Work period in months}/12) \times (1 \text{ month's salary} + \text{fixed allowance})$ |

Under GR No. 35/2021, the Compensation Payment must be paid at the expiry of the PKWT. If the PKWT is extended, the Compensation Payment for the initial contract period must be paid when the initial contract period expires. The Compensation Payment covering the period of extension must be paid when the extension expires.

Moreover, if the work is completed earlier than the end of the intended contract period under the PKWT, the Compensation Payment is calculated based on the actual work period the employee has completed (not the intended contract period). If a party terminates the PKWT early, the employer must also provide the Compensation Payment calculated based on the employee's period of employment until the early termination of the PKWT.

## 5. Termination of Employment

In a case of termination, the termination of employment shall be firstly notified by the employer to the employee whose employment is going to be terminated by at least 14 working days before the date of the termination. In the event that the termination of employment is carried out during probation, notification letter must be submitted no later than 7 (seven) working days before the termination of employment. A written notice of termination must include at least:

- (i) The reason for termination;
- (ii) The termination payment and other entitlement for the impacted employees.

The employer is required to notify the Ministry of Manpower and/or the appropriate regional Manpower Office of the termination of employment if the employee has been told and does not object.

If the employee objects to the termination of employment, they must submit a written objection within 7 working days after receiving the notification, and the employer and employee must then negotiate a fair termination agreement. If an agreement cannot be reached during the negotiation, the employment relationship may be terminated in accordance with the system for resolving labor disputes.



In the event there is termination of employment, an employer shall pay the termination rights to the dismissed employees that consist of severance pay, service pay, and compensation pay as follows:

(i) Severance Pay

| <b>Completed Contract Period</b>      | <b>Amount of Termination Rights</b> |
|---------------------------------------|-------------------------------------|
| Less than 1 year                      | 1 month wage                        |
| 1 year or more but less than 2 years  | 2 months wage                       |
| 2 years or more but less than 3 years | 3 months wage                       |
| 3 years or more but less than 4 years | 4 months wage                       |
| 4 years or more but less than 5 years | 5 months wage                       |
| 5 years or more but less than 6 years | 6 months wage                       |
| 6 years or more but less than 7 years | 7 months wage                       |
| 7 years or more but less than 8 years | 8 months wage                       |
| 8 years or more                       | 9 months wage                       |

(ii) Service Pay

| <b>Completed Contract Period</b>        | <b>Amount of Termination Rights</b> |
|---|-------------------------------------|
| 3 years or more but less than 6 years   | 2 months wage                       |
| 6 years or more but less than 9 years   | 3 months wage                       |
| 9 years or more but less than 12 years  | 4 months wage                       |
| 12 years or more but less than 15 years | 5 months wage                       |
| 15 years or more but less than 18 years | 6 months wage                       |
| 18 years or more but less than 21 years | 7 months wage                       |
| 21 years or more but less than 24 years | 8 months wage                       |
| 24 years or more                        | 10 months wage                      |

(iii) Compensation Pay

Compensation pay that should be received by the employee consist of:

- a) Compensation for annual leave to which the employee is entitled but which has not been taken and which has not been forfeited.
- b) All costs or expenses incurred in returning the employee and his/her family to the place where he/she was recruited, if applicable; and
- c) Other matters agreed in employment agreements, company regulations, or collective labor agreements.



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