

Legal Updates: Substituting / Switching Day



Dear Valued Partners,

We would like to inform you about Substituting or Switching Day based on Indonesia Labour Law and regulations, and Better Work Indonesia perspective on the issue, based on our discussion with a team from Ministry of Manpower and Transmigration:

Legal Reference:

1. Labour Act No. 13 of 2003
2. Decision of the Minister of Manpower and Transmigration No. KEP 102/MEN/VI/2014

You can access these regulations in our website or government website:

Better Work Indonesia – Labour Law Guidelines: http://betterwork.org/in-labourguide/?page_id=40
Ministry of Manpower and Transmigration website: <http://www.depnakertrans.go.id/>

Please note that all regulations are provided in Bahasa Indonesia only

Viewpoint on substituting day

National Labour Regulations do not recognize substitute day or switching day. The words of “do not recognize” does not mean that any day can be substituted with another day when there is an agreement between management and workers (or unions). There is a limitation stipulated in National Labour Regulations hindering factories from making an agreement of day substitution.

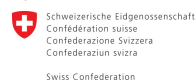
What to consider when arranging substitute/swap day

- a. What is one week?
One week is seven days from Monday to Sunday.
- b. What is weekly rest day/s:
Rest day/s is a set of day/s off provided to workers in a one-week period. The day/s off determined in the company regulation or collective bargaining agreement.
- c. Can factories substitute work on rest day (for example: Saturday or Sunday) with a day off on regular workday; thus, work on rest days are considered as normal workdays?
Yes. However, there is a limitation in this practice. Article 79 (2.b) Labour Act No. 13 of 2003 do not limit Saturday and /or Sunday as weekly rest days. When switching weekly rest day/s, factories should comply with a set of regular weekly working hours arrangement, which stipulated in its Company Regulations (*Peraturan Perusahaan*) or Collective Bargaining Agreement (*Perjanjian Kerja Bersama*). If a factory uses five workdays (eight hours per day) and two rest days per week arrangement, it should follow the set arrangement (in this case, workers should not work for more than 40 hours perweek) when the regular rest days are switched to other days.

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Legal Updates: Substituting / Switching Day



- d. Can factories substitute work on public holiday with a day off on regular workday; thus, work on public holiday considered as normal workday?
No. National public holiday should not be substituted with a day off on normal workday. Article 85 (3) Labour Act No. 13 of 2003 states that companies who require their workers/labourers to keep on working formal public holidays as referred to under subsection (2) are under an obligation to pay overtime pay.
- e. What should factories do when they need to substitute workdays because of force majeure such as flood?
Labour Act No. 13 of 2003 only recognizes force majeure in an event of termination. Nonetheless, considering force majeure is an event where both workers and factories could not predict; thus, workers are not obliged to substitute “loss working hours” although they are compensated for the loss working hours.
- f. What options that factories have when deciding switching or substituting day?
 - When there is a request from workers to have longer holiday because of a public holiday falls in the middle of a week (*hari kejut*), a factory should consider taking mass annual leave instead of working on public holiday (with normal pay) and switch the holiday with a regular workday.
 - In case of the factory could not get an agreement from workers (or union) to take mass leave, the factory can replace its rest day/s to another day/s but not on national holiday.
 - Switching weekly rest day/s should be a last resort, and should not be conducted in a regular basis. A dialogue with workers and /or union should be conducted prior the implementation, and workers and /or union should agree with the arrangement.
 - Factories should also consult with the Local Manpower Office.
- g. What is a sample scenario for shifting rest day/s:
 1. PT ABC working weekday is five days a week (Monday-Friday) with regular working hours of eight hours a day. Employees requesting shift weekly rest of 31 May to 26 of May to get long holiday.

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May 2014

Senin	Selasa	Rabu	Kamis	Jum'at	Sabtu	Minggu
			1 Hari buruh	2	3	4
5	6	7	8	9	10	11
12	13	14	15 hari waisak	16	17	18
19	20	21	22	23	24	25
26	27 Israj Mijraj	28	29 Kenaikan Isa	30	31	

As 27 May is a national holiday and 26 May is a working day (*hari kejeprit*), then factories can suggest for shifting the weekly rest day on Saturday of 31 May to Monday of 26 May, so that workers can have off days for four days in a row (24, 25, 26 and 27 May). Workers work on 28, 30 and Saturday May 31. With this shift, the regular working hours do not exceed 40 hours and workers still have two days weekly rest.

Bear in mind, because there are two days of national holiday the sample week, then the regular working week is only three days (28, 30 and 31 May) and work on public holidays (27 and 29 May) MUST be paid OVERTIME.

- Another case, for instance PT DEF work six days a week with seven hours a day from Monday to Friday and five hours on Saturday. Workers requesting a weekly rest day shift from 1 June to 28 May.

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19	20	21	22	23	24	25
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Factories arrange shifting of weekly rest from 1 June to May 26, so workers would have three days off in a row on 25, 26 and 27 May. On 28, 30, 31 May and 1 June workers come to work as usual of seven hours per day (with exception on Saturday workers only work five Hours). With this shift, the regular working hours do not exceed 40 hours and workers still have one-day weekly rest.

Bear in mind, because there are two days of national holiday the sample week, then the regular working week is only 4 days (28, 30, 31 May and 1 June) and work on public holidays (27 and 29 May) MUST be paid OVERTIME.

DISCLAIMER

The content of this information is for general information purposes only.

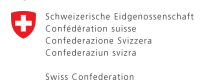
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