



BetterWork
Indonesia

Legal Update

Job Creation Law
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Background

The President of the Republic of Indonesia signed and promulgated, on 2nd November 2020, the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Law Number 11/2020), also known as Omnibus Law. The employment cluster of the Job Creation Law revises the 2003 Manpower Act and introduces significant changes to rules around employment contracts, working hours and leave, wages and termination (among others). It specifically revises articles or provisions in respect of:

- Law No. 13/2003 on Employment
- Law No. 40/2004 on National Social Security
- Law No. 24/2011 on Social Security Agency
- Law No. 18/2017 on Migrant Workers

All articles or provisions not revoked by Law 11 of 2020 remain in force.

Subsequently, at the end of February 2021, the Government issued four main employment-related regulations to accompany the employment cluster of Law 11 of 2020:

- Government Regulation No 34/2021 on Foreign Workers
- Government Regulation No. 35/2021 on Non-permanent Contract, Outsourcing, Working Hours & Rest Hour and Termination
- Government Regulation No. 36 /2021 on Wages
- Government Regulation No. 37/2021 on Unemployment Insurance

Better Work Indonesia (BWI), a partnership programme between the International Labour Organization (ILO) and the International Finance Corporation (IFC) - member of World Bank Group prepared the following summary highlighting the key changes and novelties introduced by the Job Creation Law and its accompanying government regulations. This practical document only covers areas of the law that are part of BWI's scope of labour assessment or are more relevant for the garment and footwear industry. It draws heavily from the consultation process between BWI and the Ministry of Manpower on the meaning and applicability of the new rules as well as a series of public dissemination sessions done by the Ministry.

This guide is limited in scope. Therefore, BWI advises all stakeholders to read the new Law and Regulations in its entirety.





Employment Agreement for a Specified Period of Time

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Provisions regarding the Employment Agreement for a Specified Period of Time (PKWT) on article 56, article 57, article 58, article 59 of Law No 13/2003 have been amended by Law No. 11/2020. Ministerial decree No. 100/2004 has been revoked, in line with changes to Law 13/2003. Government Regulation No. 35/2021.	Period	No longer than 2 years and is allowed to be renewed only once for a maximum period of 1 year. Renewal of PKWT/contract may be made once for a maximum of 2 years after a grace period of 30 days..	No longer than 5 years. There is no renewal of PKWT/contracts and no grace period.	No longer than 5 years. It can be an accumulation of consecutive contracts with no interruption. The period of 5 years is calculated since the promulgation of Law No. 11/2020 namely 2 November 2020.
	Basis for PKWT	- One-time or temporary work; - Work which is estimated to be completed in the not-too-long period of time and no longer than 3 (three) years; - Seasonal Work¹; or - Work related to a new product, a new activity, or an additional product that is still in trial or exploration	- Based on the period of time: - Work estimated to be completed in not-too-long period of time; - Seasonal work: - The implementation of which depends on: season or weather, which can only be performed in certain seasons or certain weather. - Certain conditions, additional jobs performed to fulfill certain orders or targets. or - Works related to new products, new activities, or additional products that are still in experimental or trial phase. - Based on the completion of a certain job: - One-time jobs; or - Temporary work. In addition to certain jobs as referred in Article 5.1 and 5.2 Government Regulation No. 35/2021, PKWT may be implemented for other certain jobs whose types and nature or activities are not permanent.	

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Provisions regarding the Employment Agreement for a Specified Period of Time (PKWT) on article 56, article 57, article 58, article 59 of Law No 13/2003 have been amended by Law No. 11/2020. Ministerial decree No. 100/2004 has been revoked, in line with changes to Law 13/2003. Government Regulation No. 35/2021.	Registration	Registered by the Employers with the local district/ city Manpower Office in charge of manpower affairs no later than 7 working days since the signing.	Registered online by the Employer with the Ministry of Manpower no later than 3 (three) working days from the signing of PKWT. If the online PKWT registration is not yet available, the PKWT registration is made by the Employers in writing with the local Manpower office at district/ city level, no later than 7 working days from the signing of PKWT.	
	Calculation of compensation for the expiry or termination of PKWT	Unregulated	1. Service period of 12 consecutive months: 1 month of wage. 2. Service period of 1 month but <12 months: the service period/12 X 1 month of wages. 3. Service period >12 months: the service period/12 X 1 month of wages.	
	Provisions for compensation for the expiry or termination of PKWT	Unregulated	1. Must be paid to workers/laborers with a service period of no shorter than 1 month of work. 2. The payment is made upon the expiration of PKWT. 3. If the PKWT is renewed, compensation will be paid before the renewal is made. 4. In the event that one of the parties terminates the employment relationship before the expiration of the period set in the PKWT, the employer is required to pay compensation money, the amount of which is calculated based on the period of PKWT worked by the Worker/Laborer. 5. If a PKWT based on the completion of a work is completed in a shorter period than the period of time agreed upon in the PKWT, the compensation money is calculated until the time the work is completed.	The calculation of compensation money has been in effect since the promulgation of Law No. 11/2020, namely 2 November 2020. Payment of compensation for the ending of PKWT due to the termination of the employment relationship before the expiration of the PKWT period does not eliminate the obligation of the party who terminates the PKWT before the expiration of the determined period to pay compensation in the amount of the worker/laborer's wage until the deadline for the expiration of the work agreement period regulated in article 62 of Law No. 13/2003. When the PKWT status changes by law into PKWTT or for other reasons, the PKWT compensation must first be paid before the employment relationship is continued as a PKWTT. Compensation pay for daily workers may be applied after the conditions regarding the service period are met as long as there is certainty about the nature of the work in accordance with the work for PKH.

¹ Not applicable to the garment sector.



Outsourcing

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Provisions regarding outsourcing in article 64 & article 65 of Law No. 13/2003 have been abolished and the provisions regarding outsourcing in article 66 of Law No. 13/2003 have been amended by Law No. 11/2020. Government Regulation No. 35/2021.	Requirements for outsourcing work	a. Performed separately from the main activities; b. Performed by direct or indirect orders by the employer; c. Is a supporting activity for the company as a whole; and d. Does not directly hamper the production process.	Unregulated	
	Prohibition of using outsourcing	It may not be used to perform main activities or any activities directly related to the production process, except for supporting service activities or any activities that are not directly related to the production process.	Unregulated	
	Protection of outsourced workers against transfer to other outsourcing companies	Unregulated	If outsourced workers are employed with PKWT, the Employment Agreement must require the transfer of protection of rights for Workers/Laborers in the event of a replacement of the Outsourcing Company and as long as the work remains.	



Work Hours

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Provisions regarding working time in article 77, article 78 and article 79 of Law No. 13/2003 have been amended by Law No. 11/2020 Government Regulation No. 35/2021.	Overtime hours	No longer than three hours a day and 14 hours a week.	No longer than four hours a day and 18 hours a week.	The provisions of overtime work exclude overtime work performed during weekly rest periods and/or official holidays. The limit of overtime work does not apply to workers/ laborers in certain groups of occupations with the responsibility of thinking, planning, executing and/ or controlling the company operation, whose working time cannot be limited and who receive higher Wages. The arrangement for certain groups of occupations is regulated in the E mployment Agreement, Company Regulation, or Collective Bargaining Agreement.
	Overtime calculation	Rest days/national holidays: - Work system of 6 days a week: - Overtime on rest days: Overtime pay is only set up to 10th hour: 4X the hourly wage. - Overtime on public holidays that fall on the shortest working day: Overtime pay is only set up to 8th hour: 4X the hourly wage. - Working system of 5 days a week: Overtime pay is only set up to 11th hour: 4X the hourly wage.	Rest days/national holidays: - Work system of 6 days a week: - Overtime on rest days: Added payment for the 11th hour of the overtime: 4X the hourly wage. - Overtime on public holidays that fall on the shortest working day: Added payment for the 9th hour of the overtime: 4X the hourly wage. - Working system of 5 days a week: Added payment for the 12th hour of the overtime: 4X the hourly wage.	
	Provision of 1400 kilo calories of meal and drink during overtime	3 hours or more of overtime.	4 hours or more of overtime.	



Compensation

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Article 88 CHAPTER X, Part Two on wages of Law 13/2003 has been amended by Law No. 11/2020. There are 5 (five) articles inserted between article 88 and article 89 i.e. article 88A, article 88B, article 88C, article 88D, and article 88E. Government Regulation No. 36/2021.	Minimum wage	Regulates the setting of: - Provincial Minimum Wage (UMP) - District/City Minimum Wage (UMK) - Sectoral Minimum Wage (UMS)	Only regulates the setting of: - Provincial Minimum Wage (UMP) by the governor. - District/City Minimum Wage (UMK) - not mandatory but governor may set UMK under certain conditions.	The requirements for setting UMK include local economic growth or inflation in the district/city. The UMS, which was stipulated before 2 November 2020, remains valid until: Decree for UMS expires or the UMP/UMK in the area is set higher than the UMS. UMS which was stipulated after 2 November 2020, must be revoked by the governor no later than one year since the stipulation; and the governor may no longer set the UMS.
	Postponement of minimum wage	Employers who are unable to pay the minimum wage may postpone it.	Unregulated	
	Wages of workers with the service period of 1 year or longer	Based on bipartite negotiations between employers and workers in their respective companies.	Based on wage scale structure.	
	Minimum wage for Micro Small Medium Enterprise (MSME)	Unregulated	Set by agreement between workers and employers under the following conditions: - At least 50% of the average consumption of people at the provincial level. - The agreed minimum wage is 25% above the poverty line at the provincial level.	



Job Loss Benefit or Unemployment Benefit (JKP)

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Remark
Law No. 11/2020 and Government Regulation No. 37/2021	Participation	Unregulated	Employers are required to enroll Workers/Laborers as Participants in the JKP program.	New social security system providing unemployment benefits.
	Percentage of contribution	Unregulated	• Employers mandatory deductions: 0.24% • Government mandatory deductions: 0.22%	

Termination of Employment Relationship (Termination)

Legal Reference		Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
Article 151, article 153, article 154, article 156, article 157, article 160 have been amended by Law No. 11/2020. Article 152, article 155, article 158, article 159, article 161 – article 172, and article 184 are abolished by Law No. 11/2020. Insertion of new articles in Law 11/2020: article 151A, article 154A & article 157A. Government Regulation No. 35/2021.	Procedure	Unregulated	If it is unavoidable, the employer shall notify the worker/labour and/or trade union/labour union of the purpose and reasons for termination of employment no later than 14 working days prior to the termination of the employment relationship. If the termination is made during the probationary period, a notification letter shall be provided no later than 7 working days before the termination. Workers/labour who reject the termination must make a letter of rejection accompanied by its reasons no later than 7 working days after receiving the termination notification letter.	When the bipartite negotiations do not reach an agreement, the settlement of the next stage of employment termination is conducted through a settlement mechanism for industrial relations disputes in accordance with the provisions of laws and regulations. If the Company Regulation (CR) and Collective Bargaining Agreement (CB) is still in effect when Law 11/2020 was promulgated, the provisions of termination are referred to the regulations in the CR/CBA. This consideration is based on²: a. Even if it only binds the parties within the scope of CR/CBA and as long as it does not conflict with laws and regulations, it can be used because it is a rule in Manpower Affairs. b. In principle, CR/CBA is to accommodate matters that are not specifically regulated in the legislation as long as they are not lower than the provisions of laws and regulations. c. CR is a company document that has been legalized by the state & CBA is the result of negotiations that have been agreed upon, so the agreement is to be completed until the time it expires & the state respects the agreement.

Legal Reference			Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
Article 151, article 153, article 154, article 156, article 157, article 160 have been amended by Law No. 11/2020. Article 152, article 155, article 158, article 159, article 161 – article 172, and article 184 are abolished by Law No. 11/2020. Insertion of new articles in Law 11/2020: article 151A, article 154A & article 157A. Government Regulation No. 35/2021.	Reason and Compensation for Termination	Employers do not want to continue the employment relationship or are not willing to accept the workers/labours	Consolidation, Merger, change, change of ownership: • 2X severance pay • 1X tenure reward • Rights reimbursement	Consolidation, merger or separation of companies & workers/laborers: • 1X severance pay • 1X tenure reward • Rights reimbursement Takeover of companies:: • 1X severance pay • 1X tenure reward • Rights reimbursement	
		Employees do not want to continue the employment relationship or are not willing to accept the workers/labours	Consolidation, Merger, change of status, change of ownership: • 1X severance pay • 1X tenure reward • Rights reimbursement	Takeover of companies resulting in a change in working conditions: • 0.5X severance pay • 1X tenure reward • Rights reimbursementk	
		Efficiency	• 2X severance pay • 2X tenure reward • Rights reimbursement • Detachment money	Because the company is losing: • 0.5X severance pay • 1X tenure reward • Rights reimbursement • Detachment money	
				Preventing the company from losing further:: • 1X severance pay • 1X tenure reward • Rights reimbursement • Detachment money	

Legal Reference			Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
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			Efficiency: • 2X severance pay • 2X tenure reward • Rights reimbursement	Not because of loss: • 1X severance pay • 1X tenure reward • Rights reimbursementk	
				Due to force majeure • 0.5X severance pay • 1X tenure reward • Rights reimbursement k	
		Force majeure, but it is not closed	Unregulated	• 0.75X severance pay • 1X tenure reward • Rights reimbursement	
		The company is in a state of postponement of debt payment obligations	Unregulated	Because the company is losing: • 0.5X severance pay • 1X tenure reward • Rights reimbursement	
				Not because the company is losing: • 1X severance pay • 1X tenure reward • Rights reimbursement k	
		The company is bankrupt	• 1X severance pay • 1X tenure reward • Rights reimbursement	• 0.5X severance pay • 1X tenure reward • Rights reimbursement	

Legal Reference			Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
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		Criminal proceedings	Other than complaints by employers: • 1X tenure reward • Rights reimbursement	Suspected of committing a criminal act that caused losses to the company: a. Absent from working for 6 months because of being detained: • Rights reimbursement • Detachment money according to the arrangements in the employment agreement/company regulations/collective bargaining agreement. b. Absent from working for more than 6 months because of being detained: • 1X tenure reward • Rights reimbursement	
				Court decision before the end of the 6 month period: a. The employee is found guilty of a criminal act that caused losses to the company:: • Rights reimbursement • Detachment money according to the arrangements in the employment agreement/company regulations/collective bargaining agreement. b. The employee is found guilty of a criminal act that does not caused losses to the company:: • 1X tenure reward • Rights reimbursemen	

Legal Reference			Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
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		Absent for 5 days or more consecutively without written information, accompanied by valid evidence and has been properly and in writing summoned by the employer twice	• Rights reimbursement • Detachment money	• Rights reimbursement • Detachment money according to the arrangements in the employment agreement/ company regulations/collective bargaining agreement.	
		Violating employment agreement/company regulations/collective bargaining agreement after the issuance of the first, second and third reprimands	• 1X severance pay • 1X tenure reward • Rights reimbursement	• 0.5X severance pay • 1X tenure reward • Rights reimbursement • Detachment money according to the arrangements in the employment agreement/ company regulations/collective bargaining agreement.	
		Committing a violation	Serious mistakes: • Rights reimbursement • Detachment money	Urgent in nature stipulated in the collective bargaining agreement: • Rights reimbursement • Detachment money according to the arrangements in the employment agreement/ company regulations/collective bargaining agreement.	
		Prolonged illness or disability due to occupational accidents and unable to perform their jobs after exceeding the limit of 12 months	• 2X severance pay • 2X tenure reward • Rights reimbursement	• 2X severance pay • 1X tenure reward • Rights reimbursement	

Legal Reference			Law No. 13/2003 & Other Regulations	Law No. 11/2020 & Other Regulations	Description
Article 151, article 153, article 154, article 156, article 157, article 160 have been amended by Law No. 11/2020. Article 152, article 155, article 158, article 159, article 161 – article 172, and article 184 are abolished by Law No. 11/2020. Insertion of new articles in Law 11/2020: article 151A, article 154A & article 157A. Government Regulation No. 35/2021.	Reason and Compensation for Terminationa	Retired	• 2X severance pay • 1X tenure reward • Rights reimbursement	• 1.75X severance pay • 1X tenure reward • Rights reimbursement	
		Died	• 2X severance pay • 1X tenure reward • Rights reimbursement	• 2X severance pay • 1X tenure reward • Rights reimbursement	

² Government dissemination sessions of Law No.11/2020 and its Government Regulation can be access through below link:

- Law No. 11/2020:
 - <https://www.youtube.com/watch?v=epPfKCJsqt8>
 - <https://www.youtube.com/watch?v=Fxbktp4OxWc>

- Government Regulation No. 35/2021:
 - <https://www.youtube.com/watch?v=NODDWImholcS>
 - <https://www.youtube.com/watch?v=udLONwpZjz8>
- Government Regulation No. 36/2021:
 - <https://www.youtube.com/watch?v=HgTzFKMt5-E&t=10600s>
 - <https://www.youtube.com/watch?v=cgULwHshtVO>

- Government Regulation No. 37/2021:
 - <https://www.youtube.com/watch?v=HgTzFKMt5-E&t=10600s>
 - <https://www.youtube.com/watch?v=SqZGzZpMLao>
- Government Regulation No. 34/2021:
 - <https://www.youtube.com/watch?v=2FuoRJoUKjw>

