

Foreign labour law has become a significant issue for employers as more companies look to expand abroad to keep pace with globalisation. A changing landscape of regulation in the wake of slow recovery from the global financial crisis has made the challenge of managing an international workforce more acute.

In its report *World Employment and Social Outlook – Trends 2015*, the International Labour Organization warns that, despite improvement in some advanced economies, the employment situation remains difficult in much of Europe and many emerging and developing economies. Now in its sixth edition, *Employment & Labour Law* provides a snapshot of the employment law landscape across the globe. With its ease of access and template style, it provides an invaluable tool for employers who operate across borders and those looking to venture into new territory.

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EMPLOYMENT & LABOUR LAW
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INTERNATIONAL SERIES

General Editor: Siân Keall Travers Smith LLP

EMPLOYMENT & LABOUR LAW

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Published in September 2015 by Thomson Reuters (Professional) UK Limited, trading as Sweet & Maxwell
Friars House, 160 Blackfriars Road, London, SE1 8EZ
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG)
A CIP catalogue record for this book is available from the British Library.

ISBN: 9780414051249

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1. SOURCES OF EMPLOYMENT LAW

1.1 What are the principal sources of law and regulation?

In Turkey, the principle sources of employment law can be categorised into formal and special sources. While formal sources consist of the Turkish Constitution, statutes, secondary laws and court decisions; special sources include collective bargaining agreements, employment contracts, internal regulations and workplace practices.

The Turkish Constitution embraces the principle of a social legal state. It regulates and protects social and economic rights with regard to employment law such as freedom to work, right to rest, right to establish, be affiliated to and resign from trade unions, right of collective bargaining agreements, right to strike and lock-out, right to fair remuneration and right to social security and property.

Apart from the Constitution which sets out the main principles, the most essential source of employment law is Turkish Labour Act 4857 (the Labour Act). Even though the Labour Act is not a general code regulating all employment relationships, it is the basic code in Turkey which regulates individual employment relationships. Furthermore, the Law on Trade Unions and Collective Bargaining Agreements 6356 (the Union Law) and the Law on Civil Service Trade Unions and Collective Bargaining Agreements 4688 are the main codes which ensure provisions and regulations regarding collective bargaining agreements. Another essential source of employment law is the Turkish Code of Obligations 6098 (the Obligations Code) which also contains provisions with regard to employment contracts and regulates the rights and obligations of employees such as the right to remuneration, duty of care, duty of loyalty, non-competition and confidentiality. The Obligations Code applies to those who are not covered within the scope of the Labour Act if they are also not included in the special labour codes which will be explained below.

Secondary laws consist of by-laws and regulations including labour inspection, annual leave, working hours, overtime work, minimum wage and female and child employees. Other than that, there are also communiqués and circulars published by the Ministry of Labour and Social Security with regard to the application and recommendation of labour legislation.

In addition to official sources, court decisions are a subsidiary source of employment law as they are not binding in principle. The Court of Appeal's decisions are mostly advisory for local courts and they tend to give their decisions in line with the Court of Appeal's decisions. On the other hand, Court of Appeal's Assembly of Civil Chambers' decisions on the unification of the conflicting judgments are binding, and courts cannot render a decision contrary to these unification decisions.

Among private sources, employment contracts form the basis for individual employment relationships and they are the main source determining the working conditions to be applied to this relationship. Collective bargaining agreements also provide objective rules affecting employment contracts.

Internal regulations are prepared by employers and regulate general and uniform working conditions to be applied in the workplace. Workplace practice comes into existence, when a benefit is unilaterally provided by the employer consistently and under the same conditions and thus, it becomes a provision of employment contracts.

1.2 What is the order of priority of the relevant sources? Which take precedence in the event of a conflict?

The hierarchy for the formal sources of employment law is the Constitution, statutes (and decree laws) and executive sources (bye-laws, regulations, communiqués, circulars and so on). The hierarchy for the special sources of employment law is collective bargaining agreements, employment contracts (and internal regulations and workplace practices which have gained the nature of employment contracts) and employer instructions.

The Turkish Constitution prevails over all sources of employment law pursuant to the principle of supremacy.

According to the Turkish Constitution, international treaties have the power of statutes under Turkish law. However, the Constitution states that treaties regarding fundamental rights and freedoms prevail over the statutes in the event of a conflict. In this way, statutes take the third place in the hierarchy and cannot be prevailed over by collective bargaining agreements or employment contracts, even where the provisions are in favour of the employee. Nevertheless, other provisions can be changed and prevailed over by collective bargaining agreements, employment contracts, internal regulations or workplace practices provided that they are much more favourable to employees.

As a general rule, individual employment agreements cannot be contrary to collective bargaining agreements. Thus, it is accepted that collective bargaining agreements prevail over employment agreements. However, the principle of interpretation in favour of the employee also applies to private sources of employment law. For instance, in the event of a conflict between an employment contract and a collective bargaining agreement, employment contract may prevail if it is more protective and beneficial to the employee.

Consequently, except for the Constitution, treaties and mandatory rules, where there is a conflict between all official and private sources, priority belongs to the source of law which is most beneficial and favourable to the employee.

1.3 What are the relevant statutes and international treaties?

The most prominent statutes relating to employment law can be listed as follows:

- Turkish Labour Act No. 4857, the main code regulating individual employment relationships in detail.
- Maritime Labour Act No. 854, the special code regulating employment relationships between seamen and their employers.
- Press and Media Labour Act No.5953, the special code regulating employment relationships between employees who perform literary and artistic works for journals, news or photography agencies and their employers.
- Turkish Code of Obligations No. 6098, the general code regulates employment relationships.
- Social Security and General Health Insurance Law No. 5510, basic code regulating the principles of the social security system and general health insurance and applying to all employees under different conditions.
- Occupational Health and Safety Law No. 6331, aims to ensure the health and safety of the employees in the workplace, envisaging essential safety measures and applying to all workers.
- The Union Law No. 6356, sets forth provisions regarding employees' right to establish, be affiliated to and resign from trade unions and regulations regarding collective bargaining agreements as well as the right to strike and lock-out.

- The Law on Civil Service Trade Unions and Collective Bargaining Agreements No. 4688, mainly concerns public officials' right to establish, be affiliated to and resign from trade unions and regulations regarding collective bargaining agreements as well as the right to strike and lock-out.

As explained above, in principle, International Labour Organization (ILO) agreements regarding fundamental rights and freedoms prevails over statutes including the Labour Act. However, it should also be noted that according to the principle of interpretation in favour of the employee, the Labour Act may prevail over the treaty if its provisions are more detailed and protective for employees.

Apart from the statutes listed above, Turkey is a party to numerous international treaties with regards to employment law matters. Particularly, ILO treaties are of crucial importance. Some of the ILO treaties recognised under Turkish Law are listed below as follows:

- ILO Convention no. 2 – Unemployment Convention.
- ILO Convention no. 11 – Right of Association (Agriculture) Convention.
- ILO Convention no. 26 – Minimum Wage-Fixing Machinery Convention.
- ILO Convention no. 29 – Forced Labour Convention.
- ILO Convention no. 87 – Freedom of Association and Protection of The Right To Organise.
- ILO Convention no. 98 – Right To Organise and Collective Bargaining Convention.
- ILO Convention no. 100 – Equal Remuneration Convention.
- ILO Convention no. 102 – Social Security (Minimum Standards) Convention.
- ILO Convention no. 105 – Abolition of Forced Labour Convention.

Furthermore, the European Convention on Human Rights was ratified by Turkey on 10 March 1954 and thus, several provisions regarding employment relationships such as the prohibition against forced labour and the right to establish trade unions, have also been accepted under Turkish law.

Turkey also ratified the European Social Charter on 27 September 2006 with reservations regarding employee's rights to organise and strike, annual paid leave and reasonable remuneration. Moreover, Turkey has concluded many bi-lateral agreements with regard to Turkish employees' working conditions and social security rights abroad. Germany, France, England, Netherlands and Belgium are among the contracting states.

2. PRINCIPAL INSTITUTIONS

The Ministry of Labour and Social Security inspects workplaces with regard to the regulation of working life, employee-employer relationships and occupational health and safety.

The Turkish Employment Agency and Social Security Institution are also organisations belonging to the Ministry. The Turkish Employment Agency was established to prevent unemployment and develop employment. The purpose of the Social Security Institution is to carry out the social security system using fair and contemporary standards.

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In addition, the Labour Inspection Committee – which conducts its activities under the body of the Ministry – monitors, inspects and supervises work life. Officials from the Committee visit workplaces and inspect company records especially with regards to social security matters. Where any violation of labour legislation is determined, they issue an inspection report and give the employer either a period of time to remedy the violation or an administrative fine according to the situation.

3. ROLE OF THE NATIONAL COURTS

The Labour Courts are the specialist courts for hearing disputes between the employer and the employee. The Labour Courts can hear all claims arising out of the employment relationship such as reinstatement, overtime, severance compensation, notice payment and moral damages.

In principle, employment disputes are not deemed arbitrable. However, some reinstatement cases can be arbitrated provided that the parties agree to settle the reinstatement dispute after termination of the employment. In practice almost all employees do not agree to arbitration.

4. EMPLOYMENT STATUS AND CATEGORIES OF WORKER

4.1 What defines employment status (whether an individual is employed or self-employed)?

Under Turkish law, real persons who work under an employment contract are deemed to be employees. Under the Labour Act, an employment contract is defined as an agreement whereby one party (the employee) undertakes to perform work in subordination to the employer while the other party undertakes to pay a salary in return. Having said that, the Labour Act leaves certain types of workers, for example, maritime and air transportation workers, household workers and so on, outside the scope of the definition of “employee” and the Labour Act does not apply to them.

Regardless of what the parties call it, if there is an agreement with the abovementioned elements of subordination and salary, such agreement is accepted as an employment contract and the person is defined as an employee.

It is also possible to provide services without being subject to an employment contract. In such cases, persons usually work under a consultancy agreement or a separate service agreement which does not bear the conditions of an employment contract. Rather than being defined as employees, these persons fall under the category of self-employed. However, it would be safe to point out that the level of dependency on the self-employed to the employers’ orders and instructions is substantial in such agreements as the more dependent on the employer the other party gets, the more likely the relationship will be interpreted as an employment relationship.

4.2 What is the relevance of the distinction?

The main distinction between employees and self-employed is the social security system. When persons work under the payroll of an employer, the employer becomes obliged to notify the Social Security Institution of the commencement and termination of the employment and pay social security premiums on the employees’ behalf.

Self-employed people fall under a different insurance category and they are required to pay their own premiums.

As a natural result of this distinction, self-employed people are not entitled to enjoy the rights and protection provided by the Labour Act or other labour-related laws.

4.3 What are the main categories of worker?

The Labour Act sets out categories for employment contracts rather than employees. In this regard, the main categories of employment contracts are as follows:

- Continual/transitory contracts: Transitory contracts can be made for employment which lasts only up to 30 days due to the nature of the work. Continual contracts are made where employment requires a longer period.
- Definite (fixed) term/indefinite term contracts: While indefinite term contracts are the rule under the Labour Act, parties may also enter into a contract for a definite period under certain circumstances, like the completion of certain work or a specified project with a specified term.
- Full-time/part-time contracts: An employment contract must be considered part-time where the normal weekly working time of the employee has been fixed as shorter than the working time of an employee who is employed full-time in the same or a similar job.
- Temporary employment contracts: Temporary employment contracts are established when the employer transfers the employee to another establishment within the structure of the same holding company or the same group of companies, or to another employer for a maximum period of six months, in order to perform work similar to what the employee was doing before.

In addition to the main categories of employment contracts listed above, there are also on-call, team, seasonal, domestic service, marketing and conditional employment contracts.

4.4 What is the position of directors?

According to precedents in the Court of Appeals, a director who is conferred with the power to govern and represent the company is deemed to be a management organ of the company rather than an employee, regardless of the existence of an employment contract. In this regard, the relationship between the chairman of the board of directors and the joint stock company can be regarded as a proxy relationship rather than one of employment.

According to the Labour Act, an employer's representative and his deputies who are entitled to manage the entire enterprise with authorisation to hire and terminate employees cannot benefit from job protection provisions.

5. CONTRACT

5.1 What constitutes an employment contract?

Under the Labour Act, an employment contract is defined as an agreement whereby one party (employee) undertakes to perform work in subordination to the employer while the other party undertakes to pay a salary in return.

In principle there is no legal requirement for an employment contract to be evidenced in writing if it is signed for an indefinite period.

However, if there is no written employment contract, the employer is obliged to submit to the employee a written document indicating general and special working conditions, daily or weekly work period, basic salary and other benefits (if, any), salary payment period, and the provisions that the parties must observe in case of termination.

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5.2 What formal requirements are there in relation to the formation of an individual employment contract?

As explained above, there is no formal requirement for open ended employment contracts. However, fixed-term employment contracts should be made in writing.

An employer is obliged to inform the Social Security Institution of the employment of a new worker at least one day before their start date.

5.3 Where do the terms come from?

The aim of the Labour Act is to regulate the working conditions and rights and obligations of employers and employees. As a general rule, any clause which lays down heavier conditions for employees than the ones provided under the Labour Act will not be valid.

Workplace practices are also important. If an employer provides benefits to employees a few years in a row, then it becomes a workplace practice and the employer must continue to apply it.

The terms of a contract can also be derived from collective employment agreements.

6. TERMS AND CONDITIONS

6.1 What terms, if any, must be included in a contract?

As explained above, in principle there is no legal requirement for an employment contract to be evidenced in writing if it is signed for an indefinite period.

However, if there is no written employment contract, the employer is obliged to submit to the employee a written document indicating general and special working conditions, daily or weekly work period, basic salary and other benefits (if any), salary payment period, and the provisions that the parties must observe in case of termination. Therefore, those terms should be included in an employment contract.

6.2 What terms are typically included in a contract?

Terms regarding the duties of the employee, term of employment, hours of work, place of work, salary and other benefits, holiday periods, illness and absence from work, termination, intellectual property rights, confidentiality and data privacy are commonly included in employment contracts.

At management level, provisions regarding non-compete and non-solicitation are quite common.

6.3 What rules apply to:

6.3.1 Working time and rest breaks

An employee can work a maximum of 45 hours per week. The employee's consent is required for overtime work and the employee is entitled to overtime payments for all overtime exceeding 45 hours per week at 1.5 times his hourly rate. Parties can decide that the salary of an employee includes overtime work up to 270 hours per year (22.5 hours per week) and the employee will not be paid any additional salary for such overtime work.

A rest break is also regulated under the Labour Act. If daily working hours are four or less, the break time must be at least 15 minutes. If daily working hours are between four and seven and a half, (inclusive), the break time must be at least 30 minutes. If daily working hours are more than seven and a half, the break must be at least 60 minutes. These break times can be increased by the employer and are not regarded as part of normal working time.

6.3.2 Annual leave

Under the Labour Act, an employee will be entitled to annual paid leave if he has worked at company for at least one year, including the probationary period.

If the term of the employee's service is between one and five years (inclusive), the holiday period must be at least 14 working days. If the term of the employee's service is between five and 15 years, the holiday period must be at least 20 working days. If the employee has worked for 15 years and over, the holiday period must be at least 26 working days. Annual leave may not be less than 20 working days for employees who are 18 or under and 50 or over. However, these periods may be increased by employment contracts.

In principle annual leave should be used as a whole. However, if the parties agree, the annual holiday period can be divided into three parts (at most) provided that one of those parts is at least ten days long. If the employer does not comply with this provision, it will be subject to an administrative fine of TL270 per employee (fines are reviewed once in a year). The same administrative fine is also applicable to the employer if the employees do not use their annual leave completely.

The employee is obliged to inform the employer in writing at least one month before taking annual leave.

Following decisions in the Court of Appeals, employers are entitled to determine the period of annual paid holiday but the employer should act in good faith and they should take into account the demands of the employee to the extent possible since annual leave is a right regulated under the Turkish Constitution.

7. EMPLOYEE REPRESENTATION

According to the freedom of organisation, unions can be established without prior authorisation. There are 20 different lines of business (such as food industry, communication, construction, health and social services) set out in the Union Law and they need to conduct their activities in one of these lines in compliance with the main business activity conducted in the workplace.

Collective bargaining agreements can only be made between trade unions and employer unions (or employers who are not affiliated to a union). In this regard, there are certain conditions that need to be fulfilled in order for a trade union to be authorised to conclude a collective bargaining agreement. With a recent decision of the Constitutional Court following an amendment to the Union Law in 2014, the threshold of 3% of employees working in the same line of business in which the trade union conducts its activities – which was determined as the number of the employees for the trade unions to conclude collective agreements – has been reduced to 1%.

Furthermore, more than 50% of employees in the workplace or at least 40% of the employees in the enterprise subject to the collective bargaining agreement to be made are needed to be affiliated to a trade union seeking to make a collective bargaining agreement for the workplace or enterprise.

When these conditions are fulfilled, the trade union needs to apply to the Ministry of Labour and Social Security for

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determination of their authorisation to enter into a collective bargaining agreement. Once that authorisation has been finalised, the trade union needs to assign workplace union representatives among the employees in the workplace based on their number and notify the employer of their identities within 15 days.

As employees do not have a right to conclude collective bargaining agreements by themselves, they need to be a member of a trade union in order to benefit from the provisions envisaged in the collective bargaining agreement. Every employee turning 15 years old has a right and freedom to be a member of a trade union and trade unions have a right to act on behalf of the employees and represent them. In fact, trade unions are authorised to file an action and also follow the proceedings in an action brought before the court regarding disputes arising from work life, legislation and/or customs on behalf of the employees.

Workplace union representatives are in charge of listening to employees' requests and resolving their complaints, establishing co-operation, peace and harmony between employees and employer, protecting employees' rights and benefits and assisting the practice of the working conditions envisaged in the Labour Act and collective bargaining agreements.

8. INFORMATION AND CONSULTATION

Consulting with the trade union representative is one of the procedural steps required for collective dismissal. Once the employer decides on collective dismissal, after informing the official authorities, it is obliged to consult with the trade union's representative. The employer and trade union representative discuss whether it is possible to prevent collective redundancy and if not, to reduce the number of employees who will be dismissed. They also try to find solutions to minimise the negative effects of redundancy on the employees. However, it is not mandatory to reach a conclusion and make a decision at the end of the meeting.

9. EQUAL OPPORTUNITIES

9.1 What protection do employees have from discrimination?

Equal treatment and non-discrimination obligations are regulated by the Turkish Constitution. The Labour Act also specifically explains those obligations. According to the Labour Act, it is not possible to discriminate based on language, race, sex, political opinion, philosophical belief or religion.

The Labour Act also explicitly prohibits discrimination against employees who sign different types of employment contracts. In this regard, provided that there is no essential reason, an employer cannot discriminate between full-time and part-time employees or between an employee who signed a fixed term contract and one who signed an open-ended contract. Treating differently employees who are members of a trade union is also strictly prohibited.

An employer should also treat equally employees who have similar positions in the workplace. Differential salaries and other benefits, for example a bonus for similar positions, is also prohibited.

If an employer violates the principle of equal treatment, the employee can request compensation equivalent to up to four months of salary. The employee can also claim rights to which he has been deprived. Also, the employer will be subject to an administrative fine amounting to TL134 per employee (fines are reviewed once in a year).

9.2 What rights do parents have?

Female employees are entitled to take maternity leave for a period of 16 weeks (eight weeks before and eight weeks after confinement). In the case of multiple pregnancies, an extra two weeks are added to the eight weeks before confinement. Upon request and subject to a doctor's approval, female employees can work until three weeks before confinement. If necessary, these periods may be extended depending on the health of the employee and the special requirements of the job, subject to a medical report.

Female employees may, at their request, be granted unpaid leave for a period of up to six months following the 16-week maternity leave period.

In addition, until the child reaches the age of one, a female employee is entitled to one and a half hours a day for breastfeeding.

In the case of adoption, maternity leave is not applicable since there is no specific regulation under the Labour Act in this regard.

The Labour Act also does not regulate parental leave or paternity leave. However, in practice employers may grant three days to seven days as paternity leave.

10. DISCIPLINE AND TERMINATION

10.1 What rules/procedures must be followed if an employer wishes to discipline an employee?

Due to the lack of general legislation regulating the principles and procedures for disciplinary action, such procedures are determined in light of the general provisions and the fundamental principles of employment law. Having said this, owing to the disciplinary provisions included in collective bargaining agreements and internal regulations, practice regarding disciplinary procedures has improved.

In order for an employer to impose a disciplinary action on an employee, there must be a valid legal ground. With the exception of salary deduction and termination, the types of disciplinary action that can be imposed in the workplace must be set out in internal regulations.

10.2 What disciplinary action may be taken?

The most common disciplinary actions that may be imposed on employees are as follows: warning, reprimand, salary deduction, change of work or workplace, temporary removal from the workplace and termination.

It is worth noting that salary deduction can only be imposed for reasons foreseen under an employment contract or collective bargaining agreement and the amount of the deduction cannot exceed two daily wages of the employee. As will be explained in detail below, termination of the employment contract is also subject to certain procedural requirements.

In order for other disciplinary actions to be imposed, they must be included within the employment contract or collective bargaining agreement. Disciplinary fines are subject to judicial review.

10.3 What are the grounds on which employment contracts can be terminated (by both employer and employee)?

An employment contract can be terminated by the parties either by serving the other party with notice; or with immediate effect by relying on just cause.

In principle, the parties to an employment contract signed for an indefinite period can terminate it by complying with the notice periods. Alternatively, the employer can choose to pay in lieu of the notice period. Depending on the seniority of the employee, the notice periods are determined as follows:

- For employment of less than six months: two weeks' notice.
- For employment between six and 18 months: four weeks' notice.
- For between 18 months and three years: six weeks' notice.
- For employment longer than three years: eight weeks' notice.

However, the Labour Act provides 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.

The six-month period is calculated by taking into account the sum of employment periods in one or different establishments belonging to the same employer.

If an employer has more than one workplace with the same activity, the number of employees is determined on the basis of the total number of employees in all the workplaces. The legislation does not require employers to take into account employees based in other countries. However, according to precedents in the court of appeals, the number of employees in a liaison office or a branch must be determined by taking into consideration the number of employees in the principal (international) company abroad.

According to the Labour Act valid reasons can be related to capability or behaviour of the employee, or the requirements of the enterprise, workplace or the work.

It is also possible to terminate the employment contract relying on a just cause. Just causes are classified under three categories (i) reasons of health, (ii) cases which are incompatible with morals, goodwill and similar circumstances, and (iii) force majeure.

10.4 What procedure must be followed?

When terminating for just cause, if the employer terminates the employment contract because of acts of the employee which are incompatible with morals or goodwill, it must terminate within six working days from the date when it learns of the employee's act. However, the employer cannot exercise this right if the act took place a year or more in advance of when the employer discovers it.

When terminating for valid reasons, for employees who are subject to job protection provisions, the employer must inform the employee of his poor performance or misbehaviour and obtain written statements from the employee on the reasons for it. In both cases, the employer should give the employee a proper chance and some time to change his behaviour or to increase his performance.

As for terminations arising from the requirements of the enterprise, workplace or the work, although not required by law, it is settled by precedent of the Court of Appeals that the employer should take an “operational decision” before terminating the employment. The “operational decision” should state the internal operational reasons or external causes affecting the enterprise. The termination must also comply with the “principle of last resort”. The employer should clearly explain the reasons for the termination in a letter which must be in writing. The termination letter should be signed by representative(s) of the employer who are authorised to terminate employment contracts and it must be counter-signed by the employee.

10.5 What indemnities must be paid?

Where an employment contract is terminated based on a valid reason, the employer must pay severance compensation to the employee if he has been working for the employer for at least one year. In addition, if the employer does not wish to employ the employee during the notice period, compensation must be paid.

In addition, if the employee has unused annual holiday, payment must also be made to compensate for this.

10.6 What are the consequences of not having the right grounds/following the right procedure?

Unless the required procedure has not been followed by the employer when terminating the employment contract, or unless there is a valid reason or just cause, the employee is entitled to file a reinstatement action within one month from the termination date.

In reinstatement actions, the employee requests the determination of the invalidity of the termination and his reemployment by the employer.

If the court accepts the case, among the abovementioned demands of the employee, it can also decide that four months' salary and other benefits must be paid for the period in which the employee has not worked. In addition, if the employer decides not to re-employ the employee, the court can also determine that the employer must pay between four and eight months' salary in advance as compensation. The employee is required to apply for re-employment within ten days from the final decision, and the employer is required to re-engage the employee within one month from the employee's application. If it fails to do so or declares its intention not to re-employ the employee, then it must pay the compensation previously determined by the court.

10.7 Do special rules apply in certain situations?

The rules for termination set out above and are also applicable for employees in protected categories. In other words, there are no specific rules for those employees. However, the Labour Act explicitly sets forth that being pregnant, being a trade union member or participating in union activities cannot be a valid reason for termination.

Fixed-term contracts terminate on the expiry date. If the employer terminates the contract before the expiry date without just cause, the employee can claim his remaining salary.

If the parties agree on a prohibition period, during this period, parties can terminate the employment contract without any prior notice or compensation.

TURKEY

11. COLLECTIVE DISMISSALS

11.1 What is the definition of collective dismissal?

A collective dismissal occurs when an employer terminates the employment contracts of:

- At least ten employees out of a total workforce between 20-100.
- At least 10% of the employees out of a total workforce between 101-300.
- At least 30 employees out of a total workforce of 301 or more.

The terminations must occur on the same date or within one month of each other as a result of economic, technological, structural or similar enterprise, business or work requirements.

11.2 What is the procedure that must be followed in the event of collective dismissals?

An employer must comply with the following requirements and procedures:

Organisational decision: Before initiating the process, the employer must take a decision justifying the termination on the grounds of economic, technological, structural or similar enterprise, business or work requirements. It should be noted that the organisational decision is not regulated under the Labour Act but the Court of Appeals requires such a decision.

Notification requirements: The employer must notify the trade union representative(s) (if any), the Provincial Directorate of Social Security Institution and the Turkish Employment Agency at least 30 days in advance. This notification must be in writing and must include:

- Reasons for the termination.
- Number and the group of employees to be dismissed.
- Timeframe for redundancy proceedings.

This requirement does not impose an obligation to obtain approval from these authorities; it only obliges the employer to notify them. According to the Labour Act, the notice of termination will be deemed effective after 30 days after the employer's notification to the abovementioned official authorities.

Consultation requirements: After notification, the employer should also consult with the trade union representative(s) (if any) regarding the redundancy. The trade union representative(s) and the employer are required to meet in order to discuss one of the following issues:

- Preventing collective redundancy.
- Reducing the number of employees who will be dismissed.
- Minimising the negative effects of the redundancy for the employees.

It is not mandatory to reach a conclusion and make a decision at the end of the meeting. The meeting constitutes an informative and advisory meeting only. It should be noted that if there is no trade union representative in the workplace, there is no need to meet the consultation requirements.

11.3 What are the consequences of not complying with the applicable procedures?

If an employer does not comply with the notification and consultation requirements, it is obliged to pay an administrative fine for each employee subject to the collective redundancy. For now, the administrative fine is TL554 per employee (fines are reviewed once a year).

Redundant employees who have seniority of at least six months in the workplace may challenge the validity of the terminations by filing a reinstatement action claiming that notification to the official authorities was not made, or the 30-day waiting period was not complied with, or the employment contract was terminated in the absence of any of the relevant reasons.

If the court accepts one of these claims, it will order that the employee must be reinstated and the employer must pay compensation equivalent to four months' gross salary and other benefits (such as bonuses). Further compensation of between four and eight months' gross salary will be payable if the employer does not reinstate the employee.

11.4 What are employees' rights in the event of collective dismissals?

An employer is obliged to comply with notice periods when terminating employment. Minimum notice periods are regulated under the Labour Act but it is possible for parties to extend the notice periods through an employment contract. Alternatively, the employer can choose to pay compensation in lieu of the notice period.

Also, if the employee has at least one year's service in the workplace, the employer must pay severance at the rate of 30 days' gross salary for each full year of service, based on the employee's most recent gross salary (including benefits). Payment must be made pro rata for partial years of service. However, the cap on severance payment is TL3,541.37 for each year (which is reviewed once or twice a year).

In addition, if an employee has unused annual holiday, payment should be made to compensate for this.

On the other hand, if an employer wants to employ its workers for similar jobs within six months from the finalisation of the collective dismissal, redundant employees have priority for re-employment. It should be noted that the redundant employee must be re-employed with the same working conditions as before.

11.5 Are there other circumstances which trigger collective dismissal rights?

The collective dismissal procedure is also partially applied when the workplace is permanently closed. In this case, the employer is obliged to notify the Provincial Directorate of Social Security Institution and the Turkish Employment Agency at least 30 days in advance. The notification must be in writing. Also, the employer should declare the permanent closure of the workplace to the employees. The employer is also obliged to comply with the notice period or pay the notice compensation in lieu and provided that the employee has one year of seniority, pay a severance package. A payment for unused annual holiday should be paid as well.

12. FORTHCOMING LEGISLATION

Over the past three years, the new Trade Unions and Collective Bargaining Agreement Code No. 6356 and Occupational Health and Safety Code No. 6331 have entered into force. There is no expected major regulation change.

TURKEY

The Labour Act sets out that a “severance payment fund” should be established. However, since it is such a crucial issue, it will take some time to promulgate and implement it.

13. USEFUL REFERENCES

Ministry of Labour and Social Security: www.csgeb.gov.tr

Social Security Institution: www.sgk.gov.tr

International Labour Organization: www.ilo.org.

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