

CLIENT NEWSLETTER

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FREQUENTLY ASKED QUESTIONS ON EMPLOYMENT AMID COVID-19 PANDEMIC

Background

Recently, President Joko Widodo issued Presidential Decree No. 12 of 2020 on the Stipulation of Non-Natural Disaster of the Spread of COVID-19 as National Disaster (**PD 12**). By the issuance of PD 12, COVID-19 is officially considered a national disaster in Indonesia.

The COVID-19 outbreak and the measures taken to deal with such crisis have undoubtedly disrupted the economic sector as uncertainty of economic conditions have affected the business short- and long-term sustainability. Many employers try their best to maintain the survivability of their business during this difficult period and employment matters immediately become one of the key factors.

Frequently Asked Questions

We set out below our responses to some frequently asked questions on employment law matters arising during the pandemic:

1. Can companies reduce their employees' salaries due to the outbreak?

Yes, they can. The reduction, however, is generally subject to agreement with the relevant employees and with due observance of company regulation and existing employment contract (if any). As employment agreement (either in writing or not) is basically



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an agreement between parties, any change to the terms and conditions therein must be based on mutual consent. This understanding is confirmed by the issuance of Ministry of Manpower Circular Letter No. M/3/HK.04/III/2020 on Worker/Labor Protection and Business Continuity in the Context of the Prevention and Control of COVID-19 (**MoM CL 3/2020**).

MoM CL 3/2020 basically allows companies affected by the pandemic to reduce salaries, subject to agreement with the employee. However, please note that MoM CL 3/2020 does not supersede applicable minimum payment requirement (**UMR**). Therefore, even though companies successfully manage to secure employees' consent for salary reduction, the reduced salary should not be less than applicable UMR. Companies should further check their employment agreement and how salary determination is set out under such agreement.

2. Can companies reduce salaries of employees who work from home due to COVID-19 outbreak?

In general, the answer would be similar to our response in question 1 above. But Employment Law allows the break-down of salary components into basic salary and allowances, and allowances may be made payable based on the attendance of employees in working place.

As such, if working from home policy is applied and employees are not coming to the working place, the relevant allowance may not be payable, and salary could be reduced accordingly. It is therefore beneficial for companies to break down their employees' salaries into components.

This policy will enable companies to cut costs if a situation which prevents normal business operations takes place. If salary break-down policy has not been clearly applied in the agreement, the companies will need to amend the employment contract and/or company regulation to apply this policy.

3. Can companies reduce salaries of employees who catch COVID-19 and therefore cannot work at all?

Employment Law requires companies to pay full salary of any sick employee for at least the first four months. Further, Employment Law sets out stages of salary reduction due to prolonged illness using the following formula:

- a) For the first four months, 100% salary.
- b) For the second four months, 75% salary.
- c) For the third four months, 50% salary.
- d) For subsequent months, 25% salary.

4. Can companies terminate their employees who catch COVID-19?

Basically, Employment Law requires Companies to maintain employment relation with sick employees (as validly evidenced) for at least 12 consecutive months. However, it is not illegal for companies to persuade the employees to agree on mutual termination earlier than 12 months, with payment of severance package.

5. Can companies lay-off their employees due to COVID-19 outbreak?

In principle, Employment Law provides several options for the employer to lay-off or reduce its employees. However, there are several requirements to be fulfilled before the employer can conduct termination of employment among others, including: force majeure condition, business efficiency, the company suffering losses within certain period, or change of control.

If a company's business is adversely affected by the outbreak, the companies can, of course, terminate their employees. COVID-19 outbreak as force majeure event can also be theoretically used as the basis for termination (with payment of severance package). In this case, employers must first build an argument that COVID-19

is a force majeure event for their business and this will have to be analyzed on a case by case basis.

Though this pandemic situation is unprecedented, employers will still have to prove that their companies are suffering losses and no longer able to pay their employees' salaries due to the pandemic to avoid significant challenge by employees.

Having that said, as a general principle, unilateral termination by employers can only be implemented with approval from the Industrial Court and it will take certain period of time to have it approved. To avoid prolonged and challenging process with the court proceeding, it is highly recommended that companies/employers to reach settlement agreement with the relevant employees to proceed with mutual termination, or consider the alternative solution set out in question No. 7 below.

6. Are employees still entitled to receive the religious allowance (THR) during the COVID – 19 outbreak?

Yes, the employees are still entitled to receive THR as there is no legal provision that eliminate THR obligation during the pandemic. However, companies may approach employees to agree on reduction of THR amount as business and financial condition of the company are affected by the pandemic. Please see our response to questions number 1 and 2.

7. Can companies temporarily release (*merumahkan*) their employees during pandemic?

Employment Law does not recognize temporary release (*merumahkan*). However, Article 93 paragraph (1) of Employment Law states that salaries are not payable if employees do not perform their work. This can be used as a basis for companies to ask their employees to cease working and receiving salaries. In addition to justification available under Article 93 paragraph (1) of Employment Law, companies must also prove that temporary release is implemented due to unavoidable external condition and that it is the best available alternative other than termination.

In 2004, Minister of Manpower issued a circular letter which basically allows temporary release (*merumahkan*) of employees to avoid mass termination.

In short, temporary release should be doable if:

- (a) due to the unavoidable external factor, temporary release must be implemented;
- (b) temporary release is implemented to recover financial condition of the company; and
- (c) temporary release is implemented to avoid termination of employees.

That said, temporary release is not without risks and may still be challenged by employees. Proper talks with employees should still be arranged.

Closing

Regardless of the legal grounds available under the written law, any action related to human resources and employment during this unprecedented situation should be taken carefully and, to the extent possible, with consent from the relevant employees. This after all is not only about legal matters, but also human relationship.

The pandemic has affected many people's lives and operations of business and companies. Unfortunately, we have reached a situation where isolation is the only option and mobilization is limited. Given these facts, securing consents from the employees for any decision to be taken by employers may be technically easier as long as the decision contains benefits, or at least hope, for the employees to survive the current adversity. Employers may, through available means of communication, approach each employee personally to explain the situation. As handling disputes amid the pandemic is troublesome, amicable settlement with employees is the best way, if possible.