

Client Update: Indonesia

11 June 2024

Redefining Maternity Leave under the New Mothers and Children Draft Law



In June 2024, the House of Representatives ratified the draft law governing the welfare of mothers and children. As evident from the subject matter, the draft law regulates various aspects related to the welfare of mothers and children, as well as the rights that need to be guaranteed by the state to realise this. When it becomes effective, the draft law will regulate maternity leave, supporting facilities at workplace for mothers who have recently given birth, and adjustment to working hours for breastfeeding mothers. These changes are in line with the aim of the draft law, which is to ensure the equal rights of mothers and children under the 1945 Constitution.

From the employers' perspective, the draft law will impact the rights of workers and employers' obligation to provide facilities for working mothers. It may also lead to amendments in company regulations to accommodate changes in leave entitlement and working hours, among other things.

Overlap with the Labour Law

It is important to note that several provisions in the draft law overlap with the existing regulatory framework under the Labour Law (Law No. 13 of 2003 as amended). Because the draft law does not expressly repeal these provisions, they will continue to apply.

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Consequently, in our view, it can be assumed that:

1. The draft law will apply to programs or activities (such as maternity leave) initiated **after** its enactment. Ongoing programs or activities will still fall under the purview of the Labour Law.
2. Once the draft law becomes effective, overlapping provisions under the Labour Law will no longer be in force.

Maternity Leave

Under the draft law, working mothers are entitled to maternity leave for at least three months after childbirth. This can then be further extended up to an additional three months if there are special conditions as proven by a doctor's certificate. This provision amends the previous allowance under the Labour Law, which grants working mothers three months of maternity leave, to be equally divided before and after childbirth.

Under the draft law, if an employee qualifies for the additional three months, she will be entitled to receive her full wage up to the fourth month and 75% of her wage on the fifth and sixth months. This clarification is certainly welcome, as the current Labour Law does not regulate maternity leave beyond 1.5 months after childbirth. Consequently, employers are responsible for regulating this in the employment agreement and/or company regulations, with the stipulation that wage deductions must not exceed 50%.

The draft law has retained the same allowance under the Labour Law of allowing an employee who experiences a miscarriage to 1.5 months of rest or longer if supported by a certificate from a doctor, obstetrician, or midwife.

For male employees, they are entitled to a two days' paternity leave to accompany their wives during childbirth, which can be extended up to an additional three days by agreement with their employers. Fathers are also entitled to two days' leave in the event of a miscarriage.

Workplace Facilities

With respect to workplace facilities, employers are required to provide adequate support for female employees who are breastfeeding. This obligation aligns with the goal of exclusive breastfeeding from birth until the child is six months old. Specifically, Article 30(3) of the draft law mandates that workplace facilities must include health services amenities, lactation rooms, and daycare facilities.

Working Hours

In addition to facilities for breastfeeding mothers and maternity leave, the draft law provides an opportunity for female employees who are breastfeeding and their employers to negotiate adjustments to working hours and duties. This progressive measure recognises the unique needs of breastfeeding

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mothers, aiming to create a more accommodating and flexible work environment. By addressing these needs, the law seeks to promote a supportive workplace culture that benefits both employees and employers, ultimately contributing to better work-life balance and enhanced productivity.

Implementation and Sanction

Lastly, the draft law guarantees that female employees who gave birth or miscarried cannot be terminated from their jobs. Employers may be subject to sanctions in the form of guidance or administrative sanctions if they fail to implement the obligations under the draft law. Further provisions regarding supervision, sanction, and evaluation will be regulated in more detail in government regulations.

Key Takeaways

In conclusion, while the draft law introduces significant improvements for female employees, particularly in terms of maternity leave, breastfeeding support, and the possibility of flexible working arrangements, it is important to note that these provisions are yet to be enacted. As the legislative process unfolds, there may be changes or further clarifications in the law's implementing regulations. In the meantime, employers should stay informed and prepared to adapt their policies to comply with the draft law, ensuring a supportive and compliant work environment for their employees.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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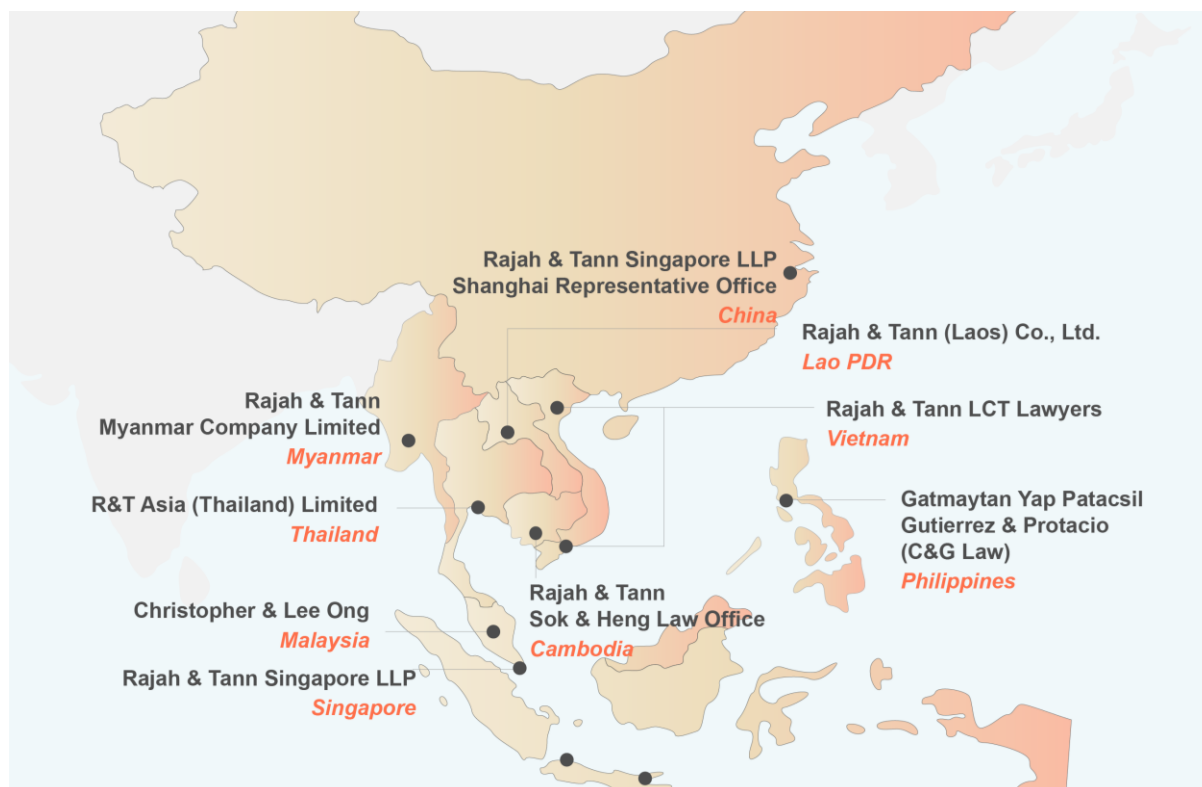
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