

Employment and employee benefits in Turkey: overview

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SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

In the absence of a foreign law chosen by the parties to govern the employment contract, employment laws in Turkey apply to both Turkish and foreign nationals.

Under Act on Private international and Procedural Law no. 5718, parties can choose the governing law for their employment contract but the applicable law must involve a higher standard of employee protection than that of the mandatory rules of the law of the employee's habitual place of work.

Laws applicable to nationals working abroad

Social security provisions as Law on Social Insurance and General Health Insurance apply also to Turkish nationals sent to foreign countries for temporary duty. The provisions differ depending on whether there is a bilateral social security agreement signed with the host country.

EMPLOYMENT STATUS

2. Does the law distinguish between different categories of worker? If so, what are the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

The Labour Act regulates employees. An employee performs services under an employment agreement under the direction and supervision of the employer in exchange for the payment of a salary.

Independent contractors can also provide personal services to employers. They perform their obligations at their own risk, have the freedom to reject work requested by the employer and they are not subject to the Labour Act.

A party who is named as an independent contractor can still be considered de facto an employee if the agreement has the characteristics of an employment agreement regardless of how the parties are defined the contract, that is. the agreement has the following characteristics:

- The employee is dependent on the employer for work.

- The type of work is dictated by the employer, and the employer guarantees to provide a certain volume of work.
- The employee receives a salary payment.

Entitlement to statutory employment rights

Only employees are entitled to statutory employment rights such as minimum wage, statutory leaves, notice periods, severance pay.

Time periods

In principle, employment contracts should be signed for an indefinite period of time.

RECRUITMENT

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives

There are several incentives, supports and discounts available to private sector employers who fully comply with their duties relating to social security payments for their employees. Some of these incentives are subject to applicable time limits to claim the incentive, and some of them are not. There are also tax incentives available for employees who fully comply with their tax duties. There are also incentives for employing certain categories of employees for example, when an employer employs a disabled employee or a female employee over 18 or a young employee between the age of 18-29, the insurance premiums of these employees are paid by Unemployment Insurance Fund. Adding to this, if an employer, employs a person who is receiving a unemployment compensation, 1/3 of the insurance premium will again be paid by the fund.

Filings

In principle, the employers must inform the Social Security Institution about new employees at least one day before the employee starts working. A statement of employment is filled on the online system of Social Security Institution, by the employer regarding the employment relationship between the parties.

BACKGROUND CHECKS

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

There is no specific regulation regarding background checks on applicants. However, data protection provisions are applicable and an employee's consent is required for background checks. If a third party is hired to perform the checks, they must also comply with data protection provisions.

PERMISSION TO WORK

5. What prior approvals do foreign nationals require to work in your country?

Visa

Procedure for obtaining approval. Normally, all foreign nationals must obtain a visa except citizens of countries that are exempt from the visa procedure under international agreements and Council of Ministers decisions, and foreign nationals who have obtained residence or work permits.

Foreign nationals who enter Turkey for professional purposes, official visits and business meetings can obtain a tourist or business visa. Those who remain in Turkey for more than 90 days must obtain a residence permit.

Cost. Visa charges are:

- Single entry: TRY400.80.
- Multiple entry: TRY1,342.10.

Time frame. This varies according to the applicant's home country, reciprocity agreements and the legislation in the applicant's home country.

Sanctions. Visa fines resulting from violations vary according to the duration of the violation, the person's home country and whether the party had previously received a residence or work permit in Turkey.

Permits

Procedure for obtaining approval. Work permit applications in Turkey can be directly made to the Ministry of Labour and Social Security (Ministry). Applications from abroad can be made to the embassy or consulate general of Turkey which will transfer the application to the Ministry afterwards. While evaluating a work permit application, the Ministry examines whether the position can be filled by a resident worker. Specific details of the job, education of the foreign national, relevant market conditions and existence of resident employees with similar capabilities are evaluated by taking into consideration the decisions of the International Workforce Policy Advisory Board, opinions of administrative bodies and professional associations in the relevant field, if necessary. All categories of employees except foreign nationals who come to Turkey temporarily for professional, scientific, educational, cultural and artistic purposes and for sport activities has to obtain work permit in order to work in Turkey.

Cost. Work permit charges are:

- Temporary work permit and work permit exemption certificate: TRY615.20.
- Indefinite work permit: TRY6,152.70.
- Independent worker work permit: TRY6,152.70.

Time frame. Work permit applications made in accordance with the procedure will be finalised within 30 days at the latest by the Ministry, provided that the documents are complete.

Sanctions. These are as follows:

- TRY7,130 for employers employing foreign personnel without a work permit (for each foreign worker employed).
- TRY2,851 for foreigners working dependently without a work permit.
- TRY5,704 for foreigners working independently without a work permit.
- TRY475 for foreign nationals working with an independent work permit granted for indefinite period of time and employers who

do not fulfil their obligation to notify ministry within the time limits prescribed by law.

RESTRICTIONS ON MANAGERS AND DIRECTORS

6. Are there any restrictions on who can be a manager or company director?

There are no age or nationality restrictions on who can be a manager or company director. However, under the Turkish Commercial Code, board members of a joint stock company or managers of a limited liability company who become insolvent or whose legal capacity becomes restricted can no longer serve as a board member/manager.

Additional restrictions may also be asserted in these cases by a company's articles of association.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

7. How is the employment relationship governed and regulated?

Written employment contract

In principle, a written employment contract is not mandatory. However, if the contract is not concluded in writing, the employee must be provided with a written document within two months of commencing employment, showing the:

- General and special conditions of work.
- Daily or weekly working time.
- Basic salary and any salary supplements.
- Times/dates when remuneration will be paid.
- Conditions concerning the termination of the contract.

For fixed-term employment contracts, written form is mandatory. If the parties to the contract are Turkish, the agreement must be in Turkish.

Implied terms

The mandatory rules of the Labour Law are implied into employment contracts, including any provisions on workplace practices.

Collective agreements

Collective bargaining agreements can be made between trade unions of employees and employer unions or with employers which are not affiliated to a union, and they are binding.

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Material changes by the employer to the working conditions in the employment contract, on the rules of work which are annexed to the contract, or to any other workplace practices can be made with a written notice. The changes must be approved by the employee within six working days of receiving the new terms, otherwise the changes will not bind the employee.

MINIMUM WAGE

9. Is there a national (or regional) minimum wage?

The national monthly gross minimum wage for 2018 is TRY2,029.50.

RESTRICTIONS ON WORKING TIME

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

The maximum working hours allowed is 45 hours per week. Working hours can be distributed over the working days provided that daily working hours do not exceed 11 hours on any one working day.

The maximum night working hours are 7.5 hours per week. Employees must be given at least 24 hours rest time in a week. Also, overtime work cannot exceed 270 hours per year.

Employees cannot opt out of such restrictions either on an individual or collective basis.

Rest breaks

The mandatory rest break periods are as follows:

- Up to four working hours: 15 minutes.
- Up to 7.5 working hours: 30 minutes.
- More than 7.5 hours working hours: one hour.

Shift workers

Special provisions regarding shift worker employees are regulated under regulations on shift workers issued by the Ministry of Labour and Social Security. Shift worker employees cannot be forced to work without 11 hours of rest between shift changes and at least 24 hours rest time must be given in a week.

HOLIDAY ENTITLEMENT

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

Minimum paid holiday for each year is regulated as follows:

- Employees are granted paid holiday provided that they have worked for at least one year.
- If the term of the employee's service is one to five years, 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.
- For employees aged 18 years or less, and for the employees aged 50 years or older, paid holiday cannot be less than 20 days.

Public holidays

Public holidays are not included in the minimum paid holiday entitlements and employees are entitled to their regular daily salaries for these public holidays. These holidays are as follows:

- New Year (1 January).
- National Sovereignty and Children's Day (23 April).

- Labour Day (1 May).
- Youth and Sports Day. (19 May).
- Democracy and Freedom Day (15 July).
- Victory Day (30 August).
- Republic Day (29 October).
- Ramadan and Eid Holidays. For 2018 the dates of Ramadan are 15-17 June, dates of Eid are 20-24 August.

ILLNESS AND INJURY OF EMPLOYEES

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Can an employer recover any of the cost from the government?

Entitlement to paid time off

In principle, there is no mandatory requirement for the employer to make salary payments where the employee has time off for illness or injury, but employees are entitled to sick pay from the state (see below, *Recovery of sick pay from the state*).

Employees subject to an injury due to a workplace accident are entitled to receive payments from the Social Security Institution due to temporary incapacity to work on the same principles as sick pay.

Entitlement to unpaid time off

Entitlement to unpaid time off depends on what has been agreed between the parties either in the employment contract or between themselves.

Recovery of sick pay from the state

If a sick employee has not been working for at least three days, the employee can receive sick pay from the Social Security Institution provided that the employee has a medical report.

The process is as follows;

- A medical report prepared by the doctor online is sent automatically to Social Security Institution.
- The Social Security Institution makes sick pay payments to the named bank, under the national ID number of the insured.
- There is no maximum period after which sick pay elapses but medical reports exceeding 40 days must be received from a doctors' panel instead of a single doctor.
- Finally if the time spent on sick leave by the employee goes six weeks beyond the notice period given in the employment contract between the parties, the employer will be entitled to terminate the employment contract with just cause.

STATUTORY RIGHTS OF PARENTS AND CARERS

13. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
 - **Carers (including those of disabled children and adult dependants)?**
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Maternity rights

Employees are entitled to take maternity leave of 16 weeks; eight weeks before and eight weeks after confinement. In cases of multiple pregnancies, an extra two-week period will be added to the eight-week period before giving birth.

In principle, the Social Security Institution makes the maternity leave payment following the same procedure as sick leave (see *Question 12, Recovery of sick pay from the state*).

Following the maternity leave, the employee is also entitled to a further part-time temporary leave based on the number of children that the employee has (a 60-day period for the first child, 120 days for the second child and 180 days for three or more children). An additional 30 days' part-time temporary leave will also be added in the case of a multiple pregnancy, and an additional 360 days part-time temporary leave will be added in the case of the birth of a disabled child. For example, an employee who normally works between the hours of 08:00-17:00 will be able to start or leave work at 12:30 depending on the understanding between parties. This part-time leave can also be used as three whole days if the parties agree.

An employee can also take unpaid maternity leave up to six months following the end of the period of paid maternity leave.

Paternity rights

The father is entitled to take five days of paid paternity leave.

Surrogacy rights

Not applicable.

Adoption rights

Both parents are entitled to three days' paid adoption leave.

An employee who adopts a child who is under the age of three is granted paid adoption leave for eight weeks from the date the child begins living with the employee the family. Only one spouse (including a non-married partner) is granted this leave.

An employee can also take unpaid adoption leave for up to six months. The right to request part-time work is also granted to persons who adopt a child under age three (*see below*).

Parental rights

If both parents work, one of the parents has the right to request to work part-time until the child reaches the age to attend primary school.

CONTINUOUS PERIODS OF EMPLOYMENT

14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created

Continuous employment creates statutory rights such as paid holiday and termination related rights (*see Questions 11 and 19*).

Consequences of a transfer of employee

If an employee is transferred to a new entity, he or she retains his or her period of continuous employment.

FIXED TERM, PART-TIME AND AGENCY WORKERS

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Different types of employment contracts are regulated under Turkish Labour Act including:

- Definite (fixed) term or indefinite term.

- Full-time or part-time.
- Temporary.
- On-call, team and seasonal service contracts.

The Labour Act is based on the principle that all employees should be treated equally unless justifiable grounds exist for different treatment.

There must be an objective reason to conclude a fixed-term employment contract otherwise it will be deemed as an indefinite term agreement. Parties cannot engage in successive fixed-term contracts if there is no objective reason to engage in such a contract, and where this occurs the employment agreement will be deemed to constitute an indefinite term agreement even if it is renewed as a fixed-term contract.

Temporary workers

A temporary employment relationship can be established when the employer transfers the employee, with his or her written consent at the time of transfer, to another establishment within the structure of the same holding company or the same group of companies. While in this case the employment contract between the employer and the employee continues to be in effect, the employee is under a duty to perform work for the host employer with whom the temporary employment relationship has been established. The employer's obligation to pay the employee's wages continues. The temporary worker will still be entitled to employment benefits provided by the host employer in line with the equality principle.

Agency workers

A temporary employment relationship can also be established through a private employment agency.

While in this case the employment contract between the private employment agency and the agency worker continues to be in effect, the agency worker is under a duty to perform work for the host employer with whom the temporary employment relationship has been established. The private employment agency's obligation to pay the employee's wages continues. The agency worker will still be entitled to employment benefits provided by the host employer in line with the equality principle.

Part-time workers

Payment and other benefits of part-time workers are met by the employer in proportion with their working hours. Part-time workers cannot be not treated less favourably than full-time employees, unless such treatment can be objectively justified.

DATA PROTECTION

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights/obligations

Employers are obliged, under the Labour Act, to process employee's data lawfully and in good faith.

The Data Protection Law regulates the protection of personal data generally but does not have any specific provision regarding the personal data of employees.

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

- Prevent unlawful processing of the personal data.
- Prevent unlawful access to the personal data.
- 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. Further, the employer must conduct necessary audits to ensure the provisions of the Data Protection Law are implemented.

In addition to the above, the employer must process the personal data:

- In line with the law and in good faith.
- In an accurate and up-to-date way.
- For specific, clear and legitimate purposes.
- Only as far as is related to, limited with and proportionate to the purpose for which the personal data is processed.

Personal data must be stored for the time specified in the relevant legislation or the time required for the purpose for which the personal data is processed.

DISCRIMINATION AND HARASSMENT

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

It is unlawful to discriminate against employees based on their language, race, sex, political opinions, philosophical beliefs, religion, sex or similar grounds.

If an employer breaches the equal treatment principle, the employee is entitled to request compensation of up to four months' salary. The employee can also claim rights to which he/she has been deprived, for example, loss of salary. The employer will also be subject to an administrative fine amounting to TRY177 per employee. The employee can also terminate the employment based on just cause with immediate effect and claim a severance payment.

Protection from harassment

Employees who are subject to harassment can terminate the employment based on just cause with immediate effect and claim a severance payment. Employees are also entitled to request compensation of damages as under the general provisions of the Code of Obligations.

WHISTLEBLOWERS

18. Do whistleblowers have any protection?

Under Turkish law, whistleblowing is evaluated according to the general provisions of the law. Both the Labour Act and the Code of Obligations impose a duty of loyalty on employees and in this regard the employees are obliged to inform their employers of any problems, wrongdoings, mistakes and conflicts that occur at the workplace. In terms of criminal law, failure to report an offence may itself constitute an offence.

In practice, employers issue whistleblowing procedures to protect their employees.

Also, in terms of dismissals, the Labour Act provides protection to employees who file or participate in a complaint. Under the Labour Act, applying to administrative or judicial authorities against an employer to enforce an employee's statutory or contractual rights or participating in a process initiated related to such a matter is not considered a valid reason for the termination of an employment agreement.

TERMINATION OF EMPLOYMENT

19. What rights do employees have when their employment contract is terminated?

Notice periods

The Labour Act regulates minimum notice periods as follows according to the length of the employee's service:

- Less than six months' service: at least two weeks' notice.
- Six to 18 months' service: at least four weeks' notice.
- 18 months' to three years' service: at least six weeks' notice.
- More than three years' service: at least eight weeks' notice.

The parties can agree on longer notice periods through employment contracts.

Severance payments

If the employee has worked for the employer for at least one year, the employer must pay a severance payment at the rate of 30 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 payments must be made based on the latest gross salary. However, in any case, the maximum amount which can currently be paid to an employee as a severance payment is TRY5,002 for each year worked.

If the employment is terminated based on just cause for cases which are incompatible with morals and goodwill, the employer is not required to make a severance payment for example termination due to particular reasons of health, immoral, dishonourable or malicious conduct or other similar behaviour of employee or force majeure.

Procedural requirements for dismissal

If the employer terminates the employment contract as a result of the employee's conduct that is incompatible with morals, goodwill and similar circumstances (that is, the termination of employment is for a just cause), the employer must terminate the employment within six working days from the date when it learns of the employee's conduct which justifies the dismissal.

An employee is subject to job security provisions if, he/she has been working for at least six months at a workplace which has 30 or more employees. In this case the employer can only terminate the employment contract by relying on a valid reason or just cause (see above). However, the employer's representative and his/her deputies who are entitled to manage the entire enterprise with authorisation to hire and dismiss employees cannot benefit from job security provisions. For employees who are subject to job security provisions, the employer must inform the employee of his or her low performance or misbehaviour and obtain his or her written statements regarding the reasons for the performance or behaviour before terminating the employment.

If the termination arises from the requirements of the business, workplace or the work, that is, redundancy, the employer must take an operational decision before terminating the agreement (see Question 21). The operational decision needs to be taken by the board of directors/managers of the employer and clearly show the structural change in the organisation. In case of any dispute, courts check whether the content of the decision is properly applied. The employer must state the termination reasons in writing in the termination letter. If the procedural requirements are not followed, the court will not examine the merits of the case and the employer must accept court's decision to reinstate the employee.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

The Labour Act provides job security to employees in particular cases (see *Question 19*).

Protected employees

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 based on valid reason or just cause can be related to the capability (performance) or behaviour of the employee, or the requirements of the enterprise, workplace or the work (that is, redundancy).

REDUNDANCY/LAYOFF

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

Redundancies/layoffs are defined as the termination of the employment contract of an employee based on reasons independent of the employee's personality, but because their service is no longer required or cannot be afforded by the employer due to economic, reorganisational or technological reasons arising out of the business, workplace or the work.

The employer has to prove the existence of these reasons for a valid termination. If the redundancies do not constitute a collective dismissal, the rules for individual termination will be applied (see *Question 19*).

Procedural requirements

When the termination arises from the requirements of the business, workplace or the work, the employer must take an operational decision before terminating the employment. The employer must state the termination reasons in writing in the termination letter. In cases where it constitutes a collective redundancy, see below, *Collective redundancies*.

Redundancy pay

Employees have a right to notice and severance payments as is the case with an ordinary termination of employment (see *Question 19*).

If there is no valid reason for termination, the employee can file a re-instatement action if the employee benefits from job security provisions.

Collective redundancies

Where the employer terminates the employment contracts of the following numbers or percentages of employees within the same month as a result of economic, technological, structural or similar enterprise, business or work requirements, this constitutes a collective redundancy:

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

After taking the operational decision to make redundancies, the employer must notify the trade union representative (if any), the Provincial Directorate of Social Security Institution and the Turkish Employment Agency at least 30 days before the date due for the

termination of employment. This notification must be in writing and include reasons for the termination, number and the group of employees to be dismissed and a timeframe for redundancy proceedings. The termination notice will be deemed effective after 30 days of the employer's notification to the authorities. After the notification, the employer must also consult with the trade union representative (if any).

EMPLOYEE REPRESENTATION AND CONSULTATION

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

Employees are entitled to be members of the board of directors but they are not entitled to management representation.

Consultation

Consulting with the trade union representative is one of the procedural steps required for collective redundancies (see *Question 21, Collective redundancies*). Once the employer decides on collective redundancies, after informing the official authorities, it is obliged to consult with the trade union(s).

Major transactions

In general, employees' consent is not required for major transactions.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

If the employer does not comply with the consultation obligations during collective redundancies, it is obliged to pay an administrative fine for each employee subject to the collective redundancy, which is TRY693.

Employee action

In a collective redundancy, redundant employees are entitled to file a reinstatement action if they benefit from job security provisions (see *Question 19*).

CONSEQUENCES OF A BUSINESS TRANSFER

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

In a transfer of a business (or the part of a business) to another person or entity, the employment contracts existing at the time of that transfer automatically pass to the transferee with all the rights and obligations involved. Transfer of workplace if it does not result in aggravating changes in employees working conditions does not constitute a just cause for termination. However, if the business transfer is 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 the transfer of the employment relationship.

Pursuant to precedents of Supreme Court, if the employee objects to a transfer made by way of merger, demerger or the conversion of company type, the employment relationship ends at the end of legal notice period and the employee acquires his/her statutory rights as severance pay, annual leave pay, other receivables and so on. However, in case of automatic transfer, an employee does not have a right to object the transfer and so cannot gain access to his/her statutory rights if he/she terminates the employment contract.

Protection against dismissal

The transfer of workplace does not constitute a valid reason for termination. However, business economic, technical or organisational reasons constitute valid grounds and if the employer proves that economic, technical or organisational conditions caused excess workforce in the company, then the termination can be made based on valid reason.

Harmonisation of employment terms

An employee's consent is required if terms of work or conditions are changed by the transfer (see *Question 8*).

EMPLOYER AND PARENT COMPANY LIABILITY

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

The employer can be held liable for the acts or conduct of its employees in tort (where the employer is strictly liable for any tort(s) committed by its employees) or in contract law (where the employer is liable for the actions of the employee committed as a direct result of performing the employment contract). To eliminate the liability, the employer must prove that he or she has shown the necessary due care when instructing and supervising the employee and that the business is structured in a way to prevent the occurrence of damage. Ultimately, the employer's liability is determined by the courts according to the specific circumstances of each incident, by examining the relationship between the parties.

Parent company liability

Parent companies and their subsidiary companies are separate legal entities. Therefore, generally, a parent company is not liable for the acts of its subsidiary company's employees.

EMPLOYER INSOLVENCY

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

In case of the insolvency of the employer, the employment relationship will be terminated and the rights and receivables of the employees arising out of this relationship will be treated as privileged debts. When an employer receives a certificate of insolvency, a payment guarantee fund under the state guarantee fund will be established for the payment of last three months' salary of the employees. This payment is calculated on the base salary of the employee on the condition that the worker has worked in the same workplace within the last year before the employer's failure to pay.

State guarantee fund

See above, Employee rights on insolvency.

HEALTH AND SAFETY OBLIGATIONS

27. What are an employer's obligations regarding the health and safety of its employees?

Under the Occupational Health and Safety Law, the employer has a duty to ensure the safety and health of the employees in every aspect related to the work. In this respect, the employer must:

- Take the measures necessary for the safety and health protection of the employees.
- Prevent occupational risks.
- Provide information and training for the employees.
- Monitor and check whether occupational health and safety measures are taken.
- Provide occupational safety specialists, occupational physicians and other healthcare personnel.
- Provide any required equipment for occupational health and safety services at the workplace, and so on.

TAXATION OF EMPLOYMENT INCOME

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals

Where a foreign national employee is already subject to income tax on their employment income earned in Turkey in another jurisdiction, and that jurisdiction has a double taxation agreement signed with Turkey (to avoid the double taxation of employment income), the terms of that applicable treaty will apply.

Nationals working abroad

Nationals of Turkey working abroad will be subject to income tax if they receive their income in Turkey or from Turkish sources. However, as above, any applicable double taxation agreements should be taken into consideration.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

Taxation rates on employment income for 2018 are:

- Up to TRY14,800: 15%.
- Between TRY14,801 and TRY34,000: 20%.
- Between TRY34,001 and TRY120,000: 27%.
- Over TRY120,000: 35%.

Social security contributions

Social security premiums are paid by both employers and employees. The premium rates are as follows:

- Short-term risks: 2% (paid only by the employer).
- Long-term risks: 20% (11% paid by the employer, 9% paid by the employee).
- General health insurance: 12.5% (7.5% paid by the employer, 5% paid by the employee).

- Unemployment insurance: 3% (1% paid by the employer, 2% paid by the employee).

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

It is common to reward employees through contractual or discretionary bonuses. There is no specific regulation regarding bonuses. In practice employers generally set out several criteria for bonus payments.

INTELLECTUAL PROPERTY (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

There are specific regulations governing the legal status of patents, utility models, designs and copyrights created by employees in the course of their employment.

Under industrial property law, patents, utility models, and designs (two- or three-dimensional) are not automatically owned by the employer when created. Once these are invented or created by the employee, the employee must inform the employer who then has a right to decide whether to buy the IP rights of these inventions or creations.

Former agreements, stating that IP rights of these innovations and creations will automatically pass to the employer do not have legal value because the law intends to protect the employee. This means that when the relevant IPR is created, separate assignment agreements should be concluded for every IPR, depending on its importance for a business, as this provides the strongest and most secure protection for the employer.

Supreme Court precedents relating to copyrights divide the rights into two categories:

- Intangible rights of the creator.
- Economical rights in the copyright.

Economical rights regarding the copyright automatically pass to employer once the copyright is created, however intangible rights belong to the employee, although the employer can request the employee to transfer the usage of the intangible rights to the employer.

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

It is possible to restrict employee's activities during employment. However, any such restriction should be in writing. As a general

guide, the scope of the restriction should be about activities of the employee related to the employment contract and no wider than is reasonably necessary to protect the relevant business interest.

Post-employment restrictive covenants

The parties can agree on a non-compete obligation in writing. The non-compete clause should be reasonably limited with regard to place, time and subject. The restricted period time and subject is determined as to the special conditions of each employment relationship. Article 445 of the Turkish Code of Obligations (TCO) states that the duration of the non-compete clause should not exceed two years unless there is a special condition. The duration of the restrictive covenant should reflect the period for which the relevant information is likely to remain confidential. However, a non-compete restraint will no longer be valid once the employer ceases to have an interest in that business. The employer does not need to make any payment to the former employee to enforce the clause.

RELOCATION OF EMPLOYEES

33. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Employers can include mobility clauses in the employment contract. The Supreme Court accepts clauses which regulate the appointment of employees to the other offices or locations of the company as valid, provided that the employer does not misuse this right. The rationale behind the enforcement of these clauses is whenever it is understood from the particular incident is that employer enforcing this clause in order to force employee to terminate employment contract, the clause is no longer valid and employee is deemed accepted as validly terminating the employment agreement but if there is a relocation clause, in the employment contract signed by both parties and it is enforced due to objective requirements, parties has to comply with this clause. However, in principle, mobility clauses cannot require relocation to another country.

PROPOSALS FOR REFORM

34. Are there any proposals to reform employment law in your jurisdiction?

On 25 October 2017, the Labour Courts Act was published in the *Official Gazette* and officially came into effect. The Act aims to ease the judiciary's workload and accelerate the judicial process in employment cases. The Act brought a number of changes to employment cases. The most important changes can be summarised as follows:

- Mandatory mediation is introduced for both employers and employees before initiating lawsuits.
- The procedure for reinstatement cases is amended.
- The statute of limitations for several types of compensation is decreased to five years.

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ONLINE RESOURCES

General Directorate of Development of Legislation and Publication

W <http://www.mevzuat.gov.tr/>

Description. Government-maintained website containing information which is official and up to date.

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Publications.

- *Labour Courts Act Comes Into Effect, ILO, Employment & Benefits Newsletter, Co-Author, 30.11.2017.*
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- International Insurance Law Association (AIDA).
- Federation of Defense and Corporate Counsel (FDCC).
- Transparency International Turkey.
- International Bar Association (IBA).
- Secretary of Insurance Committee (2016-2017).

Publications.

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Professional associations/memberships. Employment Lawyers Association (ELA).

Publications.

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- *Labour Courts Act Comes Into Effect, ILO, Employment & Benefits Newsletter, Co-Author, 30.11.2017.*
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