

EMPLOYEE'S ENTITLEMENTS UPON TERMINATION OF EMPLOYMENT CONTRACT

MARCH 2024 LABOR ALERT

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On 21 March 2024, the Ministry of Labor and Vocational Training (the "MLVT") issued a Notification on Employee's Entitlements Upon Termination of an Employment Contract (the "Notificaton"). This Notification aims to clarify the mandatory wages payable and other benefits granted to employees in case of termination of an employment contract based on the type of employment contract being (1) Undetermined Duration Contract ("UDC") or (2) Fixed Duration Contract ("FDC"). The following are the key highlights from the Notification:

1. Termination of an Employment Contract by the Employer

1.1. If the employment contract is terminated by the employer without a valid reason (i.e. the employee has not committed any serious misconduct under Article 83 of Labor Law or the internal regulations of the enterprise), the employee will be entitled to the following under the Labor Law:

a. For FDC:

- outstanding wages (Article 116);
- payment in lieu of unused annual leave (Article 166 and Article 167);
- severance pay at least equal to 5% of the wages paid during the term of the employment contract (Article 73); and
- compensation at least equal to the remuneration he/she would have received until the termination of the contract (Article 73).

b. For UDC:

- outstanding wages (Article 116);
- payment in lieu of unused annual leave (Article 166 and Article 167);
- payment in lieu of prior notice, if the employer fails to give a prior notice in compliance with the Labor Law (Article 75 and Article 77);
- payment of seniority indemnity (both seniority indemnity in the current semester and outstanding payment of back pay of seniority indemnity (Article 89 New); and
- damages equal to the seniority indemnity already received and to be received during the employment contract (Article 91 New).

1.2. If the termination of the employment contract is due to serious misconduct committed by an employee under Article 83 of Labor Law and the internal regulations of the enterprise, the employee is entitled to:

a. For FDC:

- outstanding wages (Article 116); and
- payment in lieu of unused annual leave (Article 166 and Article 167).

b. For UDC, the employee is entitled to:

- outstanding wages (Article 116); and
- payment in lieu of unused annual leave (Article 166 and Article 167).

2. Termination of an Employment Contract due to the Bankruptcy of the Enterprise

If the employment contract is terminated as a result of the enterprise having been declared bankrupt or files for bankruptcy, the employee is entitled to the following under the Labor Law:

- For FDC:
 - outstanding wages (Article 116);
 - payment in lieu of unused annual leave (Article 166 and Article 167); and
 - severance pay at least equal to 5% of the wages paid during the term of the employment contract (Article 73).
- For UDC
 - outstanding wages (Article 116);
 - payment in lieu of unused annual leave (Article 166 and Article 167);
 - payment in lieu of prior notice, if the employer fails to give a prior notice in compliance with the Labor Law (Article 75 and Article 77); and
 - payment of seniority indemnity (both seniority indemnity in the current semester and outstanding payment of back pay of seniority indemnity (Article 89 New).

The MLVT also highlights in the Notification that the damages are not applicable in case of bankruptcy as such termination does not badly affect the terminated employee's reputation or dignity, or being misunderstood by the public or other employees over the terminated employee's workability or productivity. However, a separate or collective termination does contain the element that badly affects the terminated employee's reputation and dignity as well as suspicion from their colleague regarding their workability, productivity, or behavior of the terminated employees.

Should you need further information or legal support, please feel free to contact us at: info@hbslaw.asia.

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