

Labour & Employment

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2017

GETTING THE
DEAL THROUGH 

Turkey

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main sources of employment law are as follows:

- the Constitution;
- the Turkish Labour Act No. 4857 (the TLA);
- the Law on Trade Unions and Collective Bargaining Agreements No. 6356 (the Union Law);
- the Law on Civil Service Trade Unions and Collective Bargaining Agreements No. 4688;
- the Maritime Labour Law No. 854;
- the Press and Media Labour Law No. 5953;
- the Turkish Code of Obligations No. 6098 (the TCO);
- the Occupational Health and Safety Law No. 6331;
- the secondary laws and regulations including annual leave, working hours, overtime work, minimum wage and female and child employees;
- communiqués and circulars published by the Ministry of Labour and Social Security (the Ministry) with regard to the application and recommendation of the labour legislation;
- the Court of Appeal's Assembly of Civil Chambers' decisions on the unification of the conflicting judgments; and
- employment contracts, collective bargaining agreements, internal regulations and personnel regulations, workplace practices.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Yes, the principle of equal treatment is regulated by article 5 of the TLA and it is not lawful to discriminate against employees based on their language, race, sex, political opinions, philosophical beliefs, religion, sex or similar reasons.

Also, the Law on Human Rights and Equality Institution of Turkey No. 6701 dated 6 April 2016 prohibits the employer from discriminating in terms of determination of the criteria or conditions of job application and recruitment.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry is entitled to inspect the employers and issue administrative fines but their decisions are subject to judicial review. Both employers and employees can always refer the matter to the courts or the execution offices.

Worker representation

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Establishing works councils is not regulated under Turkish law. However, trade unions can be established with at least seven employees and upon providing the procedure and principles regulated by the Unions and Collective Employment Agreements Law No. 6356; they can be established without prior authorisation and can have legal

entity. Trade unions are authorised to assign a workplace union representative from among the employees.

5 What are their powers?

Trade unions should conduct their activities in compliance with the main business activity conducted in the workplace. Trade unions are entitled to:

- enter into collective bargaining with the employer union or employer and negotiate the terms and conditions of collective employment agreements;
- act on behalf of the employees and represent them;
- take collective actions in order to enforce the terms and conditions of a collective bargaining agreement; and
- file actions and represent the employees or their successors during the proceedings in order to protect their rights arisen from the employment relationship.

Workplace union representatives are under the obligation of providing corporation, peace and harmonisation in the workplace between employees and employer, listening to the requests of the employees and solving their complaints, protecting employees' rights and assisting the practice of working terms and conditions regulated under the TLA and collective bargaining agreements.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There is no specific regulation regarding background checks on applicants. The employer can conduct its own checks or hire a third party. Requesting criminal records is a particularly common practice in Turkey, but the employee's consent is required in such a case.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

The employer can require a medical examination as a condition of employment but the applicant's consent is required for such a medical examination. The employer may refuse to hire an applicant who does not submit to an examination. However, the employer should not have an intention of discrimination by doing so.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

The applicant's consent is required for drug and alcohol tests. The employer may refuse to hire an applicant who does not submit to a test.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

According to the TLA, employers who employ at least 50 employees are required to employ disabled persons. Otherwise the employers would be subject to administrative fines.

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Under Turkish law, it is not mandatory to conclude employment contracts in writing. The written form is only mandatory for fixed-term employment contracts. However, if the contract is not to be concluded in writing, then it is necessary to provide the employee with a written document, within two months at the latest, showing the general and special conditions of work, the daily or weekly working time, the basic salary and any salary supplements, the time intervals for remuneration and conditions concerning the termination of the contract.

11 To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts must be in written form. There must be an objective reason such as completion of a specific job to conclude a fixed-term employment contract. A fixed-term employment contract cannot be renewed unless there is an objection reason.

12 What is the maximum probationary period permitted by law?

The probationary period can be a maximum of two months and its duration should be indicated in an employment contract. The probationary period can be extended up to four months by collective labour agreements.

13 What are the primary factors that distinguish an independent contractor from an employee?

Employees are dependent; they do work in line with the instructions of the employer in return for a salary.

Independent contractors work independently, can determine their own service hours, can issue invoices in their own name.

14 Is there any legislation governing temporary staffing through recruitment agencies?

The Omnibus Law No. 6715, published on 20 May 2016, has amended the TLA and introduced temporary staffing through recruitment agencies. Also, the Regulation regarding private employment agencies (the Regulation) was published on 11 October 2016. The agencies must be authorised by the Turkish Labour Institution. The TLA defines limits on the use of agency workers.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

The Law No. 6458 Concerning Foreigners and International Protection regulates foreign workers. As a rule, all foreign nationals must obtain a visa. However, there are some exceptions such as, citizens of countries which are exempt from visa procedure under international agreements and Council of Ministers decisions and foreign nationals having obtained residence or work permits.

The types of short-term visas are enumerated in a non-exhaustive way. According to the Regulation on the Application of the Law No. 6458, foreigners who enter Turkey for professional purposes, official visits, business meetings etc, can obtain a tourist visa or business visa. Those who remain in Turkey for more than 90 days should obtain a work permit.

There is no exceptional visa concerning the employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction.

16 Are spouses of authorised workers entitled to work?

The Law No. 6735 Concerning International Workforce does not provide any general provision with regard to the accompanying family members with one exception. Accordingly, spouses and dependent children of Turquoise Card owners will benefit from a long-term residence permit which allows one to stay in Turkey for an unlimited period of time.

Turquoise Cards are given if the applicant meets certain criteria with respect to their education level, professional experience,

contribution to science and technology and other factors set by the administration. It gives the same rights as a permanent work permit.

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The ministry prepares and issues the evaluation criteria. Accordingly, employers and foreign nationals must fulfil the requirements specified as evaluation criteria, some of which are listed as follows:

- at least five Turkish nationals shall be employed at the workplace for which the work permit application has been filed;
- the foreign partner of the company requesting a work permit shall have at least 20 per cent of the shares in the company provided that their share equals to or exceeds 40,000 Turkish lira; and
- the paid capital of the workplace shall be at least 100,000 Turkish lira or its minimum gross sales shall be 800,000 Turkish lira or the export amount in the last year shall be at least US\$250,000.

The salary to be paid to the foreign national shall be compatible with his or her duty and competence at the workplace. In this regard, the minimum levels of the salary to be granted to the foreign national are determined by the ministry considering the characteristics of the job and the minimum wage in force as of the application date.

However, foreign direct investment regulations provide simplified conditions for the key personnel to be employed under these investments and liaison offices. Accordingly such companies are entitled to hire key personnel without being subject to the evaluation criteria explained above.

Administrative fines are as follows:

- 6,229 Turkish lira for employers employing foreign personnel without a work permit (for each foreign personnel);
- 2,491 Turkish lira for foreign nationals working dependently without a work permit;
- 4,983 Turkish lira for foreign nationals working independently without a work permit; and
- 415 Turkish lira for foreign nationals working independently and employers employing foreign personnel who do not fulfil their obligation to notify the Ministry.

18 Is a labour market test required as a precursor to a short or long-term visa?

In evaluating an application for a work permit, the Ministry requires the applicant to complete a resident labour market test to demonstrate that the role cannot be filled with a resident worker. For this purpose, certain factors such as specific details of the job, education of the foreign national, previous employment in the relevant market and whether there are any resident employees with similar capabilities must be taken into account when justifying the employment of a foreign national instead of a Turkish citizen.

This evaluation is made by the Ministry by taking into consideration the decisions of the International Workforce Policy Advisory Board which will be established according to the Law on International Workforce and the opinion of administrative bodies and professional associations in the relevant field, if necessary.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Employees can work a maximum 45 hours per week. Working hours can be distributed over the working days on the condition that the daily working hours do not exceed 11 hours on any one working day. The maximum night working hours are 7.5 hours. Overtime work cannot exceed 270 hours per year. Employees cannot opt out of such restrictions.

20 What categories of workers are entitled to overtime pay and how is it calculated?

In principle, all employees are entitled to receive overtime payment. Employees are entitled to overtime payment for all overtime exceeding 45 hours per week at 1.5 times their hourly rate. However, if the weekly working hours are less than 45 hours, a 1:1.25 ratio will be applied up to the 45 hours.

21 Can employees contractually waive the right to overtime pay?

It is possible to provide in the employment contract that the salary of an employee includes overtime of up to 270 hours per year without additional pay provided that the salary of the employee is higher than the minimum wage.

22 Is there any legislation establishing the right to annual vacation and holidays?

Employees shall be granted paid annual vacation provided that they have worked for at least one year, including the probationary period. If the term of the employee's service is one to five years (inclusive), the holiday period must be at least 14 working days. If the term of the employee's service is five to 15 years, the holiday period must be at least 20 working days. If the term of the employee's service is 15 years and over, the holiday period must be at least 26 working days. However, these periods can be increased through the employment contracts.

Paid annual vacation may not be less than 20 days for employees aged 18 years or less and those aged 50 years or older.

23 Is there any legislation establishing the right to sick leave or sick pay?

Yes, Social Security and General Health Insurance Law No. 5510 regulates sick pay.

If the sick employee has not been working for three or more days, he or she should submit a medical report and the employer is obliged to notify the Social Security Institution. In such a case, the employer is not required to pay salary to the employee who has a medical report. Instead, the Social Security Institution makes the payment to the employee.

24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

There are several types of leaves of absence, such as marriage, maternity, breastfeeding and paternity leaves.

Female employees are entitled to take paid maternity leave for a period of 16 weeks (ie, eight weeks before and eight weeks after confinement). In case of multiple pregnancy, an extra two-week period shall be added to the eight weeks before confinement.

Until the child reaches the age of one, the female employee is also entitled to one-and-a-half hours a day for breastfeeding. The father is entitled to take five days of paid paternity leave.

In case of a marriage, the employees are entitled to three days of paid leave. The employees are entitled to three days of paid leave following the death of the employee's mother, father, spouse, brother, sister or child.

25 What employee benefits are prescribed by law?

Salary, social security contributions, paid annual leave, paid sick leave, general health insurance contribution, weekend, public holiday, official holiday salaries, overtime payments, maternity leave or paternity leave pays are main mandatory benefits. The employer may also provide to employees additional voluntary benefits.

26 Are there any special rules relating to part-time or fixed-term employees?

A part-time employee's weekly work time is determined as less than an equivalent worker working on a full-time basis. According to the relevant regulation, a 2:3 ratio must be applied for part-time work. That means if the working time is 45 hours, the part-time employee should work less than 30 hours.

There must be an objective reason to conclude a fixed-term employment contract. Otherwise it will be deemed as an indefinite-term agreement.

Provided that there is no essential reason, the employer cannot make discrimination between full-time and part-time employees or between an employee who works with a fixed-term agreement and one who works under an open-ended employment contract.

Post-employment restrictive covenants**27 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?**

Non-competition, non-solicitation clauses are generally included in employment agreements as post-employment restrictive covenants.

Non-competition obligations are regulated under the TCO. According to the TCO, the non-competition obligation must not jeopardise the employee's economic future and not be opposite to the equity principle. Therefore, it should be reasonably limited with regard to place, time and subject. The clause should be in writing and applicable for the employees who are in contact with customers and have access to the customers' trade secrets. Employees' usage of such knowledge must cause a significant damage to the employer. The restricted period should be limited to two years. It can exceed two years only in specific circumstances.

28 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No, the employer does not need to continue to pay the former employee while they are subject to post-employment restrictive covenants.

Liability for acts of employees**29 In which circumstances may an employer be held liable for the acts or conduct of its employees?**

The employer may be held liable for the acts or conduct of its employees either by tort liability given as objective liability of the employer under the article 66 of the TCO or contractual liability given under article 116 as the liability arising out of the actions of the employer during the execution of the contract.

Article 66 of the TCO sets forth that: an employer is liable for the loss or damage caused by his or her employees or ancillary staff in the performance of their work unless the employer proves that he or she took all due care to avoid a loss or damage of this type; or the loss or damage would have occurred even if all due care had been taken. The employer has a right of recourse against the person who caused the loss or damage to the extent that such person is liable for damages.

As for the contractual liability, article 166 of TCO states that a person who delegates the performance of an obligation or the exercise of a right arising from a contractual obligation to an associate, such as a member of his or her household or an employee, is liable to the other party for any loss or damage the associate causes in carrying out such tasks, even if their delegation was entirely authorised.

Taxation of employees**30 What employment-related taxes are prescribed by law?**

Salary and other benefits provided to the employees are subject to income tax and stamp tax.

Employee-created IP**31 Is there any legislation addressing the parties' rights with respect to employee inventions?**

Employee inventions are regulated as per the IP Law No. 6769. As per IP Law, service inventions are those that are made by the employee in the course of his or her employment, by virtue of his or her obligations, the tasks assigned to him or her, or those that are based to a large extent on the experience and work of the employer.

32 Is there any legislation protecting trade secrets and other confidential business information?

As per the TCO, the employee is under the confidentiality obligation during the employment and post-employment period, as long as it is required for the protection of the employer's rightful interest.

Also, the Turkish Criminal Code regulates criminal sanctions for those who illegally obtain and disclose trade secrets and confidential information.

Update and trends

A new Draft Law on Labour Courts (Draft Law) has been prepared and shared by the Ministry of Justice with relevant public institutions and organisations. The most important amendment stipulated under the Draft Law is the introduction of a new mandatory mediation phase. Accordingly, if the Draft Law is adopted by the legislator, it will be mandatory for employees to apply for mediation prior to initiating the below-listed type of lawsuits:

- employee receivables;
- reinstatement claims arising from the TLA; and
- employment agreements and collective bargaining agreements.

Data protection

33 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

According to the TLA, employers are obliged to process an employee's data lawfully and in good faith, therefore, they cannot disclose an employee's personal data which the employee has a legitimate interest to keep confidential.

As per the TCO, employers can use an employee's personal data only if it is related to the employee's tendency to work or execution of the employment agreement is required to do so.

On 7 April 2016, a new law on the protection of personal data came into force in Turkey. The Data Protection Law is mostly in line with the EU Directive 95/46/EC on Data Protection. The Data Protection Law does not have any specific provision regarding the personal data of employees, however it regulates the protection of personal data generally.

Pursuant to the Data Protection Law, the employer is qualified as a data controller and is obliged to take all necessary technical and administrative measures that are necessary to ensure an appropriate level of security, in order to:

- prevent unlawful processing of the personal data;
- prevent unlawful access to the personal data; and
- ensure protection of the personal data.

The employer, as the data controller, is jointly liable with any third party who processes the personal data on its behalf. Furthermore, the employer must conduct necessary audits to ensure implementation of provisions of the Data Protection Law.

In addition to the above, the employer shall comply with the below principles while processing the personal data:

- being in line with the law and good faith;
- being accurate and up to date;
- processing the data for specific, clear and legitimate purposes;
- data process is related to, limited with and proportionate to the purpose for which the personal data is processed; and
- the personal data is stored for the time specified in the relevant legislation or the time required for the purpose for which the personal data is processed.

Business transfers

34 Is there any legislation to protect employees in the event of a business transfer?

Yes, according to TLA, in case of transfer of an establishment or one of its sections to another person due to a legal transaction, the employment contracts existing in the establishment or in the transferred section on the date of the transfer shall automatically pass on to the transferee with all the rights and obligations involved. TLA also sets forth that the transferor and transferee shall be jointly liable for the obligations which have materialised before the transfer and which must be defrayed on the date of the transfer. The time limit for the liability of the transferor is two years following the date of the transfer.

According to TCC, in case of business transfers made by way of merger, demerger or the conversion of company type, the employment contract and the rights and obligations arising out of it can only be

transferred to the new employer if the transferring employee does not object to such transfer of the employment relationship.

Termination of employment

35 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Under Turkish Labour Law, an employment contract can be terminated by an employer either by serving the employee with notice; or terminating with immediate effect by relying on a just cause.

The TLA provides job protection to employees in particular cases. If an employee has been working for at least six months at a workplace which has 30 or more employees, the employer can only terminate the employment contract by relying on a valid reason or cause. An employer's representative and his or her deputies who are entitled to manage the entire enterprise with authorisation to hire and terminate employees cannot benefit from job protection provisions.

Valid reasons can be related with capability or behaviour of the employee, or the requirements of the enterprise, workplace or the work.

With regard to just causes, they are classified under three categories as follows: reasons of health; cases that are incompatible with morals, goodwill and similar circumstances; and force majeure. In case of just cause, the employment will be terminated with immediate effect.

36 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Yes, if there is not just cause, notice of termination should be given prior to dismissal. However, instead of providing the employee with a notice period, the employer may choose to terminate the employment contract by providing pay in lieu of notice.

The TLA sets forth the minimum notice periods. If the length of the employee's service is less than six months, notice period must be at least two weeks; if it is six to 18 months, it must be at least four weeks; if it is 18 months to three years, the notice period is six weeks and if it is more than three years, the notice period must be at least eight weeks. The parties can increase those periods through employment contracts.

37 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

If there is a just cause, the employer can dismiss an employee without notice or payment in lieu of notice. Also, during the probation period the employment can be terminated without notice or payment in lieu of notice.

38 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

If the employee has worked for the employer for at least one year, the employer must pay a severance payment at the rate of thirty days' gross salary for each full year as of the date on which the employment relationship between the parties commenced. Payment must be made pro rata to the service period of the employee within a year. Calculation of severance payment must be made based on the latest gross salary. However, in any case, the maximum amount to be paid to an employee as severance payment for the time being is 4,426.60 Turkish lira for each year. If the employment is terminated based on just cause for cases which are incompatible with morals and goodwill, the employer would not pay a severance payment.

39 Are there any procedural requirements for dismissing an employee?

If the employer terminates the employment contract relying on a just cause for cases that are incompatible with morals, goodwill and similar circumstances, the employer must use his or her right within six working days as of the date when it learns the employee's act.

For the employees who are subject to job security provisions, the employer must inform the employee of his or her low performance or misbehavior and obtain his or her written statements regarding the reasons for his or her low performance or behavior before terminating the employment. If the termination is arising from the requirements of the

business, workplace or the work, the employer should take an operational decision before terminating the employment.

The employer should state the termination reasons in writing in the termination letter.

Prior approval from a government agency is not required by law.

40 In what circumstances are employees protected from dismissal?

The TLA provides job protection to employees in particular cases. If an employee has been working for at least six months at a workplace which has 30 or more employees, the employer can only terminate the employment contract by relying on a valid reason cause.

41 Are there special rules for mass terminations or collective dismissals?

In case the employer terminates the employment contracts of at least 10 employees out of a total workforce of between 20 and 100 employees, or at least 10 per cent of the employees out of a total workforce or between 101 and 300 employees, or at least 30 employees out of a total workforce of 301 or more employees, within one month on the same date or different dates as a result of economic, technological, structural or similar enterprise, business or work requirements, it constitutes a collective dismissal.

As a first step the employer should take an operational decision. Then the employer should notify the trade union representative (if any), the Provincial Directorate of the Social Security Institution and the Turkish Employment Agency at least 30 days in advance. This notification must be in writing and include reasons for the termination, the number and group of employees to be dismissed and the time frame for redundancy proceedings. Consulting with the trade union representative is also one of the procedural steps of the collective dismissal. Once the employer decides for collective dismissal, after informing official authorities, it is obliged to consult with the trade union representative.

According to the TLA, the termination notice will be deemed effective after 30 days of the employer's notification to the said official authorities.

42 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

In principle, employees can assert labour and employment claims on an individual basis. However, trade unions can also file cases.

43 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Retirement of an employee is not sufficient to terminate the employment contract by the employer. However, according to the precedents of the court of appeals, if the employer determines a reasonable certain age limit for its employees and this limit is used in a general and objective manner to all employees, then mandatory retirement age will be deemed lawful.

Dispute resolution

44 May the parties agree to private arbitration of employment disputes?

In principle employment disputes are not deemed arbitrable. However, only reinstatement cases can be arbitrable provided that parties agree to settle the reinstatement dispute after the termination of the employment.

45 May an employee agree to waive statutory and contractual rights to potential employment claims?

No, under Turkish law, it is not possible to waive statutory and contractual rights to potential employment claims. If the parties settle before a court, there will be a valid waiver.

46 What are the limitation periods for bringing employment claims?

There are several limitation periods for bringing employment claims. For instance the employee can file a re-employment action within one month as of the termination notice. The statute of limitation is five years for salary. For compensation claims, the general statute of limitation is 10 years.

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Labour & Employment
ISSN 1750-9920



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