

# The Global Employer

## Focus on Turkey



This document provides a summary of the laws and procedures applicable to employment in Turkey. The rules and regulations relating to labor law are complicated and extensive. Therefore, this booklet does not deal with every aspect of Turkish employment law, but addresses only the most important issues. The law is correct as of December 23, 2014.

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# Governing Rules

## Scope of Turkish Employment Law

Under the International Private and Procedural Law (No. 5718), parties to an employment agreement are entitled to choose the governing substantive law of the employment agreement to the extent that the minimum protections granted by the mandatory provisions of the law of the habitual workplace are observed.

If the parties have not selected a governing law, the substantive law of the habitual workplace applies. Consequently, the Turkish Labor Code (No. 4857), which came into force on June 10, 2003 (the “**Labor Code**”), is applicable when the habitual workplace is in Turkey or when the parties have chosen Turkish law as governing, except for the minimum protection granted by the mandatory provisions of the law of the habitual workplace.

## Sources of Turkish Employment Law

The Constitution of the Republic of Turkey (the “**Constitution**”) lies at the top of the hierarchy of norms in Turkey. Therefore, any norm that conflicts with the Constitution is null and void. Article 49 of the Constitution sets forth that working is both a right and duty for everyone.

The Constitution is followed by the Labor Code, under which employment relationships are principally governed.

In addition to the Labor Code, the Turkish Code of Obligations (No. 6098), which came into force on July 1, 2012 (the “**Code of Obligations**”), governs certain aspects of employment relationships as well. Although the main principles in the previous code of obligations have been maintained, the Code of Obligations has also introduced many new legal labor-related provisions such as employer release, noncompetition, bonuses and general terms and conditions.

As stated above, employment relationships are principally governed by the Labor Code. The Labor Code covers employment relationships except those governed by the Code of Obligations and *lex specialis*, such as the Maritime Labor Code (No. 854) and the Press Labor Code (No. 5953). Where there is no provision in the Labor Code, the Code of Obligations applies.

The last paragraph of Article 90 of the Constitution states that international treaties duly put into effect have the force of law. No appeal to the Turkish Constitutional Court can be made with regard to these treaties on the grounds they are unconstitutional. What is more, in case of a conflict between these treaties and Turkish law concerning fundamental rights and freedoms due to differences in their provisions on the same matter, the international treaties will prevail. Therefore, Turkey is bound by the International Labor Organization documentation as well, as a member state.

According to the hierarchy of norms under Turkish law, laws are followed by bylaws (*tüzük*), regulations (*yönetmelik*) and communiqués (*tebli*).

Court precedents and doctrine are other important sources of employment law in Turkey. The Turkish Supreme Court of Appeals (the “**Supreme Court of Appeals**”) decisions help to fill in the legal gaps (*kanun boluu*) and are also vital for understanding how the laws should be interpreted.

In addition, collective bargaining contracts, individual employment contracts, workplace regulations, workplace practices and employer instructions are sources of Turkish employment law as well.

As stated above, most employment relationships fall within the Labor Code. The Labor Code, however, does not govern work involving:

- a) sea and air transport activities,
- b) agriculture and forestry enterprises with less than 50 employees,
- c) construction related to agriculture in a family enterprise,

- d) work and handicrafts performed at home with family members or close relatives up to and including 3rd degree,
- e) domestic services,
- f) apprenticeships,
- g) sportsmen and sportswomen,
- h) persons undergoing rehabilitation,
- i) establishments employing three or fewer employees within the definition of Article 2 of the Tradesmen and Small Handicrafts Occupational Institutions Act (No. 5362).

Work involving the following work, however, is subject to the Labor Code:

- a) stevedores and longshoremen,
- b) air transport ground activities,
- c) agricultural crafts and activities in workshops and factories manufacturing implements, machinery and spare parts for use in agriculture,
- d) construction work in agricultural establishments,
- e) work in public parks and gardens or subsidiary to any such establishment,
- f) work by seafood producers whose activities are not covered by the Maritime Labor Code and not deemed to be agricultural.

International treaties, the Turkish Constitution of 1982, Turkish Civil Code (No. 4721), Turkish Commercial Code (No. 6102), and various other laws governing specific fields of employment also regulate certain employment relationships. Employment agreements, workplace regulations and collective bargaining agreements are also sources of employment law.

## Immigration Requirements

In Turkey, the main laws on immigration are the Law on Foreigners and International Protection (No. 6458), which entered into force on April 11, 2014, and the Law on the Work Permits of Foreigners (No. 4817), which entered into force on June 27, 2003.

Under the Law on Foreigners and International Protection, foreigners who would like to stay in Turkey beyond their visa's validity period, the visa exemption period or 90 days, must obtain a residence permit. Those who come to Turkey for employment purposes must obtain a work permit. Further information is provided in the next chapters.

### Work Permit

Foreign nationals entering Turkey for the purposes of employment are required to obtain a work permit regardless of the length of stay. Work permits are granted by the Ministry of Labor and Social Security, and Turkish consulates/embassies are responsible for processing visa and work permit applications abroad.

The employee should initiate the work permit application upon visiting his or her nearest Turkish consulate/embassy in person. Those who have a minimum six months' valid residence permit (for other than education reasons) can directly apply in Turkey to the Ministry of Labor and Social Security for a work permit within this validity period.

Once applied to the Turkish embassy/consulate abroad, all required documents need to be submitted by the Turkish employer to the Ministry of Labor and Social Security within 10 business days following the foreigner's date of application to the relevant Turkish mission. The foreigner and the Turkish employer should therefore be in accord while planning the application; otherwise, the Ministry of Labor and Social Security will not process the work permit application.

Although the Law on the Work Permits of Foreigners indicates that a work permit application must be processed by the Ministry of Labor and Social Security within 30 days max, it generally takes 30 to 45 days for the Ministry of Labor and Social Security to conclude work permit applications, provided all required documents are submitted and fully completed. The relevant Turkish mission will inform the employee either by phone or email if his/her application has been approved.

Once the foreigner arrives in Turkey, the Turkish employer will need to register him/her with the Social Security Institution as soon as possible. Also, in maximum 20 days starting from the date of entrance to Turkey, the foreigner will need to be registered at the Census Office (*Nüfus Müdürlüğü*) of the district he/she will be residing in Turkey.

All documents in a language other than Turkish should be translated into Turkish and notarized by a Turkish notary public prior to their submission to the Ministry of Labor and Social Security. Further, for the final work permit assessment, the Ministry of Labor and Social Security will assess the scope and objective of the Turkish entity and the details of the education and profession of each and every foreigner.

Certain categories of work are exempt from work permits such as soccer players under contract and foreign personnel installing equipment sold to a person in Turkey.

In assessing work permit applications, the Ministry of Labor and Social Security currently uses a number of criteria such as the paid-in capital of the Turkish employer, the number of Turkish citizens that must be employed at the relevant workplace and the amount of the monthly salary to be paid to the foreigner.

## Employment Visa

In principle, foreigners are required to obtain a visa to travel to Turkey. Those who obtained a tourist visa are entitled to stay in Turkey for up to 90 days.

Although no reference was made to employment visas in the Passport Law (No. 5682), the European Convention on the Travel of Persons and bilateral visa agreements were invoked as the legal basis for employment visas prior to the Law on Work Permits for Foreign Nationals. Turkish missions abroad simply stamped an employment visa into the passports of foreign nationals, the stamp noting that the visa has been issued for employment purposes in Turkey.

Whether an employment visa will suffice will depend on the type of activity the foreigner will carry out in Turkey. In principle, foreigners are required to obtain a work permit to conduct any work-related activity in Turkey. Foreign employees working in Turkey without a work permit will be deported and fined when they are identified by the relevant authorities.

## Residence Permit for Employment Purposes

Under the Law on Foreigners and International Protection, foreigners who would like to stay in Turkey more than their visa's validity period, the visa exemption period or 90 days, must obtain a residence permit. Although this law states that residence permit applications must be made at the Turkish

embassy/consulate in the foreigner's home country or the country where the foreigner is located, this provision does not yet apply as the law entered into force only recently. Residence permit applications are therefore made at the police department determined based on the foreigner's residence address in Turkey.

It takes approximately one to two months for residence permit applications to be concluded.

Those who have a valid work permit do not need to apply separately for a residence permit; the work permit also functions as a residence permit.

### Types of Work Permits

Turkey has four types of work permits: fixed-term, indefinite-term, independent and exceptional.

Fixed-term work permits are issued for a specific duration and specific workplace or company and are valid for up to one year. After expiry of the one-year term, it may be extended for up to three years for the same workplace or company and in the same profession. Following the end of this extended term, the work permit can be extended in the same profession for the same occupation for any employer up to six years.

Unless otherwise provided in bilateral or multilateral agreements to which Turkey is a party, foreigners who have obtained a long-term residence permit in accordance with the Law on Foreigners and International Protection or foreigners who have stayed in Turkey holding a residence permit without interruption for at least eight years or having undergone a total working period of eight years in Turkey, may be granted a work permit for an indefinite term without restriction as to any particular operation, profession, civil or geographical area.

An independent work permit may be granted on the condition that the applicant foreigners have resided in Turkey legally and without interruption for a period of at least five years, and that their activities create an added value in terms of economic growth and have a positive influence on employment. While evaluating the independent work permit application, the Ministry of Labor and Social Security may request documents evidencing the contribution of the foreigner's activities to the national economy and that the foreigner has sufficient income for the activity to be performed, along with other relevant documents.

## Terms of Employment

### Form of Employment Agreements

Fixed-term employment agreements with a term of a year or more and governed by the Labor Code must be in writing. Other than this requirement, neither the Labor Code nor the Code of Obligations dictates the form of employment agreements. For other fixed-term employment agreements, the employer must provide the employee with a document containing essential provisions; the term, wage and termination.

As the authorities generally require foreigners to submit written employment agreements in order to process their work permit applications, the written form can, practically, become an obligation within the context of work permit applications.



## Language Requirements

While the Labor Code and the Code of Obligations do not impose any language requirements, the Law on the Mandatory Use of Turkish in Commercial Enterprises (No. 835) provides that Turkish companies and enterprises must use Turkish in their activities and transactions in Turkey. Further, this law also provides that foreign companies and enterprises must use Turkish for their activities and transactions with Turkish natural persons and enterprises, and maintain in Turkish documents that may be required by government bodies. Consequently, bilingual contracts are common, with the Turkish version prevailing.

## Fixed- and Indefinite-Term Employment Agreements

The Labor Code provides for two main types of employment agreements in terms of duration. Indefinite-term agreements are the most common as only with this type do employees have the right to seek reinstatement against an employer.

Fixed-term employment agreements must rely on objective criteria such as completion of specific work, performance of a specific, temporary duty or the occurrence of a particular event. In the absence of objective criteria, the employment agreement is not a fixed-term agreement even if the parties have expressly so agreed. Renewal of a fixed-term employment agreement is subject to the same requirements.

## Part-Time Employment

Part-time employment is defined as employment where the employee's normal weekly working time is considerably shorter in relation to a full-time employee, i.e., where the employee's weekly working time is less than two-thirds of the normal weekly work time at the relevant workplace. Part-time employees enjoy the same rights and benefits as similar full-time workers, but *pro rata*.

## Temporary Employment Relationship

The employer can temporarily assign an employee to another employer to do similar work, or to another company under the same group of companies or within the same holding, with the employee's written consent for initially up to six months, extendable only twice for two additional six-month terms.

Since the temporarily assigned employee remains the permanent employer's employee, the permanent employer is responsible for paying the assigned employee's wage. The "temporary employer," however, is jointly and severally liable with the permanent employer for the assigned employee's unpaid wages and social security premiums.

## Probationary Period

A new employee can be subject to a probationary period of up to two months. In the case of a collective bargaining agreement, this period can be up to four months. While a probationary period is part of an employee's length of service, during the probationary period, either the employee or employer can terminate the employment agreement without observing the notice term and without paying severance or other indemnification, only the employee's accrued rights.

## General Transaction Conditions

The Code of Obligations introduced “General Transaction Conditions” for employment contracts, defined as “contractual provisions prepared and presented to the counterparty by the drafter of an agreement in advance for the purpose of using the same draft to conclude multiple similar agreements in the future.” This provision, however, has yet to be interpreted by the Supreme Court of Appeals, so it is unclear as to how this will be applied to employment agreements. General transaction conditions are void unless the counterparty is informed of their existence and has approved them. Provisions permitting an employer to make unilateral amendments are unenforceable.

## Working Conditions

### Working Hours

An employee cannot work more than 45 hours per week. Unless agreed otherwise, this time is divided equally among the days of a work week. The parties can, however, agree to a different allocation provided no work day is longer than 11 hours. The Labor Code permits distribution not only of working hours within a week, but also working hours among the weeks in a “balancing period.” With a balancing period, the parties can agree that the employee will work for more than 45 hours in one week and less than 45 hours in another. The balancing period cannot exceed two months unless a collective bargaining agreement is in place, in which case the balancing period is four weeks.

### Breaks

Employees must be given a break time in the middle of a working day proportionate to their working time:

- for working days of four hours or less - 15 minutes;
- four hours up to seven and a half hours - 30 minutes;
- more than seven and a half hours - 1 hour.

Break time is not included in the determination of working time.

### Overtime and Exceeding Time

Overtime work is work in excess of 45 hours in a work week. Where balancing is used, even if the working hours of some weeks exceed 45 hours, it is not regarded as overtime work.

There is also an exemption for miners, which will be effective as of 1 January 2015; underground work hours for a miner cannot exceed six hours per day and 36 hours per week.

Certain groups of employees cannot be required to perform overtime work:

- employees younger than 18 years old;
- employees who have obtained a medical report prohibiting overtime work;
- employees who are pregnant, have recently given birth, or who breast feed babies;
- part-time employees; and
- miners.

“Exceeding time” work is work in excess of the working time set in a particular workplace, up to the threshold of 45 working hours per week.

For both the overtime work and exceeding time work, the employee's written consent must be obtained. Consent for overtime work must be obtained from each employee at the beginning of each year of employment and kept in each employee's personnel file.

Where the national interest or where the work or need to increase production is urgently required, overtime work may be required without consent. Urgency, for example, a mechanical failure, is determined on a case-by-case basis.

Overtime work cannot exceed 270 hours in a 12-month period.

For each hour of overtime work, the hourly wage of an employee is increased by 50%. There is also a special regulation for miners, which will be effective as of 1 January 2015; if miners work overtime; their hourly wage is doubled per each overtime work hour. For exceeding time work, the hourly wage is increased by 25%. For overtime work, rather than an increased hourly wage, an employee may require that the employer provide an hour and a half off for each hour of overtime work. For each hour of exceeding time work, the amount of time off is one hour and 15 minutes. An employee can use the time off within six months during working hours and without any wage deduction.

## Wage

Wage is defined as an amount paid in cash to an employee by his employer or by a third person in return for his services. The Labor Code does not exclude specific items from the definition of wage. Payments for annual leave, general holidays, national holidays and weekends must be calculated by considering the base wage, which can only be paid in cash. For instance, when "severance compensation" or "notice compensation" is calculated, base wage PLUS all the benefits (the value of premiums, bonuses, private insurance, company car, mobile phones, clothes, etc.) must be taken into account.

All salary payments must be made in cash to the employee's bank account if the employer has at least 10 employees working, without discrimination among the employees with same or similar qualifications working under same or similar conditions. The mandatory minimum wage is determined once every two years by the Ministry of Labor and Social Security through the Minimum Wage Fixing Board. Until the end of 2014, the minimum gross wage for employees is TRY 1,134.00 (approximately USD 490 as of 23 December 2014). Also, the minimum salary for miners' work in lignite and anthracite coal mines cannot be less than two times the statutory minimum salary provided by law, i.e., TRY 2,268 (approx. USD 980 as of 23 December 2014).

Wage must be paid in Turkish lira unless another currency has been agreed upon. If an employer fails to pay wage to an employee, the employee will have the right to interest, to halt work, or terminate employment for a "justified reason."

## Bonus

A premium (*ikramiye*) can be paid to an employee for specific days, such as the employee's birthday. The Code of Obligations requires that premiums be paid without regard to whether the employee is working for the employer on a certain date.

Under this new rule, a prorated payment must be made to the employee even if he has quit work before the pre-agreed date of the premium payment. In other words, termination of employment does not deprive an employee of premium entitlements.

Most scholars believe that this norm should apply to bonuses (*prim*) *mutatis mutandis*.

## Employee's Right to Rest

An employee cannot be required to work (even for additional wage) during vacation time as the employee's right to rest is a constitutional right.

### a) Weekly Holidays and General Holidays

A minimum 24-hour break must be given to an employee provided he/she worked during the preceding working days as provided in the employment agreement. This break is known as a "weekly holiday." The weekly holiday need not be Sunday.

There are 14.5 general holidays per year: Independence Day (September 29), official holidays (January 1, April 23, May 29 and August 30), religious holidays (8 days) and Labor Day (May 1).

### b) Paid Annual Leave

An employee must have worked for at least one year, including any probationary period, to be entitled to annual paid leave. In calculating this one-year term, all the previous periods of employment, if any, of an employee with the same employer are considered. The length of annual paid leave depends on length of service:

- One to five years (fifth year is included) - 14 working days;
- more than five years to 15 years (15 years excluded) - 20 working days;
- 15 years and more - 26 working days.

The above periods are the minimum statutory periods and can be extended by the employment agreements.

Employees who are 18 years old and younger, as well as employees who are 50 years old and older, must be given an annual paid leave of at least 20 working days.

Annual paid leave may be divided by agreement into a maximum of three parts, one of which cannot be less than 10 days. An employee who wishes to go on paid annual leave must inform the employer of preferred days for leave. The employer considers the timing request based on business considerations. An employee cannot work for another employer during the annual paid leave. Notice periods and annual leave cannot overlap.

### c) Other paid leave days

In the case of

- marriage - up to three days;
- deaths of a father, mother, sibling or child - up to three days;
- for female employees, birth of a child - up to 18 weeks,

an employee is entitled to paid leave.

### d) Occupational Health and Safety

The employer has extensive duties to maintain workplace safety and to protect the health of its employees. Risk evaluation reports must be prepared; workplace trainings must be given; a workplace doctor must be hired or outsourced.

### e) Sick Leave

Employees are also entitled to take sick leave provided they submit a medical report proving their illness. During the sick-leave period, the employer does not have the right to make deductions from the employee's salary if the employee is being paid a monthly fixed salary. If, however, the employee

receives temporary incapacity payment (*geçici işgöremezlik ödeneği*) from the Social Security Institution, then the employer will be entitled to deduct these payments from the employee's salary.

Where the illness or injury period continues for over six weeks exceeding the statutory notice periods determined per the length of service, the employer can terminate the employment agreement with a justified reason and without complying with any notice period.

Under Turkish law, statutory notice periods depend on the employee's length of service. For instance, if an employee who has served less than six months is absent due to illness, continuously for eight weeks (two-weeks notice period plus six-week illness period), the employer can terminate the employment relationship with justified reason.

## Changes in Working Conditions

Any substantial change to the working conditions stated in the employment contract or workplace regulations or practices cannot be made without the employee's written consent. In principle, changes in wage, work, workplace and working hours are deemed substantial, and the employer cannot change these unilaterally to the employee's detriment. Changes that are not in conformity with this procedure and not accepted by the employee in writing within six working days are not binding.

If the employee does not accept the offer for a change within this period, the employer can terminate the employment contract after the required notice period, provided the employer indicates in writing that the proposed change was based on a "valid reason." Mere refusal to accept the proposed change does not constitute a valid reason for termination.

If the employer insists on the unaccepted changed conditions (e.g., amount of wage), the employee would, in principle, have the right to stop work or demand payment of the difference with interest or, finally, to terminate the employment relationship relying on a "justified reason," enabling the employee to immediately terminate employment and demand severance compensation.

A change in working conditions cannot be retroactive.

## Harassment and Protection of Employee's Personality

An employer is under the obligation to respect and protect the employee's identity and maintain order in the workplace within the scope of the employment relationship. The employer is obligated to protect an employee from being subjected to psychological or sexual harassment, and to take necessary measures to minimize the effects of such harassment, if any.

If the employer violates the employee's personality, or his/her physical integrity or causes the employee's death, the employer will be liable to the employee or, in the case of death, his estate. If the violation constitutes breach of the equal treatment principle, the employee can seek discrimination compensation.

## Data Protection and Privacy

The Code of Obligations permits an employer to use employees' personal data to the extent the data is related to the employee's capabilities or is necessary for the performance of the employment agreement. The provisions of other special laws, however, still apply.

The safest way to process employees' personal and/or sensitive data is to obtain their written consent by informing the employees of the specific data that will be collected; for what purpose; where the data will be sent; and that they will have the right to demand deletion of their data, and their data will be protected as appropriate.

## Equal Treatment of Employees

Under the Turkish Labor Code, an employer cannot discriminate against employees based on language, race, color, political views, sex, philosophical belief, religion, sect or other similar reasons. This obligation does not apply equally to all of the employees in a workplace, but it applies to employees with the same qualifications or employees in the same or similar conditions. According to the Supreme Court of Appeals, "the purpose of this principle is to prevent different practices toward employees who are in the same circumstances."

Payment of different salaries, bonuses and social right payments, such as for clothes, food, commute, that can be justified by reference to employees' objective or subjective qualifications, positions, importance of their posts and working conditions, is not contrary to this principle. The employer must, however, be able to justify different treatment of employees with similar qualifications and who work under the same or similar conditions. The Labor Code provides that unless there are essential reasons for differential treatment, such as biological reasons or nature of work, discrimination between full-time and part-time employees and employees with fixed-term and indefinite-term employment agreements is prohibited. Different remuneration for similar jobs or for work of equal value is prohibited.

## Subcontracting

An employer (the "**Principal Employer**") can assign specific work to another employer (the "**Subcontracted Employer**"). The following criteria must, however, be met for an employment relationship to qualify as subcontracting:

- The Principal Employer must have its own employees who work in the production of goods or services in its own workplace.
- The subcontracted work must be "necessary for the principal work" of the Principal Employer, and be in the nature of "side work" in the production of goods and services for the principal workplace, e.g., catering services, personnel transportation, cleaning. (If the principal work is divided and assigned to a subcontractor, this division and assignment must originate from the specifics of the work or enterprise and must be due to technical necessity.)

- The Subcontracted Employer must assign its employees to work only in the workplace where the Subcontracted Employer is obligated to perform duties under the subcontract.
- The work assigned to the Subcontracted Employer must (i) relate to the principal work and production of goods/services; (ii) be of a nature to continue as long as the principal work continues and be dependent on the principal work.
- The Subcontracted Employer must not be a person previously employed by the Principal Employer.

Employers have certain liabilities in connection with the use of subcontractors. Employers must monitor whether their subcontractors have fully and timely paid employee salaries. If the employer finds that a subcontractor has failed to pay its salaries, the employer must deduct equivalent amounts due to the subcontractor and deposit the payments directly into the subcontractor employees' bank accounts. In addition, employers utilizing subcontractors must ensure that their subcontractors' employees take all annual paid leave provided by law.

Subcontracting should not continue beyond the period necessary, i.e., it must not be permanent. Also, if an employer is not, for instance, in economic difficulty or undergoing reorganization or attempting to enhance its competitive position but, rather, is using subcontracting to reduce the costs of performing particular work (rather than doing so with its permanent employees), this relationship will not be regarded as meeting the "necessary for the main work" criterion. ("Necessary for the main work" implies technical, structural and/or economic reasons.)

If the above criteria are not observed, an employment relationship will not qualify as subcontracting, and the employees of the Subcontracted Employer will be deemed employees of the Principal Employer from the beginning of the so-called subcontracting relationship. These employees would, therefore, be entitled to receive their employee benefits from the Principal Employer, not the Subcontracted Employer.

Lastly, the subcontractor must apply to the Social Security Institution to register the subcontracting agreement and the Subcontracted Employer's employees who will work in the Principal Employer's workplaces.

## Employee Transfers

An employer can permanently transfer an employee to another employer if the employee consents. The length of service and employment-related rights are then calculated as of the commencement date with the transferring employer. The transferring employer remains jointly liable with the transferee employer for the obligations due as of the date of the transfer for two years from the transfer date.

## Business Transfers

The Labor Code regulates business transfers and their effects on employment relations. In the case of a merger, acquisition or spin-off, the existing employment agreements of the entity that ceases to exist (or the portion of the entity spun-off) automatically transfer with all rights and obligations to the surviving entity.

The transferred employees' rights related to length of service are calculated from the employee's commencement date in the transferor employer. The transfer, however, does not release the transferor employer from its obligations arising prior to the transfer date. The transferor employer and transferee employer are severally liable for the employees' receivables that have become due before the transfer, for two years from the transfer date. In practice, the transferor and transferee employers enter into a bilateral agreement or set up recourse mechanisms in the corporate agreements to regulate their undertakings for these liabilities.

The Turkish Commercial Code regulates the effect of business transfers on employment agreements in the context of mergers, acquisitions and spin-offs. In a merger, acquisition or spin-off, employment agreements are transferred to the transferee, but those transferred employees may object to the transfer. This objection does not suspend the corporate transaction. Nevertheless, the employee can halt the transfer of the employment contract to the transferee employer and terminate the employment contract effective at the end of the notice period; the transferor employer and the employee are liable to fulfill the employment contract until that date.

## Rights and Protections for Young Employees

Under the Regulation on Child and Young Employees, employees between the ages of 15 and 18 are considered "young employees," and those who are over 14 and less than 15 years old and who have graduated from primary school are considered "child employees." Employment of a person under the age of 15 is prohibited under the Labor Code. Nevertheless, child employees can be employed in light works that do not inhibit their physical, mental and moral development and the education of those attending school.

The safety and health as well as the physical, mental and psychological development, personal inclination and capability of young and child employees must be considered in their employment. Employment of a child cannot obstruct the child from attending his/her school, professional education and regular trace courses.

Young employees are not allowed to work underground or underwater. Also, they cannot be employed at industrial works in the night shift. For employing young employees, a medical report evidencing the employee's fitness for the work must be obtained, and young employees' health conditions must be monitored during the employment.

Young employees cannot work more than eight hours per day and 40 hours per week. The working hours for children who have completed their basic education and do not attend school cannot be longer than seven hours per day and 35 hours per week. If the child employee pursues his education, his working hours cannot exceed two hours per day and 10 hours per week during the education period. When the education period is over, the above work hour's regime applies.

The annual paid leave for young and child employees cannot be less than 20 days. The employer should give this annual paid leave without any interruption.



## Rights and Protections for Female Employees

Unless justified by the nature of the work or for biological reasons, different treatment in employment due to gender or pregnancy is prohibited. Statutory provisions intended to protect female employees cannot be used to pay female employees less than men for the same work.

Female employees cannot be required to work underground or underwater, or perform hazardous work.

A female employee is entitled to severance compensation if she terminates her employment within one year of marriage.

### Pregnant and Breastfeeding Employees and Protections

Pregnant and breastfeeding employees cannot be required to work more than seven and a half hours per day. Where supported by a medical report, the employee must be given other duties suitable to her health situation. Moreover, if no suitable position exists, the female employee is entitled to unpaid leave. These female employees cannot be forced to work on night shifts starting from the date on which their pregnancy is identified via a health report until the birth. In addition, it is prohibited to require female employees to work night shifts for a period of one year following the birth of the child.

### Leaves related to Pregnancy and Breastfeeding

A pregnant employee must be given paid leave for periodic examinations during her pregnancy. Eight weeks paid leave both before and after childbirth, for a total of 16 weeks, is mandatory. In the event of twins or triplets, the first eight-week term can be extended for two more weeks. These time periods can be increased before and after delivery if deemed necessary by a medical report in view of the female employee's health and the nature of her work.

Up to six months following pregnancy, a female employee can also request unpaid leave of up to 16 weeks (or 18 weeks in case of twins or triplets).

Female employees are allowed a total of one and a half hours breastfeeding leave per day to feed their children less than a year old. The length of the breastfeeding leave is treated as part of the daily working time. The employee is entitled to determine the number of times and time segments in which she will use this leave.

## Suspension of Employment

The parties to an employment agreement can suspend the agreement for a reasonable term, during which no salary will be paid to the employee, provided the employee gives clear, written consent within six business days even if the suspension is not foreseen in the agreement. Without this consent, the employee will not be bound by the suspension decision and the employee will have the right to terminate for a "justified reason." The Supreme Court of Appeals has stated that suspension without pay must be used "proportionately," last for a reasonable time to meet the compulsory needs of the parties, and not be abused by the employer. Thus, suspension is possible but must be used under strict conditions and circumstances at the time of suspension.

## Collective Bargaining Agreements

Article 41 of the Code on Trade Unions and Collective Bargaining Agreements (No. 6356) sets out the thresholds for a union to have the authority to enter into a Collective Bargaining Agreement (“**CBA**”) with an employer.

The following two conditions must be satisfied for the union to be able to ask the Ministry of Labor and Social Security for a mandate to negotiate and enter into a CBA with an employer:

- the union’s membership must comprise 1% of employees working in the same line of business in Turkey and
- more than 50% of the employees working in the same workplace(s), except where a CBA is to be signed with an entire enterprise rather than its different workplaces, in which case a minimum 40% of the employees working in the entire enterprise should be members of that union.

The wording of the Code is not clear as to whether the 40% will be calculated based on the total number of employees working in all workplaces of that enterprise, even those not active in the same business line.

A union that is willing to enter into a CBA with an employer must apply to the Ministry of Labor and Social Security to obtain authority to execute the collective bargaining agreement with that employer. The parties will have the right to challenge the Ministry’s decision in labor courts within six business days.

A CBA signed between the union and the employer must be in writing. Only union members who have signed a collective bargaining agreement with the relevant employer, benefit from that collective bargaining agreement. Employees in the same workplace who are not members of that union, can pay a “solidarity fee” to the union in question to benefit from the CBA.

A CBA generally includes provisions on employment agreement contents, terminations, parties’ rights and obligations and performance and control of the collective agreement.

The term of the CBA cannot be for less than one year or more than three years.

## Strike

Under Article 58 of the Code on Trade Unions and Collective Bargaining Agreements (the “**Code**”), a lawful strike means any strike called by workers in accordance with the Code, with the aim of safeguarding or improving their economic and social positions and working conditions, and in the event of a disagreement during CBA negotiations.

To satisfy the conditions of a lawful strike:

- the purpose must be to safeguard and improve workers’ economic and social position and working conditions;
- the strike decision must be taken by a trade union within 60 days from receiving the official dispute notification from the official mediator regarding the negotiations to conclude the CBA;
- the workers must cease work; and
- the strike must comply with the procedure described under the Code.

An unlawful strike is a strike called without fulfilling the conditions for a lawful strike under the Code. An unlawful strike can lead to the employer

terminating employees' employment for justified reasons. Further, if the employing entity has suffered damages due to the unlawful strike, then the union and the relevant employees can be held responsible for those damages.

## Lockout

Under Article 59 of the Code, a lawful lockout means any lockout by the employer in accordance with the Code, in the event of a disagreement during CBA negotiations and upon the union's decision to go on strike.

To satisfy the conditions of a lawful lockout:

- the purpose must be an economic and social defense against the workers' strike;
- the strike decision must be taken by an employer, a representative of an employer or an employer's union within 60 days from the trade union's strike decision;
- the workers must be suspended from the business all together, by causing the operations to completely cease;
- the strike must comply with the procedure described under the Code.

An unlawful lockout is any lockout done without fulfilling the conditions for a lawful lockout under the Code. An unlawful lockout can lead to the employee terminating employment for justified reasons. Further, the employer must pay all the benefits that an employee is entitled to receive under the employment agreement and compensate any damages the employee has sustained during the period of the unlawful lockout.

## Termination of Employment

The Labor Code provides for termination on two grounds: "valid reasons" and "justified reasons."

### a) **Justified reasons (*haklı neden*):**

Article 24 of the Labor Code sets out an employee's reasons for termination of employment for justified reasons. Under this article, justified reasons are divided into three categories: (i) health reasons, (ii) employer's behavior being contrary to the rules of ethics and goodwill and similar cases and (iii) force majeure.

Article 25 of the Labor Code sets out an employer's reasons for termination of employment for justified reasons. Under this article, justified reasons are divided into four categories: (i) health reasons, (ii) employee's behaviors being contrary to the rules of ethics and goodwill and similar cases, (iii) force majeure and (IV) employee's absence due to detention or arrest.

To terminate for an employee or employer's behavior, the termination must be made within six business days of discovering the offending behavior and the wrongdoer.

Where an investigation is necessary to collect more information, the incident must be referred to the investigation committee within six business days of discovery. The justified termination must then be within six business days of obtaining the result of the investigation. In any case, neither an employer

nor an employee can terminate the employment agreement on the basis of the other's behavior being contrary to the rules of ethics and goodwill if this behavior has occurred more than one year ago. If, however, an employee has obtained monetary advantage as a result of the behavior, e.g., fraud or corruption, the one-year limitation will not apply.

Unlike in termination for *valid* reasons, written notice of termination for justified reasons is a matter of proof, not validity. It is, therefore, not subject to any form. (For purposes of proof, however, it is advisable that a clear written notice be given.)

In justified dismissals relying on Article 25/II of the Labor Code (i.e., employee behavior being contrary to the rules of ethics and goodwill and similar cases), the employer does not need to pay notice and severance compensation to the dismissed employee, and the employment relationship is terminated immediately. In dismissals under the remaining paragraphs of Article 25 of the Labor Code, however, the dismissing employer must pay notice and severance compensation to the dismissed employee. Likewise, in case of an employee terminating employment for justified reasons under Article 24/II of the Labor Code (i.e., employer behavior being contrary to the rules of ethics and goodwill and similar cases), the employee is not obligated to pay notice compensation to the employer due to the immediate termination.

**b) Valid reasons (*geçerli neden*):**

Valid reasons for an employer to terminate an employee are (a) incapacity of the employee or abnormal behavior (such as misbehavior, damaging the employer's assets, insufficient loyalty to the employer, coming to work late or misleading the employer) and (b) business necessities (such as redundancy or economic, technological, structural or reorganizational issues) of the enterprise, the business or the work itself.

Business reasons are primarily economic, which objectively justify the dismissal of an employee. These reasons are economic difficulties such as portfolio loss, decrease in the volume of work, reorganization, economic crises, redundancy as a result of technological developments or reorganization.

Termination for valid reasons must be the "last resort" for an employer to dismiss an employee; that is to say, before dismissing an employee, the employer must have considered less drastic measures and possibilities to avoid termination, e.g., to transfer the employee to another suitable position with his/her written consent within six business days in line with the procedure of changes in working conditions, if necessary, or to send the employee on unpaid leave for a period of time or provide training for another position.

Termination for valid reasons must be on objective terms and must not be preferred merely to reduce business costs. In termination for valid reasons, the employer is obligated to pay notice and severance compensation to the dismissed employee plus all accrued contractual entitlements. (As stated above, this payment obligation also applies to all paragraphs of Article 25 of the Labor Code, apart from Article 25/II.)

Performance-related terminations require specific attention. In this kind of termination, the employer must be able to prove, among others things: the employee was not capable in the position; all necessary support and training was provided to him; the employee's business targets were reasonable; performance reviews were conducted with the employee's participation; the employee was warned of his poor performance and given additional, reasonable time to improve—but the employee failed to improve his performance despite all these measures. If the employer cannot prove the above process with documents, then it is likely that the labor court will order reinstatement.

If the below conditions are satisfied at the time of termination, the employer must rely on one of the valid reasons:

- a) the number of employees in the workplace is 30 or more;
- b) the employment agreement is of an indefinite-term;
- c) the employee has at least six months of service; and
- d) the employee is an ordinary employee, i.e., not an “employer’s representative” or his assistant authorized to manage the entire enterprise, or an “employer’s representative” managing the entire workplace who is also authorized to recruit and terminate employees.

While terminating for a valid reason, the employer must allow the employee to use his/her statutory or contractual notice period (or must pay his/her notice compensation) and must pay severance compensation (if the employee has worked for more than one year).

In both kinds of termination (i.e., in both termination for valid reasons and termination for justified reasons), the terminating party is bound by the reason used in termination; that is to say, the reason relied upon for termination cannot be amended later, e.g., in litigation.

### **Reinstatement**

If an employee meets the objective criteria (a) to (d) listed above, the employee will have the right to file an action for reinstatement. In a reinstatement action, the labor courts first look at whether there are justified reasons and whether a justified reason has been relied upon for the dismissal. If the dismissal was not for a justified reason or the procedural needs of a justified dismissal have not been satisfied, then the labor court will examine whether the reason for dismissal can constitute a valid reason for termination.

If the employee wins the reinstatement lawsuit, the employer will have to reinstate the dismissed employee and will be sentenced to pay non-employment compensation, which consists of four months’ gross wage of the employee including social benefits. If the employer does not reinstate the employee, then the employer will also need to pay non-reinstatement compensation of four to eight months’ bare gross wage of the employee, i.e., excluding the social benefits but including social security premiums and taxes, in addition to the non-employment compensation. The employer will not need to pay the non-reinstatement compensation if it reinstates the employee who has won the reinstatement action.

### **Notice Periods and Severance Compensation**

#### **Notice Periods**

Notice periods depend on the terminated employee’s length of service:

- two weeks for up to six months of service;
- four weeks for six months to one and a half years of service;
- six weeks for one and a half years to three years of service; and
- eight weeks for more than three years of service.

If a party does not provide the required notice, the terminating party must pay notice compensation to the other party. This compensation is calculated by multiplying the employee’s daily gross wage, including the daily values of all social benefits, by the number of days of the required notice period.

### **Severance Compensation**

If an employee has been dismissed for a reason other than the employee's behavior being contrary to the rules of ethics and goodwill and similar cases, which is one of the "justified reasons", and has had more than a year of service, the employer is, in principle, entitled to receive severance compensation.

The Ministry of Labor and Social Security regularly announces the maximum amount of severance compensation payable. Until the end of 2014, severance compensation is capped at TRY 3,438.22 (approximately USD 1,485 as of 23 December 2014). In cases where the dismissed employee's monthly wage is higher than this figure, the severance compensation to be paid to that employee cannot exceed this cap. Severance compensation payable to an employee is calculated by multiplying the number of years of employment by the latest monthly gross wage, i.e., not the net amount of wage but including amounts such as taxes, social security premiums and union dues.

### **Special Compensations Upon Termination**

#### **Discrimination Compensation (*Ayrımcılık Tazminatı*)**

In accordance with the "prohibition on discrimination" principle of Article 5 of the Labor Code, "an employer shall not discriminate between his employees based on their language, race, color, sex, disability, political opinion, philosophical belief, religion and sect or similar reasons or make a different treatment, either directly or indirectly, against an employee due to his/her sex or maternity except for biological reasons or reasons related to the nature of the work." If a court determines that the employer violated this prohibition, it can award the employee discrimination compensation of up to four times the employee's monthly wage and the benefits the employee was denied as a result of the discrimination. For discrimination compensation claims, the burden of proof is on the employee, not the employer, to establish that the employee was dismissed due to the employer's discrimination.

#### **Union Compensation (*Sendikal Tazminat*)**

Article 25 of the Code on Trade Unions and Collective Agreements (No. 6356) provides that "employers shall not treat employees who are members of a union and those who are not or who are members of different unions differently, with regard to the work conditions and dismissals." The Code also states that employers can not treat differently or dismiss employees due to the employees' becoming members of unions or participating in union or employee confederations' activities outside working hours or within working hours but with the permission of their employers. In the event of a violation, the employer may be ordered to pay union compensation to the employee of not less than one year's wage.

Under the Labor Code, the onus of proving that a dismissal was legal is on the employer unless and until the dismissed employee contends that the reason for dismissal was different than what the employer had claimed. For union compensation (and discrimination compensation, as relevant) claims, however, the burden of proof is on the employee, not the employer, to establish that the employee was dismissed due to union-related activities. For example, if the majority of dismissed personnel were members of a union and none of the personnel replacing them are union members, this could be used by an employee to prove union compensation claims.

#### **Compensation for Unjustified Dismissals (*Haksız Fesih Tazminatı*)**

The Code of Obligations has introduced this new type of compensation where an employer has relied on a justified reason to terminate an employee but the dismissal is then found to be unjustified. In this case, the court may order the

employer to pay compensation of up to six months of the employee's wage taking into account the surrounding circumstances.

The Supreme Court of Appeals has yet to interpret this new type of compensation, to understand whether or not it applies to employment relationships only under the Labor Code and not under the Code of Obligations, and under which conditions it will be imposed on employers. The Supreme Court of Appeals must also determine whether an employee who has the right to file an action for reinstatement can demand this type of compensation. Scholars believe employees who are covered by the Labor Code should not benefit from this compensation type as the Labor Code already introduces other compensation types for them, such as "bad faith compensation."

### **Bad Faith Compensation (*Kötü Niyet Tazminatı*)**

Bad faith compensation is intended to prevent an employer from abusing the right to dismiss employees. A wrongfully dismissed employee is entitled to bad faith compensation if he/she can prove the employer acted in bad faith in the employee's dismissal. The employer, as a party to the employment agreement, is expected to act in good faith. A typical example of "bad faith" occurs where an employer dismisses an employee for testifying in court in favor of another employee who has sued the employer. Bad faith compensation can be awarded to ordinary employees or employers' representatives who do not have the right to file a reinstatement lawsuit. The amount of the bad faith compensation is equal to three times the employee's notice compensation.

### **Collective Dismissals**

Under the Labor Code, collective dismissal occurs upon dismissal of

- at least 10 employees where the number of employees is between 20 and 100;
  - at least 10% of the employees where the number of employees is between 101-300; or
  - at least 30 employees where the number of employees is 301 or more,
- on the same date or different days and within one month by observing the statutory notice periods for each employee.

Where an employer wishes to proceed with collective dismissal of employees due to economic, technical, organizational or similar reasons due to the requirements of the enterprise, workplace or business, the employer must give a dismissal notice of any collective redundancies in writing to:

- the union representative in the workplace;
- the Regional Directorate of the Ministry of Labor and Social Security; and
- the Turkish Employment Institution

a minimum 30 days prior to the collective dismissal. The dismissal notice becomes effective after a 30-day period following notification to the Regional Directorate of the Ministry of Labor and Social Security. This notice must include information as to the reason for the dismissal, the number and groups of employees to be dismissed and the timetable during which the dismissals will take place.

After notification, the employer and union representative in the workplace meet to discuss the planned dismissals for the purpose of preventing collective dismissal, decreasing the number of employees to be dismissed and minimizing the negative consequences of collective dismissal on employees. The meeting, however, is only consultative. The parties must prepare and sign the meeting minutes at the end of the meeting. Following

the meeting, each individual employee to be dismissed must be given a written dismissal notice clearly and sufficiently setting out the reason for his/her dismissal. In the event the workplace is completely closed down and its activities are terminated definitely and permanently, the employer is only obligated to notify the relevant Regional Directorate of the Ministry of Labor and Social Security and the Turkish Employment Office 30 days in advance. At the same time, it must make an announcement at the workplace with 30 days' prior notice.

Failure to comply with the collective dismissal procedure may result in an administrative fine per each dismissed employee. The Ministry of Labor and Social Security sets the amount of this fine semi-annually. Until the end of 2014, the fine is set at TRY 504 (approximately USD 217 as of 23 December 2014). Also, failure to comply with the collective dismissal procedure can also invalidate the termination of the employees. This is important if the employees, who are dismissed without observing this procedure, demand their reinstatement.

If the employer intends to employ employees again for work of the same nature within six months of the finalization of the collective dismissal process, then it must offer the positions to the previous employees with the relevant qualifications. If the previous employees accept the job, the employer must re-employ them.

## Post-Termination Restrictions

### Confidentiality

An employee's duty of confidentiality is part of the general duty of loyalty to an employer. This duty extends to all the employer's business secrets, such as technical know-how, customer and supplier lists and prices — anything that is not known to the public and that is vital for the fair protection of the employer's business interests. If an employee breaches the obligation of confidentiality, the employer may be allowed to terminate the employee for a justified reason under Article 25 of the Labor Code.

Under the Code of Obligations, the confidentiality obligation continues after the end of the employment relationship as long as the employer has an interest in the restriction. That is to say, confidentiality obligations survive as long as the employer has a legitimate right to be protected.

The parties to an employment agreement can also agree that the employee will keep confidential matters other than the employer's business secrets. The most common example is the confidentiality of the employee's wage. These confidentiality restrictions are valid so long as they do not exceed the legitimate purpose of an employer to manage the enterprise in an orderly manner and so long as they do not jeopardize the employee's business life.

### Non-Competition

As a result of the duty of loyalty to the employer, an employee is not allowed to enter into activities during the term of his employment that compete with the employer's business activities. Furthermore, the parties to an employment agreement can agree that the employee will be restricted from entering into any competitive activity against the employer even after the termination of the employment agreement, or from entering into any relationship with a competitor, provided that due to the employment relationship, the employee has obtained production secrets, goodwill and information regarding the production process, and the use of this information would cause considerable damage to the employer.



A non-competition agreement must be fair in terms of the restrictions concerning time, place and nature of the restricted work. In the absence of a legitimate reason, the time limit cannot exceed two years. Under the Code of Obligations, if the restrictions are unfair or excessive, a court may alter the restrictions to bring them into compliance with the law.

### **Unemployment Insurance**

If an employment agreement is terminated for a reason not attributable to the employee, i.e., without the employee's fault, the employee is entitled to unemployment insurance benefits.

Employees, employers and the state each pay a portion of the premiums to be paid for an employee's unemployment insurance premiums. An employee must have paid unemployment insurance premiums corresponding to at least 600 days (the last 120 must be paid continuously) before termination.

This compensation is paid to an employee for 180 days if the premiums were paid for 600 days; for 240 days if the premiums were paid for 900 days; and for 300 days if the premiums were paid for more than 1,080 days. The benefit is equal to 40% of the employee's average gross wage for the four months prior to termination; in any case, it cannot exceed 80% of the minimum statutory gross salary applicable.

### **Release**

Under the Turkish Code of Obligations, the employer can receive a release letter from a dismissed employee if the parties so agree. The validity of this letter is subject to:

- it being obtained no sooner than one month after termination;
- it being itemized, clearly indicating all payments that have been made to the employee and the amounts; and
- all payments being made via bank transfer.

A release letter that fails to meet one of the above is deemed to be only an invoice.

### **Employment Litigation**

Disputes arising from employment agreements are resolved by specialized labor courts. The competent court to examine a labor dispute is the court located in the district of the employer's headquarters or where the work was performed. As only merchants and public bodies are allowed to decide which court is competent to resolve a dispute, the parties to an employment agreement are not allowed to agree that another court other than those indicated above is competent to examine labor disputes.

Under Turkish Law, the employer and employee can also submit the labor dispute to arbitration. The Supreme Court of Appeals, however, has ruled that any arbitration clause agreed before the occurrence of the dispute is void, and the parties must agree to take the dispute to an arbitral tribunal by agreement within one month of the termination of an employment agreement, to be entitled to arbitrate.

### **Health and Safety**

Turkish law sets forth a number of preventative health protection obligations for employers. The Labor Code and the Code of Obligations provide the general obligation for employers to protect their employees' health and provide for their occupational safety. In addition, the Law on Occupational Health and Safety (No. 6331) has brought more specific obligations for employers and employees.

The dates of entry into force for the provisions of the Law on Occupational Health and Safety are as follows:

- 1) Articles 6 (Occupational health and safety services) and 7 (Support of occupational health and safety services) will come into force:
  - 1.1) Other than those working under abolished Article 81 of the Labor Code, on July 1, 2016, for public establishments and workplaces with less than 50 employees and low hazardousness.
  - 1.2) On January 1, 2014, for hazardous or extremely hazardous workplaces with less than 50 employees.
  - 1.3) On December 30, 2012, for all other workplaces.
- 2) Articles 9, 31, 33, 34, 35, 36 and 38 as well as provisional articles 4, 5, 6, 7 and 8 will come into force on June 30, 2012.
- 3) Other articles will come into force on December 30, 2012.

The Law on Occupational Health and Safety sets out an employer's duty to ensure the safety and health of its employees. Employers must:

- take all measures necessary to protect the safety and health of workers, including prevention of occupational risks through provision of information and training, organization and means and equipment, and ensure these measures are adjusted taking into account changing circumstances with the aim of improving existing situations;
- monitor and check whether occupational health and safety measures are followed, and ensure that nonconforming situations are eliminated;
- carry out a risk assessment, or have a risk assessment carried out;
- take into consideration workers' capabilities regarding health and safety when entrusting workers with tasks;
- take appropriate measures to ensure workers other than those who have received adequate information and instructions are denied access to areas where there is life-threatening and special hazards.

In order to provide occupational health and safety services including activities related to the protection and prevention of occupational risks, the employer must:

- Designate workers as occupational safety specialists, occupational physicians and other health staff. If too few personnel in the undertaking are competent enough to be designated, the employer must enlist a joint health and safety unit to partially or fully provide these services. Provided the employer has the required qualifications and documents, the employer can offer these services considering the hazard class and number of workers, or s/he can acquire services from a common occupational health and safety board (for occupational physicians and safety specialists to be assigned, they must obtain specific certificates depending on the hazard level of work handled).
- Meet the need for means, space and time to help designate people or organizations to fulfil health and safety duties.
- Ensure cooperation and coordination among all people and bodies responsible for providing health and safety services at workplaces.
- Implement measures related to occupational health and safety that are in accordance with the legislation and are notified in writing by the designated persons or organizations providing services.
- Inform designated persons, consulted external services and other workers when the employer receives adequate information regarding factors known to affect, or are suspected of affecting, the safety and health of workers. This includes informing workers and employers from any outside enterprise or undertaking engaged in work in his/her undertaking or enterprise.

- Examine employees' health during pre-assignments, employment or change of work, in case of a request for reinstatement after facing an occupational accident, occupational illness or other health issue. The employer must obtain a health report from each employee during recruitment proving the employee's health condition is compliant with their workplace duties.
- Establish an Occupational Health and Safety Board (*Salı ve Güvenli Kurulu*) if the number of workplace employees is 50 or more, and the employees are subject to permanent employment lasting a period of more than six months.
- Establish a Workplace Health and Safety Unit (*yeri Salık ve Güvenlik Birimi*) if an occupational physician and safety specialist is needed to be employed full-time as a result of the workplace's working hours (this unit is different than the aforementioned Occupational Health and Safety Board).
- Evaluate and identify potential states of emergency beforehand and take related measures, as well as prepare an emergency plan and conduct drills. In case of emergency, the employer is also responsible for the employees' evacuation from the workplace.
- Provide training on occupational health and safety regulations to their employees. Each employee must receive safety and health training.
- Delegate employee representative/representatives from their own employees. The number of these representatives depends on the number of employees at the workplace. For instance, for two to 50 employees, one representative is required; two are required for between 51 and 100 employees.

In the event of a serious and imminent danger, employees can demand the employer determine the danger and take the necessary measures. If the employer decides in line with the employees' request, the employees can refrain from working until the necessary measures are taken. In this case, the employees will still be entitled to salary and their rights arising from their employment agreements, and the applicable laws will be reserved.

In cases where the employer does not take the necessary measures despite the employees' requests, the employees can terminate their employment agreements. Where it is not possible to prevent the serious and imminent danger, the employees have the right to leave their workplaces and go to a safe place without having to request the employer take the necessary measures.

Where employees need to intervene in a situation that creates a serious and imminent danger with regard to their own safety or the safety of other employees, the employer cannot hold the employees responsible for their intervention.

If a work accident or an occupational disease has occurred as a result of the employer's intentional acts or the employer's contradictory act against its occupational health and safety obligations, the employer will compensate all the health services, transportation and companion expenses provided by the Social Security Institution related to the work accident and occupational disease.

### Accidents at Work and Occupational Diseases

**Occupational accident** is defined under the Social Security and General Health Insurance Law (No. 5510) as

- "an incident that results in the insurance holder immediately or afterwards being disabled physically or mentally, during the period the insurance holder was at the workplace; or
- as a result of the work s/he has been carrying out in case the insurance holder had been working independently acting on their own behalf due to the work that is carried out by the employer

during the period a dependent employee has been sent to a place outside of the workplace by the employer in relation to their duties; during the feeding time of the mother; or during the period the insurance holder is being sent to a place where the work is carried out via a vehicle provided by the employer.” **Occupational disease** is identified as “temporary or permanent sickness, the state of physical or mental disability of the insurance holder as a result of the nature of work the employee engages with or the conditions of the work.”

Also, the Law on Occupational Health and Safety defines occupational accident as an incident that has occurred at the workplace or during the performance of work and that causes death or disables physical integrity physically or mentally.

The employer must notify the occupational accident to the authorized police force located near the area where the incident has taken place immediately, and to the Social Security Institution within three business days at the latest, following the accident. This three business days’ period commences on the day the occupational accident is known by the employers in cases where the accident takes place at locations the employer cannot control.

Inspectors of the Ministry of Labor and Social Security and the Social Security Institution are authorized to investigate the accidents in order to reveal whether or not the incident was an “occupational accident.” If it is understood that the incident does not constitute an occupational accident or the facts provided were not accurate, all the expenses made by the authorities will be collected from the individuals who have provided the inaccurate facts or caused the damage.

The employer who realizes or is informed that an occupational disease has developed in the insured, must notify the occupational disease to the Social Security Institution within three business days from the date of being informed. The expenses made by the Social Security Institution for the situation or the temporary incapacity payments, if any, must be collected from the employer, or the insured, who does not fulfill this obligation or who has deliberately notified the relevant facts incompletely or misleadingly.

The insured, whose earning power in the profession (*meslekte kazanma gücü*) is determined by the Social Security Institution’s Health Committee to be reduced by 10% due to the disease or disabilities caused by the work accident or occupational disease, will be entitled to permanent incapacity income.

If the employer does not notify the work accident to the Social Security Institution within the aforementioned notice period (i.e., three business days), the temporary incapacity payment payable to the insured up to the date of notification to the Social Security Institution will be collected from the employer.

If the employer prolongs the employee’s treatment process or causes the employee to become disabled, or increases the degree of the employee’s disability as a result of delay or negligence in performing its obligations, the employer will be responsible for the costs against the Institution.

Ministry of Labor and Social Security inspectors are empowered to inspect whether the requirements of the Law on Occupational Health and Safety have been implemented properly. If the inspectors detect a situation constituting a peril to employees’ lives, the work must be stopped until the peril is removed. Any objection by the employer to the court must be made within six days upon the decision to stop work. During this period, the employer is still under obligation to pay employees’ salaries.

The employer will also be subject to administrative fines for each violation, such as failure to take necessary actions to protect its employees’ health, failure to provide the conditions required for the safe operation of the workplace and violation of provisions of applicable legislation. The employer can also have penal or criminal liability following an injury.



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