

Staying safe

Noyan Turunç of TURUNÇ provides an overview of the new Turkish law on work health and safety

In late 2012 and early 2013, a series of regulations were promulgated and entered into force under the new Turkish Law on Work Health and Safety (Law), which ushered in a new era for employers and employees in Turkey. Among the reasons cited by the Turkish Parliament for the Law, which was enacted in June 2012, was the desire to bring Turkish legislation in line with international practice, in particular: the EU Workplace Health and Safety Directive (89/391/EEC); and Agreements No 155 (Occupational Safety and Health Convention) and No. 161 (Occupational Health Services Convention) of the International Labour Organization.

The main purposes of the Law are to: create healthy and safe workplaces around the country; prevent work accidents and injuries; decrease work-related risks to minimum levels; monitor and record work accidents; and notify the Turkish Social Security Institution (SSI) of such accidents. The effective date of the Law, and the applicability of certain of its and its regulations' provisions, vary according to the size of the employer and its danger classification. Having said that, by mid-2014 at the latest, all Turkish employers (including Turkish subsidiaries of foreign companies), with limited exceptions (for example, for armed forces), will have to comply with the Law in general, regardless of the size of their workforce or the nature of their business.

Among other things, employers will have to assign or employ (or, subject to certain conditions, contract for) work safety specialists, employee representatives, doctors and other health personnel at their workplaces. Employers also must train, and obtain the opinions of, employees on work safety conditions.

The promulgated regulations set forth the principles applicable to: the provision of work health and safety services at workplaces; the engagement and duties of work safety experts; the formation of workplace safety boards; and the performance of mandatory workplace health and safety risk assessments. When all of the regulations under the Law have been issued and are in effect, workplaces in Turkey will be subject to a comprehensive and strict set of standards aimed at protecting employees. Such standards include, among others: health, safety and hygiene requirements; physical space specifications; measures for the prevention of accidents and occupational diseases; and enhanced monitoring and reporting obligations.

Health and safety obligations in general

According to the Law, employers are obliged to take certain measures to protect the health and ensure the safety of their employees. They must also: provide conditions required for the safe operation of the workplace; make available all equipment needed to protect the health and safety of employees; and inform and train employees with respect to health and safety matters. Employers, through suitable means, also must warn employees of any dangers arising from the use of machines in the workplace, and train employees on any applicable protective and preventive measures. In addition, employers are obliged to report promptly to the authorities any accidents that occur in the workplace.

Employee representatives

In furtherance of the goals of the Law, each employer is obliged to designate employee representatives, based on a nomination through a vote of the employees or, if the vote does not yield nominees, by the employer's own discretion, taking into consideration the total number of the employees and the risks of the workplace. One representative is required in workplaces employing between two and 50 employees. Two representatives are required for 51 to 100 employees, three for 101 to 500 employ-

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ees, four for 501 to 1,000 employees, five for 1,001 to 2,000 employees, and six for 2,001 or more employees.

Work health and safety board

Employers are also obliged to establish a work health and safety board (Board) if they employ 50 or more employees (including employees of sub-contractors) working in a given workplace, and the nature of the work undertaken is such that it lasts longer than six months. The members of the Board comprise: the employer or its nominee; a work safety expert; a workplace doctor; a human resources, social services, administrative or financial manager; if available, a civil defence expert; if available, a foreman; and an employee representative.

“The Law is a welcome change in the right direction”

The main duties of the Board are, among other things: to draft an internal directive on workplace health and safety; submit such draft to the employer's approval; monitor the implementation of the directive; report on such implementation; guide the employees regarding work health and safety issues; assess the dangers relating to workplace health and safety and the measures related thereto; report on all workplace accidents and other incidents which pose a risk in the workplace; prepare and monitor the implementation of workplace health and safety training programmes; monitor the emergency and disaster preparedness measures at the workplace; and prepare an annual report on the state of health and safety matters in the workplace.

Workplace medical personnel

Employers are obliged to appoint from among their employees, or obtain the outsourced services of, one or more work safety experts, doctors, and, if no full-time doctor is employed by the employer, other medical personnel. Employers are also obliged to provide necessary space and equipment for the provision of these services, which must be provided at no cost to the workforce.

Workplace health and safety unit

Employers are obliged to establish a workplace health and safety unit in the workplace. At least one workplace doctor and at least one work safety expert must be appointed to such unit. Applicable regulations set forth the minimum physical and other requirements of such units. Employers may share a common and single health unit established outside their undertaking. At such units, at least one workplace doctor and one work safety expert and other medical personnel must be employed.

Analysing risks

Each employer is obliged to undertake an assessment of the risks faced by its workplaces, and identify and implement necessary health and safety precautions to deal with such risks. In making the risk assessment, the employer must take into account, among other things, the particular characteristics of the workplace and its equipment, and the status of the employees (for example, age, disability, pregnancy and breastfeeding).

The risk assessment process must be carried out by a team consisting of the employer or its nominee, workplace doctors and safety specialists, employee representatives, support staff, and employees representing every department of the workplace who are familiar with the risks at the workplace and the work being undertaken related to such risks.

The risk assessment and prevention processes involve, among other things: the identification and analysis of the potential risks; devising and implementing measures for the prevention of such risks; and documenting the foregoing. Employers must

come up with measures to prevent risks, provide a suitable workplace for the employees, adopt technological developments, replace dangerous equipment with safe ones, and develop policies regarding work organisation, working conditions, social relations and the workplace. In doing so, employers are obliged to give priority to collective protective actions over individually-based ones and give appropriate instructions to enable employees to familiarise themselves and cope with the risks of the workplace.

Emergency matters

Employers are obliged to determine the potential emergency situations likely to affect the employees and the workplace, take measures to minimise such risks, and prepare relevant emergency plans. Employers must also assign or employ a suitable number of personnel for emergency prevention, evacuation, fire fighting, first aid and related matters. They must also provide necessary equipment for such purposes, and implement procedures for communicating with outside emergency services. Employers must implement necessary procedures for the evacuation of employees to a safe location outside the workplace in case of emergencies. In such a case, the employer must not require the employees to continue work, except for those employees designated for special assignments and in possession of necessary equipment.

Recording and reporting work accidents and illnesses

Employers must record, investigate and prepare reports on all accidents and illnesses in the workplace. They must also investigate and prepare reports on accidents which damage or may damage the work equipment, and report to the SSI all accidents and illnesses in the workplace within statutory time limits.

Health checks

Employers are obliged to ensure the monitoring of the health of employees, taking into consideration health and safety risks employees may be exposed



About the author

Noyan Turunç is a partner based in the Istanbul and Izmir offices of TURUNÇ, a full-service corporate law firm, established in 1990, with offices in Istanbul, Izmir and Ankara, and is the firm's founding partner.

In addition to being one of the leading practitioners of labour and employment law in Turkey, Turunç's diverse practice covers a wide spectrum of areas, including banking and finance, mergers and acquisitions, restructuring and insolvency, project finance, competition law and tax. He has also litigated hundreds of cases in many areas, including with respect to labour and employment law, corporate matters, competition law, tax, and customs. He has decades of experience advising domestic and international corporations and financial institutions in a wide variety of industries across many jurisdictions

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Turunç is the author of many publications on labour and employment law, and related topics, including the English-language books *Turkish Labor Law* and *The Law and Practice of Mergers and Acquisitions* in Turkey. He wrote and co-wrote the Turkish chapters of various publications including the books *International Labor and Employment Laws and Restrictive Covenants* and *Trade Secrets in Employment Law: An International Survey*, both published by the American Bar Association and BNA Books.

Before founding TURUNÇ, he was general counsel at Boeing Services (Turkey) and The Coca-Cola Export Corporation (Turkey).

Turunç received his LLB degree and his LLM degree (in competition law) from the Ankara University School of Law.

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to in the workplace. Employers must make sure that the employee goes through a medical check at the time of commencing employment, when changing jobs, as directed by the authorities during employment, and, upon request, after returning to work following an absence due to a work accident, work illness or health reasons.

Training of employees

Employers are obliged to organise the training of their employees regarding work health and safety, in particular at the time of their commencement of employment, return to work after an absence of more than six months, change of workplace or job description, and the use of new equipment or technology. In the event of the return of an employee to the workplace after a work accident, the employer must organise a training session regarding the causes of the work accident and the prevention of accidents.

Receiving opinions of the employees

Employers are obliged to receive the opinions of their employees regarding, among other things: work health and safety; the use of new technology, equipment to be used in the workplace; and the

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effects of the workplace conditions on employee health and safety. They must also receive the opinions of the employee representatives regarding, among other things, work safety experts, workplace doctors and other health personnel, risk assessment, preventive measures, and the training of employees.

Health and safety records

Employers are obliged to keep work health and safety records of the workplace as well as individual health records of each employee for 15 years as from the day of separation. If the employee leaves the workplace and starts to work in another workplace, the new employer must request from the ex-employer the individual health record of the employee. In that case, the ex-employer must send a copy of the individual health record within one month.

Employers are obliged to keep a record book certified by the Directorate of Labour or a notary public regarding work health and safety procedures. The workplace doctor and the workplace safety expert shall spell out the necessary actions which should be taken by the employer in such book. The proposals written in this certified book shall be deemed as delivered to the employer.

Rights of employees

The Law also grants certain new rights to employees. In the event of a serious and present danger, employees may request the employer to take necessary corrective actions. If the employer fails to take necessary actions to prevent the danger, the employees may immediately quit working, and the employer cannot make cutbacks on the employees' entitlements or rights. At workplaces where the necessary measures are not taken, the employees may, subject to certain other conditions, terminate their employment contracts.

Enforcement mechanisms

Employment inspectors of the Ministry of Labour and Social Security are empowered to inspect whether the requirements of Law have been implemented properly. In cases where inspectors detect a situation constituting a peril to employees' lives, the work has to be stopped until such peril ceases to exist. Any objection by the employer to the court must be made within six business days but such objection cannot result in the resumption of work until the peril has been eradicated.

If a workplace is closed down because of the reasons described above, the employer is obliged either to pay employees their full wages, or employ them in other jobs commensurate with their occupational skills or circumstances without reducing their wages.

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The employer is subject to fines for actions such as: failure to take necessary actions to protect the health of its employees; failure to provide the conditions required for the safe operation of the workplace; failure to make available all the equipment needed to protect the health of the employees and to secure a safe operation; opening a workplace without procuring an operation licence; failure to inform the authorities of certain events; and violation of the provisions of applicable regulations. Fines are normally assessed for each violation. If the required measures are not taken, an additional fine is normally imposed for each successive month.

The future

In a country where workplace health and safety issues have long been a problem, the Law is a welcome change in the right direction. Two things must, however, be pointed out. First, certain blanket provisions of the Law are likely to be too burdensome (risk assessment, for example) for small businesses and possibly not sufficiently deterrent for bigger ones (flat fines, for example). The Law could be made more effective if the authorities reviewed the promulgated regulations from this perspective and made relevant amendments. Second, effective enforcement will be the key in achieving the desired results under the Law.