



DSLC

Avoid 4 Common Mistakes
in Making a Work Agreement

Work Agreement Is Not the Same As General Agreement

The relationship that occurs between companies and the workers cannot be separated from work agreements. Unfortunately, work agreements made by the parties are often just a mere formality tool so that improper work agreements are often found, which in turn lead to unfavourable consequences in the form of potential problems that may arise in the future. On the other hand, in carrying out effective and efficient business activities, companies are certainly required to be able to mitigate business risks, which in essence is to avoid any potential problems in any form.

For this reason, this article will review what mistakes a company can avoid when making a work agreement, including the legal understanding of potential problems that may occur if the company neglects or ignores important elements that should be included in the work agreement.

A work agreement cannot be equated with a general agreement. The Manpower Law and its implementing regulations have specifically regulated the legal requirements of a work agreement, including the rights and obligations of the parties. Thus, a lack of understanding or thoroughness in making a work agreement can lead to fatal mistakes that have the potential to cause legal problems in the future.

4 Common Mistakes in a Work Agreement

1. Fulfillment of Legal Terms of Work Agreement

Subjective Elements

Consisting of the agreement and the ability of the parties to carry out legal actions. Common mistakes that are often found are:

From the company side. The representative of the company listed in the work agreement is not a Director, whereas Article 98 of the Company Law basically and explicitly stipulates that only directors appointed based on the company's articles of association are authorized to represent the company both inside and outside the court, including signing a work agreement. Except, the party first obtains special power of attorney from the authorized party to make and sign a work agreement on behalf of the company.

From the worker side. The worker's age is not stated in the work agreement. Apart from this being an obligation as referred to in the Manpower Law, the inclusion of the worker's age is also important in determining whether or not a person is capable or has even passed retirement age.

Objective Elements

- a. The work to be agreed upon, such as secretary, cashier, general affair, and so on, which also includes the position of the worker at the time of signing the work agreement such as staff, senior, supervisor, manager, and so on.
- b. The work agreed upon does not conflict with public order, decency, and the prevailing laws and regulations.

Common Mistakes:

The work to be agreed upon is often not clearly stated in the work agreement due to various special considerations from the company i.e., the absence of the organizational structure of the company.

Failure to fulfill the subjective elements in the work agreement can result in the cancellation of the work agreement. Meanwhile, failure to fulfill the objective elements the work agreement can make the work agreement null and void by law

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2. Fulfillment of the provisions of article 54 of the Manpower Law

Apart from what has been mentioned above, it is also necessary to understand that Article 54 of the Manpower Law specifically regulates the minimum provisions that must be included in the work agreement. The common mistakes are as follows:

Place of Work

The mistake that is often found is that the location or place of work of workers is not specifically stated, whereas this has legal implications related to:

- a. Determination of the minimum wage because the minimum wage in one region is different from another.
- b. Determination of industrial institutions in the event of a dispute because, based on the applicable provisions, the institution that can handle the dispute must be the industrial institution that is in the location where the worker works.

The Amount of Wages and the Method of Payment

Wages are one of the most sensitive matters in labor relations, so the provisions regarding wages need extra attention. The mistake that is often found in this section is the inclusion of wages in the amount lower than the minimum wage regulated in the region.

Please note that amount of wages must not conflict with the applicable legal provisions. Violation of this provision can make the work agreement null and void by law.

In addition, the calculation of compensation for workers is based on the components of wages received by workers. Thus, the wage component needs to be clearly regulated in a work agreement.

Work Condition That Contain Rights and Obligations

Unbalanced provisions are often found in work agreements, for example, provisions that regulate more about the obligations of workers, or provisions that do not regulate working hours or other matters that should be regulated in the work agreement

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3. Terms of Work in the Legislation of Employment

There are several provisions in the Job Creation Law and its implementing regulations that further regulate the terms of work that should be regulated in work agreements, company regulations or collective work agreements, as follows:

Article 57 of the Manpower Law

This article principally regulates the use of the Indonesian language. In the event that the agreement is made in a foreign language, the Indonesian translation must be included with the provision that if there is a difference in interpretation of the contents of the work agreement, the language that is deemed valid is Indonesian.

Article 21 and Article 27 of PP No. 35/2021

Basically regulate working hours, rest periods and overtime work. Apart from the fact that the provisions regarding working hours in work agreements are often not specified, it is also often found that there are no provisions regarding the exceptions of overtime pay for workers in certain groups. On the other hand, based on PP No. 35/2021, such exceptions must be listed.

Failure to include exceptions of overtime pay for workers in certain groups in the company's internal regulations results in the obligations for the company to provide overtime pay to all workers concerned

Article 52 (2) PP No. 35/2021

This article basically regulates the termination of employment due to urgent reasons e.g., workers commit serious violations.

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4. Boiler Plate

Boiler plates or general provisions, which should always be included in a work agreement, are parts that are sometimes ignored, whereas these provisions are important to be included as complementary since they have a significant impact on the implementation of the work agreement itself. The following are examples of boiler plates to consider:

Dispute Settlement

Every company surely has a uniqueness that is different from other companies. This uniqueness is a secret that should be protected by a special provision in the work agreement.

Penyelesaian sengketa

In certain cases, work agreements are found to regulate that dispute settlement is to be held in district courts or even in arbitration institutions, whereas the Manpower Law and Law no. 2/2004 clearly stipulate that disputes in industrial relations can only be settled in industrial institutions.

Correspondence Addresses of the Parties

This component is important as it becomes the basis for the company to convey proper correspondence with a special purpose (such as transfers, absenteeism, notification of layoffs, etc.) to the workers.

Severability

Provision of this kind basically stipulates that if certain phrases or articles or paragraphs in the work agreement are declared invalid by a court decision or applicable laws and regulations, that decision does not invalidate the work agreement in its entirety.

Remember!

Dispute in Work Agreement is not settled in District Courts or in Arbitration Institutions, but can only be settled in industrial institutions.

Potential Legal Dispute

An understanding of the key provisions to be regulated in a work agreement is very important because in addition to providing legal certainty regarding the terms of work and the rights and obligations of the parties, this is also as an effort to minimize potential legal problems that may arise due to negligence or non-fulfillment of the key provisions.

A good work agreement does not necessarily have to be made in many pages, but should specifically contain the key provisions regulating important things or matters in accordance with the terms and conditions as set out in the Manpower Law as described above.



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