

Client Update: Indonesia 26 February 2021

A New Age in Employment: Part 1



Continuing our Overview Series on the Omnibus Law and in light of the issuance of the implementing regulations to the law, our team is currently examining these regulations to assess their impact on your business.

In this update, we will highlight changes in the **employment** sector.

As discussed in our initial client update (click [here](#) to read), the Omnibus Law (Law No. 11 of 2020) gave the employment sector a significant overhaul. But the large-scale change also created gaps. Now, the government seeks to fill in these gaps by enacting four implementing regulations for this sector. These regulations are:

1. Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreement, Outsourcing, Working Hours and Time-off, and Termination of Employment (“**Regulation 35**”);
2. Government Regulation No. 34 of 2021 on Manpower Utilisation;
3. Government Regulation No. 36 of 2021 on Wages; and
4. Government Regulation No. 37 of 2021 on the Administration of Loss of Employment Security Program.

Our focus in this alert will be on Regulation 35, which addresses areas of the Labour Law (Law No. 13 of 2003) that required further clarification after the Omnibus Law’s issuance. These areas are fixed-term employment agreement, termination of employment, termination payment, and outsourcing.

Fixed-Term Employment Agreement

In the past, the validity period of a fixed-term employment agreement was two years’ maximum. The employer could renew this initial period for one year, which could then be extended for two years after

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a 30-day break from employment. Now, this is no longer the case. Under Regulation 35, a fixed-term employment agreement can be made for five years' maximum. This five-year period can either be one term or includes renewal of the initial term.

But a more significant shift is introduced in the requirement for employers to pay compensation after the expiration of a fixed-term employment agreement. This mandatory compensation applies even if the employer extends the fixed-term employment agreement after the five-year period expires. The compensation is calculated as follows:

1. For a fixed-term employment agreement valid for one year, the compensation payable is equal to one month's salary.
2. For a fixed-term employment agreement valid for less or more than one year, the compensation payable will be prorated based on the following formula:

$$\frac{\text{Months of service}}{12} \times 1 \text{ month salary}$$

Expatriates are specifically carved out from Regulation 35, in that they would not be entitled to receive compensation as per the above.

In addition, an employer must report its fixed-term employment agreement to the local Manpower Office. Reporting can be done online at the latest three days after the date of signing of the agreement, or if online reporting is not possible, then physically at the latest seven days after the date of signing. Failure to report may result in administrative sanctions.

Termination of Employment

Regulation 35 restates the reasons for termination of employment under Article 154A of the Labour Law. It also restates the process to terminate employment under the Omnibus Law, namely that an employer is no longer required to obtain court's approval before terminating employment. An employer can simply issue a notification on the termination of employment at least 14 days before the date of termination. The notice must include information on the reason for termination, the amount of termination payment payable, and any other rights that the employee may have due to termination.

Assuming that the employee does not contest the notice, the employment will be terminated. Then, the employer must report the termination of employment to the local Manpower Office.

If the employee disputes the termination, the employer and the employee will need to go through the dispute settlement process (e.g. mediation, court proceeding, etc.) under the Industrial Relations Dispute Law (Law No. 2 of 2004).

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Termination Payment

One major gap under the Omnibus Law was the lack of calculation of termination payment. Regulation 35 introduces seven new termination formula whereby the amount of termination payment that an employer must pay will depend on the reason for the termination of employment.

The tables below set out the seven new formula under Regulation 35.

1. 2x severance payment formula

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employee is sick for a long time or was involved in an accident and cannot resume work after 12 months.	2x	1x	Yes	No
The employee requests to be terminated based on prolonged illness or was involved in an accident and could not resume work after 12 months.				
The employee passed away.				

2. 1.75x severance payment formula

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employee retires.	1.75x	1x	Yes	No

3. 1x severance payment formula

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employer is involved in a merger, consolidation, acquisition, or spin-off and the employer or the employee does not wish to continue employment.	1x	1x	Yes	No

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Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employer terminates an employment relationship based on an acquisition.				
The employer carries out an efficiency to avoid losses.				
The employer closed its business not due to losses.				
The employer is involved in a suspension of debt payment proceeding without the company suffering any losses.				
The employee filed a termination claim based on Article 154A(1) of the Labour Law.				

4. 0.75x severance payment formula

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
A force majeure occurs that does not result in the employer's closure.	0.75x	1x	Yes	No

5. 0.5x severance payment formula

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employer is acquired, which results in the change of the terms and conditions of employment, and the employee does not want to continue the employment relationship.	0.5x	1x	Yes	No
The employer implements efficiency due to loss.				

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Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employer closes due to two consecutive or non-consecutive years' of losses.				
The employer closes due to force majeure.				
The employer is involved in a suspension of debt payment proceeding as a result of its losses.				
The employer is declared bankrupt.				
The employee violates the employment agreement, company regulation or collective labour agreement.				

6. Only compensation of rights and separation pay is payable

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The issuance of a court decision that declared that the employer has not committed any actions under Article 154A of the Omnibus Law.				
The employee resigns.				
The employee is absent without leave for five days consecutively after receiving two summons from the employer.	-	-	Yes	Yes
The employee carries out a violation that can be considered as an urgent reason for termination under the employment agreement,				

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Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
company regulation or collective labour agreement.				
The employee cannot work due to being detained by the authorities for six months as a result of being made a suspect in a criminal case relating to a loss suffered by the employer.	-	-	Yes	No

7. Only long service payment, compensation of rights and separation pay are payable

Reason for Termination of Employment	Severance Payment	Long Service Payment	Compensation of Rights	Separation Pay
The employee cannot work due to being detained by the authorities for six months as a result of being made a suspect in a criminal case that does not relate to a loss suffered by the employer.	-	1x	Yes	No
A criminal court decision found that the employee is guilty of a criminal action before the conclusion of the aforementioned six months' period.				

Outsourcing

Taking a different route from the old Labour Law, Regulation 35 requires an outsourcing company to obtain an outsourcing license from the Ministry of Manpower. Moreover, such company must ensure that it has entered into a permanent employment agreement or a fixed-term employment agreement with each outsourced employee.

Regulation 35 also leaves no doubt that the outsourcing company is liable for the outsourced employees' protection, wages, welfare, employment terms, and dispute. The outsourcing company must ensure that these matters are fulfilled based on the applicable law and are governed explicitly under the employment agreement, company regulation, or collective labour agreement.

Suppose the outsourcing company hires the outsourced employee under a fixed-term employment agreement. In that case, the outsourcing agreement must include a specific provision for the transfer of

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the undertaking relating to the employee's protection (assuming that the work object remains the same) in the event of a change of outsourcing company. Failure to include such provision means that the transferring outsourcing company will be responsible for fulfilling the employee's rights after the transfer.

Next Steps

As seen above, it seems that the government has managed to find a new equilibrium in the employment sector.

With major changes under Regulation 35, companies should start adjusting their practice and documentation. With respect to fixed-term employment agreement, they need to be mindful of the compensation and termination package calculation. Companies should also revisit their company regulation, which may require significant amendment based on Regulation 35. If the company regulation prescribes a higher formula for termination package payment, failure to adjust may mean that the company may end up paying a higher termination formula.

To read our previous alerts on the Omnibus Law, please click [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

Contacts



Ahmad Maulana
Partner

D +62 21 2555 7816
F +62 21 2555 7899
ahmad.maulana@ahp.id



Muhamad Kamal Fikri
Senior Associate

D +62 21 2555 7824
F +62 21 2555 7899
kamal.fikri@ahp.id

[Rian Mochtar Aziz Thamrin](#) also contributed to this alert.

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Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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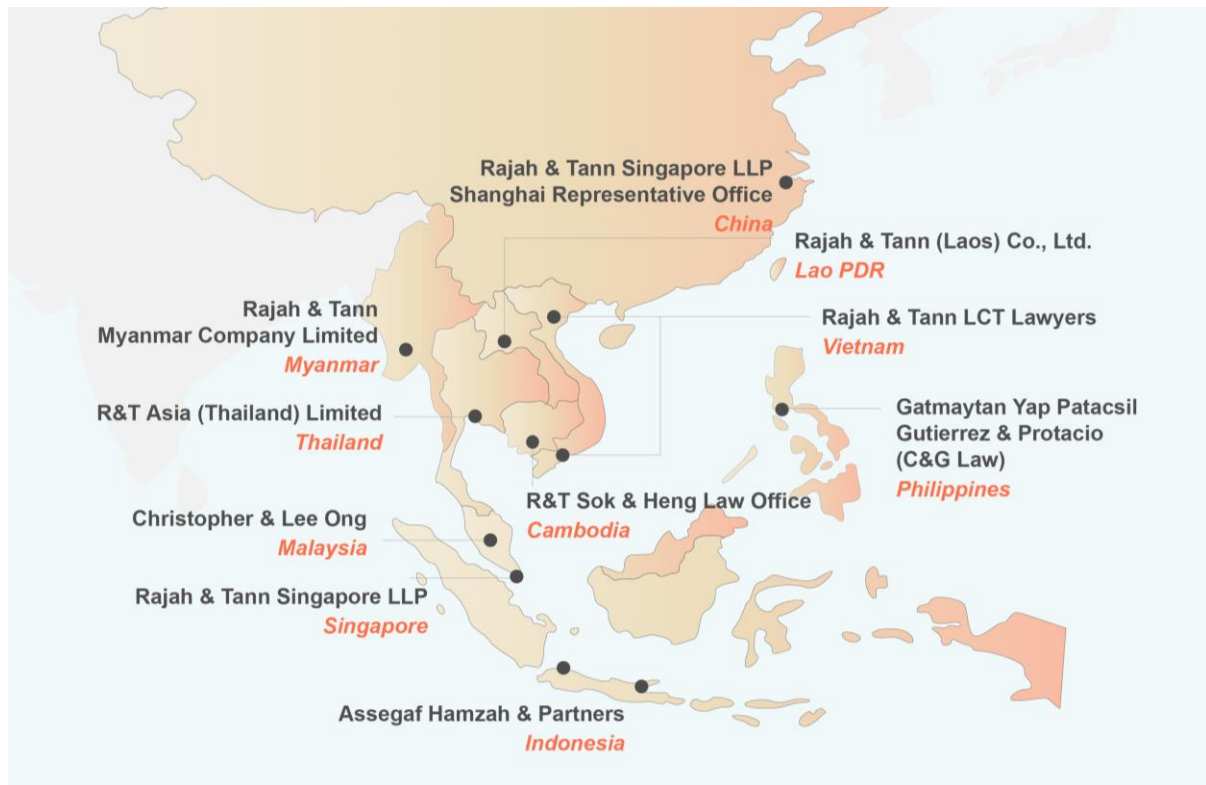
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