

Constitutional Court Decision Employment

Significant changes for employers and employees and an obligation to pass a new Manpower Law by 1 November 2026

November 2024

On 31 October 2024, the Constitutional Court of the Republic of Indonesia (“**Constitutional Court**”) rendered Decision No. 168/PUU-XXI/2023 (the “**Decision**”), based on a judicial review of the Manpower Law cluster of the Job Creation Law¹ brought by various labour unions and the Labour Party which amends, deletes, or establishes new provisions in the Manpower Law².

21 (twenty-one) of the 49 (forty-nine) articles of the Manpower Law cluster in the Job Creation Law being applied for judicial review have declared unconstitutional by the Constitutional Court. Below is a brief summary of the implications of the decision:

No.	Article of Manpower Law	Implication
Expatriates		
1.	Article 42 (1)	The Indonesian Ministry of Manpower is the authorized agency representing the government on employment related issues (Previously, the law did not state the authorised ministry and only stated that the central government was responsible).
2.	Article 42 (4)	Before hiring an expatriate, a company must prioritize hiring an Indonesian nation having “similar” qualifications.
Definite Period Employment Agreement		
3.	Article 56 (3)	The duration of a definite period employment agreement cannot exceed 5 years, including any extensions. If the work to be performed under the definite period agreement exceeds the maximum 5-year period, the employee automatically becomes a permanent employee from the date of the original employment.
4.	Article 57 (1)	Definite period employment agreements must be made in writing using Indonesian and Latin alphabets.
Outsourcing Work		
5.	Article 64 (2)	The Minister of Manpower is obliged to determines and issue the types and fields of outsourcing work.
Weekly Rest		
6.	Article 79 (2)(b)	There are two options for weekly rest: 1. 1 (one) day for 6 (six) working days in one week; or 2. 2 (two) days for 5 (five) working days in one week.
Long Leave		
7.	Article 79 (5)	Certain companies must provide long leave on top of other leaves and weekly rest. Previously, long leave was discretionary for such certain companies. The “certain companies” refers to the company which have been provided long leave before the issuance of the Job Creation Law.

¹ Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to Become Law.

² Law No. 13 of 2003 on Manpower as amended.

Wage and Minimum Wage		
8.	Article 88 (1)	Every worker is entitled to a decent livelihood for humanity (Must be interpreted as to cover: sufficient income to meet the basic needs of employees and their families, which include food and drink, clothing, housing, education, healthcare, recreation, and retirement security).
9.	Article 88 (2)	Regional wage councils should be involved in formulating wage policies to achieve fair and equitable living standards for employees.
10.	Article 88 (3) letter b	Companies in determining wage structure and scale must consider the proportionality to meet decent living needs for employees.
11.	Article 88C	Additional obligation is given for Governors to establish sectoral minimum wages at the provincial level and also at the districts/city level.
12.	Article 88D (2)	Previously, the minimum wage was required to consider economic growth variables, inflation, and certain indices. The Decision inserts the phrase ‘certain index’ which should be interpreted to include a variable to determine a minimum wage calculation formula which means the variables that represent the contribution of manpower to the economic growth of the provinces or districts/cities by taking into account the interests of companies and employees as well as the principle of proportionality to meet decent living needs for employees.
13.	Article 88F	Previously, Article 88F stated: <i>“In certain circumstances, the Government may determine a minimum wage calculation formula that is different from the minimum wage calculation formula as referred to in Article 88D paragraph (2).”</i> The Decision requires that the phrase ‘certain circumstances’ should be interpreted to encompass natural or non-natural disasters, as well as extraordinary conditions of the global and/or national economy, as determined by the President in accordance with the provisions of laws and regulations.
14.	Article 90A	An employee’s labour union can also participate in negotiations to determine wages that are already above the minimum wage through an agreement with the employer.
15.	Article 92 (1)	Besides the company’s financial ability and productivity, a company must now also consider an employee’s classification, position, length of service, education, and competence in formulating wage structure and scale.
16.	Article 95 (3)	When a company is declared bankrupt or liquidated, other rights of employees, shall take precedence for payment over all creditors, including preferred creditors, except for secured creditors.
17.	Article 98 (1)	In order to provide suggestions and considerations to the Central Government or the Regional Governments in the formulation of wage policy as well as the development of the wage system, the wage council shall be established which actively participates in the formulation of wage policies.

Termination of Employment Relationship		
18.	Article 151 (3)	The settlement procedure if an employee rejects the termination of employment after being notified, must be conducted amicably to reach consensus (<i>musyawarah untuk mufakat</i>) through bipartite negotiation between the company and the employees and/or labour union.
19.	Article 151 (4)	If the bipartite negotiation fails to reach an agreement, termination can only occur following a final and binding decision from the industrial relations dispute court.
20.	Article 157A (3)	The obligation of the company and employee remain and shall be carried out until the completion of the Industrial Relations Dispute settlement process that is final and binding.
Severance Package		
21.	Article 156 (2)	A severance pay must at a minimum comply with what is regulated under the law. There is a possibility that there will be higher demand of severance pay at the time of termination.

Mandate to Reform Manpower Law

It is worth noting that the Panel of the Constitutional Court Judges in its legal consideration of the Decision, mandates lawmakers to establish a new law on manpower within 2 (two) years from the date of the Decision (by 1 November 2026).

The reasons being:

1. prior to the Decision, part of the provisions in the Manpower Law have been declared unconstitutional by 12 (twelve) judicial review decisions;
2. manpower-related affairs are regulated under the Manpower Law and the Job Creation Law. Thus, there is the potential for inconsistencies and conflicts between the two laws; and
3. some implementing regulations are established without delegation from the Manpower Law. Moreover, several provisions covered by government regulations should be firstly set out by law (and then implemented by regulation) *e.g.*, maximum duration for the definite period employment agreement and employee's weekly rest, etc.

Our employment team will be happy to discuss any questions you might have. Please contact Partner, Made Barata (mb@mkklaw.net) for further information.