

OMNIBUS LAW ON JOB CREATION – SEVERANCE BENEFITS RELATED PROVISIONS – ARTICLE 81

Reasons of Employment Termination		Labor Law Reference	Benefits Amount	Omnibus Law – Art. 81	New Article for Labor Law – Art. 154A	Benefits Amount Status – New Article 156 (5)
A.	Attainment of Retirement Age					
1.	Non-contributory pension plan	167 (1,2)	Max[0; 2 x SVR + SVC + CP - RB]	Article deleted	(1) (n)	Will be regulated under Government Regulations
2.	Contributory pension plan	167 (3)	Max[0; 2 x SVR + SVC + CP - RB + EC]	Article deleted	(1) (n)	
3.	No pension plan	167 (5)	2 x SVR + SCV + CP	Article deleted	(1) (n)	
B.	Prior to Retirement Age					
4.	Grave wrongdoings by workers	158 (1,3)	CP	Article deleted	No longer regulated	Will be regulated under Government Regulations which must be completed within 3 months after the Omnibus Law is enacted
5.	Change of company status/ownership, merger, joint venture, and workers are not willing to continue employment; or (employers are not willing to accept workers)	163 (1,2)	SVR + SVC + CP; (2 x SVR + SVC + CP)	Article deleted	(1) (a)	
6.	Company closure due to efficiency	164 (3)	2 x SVR + SVC + CP	Article deleted	(1) (b)	
7.	Company closure due to 2 years consecutive losses	164 (1)	SVR + SVC + CP	Article deleted	(1) (c)	
8.	Company closure due to force majeure	164 (1)	SVR + SVC + CP	Article deleted	(1) (d)	
9.	Company under suspension of payment obligation	-	Not regulated	-	(1) (e)	
10.	Company declared bankrupt	165	SVR + SVC + CP	Article deleted	(1) (f)	
11.	Employers' wrongdoings	169 (1,2)	2 x SVR + SVC + CP	Article deleted	(1) (g, h)	
12.	Voluntary resignation (must meet 3 conditions)	162 (1)	Separation pay	Article deleted	(1) (i)	
13.	5 or more consecutive days of absence no notice	168 (3)	CP	Article deleted	(1) (j)	
14.	Violation of work agreement, company's rules and CLA	161 (3)	SVR + SVC + CP	Article deleted	(1) (k)	
15.	Unable to perform due to legal proceedings after 6 months or guilty verdict by court before 6 months	160 (3,5,7)	SVC + CP	Section (7) deleted	(1) (l)	
16.	Prolonged illness, disability due to work accident and disability to work after 12 months	172	2 x SVR + 2 x SVC + CP	Article deleted	(1) (m)	
17.	On death of workers	166	2 x SVR + SVC + CP	Article deleted	(1) (o)	

OMNIBUS LAW ON JOB CREATION – SEVERANCE BENEFITS RELATED PROVISIONS – ARTICLE 81 (continued)

Benefits		Labor Law Reference	Benefits Scale	Omnibus Law – Art. 81	Comments
1.	Severance pay (SVR)	156 (2)	At least , from 1 (service < 1 year) up to 9 (service >= 8 years) month wages	No change in the scales. However, the term “At least” has been removed	No comment
2.	Service pay (SVC)	156 (3)	At least , from 2 (service >= 3 years) up to 10 (service >= 24 years) month wages	No change in the scales. However, the term “At least” has been removed	No comment
3.	Compensation pay (CP)	156 (4)	Outstanding leave, cost of repatriation, and 15% x (SVR + SVC) for housing and medical allowances	The 15% x (SVR + SVC) payable for housing and medical allowances has been removed	The maximum 32.2 month wages might reduce to 28 month wages, or even 19

Notes:

SVR = Severance pay; **SVC** = Service pay; **CP** = Compensation pay (annual leave, repatriation cost, housing and medical allowances in the amount of 15% of SVR and or SVC); **RB** = Retirement benefit; **EC** = Accumulated employee contributions (DPPK or DPLK). **Separation pay** is determined at company’s discretion and varies by companies.

Comments:

1. This summary has been prepared based on a draft of the Omnibus Law agreed by the House of Representatives (**the 812-page version publicly available**) which will be passed to the President for enactment. We will provide an updated summary (if there are substantial differences) after the official final enacted copy is available.
2. There are no changes in the amount of Severance pay (SVR) and Service pay (SVC) scales. The provision of Compensation pay (CP) is still regulated, but the 15% x (SVR + SVC) for housing and medical allowances has been removed.
3. Termination of employment due to grave wrongdoings by workers has been deleted. Termination due to company under suspension of payment obligation has been introduced. All other reasons of termination of employment still remain. All reasons of termination of employment are now regulated in one new Article 154A.
4. All amount of benefits for all reasons of exit have been deleted which will be further regulated under Government Regulations. Thus, it is not known at this stage whether the Government Regulations will regulate the same amount of benefits as previously provided. However, for the voluntary retirement plans (employer pension fund, DPPK and financial institution pension fund, DPLK), we could be certain that offset of benefits at retirement age derived from those plans against severance benefits will be regulated under Government Regulations (current Article 167 of the Labor Law). It is also expected that the offset provisions in the Government Regulations will not be limited to apply for attaining retirement age only, but also for all reasons of exit.
5. A new “unemployment security” or “jaminan kehilangan pekerjaan” (JKP) has been introduced. Detailed information on benefits amount, procedures of payment, minimum participation period, and contribution level will be further regulated under Government Regulations.

OMNIBUS LAW ON JOB CREATION – JAMINAN KEHILANGAN PEKERJAAN (JKP)/UNEMPLOYMENT SECURITY – ARTICLE 82

Jamian kehilangan pekerjaan (JKP)/unemployment security is a new program introduced by the Omnibus Law under Article 82 by amending and adding the National Social Security System Law No. 40 Year 2004.

- **Article 46A:** JKP will be implemented and managed by **BPJS Worker** and the **Government**. The **implementation procedures** will be further regulated under Government Regulations.
- **Article 46C:** **Members of JKP** are those who have paid contributions. The contributions are payable by the Central Government.
- **Article 46D:** **Benefits** in the form of **cash benefits, access to job market information, and job training**. **Benefits** in the amount of at the most 6 month wages will be given to members after completing certain periods of participation in the program. **Benefits** and **periods** will be further regulated under Government Regulations.
- **Article 46E:** **Source of funding of JKP** comes from **Government initial funds** (at least Rp 6 trillion, Article 42 section (2) of the Social Security Implementing Agency Law No. 24 Year 2011 – new section under Article 83 Section 3 of the Omnibus Law), **recomposition of the current social security contributions**, and/or **BPJS Worker operational funds**. **Source of funding of JKP** will be further regulated under Government Regulations.

ACCOUNTING EXPENSE

We have seen in the draft of the Omnibus Law that the 15% for housing and medical allowances has been removed. At retirement, for instance, the current formula as we are familiar with, is **1.15 x (2 x SVR + 1 x SRVC)** with a maximum of **32.2 month wages**. If the Government Regulations maintain the formula in the bracket, then we would expect to see a new formula of **1.00 x (2 x SVR + 1 x SRVC)** with a maximum of **28 month wages**. Thus, a reduction of a maximum of **4.2 month wages**, as a rule of thumb, approximately **13%** in cost reduction. If the formula in the bracket becomes only **1.00 x (1 x SVR + 1 x SVC)** with a maximum **19 month wages**, then a reduction of approximately **41%**. Accounting wise, this reduction is termed as “past service cost”, a reduction of expense in the profit/loss statements.

This above is simply an example of speculation. There are still many uncertainties surrounding what the formula the Government Regulations will stipulate. Among others are whether the new formula will apply retroactively (including services already worked) or only applies to new hires whereby existing employees will still enjoy current formula. Moreover, companies that stipulate the severance provisions explicitly in their collective labor agreement, or employment agreement, or companies’ regulations, will also face challenges in making revision and when successful in the negotiation it will take some times before becomes effective.

It is important that in the next 3 months we should voice our concerns, if any, by providing constructive inputs in the drafting of the Government Regulations through appropriate channels.