

INDONESIA: GUIDANCE ON NOTIFICATION OBLIGATIONS UPON TERMINATION

The manpower laws were recently amended, amongst others, to require an employer to issue a notice of termination to the employee prior to terminating their employment and, if the employee does not object to the termination, to notify the manpower office of the termination. On 11 March 2022, the Directorate General of Industrial Relations and Manpower Social Security issued a letter No 4/303/HI.00.03./III/2022 to provincial manpower offices (**Letter**) to provide guidance on the relevant procedures relating to employers' notification obligations.

Notice Obligations

In 2020, Law No 11 of 2020 on Job Creation (**Job Creation Law**) amended and introduced a new requirement under Law No 13 of 2003 on Manpower (**Manpower Law**) that employers must issue a notice of termination to an employee and/or their union prior to terminating their employment.

A year later, Government Regulation No 35 of 2021 (**GR 35**) was issued to guide the implementation of the Manpower Law as amended. In relation to the notice obligations, employers are required to:

- (a) give the employee and/or their union a notice of termination (except where the termination is due to the employee committing a violation that is considered 'urgent/serious' under the employment agreement, company regulations or collective labour agreement). The notice period must be at least 14 working days (or seven working days if the employee is still on probation) before the termination date. The notice must be given in writing and state the reason for termination and the employee's termination payment entitlements;
- (b) if the employee does not object to the termination, the employment is terminated. The employer must notify the manpower office of the termination; and
- (c) if the employee objects to the termination, they must provide their reasons of objection in writing within seven working days of the notice of termination being received. Parties then need to negotiate and agree on a mutually agreed separation. Such negotiation is usually done in an individual meeting/consultation.

Guidance under the Letter

The Letter provides that:

- the notification to the manpower office (see (b) above) must be accompanied by a copy of the notice of termination issued by the employer and a letter from the employee confirming that they are not objecting to the employment termination;
- following receipt of such notification, the manpower office will issue a letter acknowledging the notification (for the avoidance of doubt, there is no requirement to obtain approval from the manpower office in these circumstances); and
- the notification should be made to the manpower office in the relevant district/city where the employee or employer is located or where the employment agreement was entered into, if the notification will subsequently be used as a supporting document to apply for unemployment benefit under the *Badan Penyelenggara Jaminan Sosial* (Social Security Administrator) system.

The Letter also annexes examples of a notice of termination, letter from the employee confirming that they are not objecting to the employment termination and letter from the employer notifying the manpower office of the termination.

These examples are not binding but provide greater clarity on the Ministry of Manpower's expectations as to the content of these communications. Based on the examples provided, a notice of termination should contain:

- name and role of the employer representative who signs the notice on the employer's behalf;
- employee details, including name, role, division and date of employment agreement;
- reason for the termination of employment, all payments and other entitlements due to the employee and when and how the payments will be made; and
- a statement requiring the employee to provide a written response to the notice of termination within a specified period.

The notification to the manpower office should contain:

- name and role of the employer representative who signs the notification on the employer's behalf;
- employee details, including name, role, division and date of employment agreement;
- a statement that the employment has been terminated;
- reason for the termination of employment;
- a statement that the employer has notified the employee of the termination and that the employee did not object to it;
- a statement that all payments and other entitlements due to the employee have been or will be paid on a specified date; and
- a copy of the notice of termination issued by the employer and the employee's confirmation that they are not objecting the termination.

Key Takeaways

The Letter provides some clarity on the employment termination process, but leaves some questions unanswered, including the timing for employers to provide notification to the manpower office of the notice of termination.

Additionally, the usefulness of the guidance in practice remains to be seen as it would be unusual for an employee to accept termination without raising any objection, particularly where ex gratia payments are ordinarily paid where the employee objects to the termination in order to secure their cooperation and agreement.