



## Indonesia's Omnibus Law: Business as Usual Under New Employment Regulation?

---



**Stephen I. Warokka**  
*Partner*



**Indrawan D. Yuriutomo**  
*Associate*

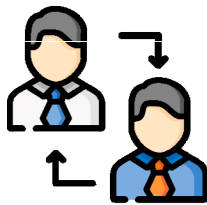


The purpose of Job Creation Law is to create employment opportunities which is carried out through regulation concerning an increase in employment protection and welfare, which at least contains the following :



---

Protection of employees  
with temporary  
employment agreement,



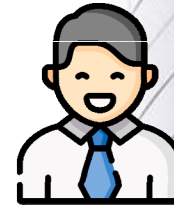
---

Protection of  
employment relationship  
for jobs that are based on  
outsourcing,



---

Protection of decent  
employment needs  
through minimum wage,



---

Protection of employees  
experiencing a  
termination of  
employment, and



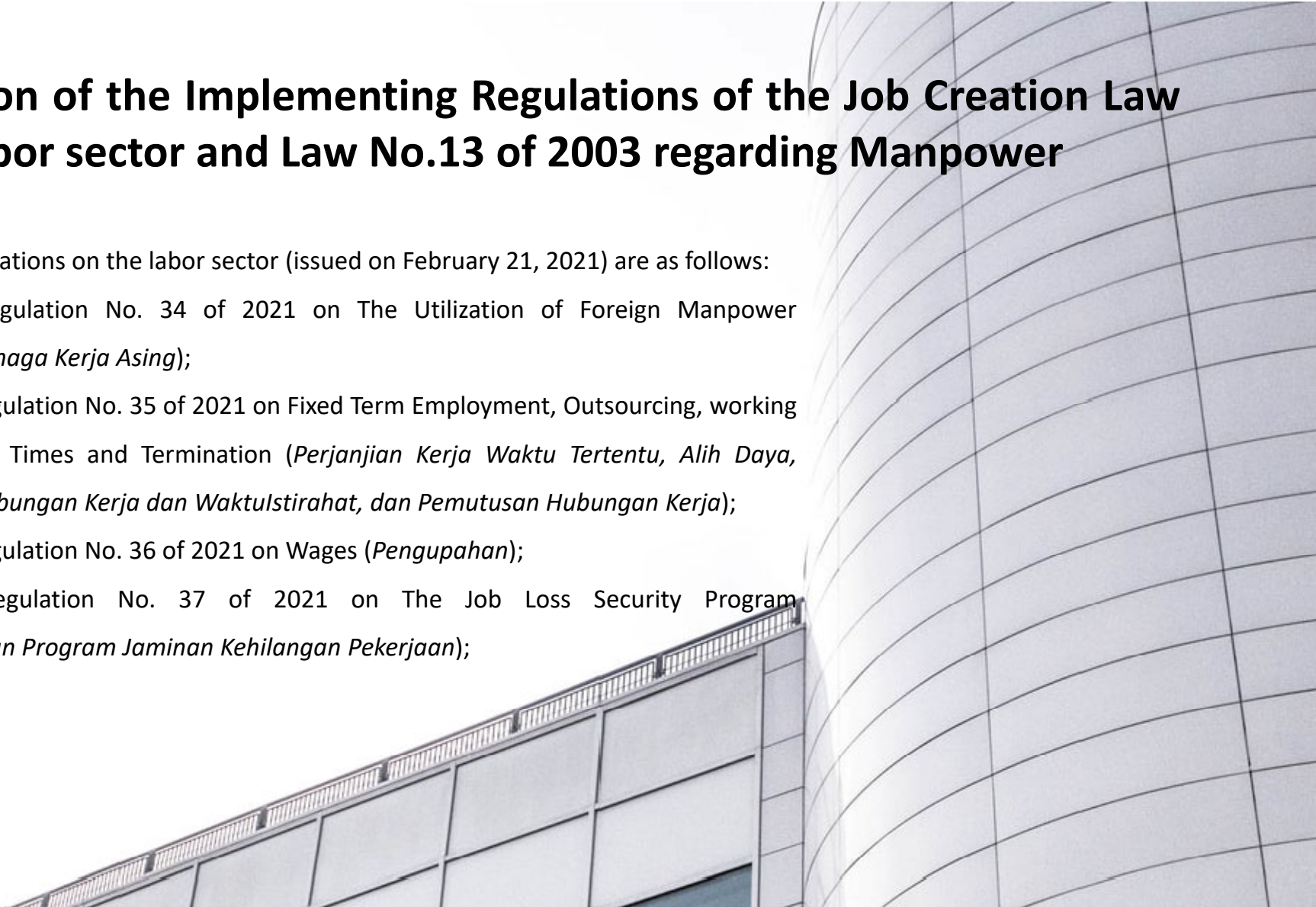
---

Ease of licensing for  
foreign employees who  
have certain skills that are  
still required for the  
production process of  
goods or services.

# I. Implication of the Implementing Regulations of the Job Creation Law on the labor sector and Law No.13 of 2003 regarding Manpower

Implementing Regulations on the labor sector (issued on February 21, 2021) are as follows:

- Government Regulation No. 34 of 2021 on The Utilization of Foreign Manpower (*Penggunaan Tenaga Kerja Asing*);
- Government Regulation No. 35 of 2021 on Fixed Term Employment, Outsourcing, working Hours and Rest Times and Termination (*Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja, Hubungan Kerja dan Waktu Istirahat, dan Pemutusan Hubungan Kerja*);
- Government Regulation No. 36 of 2021 on Wages (*Pengupahan*);
- Government Regulation No. 37 of 2021 on The Job Loss Security Program (*Penyelenggaraan Program Jaminan Kehilangan Pekerjaan*);



# Implication of Government Regulation No. 34 of 2021 on the Utilization of Foreign Manpower

Every employer of foreign employees is obliged to prioritize the use of Indonesian employees in all types of position available.

Employers of foreign employees can employ foreign employees who are currently employed by other employer for the same position (the first employer must provide its consent to the second hiring) as follows:

- Directors of Commissioners; or
- Foreign employees in the vocational education and training sector, the digital economy sector, and the oil and gas sector for production sharing contract.

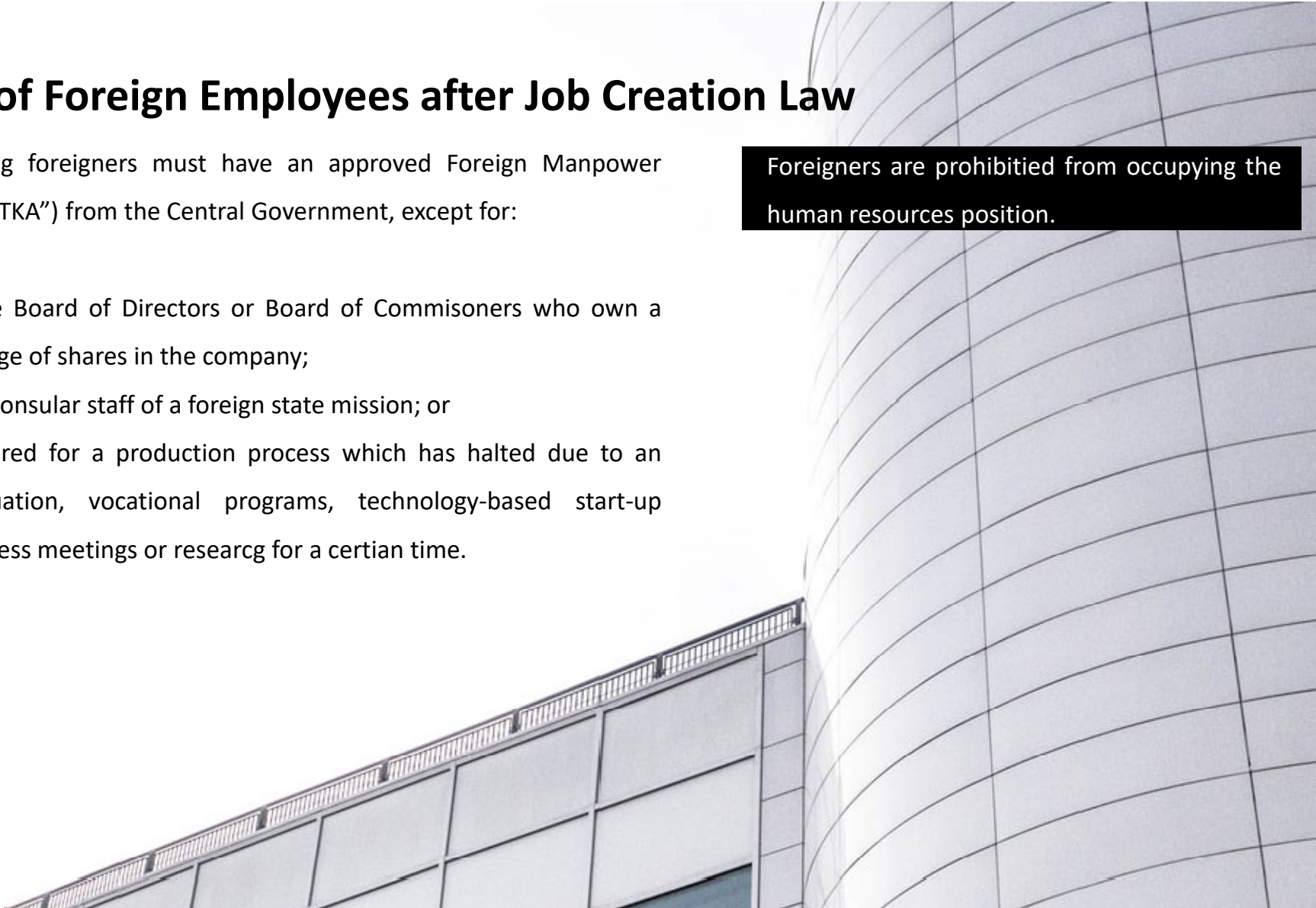


## Utilization of Foreign Employees after Job Creation Law

All employers hiring foreigners must have an approved Foreign Manpower Utilization Plan ("RPTKA") from the Central Government, except for:

- Members of the Board of Directors or Board of Commissioners who own a certain percentage of shares in the company;
- Diplomatic and consular staff of a foreign state mission; or
- Foreigners required for a production process which has halted due to an emergency situation, vocational programs, technology-based start-up companies, business meetings or research for a certain time.

Foreigners are prohibited from occupying the human resources position.



# Implication of Government Regulation No. 35 of 2021 on Fixed Term Employment, Outsourcing, working Hours and Rest Times and Termination

## Fixed Term Employment (PKWT):

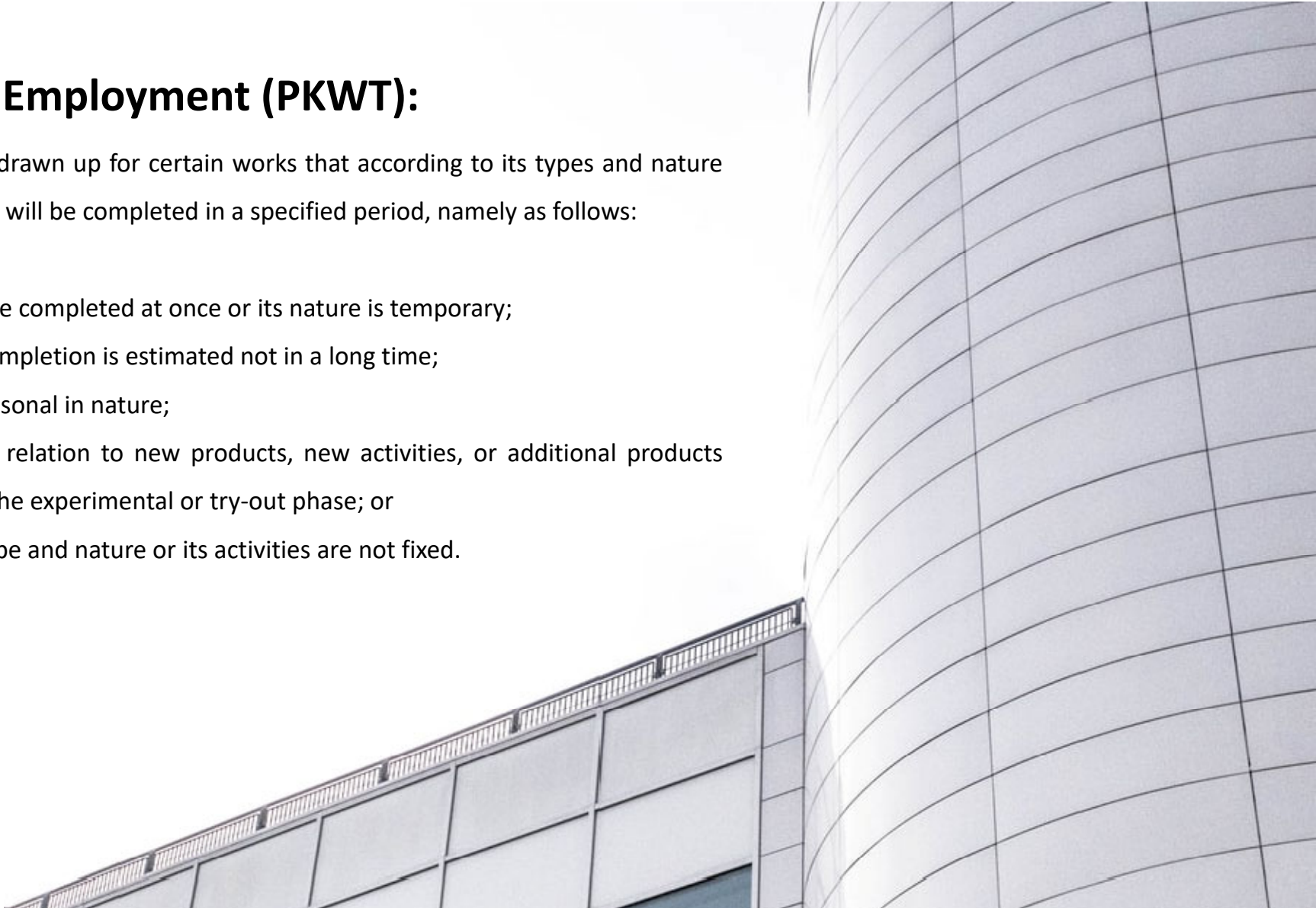
- The 2-1-2 period is no longer set.
- In the event the fixed term employment end, the employer is obliged to provide compensation pay to the employee.
- PKWT may not be entered for work that is of a permanent nature.
- PKWT shall not require any employment probation period.
- PKWT must be registered online by the employer to the local manpower office no later than 3 (three) business days since the signing of the PKWT.
- In the event that the online registration of the PKWT is not yet available then the registration of the PKWT shall be carried out by the employer no later than 7 (seven) business days since the signing of the PKWT.



## **Fixed Term Employment (PKWT):**

PKWT may only be drawn up for certain works that according to its types and nature or its work activities will be completed in a specified period, namely as follows:

- a. Work that will be completed at once or its nature is temporary;
- b. Work that its completion is estimated not in a long time;
- c. Work that is seasonal in nature;
- d. Work that is in relation to new products, new activities, or additional products that are still in the experimental or try-out phase; or
- e. Work that its type and nature or its activities are not fixed.



PKWT	Type of Work	Remarks
Period of Time	<ul style="list-style-type: none"> <li>▪ Work that is estimated to be completed in a short time.</li> <li>▪ Seasonal work depending on (i) season or weather or (ii) certain conditions to fulfil certain orders or targets</li> <li>▪ Work related to new products, new activities, or additional products that are still in trial or experiment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Maximum 5 years (including any extensions)</li> </ul>
Completion of Work	<ul style="list-style-type: none"> <li>• One time completed work</li> <li>• Temporary work</li> </ul>	<p>The employment agreement must include provisions on:</p> <ul style="list-style-type: none"> <li>▪ The scope and limit for declaring work completion</li> <li>▪ The expected period for work completion</li> </ul> <p>No specific maximum period.</p>
Other work that is not permanent in nature (daily worker)	<ul style="list-style-type: none"> <li>• Work that keeps changing based on its period and volume</li> <li>• Work where the payment is based on attendance at work</li> </ul>	<p>Maximum 20 days in a month.</p> <p>If the employee works for 21 days or more 3 consecutive months , the employee is deemed as a permanent employee.</p>



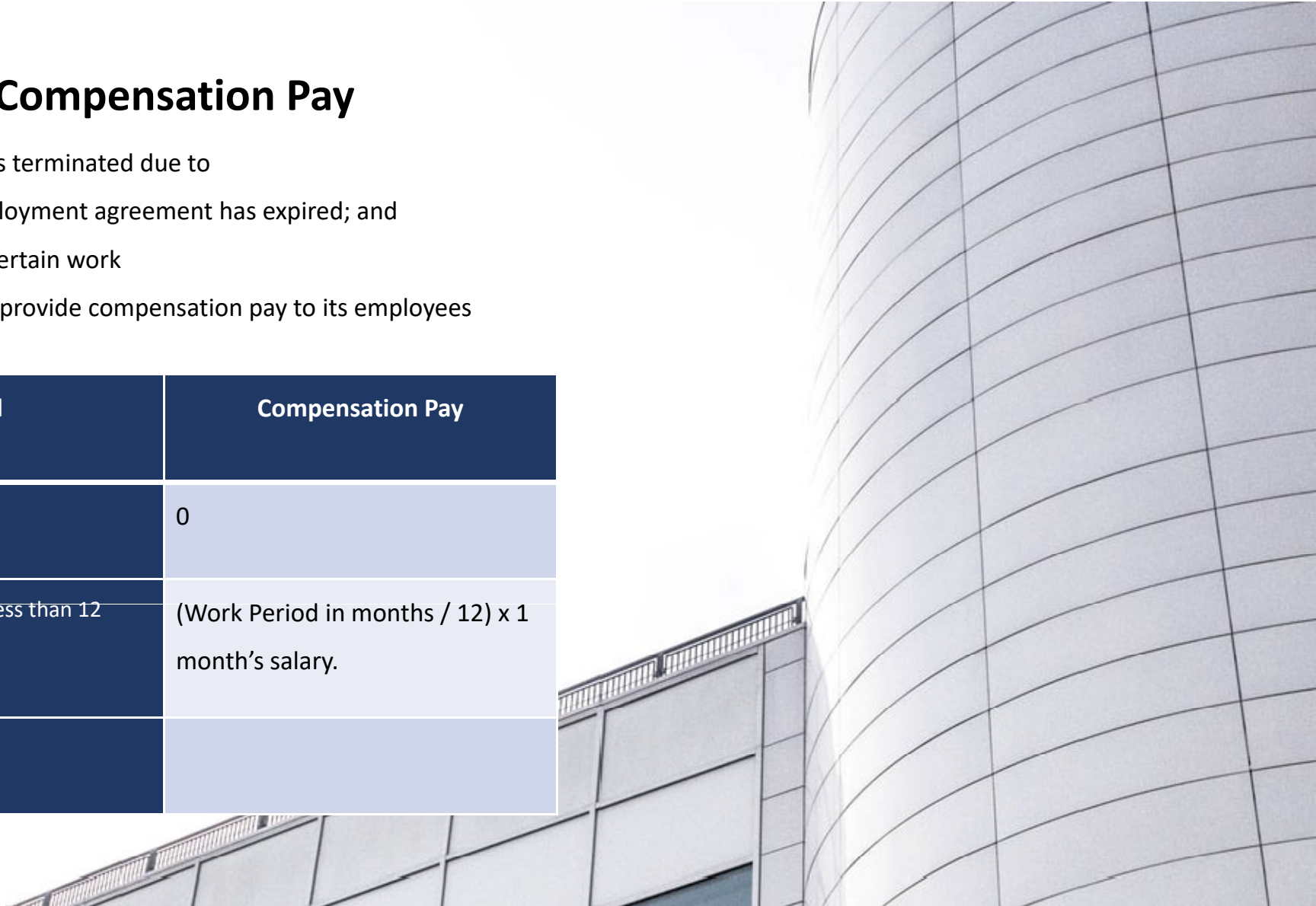
## PKWT and Compensation Pay

In the event PKWT is terminated due to

- (i). Term of the employment agreement has expired; and
- (ii). Completion of certain work

The employer must provide compensation pay to its employees

Period	Compensation Pay
Less than 1 month	0
1 month or more but less than 12 months	$(\text{Work Period in months} / 12) \times 1$ month's salary.
More than 12 months	



## Exclusion from Compensation Pay

Compensation is not given if the PKWT's working period is less than 1 month, or the PKWT ends because:

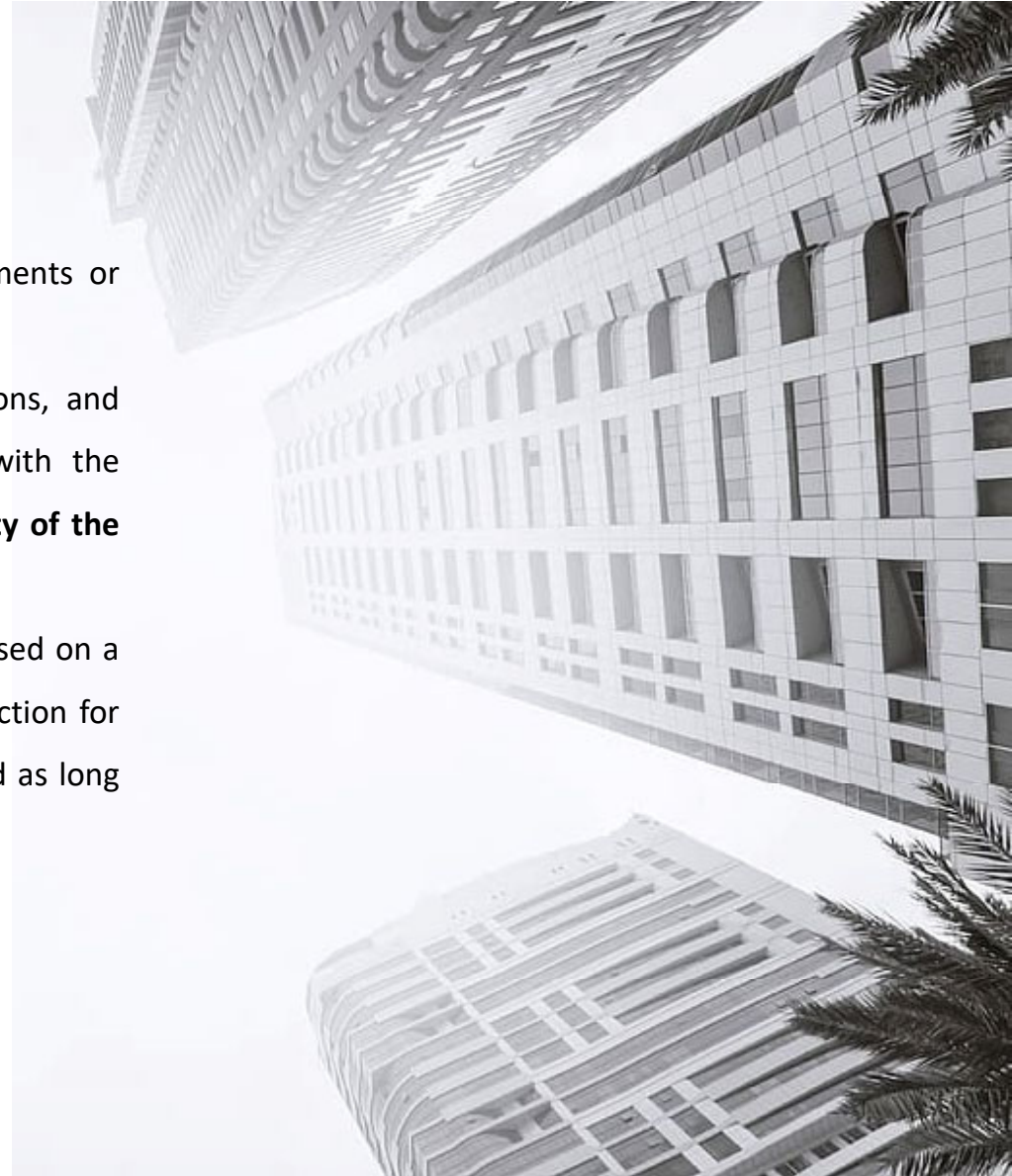
- The employee passes away;
- There is a court decision and/ or decision of labor court that is legally binding;
- The employee is a foreign worker.

The amount of compensation pay for employees in micro and small businesses shall be provided based on the agreement between the employer and the employees.



# Outsourcing

- Elimination of different arrangements regarding service agreements or labor suppliers.
- Protection of employees, wages and welfare, working conditions, and disputes that arise are carried out at least in accordance with the provisions of laws and regulations and **become the responsibility of the outsourcing company.**
- In the case that an outsourcing company employs employees based on a PKWT, such agreement must require the transfer of rights protection for employees in the event of a change in outsourcing company and as long as the object of work remains.



## Working Hours

- Working hours are 7 hours/day or 40 hours/week for a 6 working-day week or 8 hours/day or 40 hours/week for a 5 working-day week.
- Overtime can be performed for up to 4 hours/day or up to 18 hours/week.



# Termination of Permanent Employment Agreement

- Employers must make every effort to prevent termination, but if it is unavoidable, the intention and grounds for the termination must be conveyed to the employee and/or to the labor union (if he/she is a member).
- The notification of the termination and grounds must be delivered in **writing at least 14 working days before the date of the termination of employment**. If an employee is terminated during his/her probationary period, the notification must be delivered at least 7 working days before the date of termination.
- If the employee does not accept his/her termination, he/she must convey his/her reasons in writing **within 7 working days of receipt of the notification**.
- If a dispute between the parties ensues, the industrial dispute settlement procedure must be followed.
- Notification is not mandatory for employees terminated for urgent reasons.



## Notification is not required if:

- Employees resign based on their own will;
- Employees and employer terminate employment relationship in accordance with PKWT
- Employees reach pension age in accordance with employment agreement, company regulation, or collective labor agreement.
- employees terminated for urgent reasons as regulated in the employment agreement, company regulation, or collective labor agreement.



# Termination Benefits for Permanent Employee

- a. severance pay,
- b. service pay,
- c. other compensation

No.	Completed Years of Service	<sup>a</sup> Benefit
1.	less than 1 year	1 month's wages
2.	1 year or more but less than 2 years	2 months' wages
3.	2 years or more but less than 3 years	3 months' wages
4.	3 years or more but less than 4 years	4 months' wages
5.	4 years or more but less than 5 years	5 months' wages
6.	5 years or more but less than 6 years	6 months' wages
7.	6 years or more but less than 7 years	7 months' wages
8.	7 years or more but less than 8 years	8 months' wages
9.	8 years or more	9 months' wages

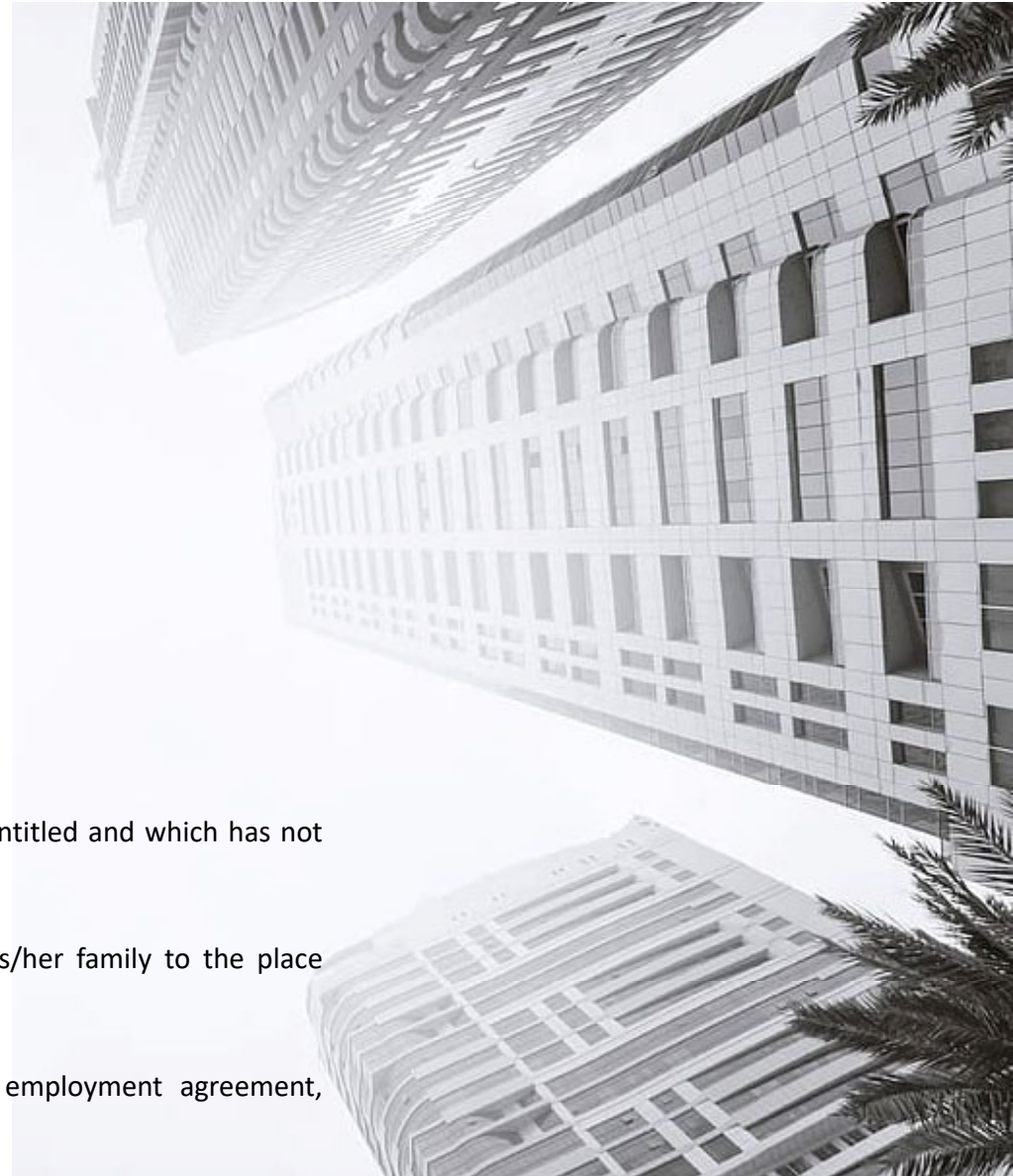


# Termination Benefits for Permanent Employee

No.	Completed Years of Service	Benefit
1.	3 years or more but less than 6 years	2 months' wages
2.	6 years or more but less than 9 years	3 months' wages
3.	9 years or more but less than 12 years	4 months' wages
4.	12 years or more but less than 15 years	5 months' wages
5.	15 years or more but less than 18 years	6 months' wages
6.	18 years or more but less than 21 years	7 months' wages
7.	21 years or more but less than 24 years	8 months' wages
8.	24 years or more	10 months' wages

## Other Compensation:

- Compensation for unused annual leave to which the employee is entitled and which has not been forfeited;
- Any costs or expenses incurred in returning the employee and his/her family to the place where he/she was recruited, if applicable; and
- Other separation benefits as may be agreed in the applicable employment agreement, company regulation or collective labor agreement, if any.





## Termination Benefits for Permanent Employee

Employers who includes its employees in the pension program in accordance with the provisions of laws and regulations in the field of pension funds, the contributions paid by the employer can be calculated as part of fulfilling the employer's obligations on severance payment and service payment as well as separation payment as a result of the Termination of Employment.

If the calculation of benefits from the pension program is smaller than the severance payment and service payment and separation payment, the employer will pay the difference.



# New Formula on Termination Calculation

No.	Reason	Calculation
<b>Merger, Consolidation or Spin-Off</b>		
1.	The company conducts merger, consolidation, or spin-off and <b><u>employees are not willing to continue</u></b> the employment relationship or <b><u>employers are not willing to accept employees.</u></b>	1 x Severance Pay 1 x Service Pay 1 x Compensation Pay
<b>Acquisition</b>		
2.	The company conducts acquisition and terminates employee(s).	1 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
3.	The company is acquired and results <b><u>in changes to terms of employment</u></b> which a given employee is not willing to accept and resigns	1/2 x Severance Pay 1 x Service Pay 1 x Compensation Pay
<b>Downsizing Workforce (Efficiency)</b>		
4.	The company conducts efficiency <b><u>due to the company experiencing losses.</u></b>	1/2 x Severance Pay 1 x Service Pay 1 x Compensation Pay
5.	The company conducts efficiency <b><u>to avoid</u></b> the company experiencing <b><u>losses.</u></b>	1 x Severance Pay 1 x Service Pay 1 x Compensation Pay

# New Formula on Termination Calculation

No.	Alasan	Perhitungan
<b>Close down and Force Majeure</b>		
6.	The company closes due to the company experiencing <b>losses</b> for 2 (two) years consecutively or not consecutively.	1/2 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
7.	The company closes <b>but not due to</b> the company experiencing losses.	1 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
8.	The company closes due to <b>force majeure</b> .	1/2 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
9.	Termination due force majeure but <b>not causing the company to close</b> .	3/4 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
<b>Suspension of Debt, and Bankruptcy</b>		
10.	The company is in the suspension of debt payment due to company experiencing <b>losses</b> .	1/2 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
11.	The company is in the suspension of debt payment but <b>not due</b> to company experiencing losses.	1 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay
12.	The company is declared bankrupt.	1/2 x Severance Pay, 1 x Service Pay, 1 x Compensation Pay

# New Formula on Termination Calculation

No.	Alasan	Perhitungan
<b>Unpleasant activities by the Company</b>		
13.	<p>Employee terminates employment relationship due to any of the following conduct committed by the company:</p> <ul style="list-style-type: none"><li>• assault, insult in a rude manner or threaten employee;</li><li>• persuade and/or order employee to commit actions contrary to laws and regulations;</li><li>• fail to pay wage at the appointed time for 3 (three) months consecutively or more, even though company pays wages on time thereafter;</li><li>• fails to perform agreed obligations promised to employee;</li><li>• orders employee to do work other than that agreed upon;</li><li>• orders employee to perform work that endangers life, safety, health, or morality of the employee when such work is not included in the employment agreement.</li></ul>	<p>1 x Severance Pay 1 x Service Pay 1 x Compensation Pay</p>
14.	<p>There is a decision of the Labor Court declaring that the employer did not commit actions referred to in No.13 above.</p>	<p>1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).</p>

# New Formula on Termination Calculation

No.	Alasan	Perhitungan
<b>Resignation</b>		
15.	Employees resign based on their own initiative and shall fulfil the following conditions; <ul style="list-style-type: none"><li>• submit resignation in writing by at least 30 (thirty) days before the resignation date;</li><li>• not bound by a bond (ikatan dinas); and</li><li>• continue to perform their obligations until the resignation date;</li></ul>	1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).
16.	Employee absent for 5 (five) business days or more without written justification proven by valid evidence and have been summoned by the employer 2 (two) times in an appropriate manner in writing;	1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).
<b>Warning Letters</b>		
17.	Employees violate provisions that are regulated in the contract, CR or CLA, and previously have been given the first, second, and third warning consecutively;	1/2 x Severance Pay 1 x Service Pay 1 x Compensation Pay

# New Formula on Termination Calculation

No.	Alasan	Perhitungan
<b>Urgent Reason (<i>alasan mendesak</i>)</b>		
18.	Employees violate serious misconduct (urgent reason) in which such provisions are regulated in the contract, CR or CLA.	1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).
<b>Criminal activities</b>		
19.	Employees are unable to do work for 6 (six) months because they are detained by the authorities due to allegedly <b><u>committing criminal acts that cause losses to the company.</u></b>	1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).
20.	Employees are unable to do work for 6 (six) months because they are detained by the authorities due to allegedly committing criminal acts that <b><u>do not cause losses the company losses.</u></b>	1 x Service Pay 1 x Compensation Pay
21.	The employee was <b><u>found guilty by the criminal court</u></b> before the expiration of the 6 (six) month period for a criminal offense that caused losses to the company.	1 x Compensation Pay, and Separation Pay (as regulated in the contract, CR or CLA).
22.	The employee <b><u>was found guilty by the criminal court</u></b> before the expiration of the 6 (six) month period for a criminal offense that <b><u>does not cause losses to the company.</u></b>	1 x Service Pay 1 x Compensation Pay

# New Formula on Termination Calculation

No.	Alasan	Perhitungan
<b>Prolonged Illness</b>		
23.	<b>Terminate by the Company</b> because the employee experiences prolonged illness or disability due to occupational accident and is unable to do their work after exceeding 12 (twelve) months.	2 x Severance Pay 1 x Service Pay 1 x Compensation Pay
24.	<b>Employee requests termination</b> because the employee experiences prolonged illness or disability due to occupational accident and is unable to do their work after exceeding 12 (twelve) months.	2 x Severance Pay 1 x Service Pay 1 x Compensation Pay
<b>Retirement</b>		
25.	Employees reach retirement age.	1.75 x Severance Pay 1 x Service Pay 1 x Compensation Pay
<b>Death of employee</b>		
26.	Death of employee	2 x Severance Pay 1 x Service Pay 1 x Compensation Pay

# Implication of Government Regulation Number 36 of 2021 on Wages

## *New regulation on Minimum Wage*

- The Governor is obliged to set out the provincial minimum wage, the formula for the calculation of the minimum wage shall include the variable of economic growth or inflation.
- Provisions on minimum wage are excluded for Micro and Small Businesses.



# Implication of Government Regulation Number 36 of 2021 on Wages

The calculation of the **lowest hourly wage** uses the following calculation formula:

Lowest hourly wages = **Monthly Wages / 126**

*Explanation:*

- *The number 126 is the divisor number obtained from the multiplication of 52 weeks multiplied by 29 hours, and divided by 12 months.*
- *29 hours is the highest median working hours in Indonesia based on the data from the National Labor Force Survey (Sakernas).*
- *The determination of wages on an hourly basis does not eliminate the obligation to pay social security retribution that employers are responsible for, which is calculated proportionally.*

# Implication of Government Regulation Number 37 of 2021 concerning the Implementation of Job Loss Security Program

Workers who experience termination of employment are entitled to job loss security.

- a. Participant of the Job Loss Security Program (JKP) is an Indonesian citizen who has been included in the social security program in accordance with the participation in Presidential Regulation No. 109 of 2013
  - Large and Medium-Sized Businesses, are included in the National Health Security (JKN), Work Accident Security (JKK), Old Age Security (JHT), Pension Security (JP), Death Security (JKM) Programs
  - Small and Micro Businesses, are included in at least National Health Security (JKN), Work Accident Security (JKK), Old Age Security (JHT), Death Security (JKM) Programs
- b. Not yet 54 years old
- c. Have an employment relationship with employers either through a Fixed Term Employment Agreement (PKWT) and Permanent Employment Agreement (PKWTT)

# The Benefits of Job Loss Security Program

## CASH

- 45 % of Wages for the first 3 (three) months; and
- 25 % of Wages for the next 3 (three) months for 6 months.

## ACCESS TO JOB MARKET INFORMATION

- Job market information services and/or position guidance
- Performed by Employment Introducers (*Pengantar Kerja*) or Inter-employment Officers (*Petugas Antarkerja*) through the Labor Service Office (Dinas Tenaga Kerja or Disnaker)

## JOB TRAINING

- Competency-based training
- Conducted through government-owned, private, or corporate Employment Training Institutions

## The Mandatory Contribution of Job Loss Security Program

Contribution at the amount of 0,46% is **borne jointly by the Central Government and Employerv** to the Employment Social Security Provider (BPJS Ketenagakerjaan) with the following provisions:

- 0,14% of JKK program contribution recomposition;
- 0,10% of JKM program contribution recomposition; and 0,22% of wages are covered by the Central Government

Upper limit of wage is Rp. 5 million

## II. Mitigation of risks that arise in the Implementation of Job Creation Law and How To Resolve Disputes

1. The termination benefits of permanent employees which is regulated in the new Government Regulation becomes lower than the previous Manpower Law.
2. All internal regulations such as employment agreement, company regulation and or collective labor agreement remains valid as long as there is no open article that stipulates if there are changes to the Manpower Law it will follows the applicable laws and regulations.
3. Practitioners of human recourses, including any human resources officials in the company, must carefully re-read the Job Creation Law and its implementing regulations.

## Best Practice

1. To reach a consensus to the terminated employees through Mutual Termination Agreement.
2. To adjust the employment agreement, Company Regulation, and or Collective Labor Agreement.



# SSEK Indonesian Legal Consultants

---

Mayapada Tower I, 14th Floor  
Jl. Jend. Sudirman No. 28  
Jakarta 12920 – Indonesia

[www.ssek.com](http://www.ssek.com) | [ssek@ssek.com](mailto:ssek@ssek.com)

