

Legal Protection for Workers on Job Loss Guarantee in the Tourism Sector



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ABSTRACT: In Indonesia, labour social security is a right of workers, as exemplified by the provision of job loss insurance. In essence, social security is designed to ensure that workers retain a decent standard of living in the event of job loss. One of the most frequently demanded rights of workers is the right to social security. The Indonesian Social Security Administration Body (BPJS) programme comprises two distinct categories: social security for health and social security for employment. The following question is posed: How is the job loss insurance programme in the tourism sector implemented at BPJS Ketenagakerjaan Cabang Bali Gianyar? Furthermore, what form of legal protection is afforded to workers who lose their jobs in accordance with Indonesian Government Regulation No. 37/2021 on the implementation of the Job Loss Insurance Program? Methodology: empirical research employing a sociological approach. The findings indicate that the implementation of the job loss guarantee programme at BPJS Ketenagakerjaan Gianyar is conducted in accordance with the submission of job loss insurance claims from workers who have been laid off. At PT. CHB Villa, 26 workers who experienced layoffs were eligible to receive the benefits of job loss insurance, including 24 workers (92%) who were entitled to receive them and two workers (8%) who were not. In conclusion, the implementation of the job loss insurance programme at the Villa of PT. CHB Gianyar has been effective in providing legal protection and benefits for laid-off workers. In the event that an employer violates the rights of a dismissed worker, the employer may be subject to administrative sanctions in accordance with the provisions of Article 46 of Indonesian Government Regulation No. 37/2021 concerning the implementation of the job loss insurance. These sanctions may include written warnings to the employer and the cessation of certain public services.

KEYWORDS: Legal protection, Workers, Job Loss Insurance, Tourism

I. INTRODUCTION

1.1. Background

Labour force occupies a prominent position within the tourism sector, reflecting the sector's emphasis on hospitality and the provision of friendly service to tourists. It is the responsibility of those employed in the sector to provide visitors with an exemplary standard of service. This must necessarily be accompanied by the recognition of the rights of workers. These rights are based on the fundamental principles of human rights and are essential standards without which individuals cannot live in a dignified manner. Workers have inherent rights that are intrinsic to it. The fulfilment of labour rights can assist workers in developing a sense of self-worth and dignity, a sense of freedom and security in their work, and the opportunity to choose and engage in productive work without restrictions.

The right of Indonesian citizens to work is enshrined in Article 27, paragraph (2), and Article 28 H, paragraph (3), of the Second Amendment to the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945). Article 27, paragraph (2) stipulates that 'every citizen is entitled to gainful employment and a livelihood that is worthy of human dignity'. Furthermore, Article 28 H paragraph (3) of the same law stipulates that 'everyone has the right to social security that enables his or her full development as a human being with dignity' (UUDNRI, 1945). Additionally, the concept of social security is closely associated with one of the fundamental principles or characteristics of Indonesian society, namely the principle of *gotong royong* (mutual cooperation) (Adillah and Anik, 2015). From a formal perspective, social security or protection systems can be classified into four categories: social assistance, provident funds, social insurance, and employer liability (Kertonegoro, 1987).

One of the consequences of the global pandemic caused by the Covid-19 on the economy is the occurrence of redundancies due to the multifaceted crisis. The workforce encountered significant challenges in fulfilling their basic needs and those of their families, in addition to encountering difficulties in securing employment. In light of these challenges, it is imperative to ensure the protection of workers through the provision of adequate social security. A crucial aspect of workers' rights that

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frequently arises is the right to social security. In response, the Indonesian government has established two mandatory Social Security Administrator (BPJS) programmes, namely BPJS for health and BPJS for employment. However, a significant concern persists, whereby employers primarily register their workers with the BPJS programme for health, while often neglecting to do so with the BPJS for employment programme.

The establishment of Law No. 11 of 2020 concerning Job Creation, which has since been amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (Undang-Undang Cipta Kerja, 2020), as well as Government Regulation No. 37/2021 concerning the Implementation of the Job Loss Insurance Programme (Pemerintah Indonesia, 2021), has had a significant impact on the social status of workers experiencing job loss. This is particularly evident in the context of their living environment and the broader society. In accordance with Article 18 of Government Regulation No. 21 of 2021, the benefits of the JKP programme are in the form of financial assistance, access to labour market information, and job training. It is anticipated that the benefits will provide social protection for workers, enabling them to maintain a decent standard of living in the event of job loss or termination of employment. Therefore, it will encourage those who have lost their jobs to seek new employment or to become self-sufficient.

The objective of the job loss insurance (JKP) programme is to ensure that workers/labourers are able to maintain a decent standard of living in the event of job loss or termination. This is intended to motivate them to seek new employment or to become independent. As Ramlall et al. has observed, the termination of employment represents a significant stressor with a detrimental impact on workers' mental health (Ramlall et al., 2014). Furthermore, job loss insurance seeks to mitigate the psychological impact of job loss by facilitating a process known as "triple skilling". This approach entails three key strategies: (1) "skilling", which involves adapting existing skills to enhance their employability; (2) "re-skilling", which entails updating and adjusting skills to facilitate job search; and (3) "upskilling", which entails enhancing abilities to navigate the uncertainty and challenges of a dynamic market (Fauzi, 2021).

The global impact of the Covid- 2019 pandemic has resulted in significant disruptions across a range of sectors, including the tourism sector. The island of Bali, a prominent tourist destination, has been significantly impacted by the global pandemic. One of the most severely affected areas on the island is Gianyar Regency, whose inhabitants traditionally rely on the tourism sector as their primary source of income. Tourism development in the regency has undergone a significant decline since 2020, reaching negative figures. This has resulted in the paralysis of various sectors, particularly the tourism business sector. From a labour perspective, the disruption has resulted in unfavourable conditions. Consequently, a significant number of employees were dismissed by their employers, resulting in substantial job losses. A considerable number of workers have been forced to cope with the loss of income, coupled with the additional challenge of securing alternative employment opportunities. This is largely attributed to the closure of numerous tourism-related businesses, which has been a direct consequence of the decline in tourist arrivals. Consequently, the unemployment rate has risen considerably. It is imperative that this issue receives the attention it deserves and that strategic handling steps are implemented (Ayupijaya, 2021). Labour social security plays a pivotal role in enhancing the productivity of regions such as Gianyar Regency. Guaranteeing social welfare for workers is a crucial step in ensuring that they are able to perform their duties effectively and efficiently. A significant challenge facing the tourism industry is the lack of guaranteed social security for workers, which often results in demands for such rights.

One illustrative case of a company affected by the global pandemic of 2019-2021 in Gianyar Regency is Vila PT CHB, a company engaged in the construction and sale of villas. In April 2023, the company proceeded with the termination of 26 employees. The company's financial condition was adversely affected by the global pandemic, resulting in significant losses that impeded its ability to recuperate following the pandemic's conclusion. Consequently, the management committee has reached a decision to dissolve the company. The company has submitted a report to the local Labour Office, notifying them of the termination of employment. All workers who had experienced termination of employment submitted a claim for job loss insurance to BPJS Ketenagakerjaan Bali in Gianyar, in accordance with the relevant procedures. Based on this phenomenon, this research is entitled "Legal Protection for Workers on Job Loss Insurance in the Tourism Sector".

1.2. Problem Statement

In light of the aforementioned description of the background of the problem, the following formulation of the problems studied in this study is proposed:

1. How is the job loss insurance programme in the tourism sector implemented at BPJS Ketenagakerjaan Cabang Bali Gianyar?
2. How are workers who lose their jobs legally protected based on Indonesian Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Insurance Programme?

II. RESEARCH METHOD

This research is based on empirical evidence and employs both a statute and a sociological approach. The research data are classified into two categories: primary data and secondary data. Primary data were gathered in the field through interviews with informants and respondents, whereas secondary data were obtained from library research utilising the note-taking method.

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The research was conducted at the Kantor BPJS Ketenagakerjaan Cabang Bali in Gianyar. The rationale for selecting this location is that Gianyar Regency is a prominent tourist destination. In the wake of the global pandemic (Covid-19), a significant number of individuals were subjected to involuntary termination of employment. One illustrative example can be observed in the hospitality sector, where a company operating within the villa industry incurred substantial losses due to the impact of the pandemic. Consequently, it is imperative to examine the legal rights of workers who have experienced job loss as a result of such circumstances. This research employs a qualitative approach to analyse both primary and secondary data. The findings are presented in a descriptive manner, accompanied by a comprehensive examination of pertinent legal arguments.

III. RESULTS AND DISCUSSION

3.1. Implementation of the Job Loss Insurance Program in the Tourism Sector at BPJS Ketenagakerjaan Cabang Bali Gianyar

A. Regulation on Job Loss Insurance

The implementation of the job loss insurance programme, as outlined in Indonesian Government Regulation No. 37 of 2021 on the Implementation of the Job Loss Insurance Programme, can be described as follows. In accordance with Article 4, paragraph (1) of the aforementioned regulation, those eligible for job loss insurance comprise both those who have been previously enrolled by their employer in a social security programme and those who have been newly registered by their employer in the same programme. Article 4, paragraph (2) of the same regulation stipulates that job loss insurance participants must fulfil the following requirements:

- a) They must be Indonesian citizens;
- b) They must not have reached the age of 54 (fifty four) years at the time of registration; and
- c) They must have a working relationship with the employer.

In addition to the aforementioned requirements, paragraph (3) stipulates that job loss insurance participants must also meet the following conditions:

- a) Workers/labourers employed in large and medium businesses are included in the Indonesian National Health Insurance (JKN), Work Accident Insurance (JKK), and Old Age Insurance (JHT) and Death Insurance (JKM) programmes.
- b) Workers/labourers employed in micro and small businesses are included in at least the Indonesian National Health Insurance (JKN), Work Accident Insurance (JKK), Old Age Insurance (JHT) and Death Insurance (JKM) programmes.

Furthermore, paragraph (4) stipulates that JKN Participants as referred to in paragraph (3) are wage earners at business entities.

B. Registration Procedures

The procedure for registering workers for social security is outlined in Article 5 of Indonesian Government Regulation No. 37/2021. The aforementioned article stipulates that: 1) Workers/labourers who have been included by employers in the social security programme as of the date of promulgation of this Government Regulation shall automatically become participants; 2) Employers are provided with a certificate of participation in the job loss insurance programme by the Social Security Administrator (BPJS) for Employment; 3) Workers/labourers are furnished with proof of participation in the job loss insurance programme by the Social Security Administrator for Employment. Moreover, Article 6 of the aforementioned regulation states that: 1) It is the responsibility of the employer to register workers/labourers in the job loss insurance programme. This must be done by submitting a completed and accurate registration form to Social Security Administrator for Employment within 30 days of the worker/labourer commencing employment. 2) The registration form must contain the following information: a. Population Identification No.; b. Date of birth of the worker/labourer; and c. The number and/or date of commencement and expiry of the employment agreement must also be included. 3) Social Security Administrator for Employment must provide a membership number no later than one working day after the registration form is received completely and correctly and the first contribution is paid in full to Social Security Administrator for Employment. Article 7 stipulates that proof of participation in the job loss insurance programme for workers/labourers is integrated into one social security programme membership card at Social Security Administrator for Employment.

C. Sources of Job Loss Insurance Funding

The source of funding for job loss insurance is regulated in Article 42 of Indonesian Government Regulation No. 37 of 2021 concerning the implementation of the Job Loss Insurance Programme. The regulation determines that the sources of funding for the insurance are the government's initial capital, the recomposition of social security programme contributions, and the operational funds of Social Security Administrator for Employment.

D. Dues and Payment Procedures

The regulations pertaining to the dues and payment procedures are set forth in Article 11 of Indonesian Government Regulation No. 37/2021. It is established that the contributions payable under the job loss insurance programme are to be paid on a monthly basis, with a percentage of 0.46% of a month's wage sourced from contributions paid by the Central Government and job loss insurance funding sources. The remuneration employed as the foundation for calculation is the most recent remuneration

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recorded at the Health Insurance Provider Agency for Employment and does not exceed the statutory ceiling remuneration, which is IDR 5,000,000.00. Job loss insurance is an additional benefit, as it is not subject to contributions. The funding sources for this insurance are the initial capital provided by the central government, the recomposition of contributions to death and work accident insurance, and/or the operational funds of Health Insurance Provider Agency for Employment. The central government contributes 0.22% of a month's wage, using the initial capital prepared by the state.

Procedures for the settlement of dues is based on the membership data held by the Social Security Administrator for Employment, which is integrated with the membership data of the Social Security Administrator for Health. The Social Security Administrator for Health transmits the membership data to the Social Security Administrator for Employment, where it is verified and validated by the aforementioned agency. The data is then submitted to the relevant ministry.

E. Benefits of Job Loss Insurance

In accordance with Indonesian Government Regulation No. 37 of 2021, the job loss insurance programme is overseen by the Ministry of Manpower, which is responsible for coordinating the activities of the Social Security for Employment and the Central Government. The aforementioned ministries oversee three distinct categories of benefits, which are outlined as follows.

1. Cash Benefits

The Social Security Administrator for Employment is responsible for the administration of cash benefits. Participants are entitled to receive cash benefits on a monthly basis for a maximum of six times, subject to the condition that the amount is 45% of wages for the initial three-month period and 25% of wages for the subsequent three-month period. Remuneration upon which the benefit payment is based is the most recent remuneration recorded at the Social Security Administrator for Employment, and the total remuneration in any given period does not exceed the upper limit of IDR 5,000,000.00 (five million rupiah).

2. Benefits of Access to Labour Market Information

The Indonesian Ministry of Manpower is responsible for the organisation of access to labour market information, which is comprised of two distinct services. The first of these is the provision of labour market information in the form of job vacancy data, while the second is the offering of job guidance services, which encompass self-assessment and career counselling.

3. Benefits of Occupational Training

Occupational training benefits are available exclusively to those who are unemployed and have received a recommendation from a career counsellor. The training, which is conducted by the Ministry of Manpower in a competency-based manner, can be accessed offline and/or online via the SIAPKerja portal (<https://siapkerja.kemnaker.go.id/>).

In the event of job loss, insurance benefits may be provided to participants who can demonstrate that they have been terminated from their position, as evidenced by relevant documentation and a termination report from the district/city manpower office. Additionally, they must have a commitment from their employer to be re-employed. In order to qualify for job loss insurance benefits, the participant must have completed a minimum contribution period of 12 months over a 24-month period and have made contributions to the Social Security Administrator for Employment for a minimum of 6 consecutive months prior to the termination of employment. The types of termination of employment that are excluded from the scope of job loss insurance benefits include instances of resignation, permanent total disability, retirement, and death. Additionally, participants who expire the term of a specific-time employment agreement are not eligible for these benefits. The right to job loss insurance benefits can be forfeited if the relevant claim application is not submitted within three months of the termination of employment, if the individual secures alternative employment, or if the participant dies.

The right to claim job loss insurance benefits may be exercised a maximum of three times during the period of eligibility for employment, subject to the following conditions:

- a. The initial claim for job loss insurance benefits must be submitted by the participant at the earliest opportunity after the contribution and participation period has been fulfilled.
- b. The second claim for job loss insurance benefits must be submitted. Subsequently, the participant must submit the second job loss insurance benefit at least five years after obtaining the initial benefit.
- c. Similarly, the second benefit must be submitted at least five years after the first.

One of the companies engaged in the tourism industry is Villa PT CHB, located in Gianyar Regency. In accordance with the findings of the interviews conducted with the Director of the company, the company has terminated the employment of 26 individuals in April 2023. This was done as a consequence of the company's declining financial condition. The company incurred losses as a result of the global pandemic caused by the Covid-19, and therefore the management team reached the decision to dissolve the company. The company has reported the termination of employment to the Dinas Ketenagakerjaan Kabupaten Gianyar. All workers who had experienced termination of employment submitted claims for unemployment benefits to BPJS Ketenagakerjaan Gianyar, Bali, in accordance with the relevant procedures.

The data provided by the company indicates that 26 employees experienced termination of employment and submitted job loss insurance claims in July 2023. Of the workers, 24 (92%) were declared eligible or fulfilled the requirements to become beneficiaries of the insurance programme. The remaining two workers were not eligible. It can be concluded that the job loss

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insurance programme at PT CHB, as stipulated in the Indonesian Government Regulation No. 37 of 2021 concerning the implementation of the job loss insurance programme, has been effectively implemented in providing protection and benefits to workers who experience termination of employment. Despite the persistence of obstacles attributable to a range of factors, including the non-compliance with provisions for eligibility as beneficiaries and the lack of education and information among participants submitting claims for job loss insurance benefits, the programme's fundamental implementation remains sound.

The following represent the principal obstacles encountered by participants in submitting job loss insurance claims in the event of termination of employment.

1. Those who participate in the job loss insurance programme often lack an understanding of the programme itself. Some were unaware that they were registered with the job loss insurance programme. Furthermore, participants lacked awareness of the procedure for submitting job loss insurance claims. Furthermore, they were unfamiliar with the digital claim process via the SIAPKerja website. Those who had experienced job termination and had submitted a claim for job loss insurance indicated that they were unaware of their registration with the job loss insurance programme. Such individuals only became aware of their registration status subsequent to the provision of information by the Social Security Administrator for Employment in conjunction with the filing of an Old Age Security (JHT) claim. It was acknowledged that the process of submitting a claim via the website was not fully understood, but assistance was provided by the Social Security Administrator for Employment.
2. The company erred in reporting employees who were no longer active to the Social Security Administrator for Employment. The company management erroneously reported that workers who had experienced termination of employment had resigned to the Social Security Administrator for Employment. This results in participants being unable to meet the criteria for filing job loss insurance claims.
3. It has been observed that some workers have not yet been registered, or have been registered but with inappropriate segmentation in the National Health Insurance (JKN), such as being registered in the Contribution Beneficiary or Non-Wage Recipient segment. This is despite the requirement to be a participant in the job loss insurance programme being to be a participant in the JKN programme in the Wage Recipient segment. The two workers in question were deemed ineligible due to their registration in the Contribution Assistance Recipient segment of the JKN programme, which is incompatible with the requirements for participation in the job loss insurance programme, which necessitates registration in the Wage Recipient segment of the JKN programme.

From the perspective of legal effectiveness, as articulated by Anthoni Allot (cited by Felik), the efficacy of a legal system hinges on its capacity to prevent undesirable actions from engendering chaos. An effective law can typically achieve its intended purpose. In the event of an oversight, the possibility of rectification will be readily available should the law be required to be implemented or applied in a novel and distinct setting. In such instances, the law will be capable of fulfilling this objective (HS and Nurbani, 2013).

3.2. Legal Protection for Workers Who Have Lost Jobs

As defined by Hadjon, legal protection can be understood as an action undertaken to safeguard the rights and interests of legal subjects, as well as to ensure the recognition of their human rights in accordance with the stipulations set forth in the applicable legal framework. Two distinct types of legal protection exist: preventive legal protection and repressive legal protection. Preventive legal protection is designed to prevent the emergence of disputes, whereas repressive legal protection is intended to address and resolve those that have already materialized (Hadjon, 1987). The legal protection of workers is aimed at providing clarity and certainty regarding their rights and obligations within the context of labour relations. This encompasses the legal protection of workers in relation to their status within the employment relationship, including the entitlement to severance pay and other benefits in accordance with the relevant legislation and regulations.

It is imperative that workers who have experienced job loss are provided with adequate social security protection. One of the legislative developments in Indonesia is the establishment of a social security system in the form of job loss insurance. The programme is then subjected to further clarification through the stipulations set forth in the implementing regulations, namely the Indonesian Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Insurance Programme. The term "social security" is used to describe the protection provided by society for its members in order to help them overcome certain risks or events. The objective is to minimise the likelihood of adverse consequences resulting from such occurrences, which could potentially lead to a significant reduction in income. Other objectives include the provision of medical care and/or financial security against the economic consequences of a risk or an event, as well as the provision of security for family and child support. The implementation of labour social security for the people of Gianyar represents a significant factor in achieving an increase in regional productivity, as high productivity can only be achieved by the community if their social welfare is guaranteed.

The objective of legal protection for workers is to ensure legal certainty regarding their rights and obligations. In the event of termination of employment, legal protection for workers is guaranteed if it has been regulated in legislation. In such cases, labour law must require or oblige the employer to act in accordance with the applicable provisions (Matantu, 2021).

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The implementation of guarantees of legal protection for workers affected by termination of employment is contingent upon the existence of obligations for employers to act in accordance with existing legislative provisions (Wijayanti, 2022). The legal protection of workers affected by the termination of employment is regulated by Law No. 13 of 2003 concerning Manpower, specifically from Articles 150 to 172. The rights of workers who have experienced termination of employment are addressed in Article 156, paragraph (1) of the law, which has been amended by Law No. 11 of 2020 concerning Job Creation. This stipulates that, in the event of termination of employment, employers are required to pay severance pay and/or long service pay and compensation pay that should have been received.

Moreover, Article 1, paragraph (1) of the Indonesian Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Insurance Program stipulates that job loss insurance is social security provided to workers/labourers who experience termination of employment in the form of cash benefits, access to labour market information, and job training. In the event of an employer violating this provision, they may be subject to administrative sanctions in accordance with Article 46 of the regulation. These sanctions may take the form of a written warning or the refusal of certain public services. The imposition of sanctions for violations of this provision serves to legally protect the rights of workers/labourers to the rights that have been regulated in the legislation.

Legal protection realisation is contingent upon the existence of legal certainty. The function of the law is to establish legal certainty, thereby fostering order within society. In Kelsen's view, law is a system of norms. A norm is a statement that emphasises the 'should' or '*das sollen*' aspect, including rules about what action should be taken. Norms are the result of deliberate human action. Laws comprise regulations that function as directives for individuals or communities. They function as a demarcation of societal boundaries, delineating the scope for action against other individuals. The existence of rules and their implementation give rise to legal certainty (Marzuki, 2011). Normative legal certainty can be defined as the state in which a regulation is made and promulgated with certainty, due to its clear and logical regulation. The law is clear in the sense that it does not give rise to doubt or ambiguity and is also logical. It is clear in the sense that it forms part of a coherent system of norms, preventing conflict or inconsistency. Legal certainty refers to the enactment of clear, fixed, consistent and objective laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands; they are fundamental characteristics of the law (Wijayanta, 2014).

IV. CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

- 1) The implementation of the job loss insurance programme in the tourism sector at the BPJS Ketenagakerjaan Cabang Bali Gianyar has been conducted in accordance with the relevant procedures. A total of 26 workers from PT CHB submitted job loss insurance claims to the agency. Of these, 24 (92%) were declared eligible, while 2 (8%) were deemed ineligible. This demonstrates the efficacy of Indonesian Government Regulation No. 37 of 2021 in providing protection and benefits to workers who experience termination of employment.
- 2) In the event of an employer violating the rights of their employees and subsequently resulting in the loss of employment for the latter, the former may be subject to administrative sanctions in accordance with the provisions set forth in Article 46 of the Indonesian Government Regulation No. 37/2021 concerning the implementation of Job Loss Insurance. Such sanctions may include the issuance of written warnings and the denial of certain public services. This represents a form of legal protection for workers/labourers with regard to their rights as set forth in the aforementioned regulation. In the event of the termination of an employment contract, the employer is obliged to pay the employee in question a sum of money representing severance pay, long service pay and compensation pay.

4.2. Recommendations

- 1) It is recommended that the social security administrator for employment implement an educational initiative to enhance socialisation activities, specifically in the form of counselling services, with the objective of disseminating information about social security programmes for health and employment. This approach would facilitate a clear distinction between social security for health and social security for employment, as well as ensure that individuals possess a comprehensive understanding of their rights and obligations as workers and as employers. Furthermore, the agency is expected to provide counselling on the registration mechanism for job loss insurance, with the objective of ensuring that the community is fully aware of the registration procedure.
- 2) Individuals who are uncertain about the procedures for registering and submitting job loss insurance claims are expected to contact the social security administrator for employment.

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