

Secondment and Transfer of Employee Under the Indonesian Manpower Law

Secondment or Job Placement

The Indonesia Manpower Law Number 13 of 2003 provides definition of Secondment or Job Placement, where it is also known as '*Penempatan Tenaga Kerja*' or '*Mutasi Kerja*' as meant in Chapter VI Article 31 until Article 38 of the Indonesian Manpower Law. Secondment or Job Placement means employees can be placed to other company's premises by the employer which best suits their skills, trade, capability, talents, interest and ability.

The employee may normally be placed by company which has representative or branch or associated companies either domestically or overseas for certain period of time. The Secondment may depend on the employer's needs on the employee's skills for projects.

As a result of the Secondment, the terms and conditions in the employment agreement between the original employer and the employee, including its rights and obligations remain unchanged. In particular, the payment of benefits during the work period and upon termination are still the original employer's liabilities.

There is no new employment agreement shall be made between the new employer and the employee during the Secondment period. Further, any industrial relations dispute arises during Secondment or Job Placement period should be settled between the original employer and the employee through the Indonesian Industrial Relations Court.

Employee has no rights to raise an objection on the secondment decision made by the employer if employee has provided its consent to be placed at any location/branches as agreed in the employment agreement or the company's regulation. Rejection of secondment means rejection of work order from the employer. This action can be qualified as a voluntary resignation according to Article 168 of the Indonesian Manpower Law.

However, if the secondment is not agreed in an employment agreement, company's regulation or collective employment agreement and employee does not provide any consent on such secondment, employee may reject such secondment decision made by employer and ask for termination of employment relationship. It is because employer instruct employee to perform duties that are not agreed upon in the employment agreement as regulated in Article 169 of the Indonesian Manpower Law.

LEGAL ARTICLE



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Transfer of Employee

Transfer of employee is stipulated under Article 61 paragraph (3) of the Indonesian Manpower Law which provides as follow:

“In the event of a transfer of ownership of an company, the new company shall bear the responsibility of fulfilling the entitlements of the employee unless otherwise stated in the transfer agreement, which must not reduce the entitlements of the employee.”

Although Indonesia does not specifically recognize the company group principle, transfer of employee is normally carried out between two companies which have the same ultimate beneficial ownership.

The original employer is required to enter into a transfer (of employee) agreement with the new employer, whereby the new employer represents and warrants to provide same entitlements and benefits as the employees receive from the original employer. Thus, this transfer shall require a new adjusted employment agreement between the new employer and the employee according to the prevailing laws where the new employer is located.

Upon agreement of such both employer, the employees must follow the transfer of employee because it is basically a mandatory for all employees (not optional). The Indonesian Manpower Law has protected employee rights and interests by requiring the new employer to provide same entitlements and benefits to employee. Any objection from employee on the transfer shall require him to resign voluntarily from the company.

Calculation of working period plays important role to determine the employee's rights such as severance pay, reward pay, Compensation Payment for Entitlements as well as separation pay. In case of the employee agrees to be transferred to the new employer, his working period shall be continuously calculated since he work for the original employer (still continue, not from zero).

However, the new employer, in some cases, may offer 1 (one) time severance pay and other rights as stipulated in Article 156 paragraph (2), (3) and (4) of the Indonesian Manpower Law to the employee provided that the employee's working period shall start from 0 (zero) when joining the new employer.

Any dispute arises between the new employer and the employee should be settled according to the prevailing procedures and laws where the new employer is located as agreed in the new employment agreement, without involving the previous employer.

Employer must carefully distinguish implementation of Secondment and Transfer of Employee that leads to significantly different legal consequences, particularly on settlement of employee's rights and benefits.