

Probation Period and Annual Leave Under The Indonesia Manpower Law

Probation Period

Legal Basis of the Probation Period is regulated under Law Number 13 of 2003 on Manpower (“**Indonesian Manpower Law**”) and Ministry of Manpower and Transmigration Decree (*Kepmenaker*) Number 150 of 2000 on Termination of Employment and Severance Pay (“**Kepmenaker 150/2000**”). There are two types of employment agreement as stipulated under the Indonesian Manpower Law i.e. definite employment agreement and indefinite employment agreement.

According to Article 58 (1) of the Indonesian Manpower Law, definite employment agreement may not require probationary period. If it is still done, the probationary period will be null and void by law. However, it shall not affect the validity or enforceability of the remainder of the employment agreement which shall be construed and interpreted as if such invalid, void or unenforceable provision was not a part thereof.

Meanwhile, indefinite employment agreement may require 1 (one) time probationary period for maximum of 3 (three) months, cannot be extended/renewed. It is regulated under Article 60 (1) of the Indonesian Manpower Law and Article 5 (2) of *Kepmenaker 150/2000*.

The probationary periods requirement should be stated and agreed in the employment agreement. If employment agreement is silent about probationary period, probationary period shall be considered non-existent. During the probationary periods, the employer is prohibited to pay salary below the applicable minimum salary. If the employer does so, imprisonment sanction of at least 1 (one) year and no later than 4 (four) years and/or a fine of at least IDR 100 million and a maximum of IDR 400 million shall be charged.

Employer shall be entitled to terminate employees who are on probationary period at any time, without prior notice to employees. This termination does not require decision from industrial relations court. Upon the expiration of probationary period, employer is entitled to terminate such indefinite employment agreement.

LEGAL ARTICLE



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Annual Leave

Referring to Article 79 (2) of the Indonesian Manpower Law, annual leave of 12 (twelve) workdays shall be provided to employee after employee works for 12 (twelve) months consecutively. On the thirteenth month, the employee can take his annual leave. Otherwise, employee who has not been worked for 12 (twelve) months consecutively may submit unpaid leave application to the employer if it is allowable under the company regulation.

Further, employer may determine different arrangement of annual leave, but should be more favorable for employee. For instance, employee is entitled for 1 (one) day paid leave since the date of joining. This arrangement should be clearly stated in the employment agreement and/or the company regulation.

Total annual leave would normally be 12 (twelve) days per year, but the employer may provide more leave for certain managerial level. For instance, 16 (sixteen) days for senior manager and 20 (twenty) days for director and commissioner position per year.

In case of termination of employment agreement, employee retains the right to claim payment for all leave not taken as a reward pay according to Article 156(4) of the Indonesian Manpower Law. In practice, employer would ask employee to take all remaining leaves during the notice period.

Besides the foregoing, Article 79 (2) of the Indonesian Employment Law also provides a long period of rest of no less than 2 (two) months. It shall be awarded in the seventh and eighth year of work each for a period of 1 (one) month to employee who have been working for 6 (six) years consecutively at the same company on the condition that the said employee will no longer be entitled to their annual period of rest in 2 (two) current years. This provision shall henceforth be applicable every 6 (six) years of work.

While taking a long period of rest, workers are given compensation pay for their entitlement to the eighth year's annual leave amounting to half their monthly salary. Enterprises that have already applied a long period of rest that is better than the one stipulated under the Indonesian Manpower Law are not allowed to reduce it. Many companies even provide more benefits like car, house or bonus.

Type of employment agreement shall determine requirement of probation period and annual leave provisions should be more favorable for employee or at least in line with the Indonesian Manpower Law.