

Expatriate Employment Severance Entitlement

Foreign citizens, as stipulated by Law Number Number 13 Year 2003 regarding Manpower (“Manpower Law”), may be employed in Indonesia in certain job positions and for certain period of time. Accordingly, foreigners can only be employed under fixed-term employment agreement instead of permanent employment agreement. Based on the Manpower Law, employment agreement is made for a definite period of time (Perjanjian Kerja Waktu Tertentu/“PKWT”) or indefinite period of time (Perjanjian Kerja Waktu Tidak Tertentu/“PKWTT”). PKWT is based on either the period of specified time or the completion of specific work. Also, unlike PKWTT, PKWT can not require probation period on the employment.

PKWT is made for a period of no longer than two years and may be extended one time only for a period of no longer than one year. After the extension period has been exhausted, the employment may be renewed for a period of two years maximum. However, this renewal can only be made after observing a thirty-day grace period since the end of the employment agreement extension.

Under the Manpower Law employee may be entitled to severance pay, service pay, and compensation of rights pay in the event of termination (Pemutusan Hubungan Kerja/PHK) initiated by the employer. However, particularly for PKWT, Manpower Law requires that if PKWT is terminated earlier than its expiration date as specified therein by either the employer or the employee, and such termination is not caused by death of employee, final and binding decision of court or other relevant industrial relation authority, or any other occurrence or condition set forth in the employment agreement, company regulation, or collective labor agreement which causes employment termination, the terminating party is obliged to pay compensation to the other party in the amount of the employee’s salary until the expiration date of the PKWT. Although the Manpower Law does not state that severance pay, service pay, and compensation of rights pay are the consequence of termination designated specifically for PKWTT, it is implied that the consequence of termination for PKWT is the compensation pay instead of severance pay, service pay, and compensation of rights pay. Moreover, such implication has been widely accepted in Indonesia.

Therefore, since foreigners can only be employed in Indonesia under PKWT, but on the other hand severance payment is only designated for PKWTT, it is commonly believed that expatriate employees are not entitled to severance payment under the Indonesian Manpower Law. Expatriate employees are, however, may be entitled to compensation pay provided that they are dismissed by their employer earlier than their PKWT period.

Recently there has been some judicial rulings state otherwise. These court decisions indicate that the implication of non-entitlement of severance pay for expatriate employees can not be applied generally, but rather it must be viewed on a case-by-case basis. In order to avoid potential dispute between employer and expatriate employee in regards to the severance payment entitlement at dismissal, it is highly advisable to seek for legal assistance prior to recruiting and terminating expatriate employees.

The contents of this article are intended to convey general information only and not to provide legal advice or opinions. If you require legal assistance, you may contact:

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