INDONESIA
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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

1.1 Governing Law

In Indonesia, layoff of employment (or the commonly used term "Termination of Employment Relationship" or "**Termination**") is governed by:

(i) Law No. 13 of 2003 dated 25 March 2003 on Manpower, as revised by the Decision of Constitutional Court, Docket No. 012/PUU-I/2003 ("**Manpower Law**"); and
(ii) Law No. 2 of 2004 dated 14 January 2004 on the Settlement of Industrial Relation Dispute ("**Industrial Dispute Law**");

1.2 Requirement of Termination

In Indonesia, a Termination may be carried out under the basis of: (i) fault of employer or employee or (ii) other reasons (i.e. change of status, merger & acquisition, bankruptcy, closed down, force majeure, efficiency, etc).

As a general formal requirement, (i) a bipartite negotiation must be carried out; and/or (ii) an approval from the Industrial Relation Dispute Settlement Institution must be obtained, prior to the Termination. In specific cases, the Manpower Law requires an employer to serve warning letters to employee prior to the carrying out the aforementioned general condition.

2. Are there any formal requirements for terminating an employee or groups of employees?

The Manpower Law does not distinguish the procedure of Termination of employee, be it individually or collectively. Please find below the three (3) general and formal steps for Termination in Indonesia, in its ascending order:

(i) *necessary effort to prevent termination*

The Manpower Law prescribes that all relevant parties involved in an employment relationship, being the employer, employee, worker union (if any) and government (as the case may be) must make every necessary effort to avoid Termination.

The efforts referred to above means all action with the main objective of avoiding the proposed Termination (i.e. re-arrangement of working hours, cost efficiency, reorganizing working method, providing counseling to the employees).

(ii) *bipartite negotiation*:

If after carrying out such preventive efforts, Termination is still considered as the best way forward, the employer shall then be bound with the obligation to conduct a bipartite negotiation with the relevant employee. Both parties must reach a settlement on the terms and conditions of the Termination. If the bipartite negotiation has a positive outcome, the Industrial Dispute Law requires the parties to register their settlement agreement with the relevant Industrial Relation Court.

(iii) *approval from the Industrial Relation Dispute Settlement Institution*:

However, if the bipartite negotiation failed, then the Termination shall only be effective upon approval from the Industrial Relation Dispute Settlement Institution.

The Industrial Dispute Law provides that Termination can be settled through; (i) mediation; (ii) conciliation; and, ultimately, (iv) Industrial Relation Court. Without approval from any one of these Industrial Relation Dispute Settlement Institutions, a Termination shall be void by law.

In the event that the Termination is settled through Industrial Relation Dispute Settlement Institution, both employer and employee are still bound by their respective employment obligation, in which the employee must continue to perform his/her assigned work and the employer pays the employee's remuneration, e.g. salary and benefits. The employer may put the employee under suspension on this point, but however, still must pay the employee's remuneration.

As a result of Termination, an employer shall be obliged to compensate the relevant employee with a severance package, which may comprise of the following element (i) severance pay, (ii) long service pay, (iii) compensation and, in certain cases, (iv) separation payment. The amount and element of severance package shall be dependent upon reason of Termination and the conditions relevant to each employee, such as (i) term of employment, (ii) benefits received and/or (iii) employee's position.

As we have mentioned in Point 1.2 above, in specific cases, the Manpower Law requires an employer to serve warning letters to employee.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

The Manpower Law recognizes redundancy-based termination as "termination due to efficiency," the only distinct legal requirement towards this type of termination is that the severance pay received by the respective employee is twice as much from the regular one.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Yes:

(A) the Manpower Law, for the basis to challenge his/her Termination, whether it is

(i) the legality of his/her Termination;

(ii) the amount of his/her severance package; or

(iii) remuneration during the Termination process, and

(B) Industrial Dispute Law, for the procedural guidelines.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

There are no sanctions or penalties provided in the Manpower Law towards the Termination requirements.

However, please note that until such time an amicable settlement is reached and/or an approval from any one of the Industrial Relation Dispute Settlement Institution is obtained, a Termination is considered to be void by law.

The consequence to this condition from the part of employer is the obligation to pay the employee's salary.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

Based on our observation, there are two general mistakes by the employers:

(i) termination mostly initiated by the employer are seldom accompanied by the approval of the Industrial Relation Court or other Industrial Relation Dispute Settlement Institution; and

(ii) in termination based on violation of employment agreement (or any other binding employment documents), employers rarely provide the warning letter(s) as required under the Manpower Law.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

Based on decision of the Constitutional Court passed on 28 October 2004 (Decision No. 012/PUU-I/2003/"**Decision**") regarding *the Judicial Review on the Manpower Law in conjunction with Constitution of Republic of Indonesia*, the provisions of termination based on employee's grave violation were no longer applicable.

As a consequence, in order to terminate an employee who is alleged of conducting criminal act, the employer has to wait until there is a binding conviction by a court of the said employee for the relevant criminal act.