



Outsourcing Post Job Creation Law 2023

Overview

In March 2023, the Government passed Law Number 6 of 2023 on Enactment of Regulation of the Government in lieu of Law Number 2 of 2022 on Job Creation into Law ("**Job Creation Law 2023**"). There were significant shifts in the amendments to Articles 64 to 66 of Law Number 13 of 2003 concerning Manpower ("**Manpower Law**") regarding outsourcing.

Previously, under the Manpower Law, the provisions regarding outsourcing were limited to specific non-core jobs, which were defined as follows:

- A. Jobs performed separately from the primary activities;
- B. Jobs performed under direct or indirect orders from the employer;
- C. Jobs that support the overall activities of the company; and
- D. Jobs that do not directly impede the production process.

Subsequently, the Job Creation Law of 2020 removed these limitations, allowing both core and non-core jobs to be outsourced as long as they were agreed upon in written agreements. However, the limitations on jobs eligible for outsourcing were revised again through the Job Creation Law of 2023. The changes are found in Article 64, paragraphs (2) and (3), stating that *"The Government shall stipulate the part of the outsourcing and further provisions on the stipulation of the part of the outsourcing to be regulated in Regulation of the Government"*.

The implementing provisions for outsourcing still refer to Government Regulation Number 35 of 2021 on Temporary Employment Agreement, Outsourcing, Working Hours and Breaks and Termination of Employment Relationships ("**GR No. 35/2021**"). As a result, the aspects of core and non-core jobs have not yet been clearly defined. The previously established regulations on outsourcing by the Ministry of Manpower were also revoked after the issuance of the Job Creation Law in 2020.

Despite the lack of clarity regarding the limitations on jobs eligible for outsourcing, the Job Creation Law and GR No. 35/2021 clarify the full responsibility of outsourcing workers being borne by the outsourcing service provider companies. Additionally, the Job Creation Law begins to address job security for outsourcing workers, as stipulated in the amendment to Article 66 paragraph (3) of the Manpower Law, which requires that employment agreements for outsourcing workers must include the TUPE (Transfer of Undertaking Protection of Employment) clause, safeguarding the rights of workers during a transfer of business ownership.

TUPE offers legal protection for outsourcing workers under fixed-term employment agreements (PKWT), ensuring that when a user company changes its outsourcing provider, the new outsourcing company must continue the existing employment contracts. The years of service accumulated by the outsourcing workers are still considered valid and accounted for, allowing them to enjoy their rights as workers adequately and proportionally. If outsourcing workers are terminated due to a change in outsourcing companies, they have the legal right to file a lawsuit with the Industrial Relations Court to dispute their rights.

What's Next?

As of this update release, the implementing provisions for outsourcing activities still refer to GR No. 35 of 2021, meaning that the requirements for job division eligible for outsourcing are still unclear. The government will continue to review best practices in implementing updated outsourcing agreements and monitor the regulatory updates and revision processes for GR No. 35/2021, which are currently underway.

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