



Labour & Employment

in 38 jurisdictions worldwide

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Legislation and agencies

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

Turkey's Constitution contains provisions on the fundamental rights and freedoms related to working life, including the right to work, to suitable working conditions, to rest and leisure, to organise trade unions, to bargain collectively, to strike and lock-out, and to social security.

The Labour Law No. 4857 governs the individual employment relations of the majority of workers. However, the Maritime Labour Law covers sea transport work; and the Press Labour Law covers press workers, such as journalists. The Code of Obligations governs contracts of service for other categories of workers.

The Law on Unions regulates the functioning and activities of unions. The Law on Collective Labour Agreements, Strikes and Lockouts regulates collective bargaining and industrial action.

Turkish workers are covered by a government-controlled public social insurance system regulated by the Social Insurance Law No. 506.

Turkey is a signatory to numerous international treaties and conventions of the International Labour Organization (ILO), including conventions No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on the Right to Organise and Collective Bargaining, No. 151 on Public Service Labour Relations, and No. 158 on Termination of Employment. Turkey has ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe's 1961 European Social Charter.

2 Is there any legislation prohibiting discrimination or harassment in employment?

The Constitution prohibits discrimination or harassment in employment, by providing that all individuals are equal, without any discrimination before law, irrespective of any issue, including language, race, colour, sex, political opinion, philosophical belief, religion and sect, as does the Labour Law.

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

There is no specific personal data protection law enacted in Turkey. A draft Personal Data Protection Law is under preparation by the Ministry of Justice.

However, Turkey's Criminal Law No. 5237 includes provisions regarding the collecting, storing, archiving and transfer of personal data. There are provisions with respect to crimes com-

mitted against private life and privacy, recording of personal data and illegally transferring or obtaining data. Persons who record personal data illegally or who record personal data concerning people's political, philosophical or religious opinion, racial roots, moral tendencies, sexual life, health conditions and their relations with a trade union and those persons who illegally transfer, diffuse or obtain the personal data to third parties, shall be sentenced to imprisonment.

Under Turkey's Constitution, each person has the right to demand his or her personal, private and family life be protected, and everyone has the right to freedom of communication. The constitutional provisions regarding interference by public authorities under certain conditions correspond with terms analogous to those of article 8 in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Under Turkey's Civil Code, a person whose personal rights have been illegally infringed may request that the court prevent the offence, order cessation of the offence or determine that the offence still has unlawful effects.

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

The Ministry of Labour and Social Security and its regional labour directorates are the government agencies responsible for the enforcement of employment statutes and regulations.

The recruitment of workers is the responsibility of the Turkish Employment Agency.

The Social Security Institution provides social insurance benefits to those who suffer hardship owing to occupational accidents, illness, motherhood, disability or old age.

Labour courts resolve disputes arising from individual and collective employment relations.

Worker representation

5 Is there any legislation mandating the establishment of a works council or workers' committee in the workplace?

There is no legislation mandating the establishment of a works council or workers' committee in the workplace.

Background information on applicants

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

There are no restrictions or prohibitions against background checks of applicants. It makes no difference if an employer conducts its own checks or hires a third party.

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

There are no restrictions or prohibitions against requiring a medical examination as a condition of employment. An employer can refuse to hire an applicant who does not submit to an examination.

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

There are no restrictions or prohibitions against drug and alcohol testing of applicants. An employer can refuse to hire an applicant who does not submit to a test.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to particular people or groups of people?

In principle, there are no legal requirements to give preference in hiring to particular people or groups of people, with the exception of certain obligations concerning disabled persons, ex-convicts and victims of terrorism. The Labour Law and the Law on Combat Against Terrorism No. 3713 require employers with a workforce of 50 or more to hire disabled persons, ex-convicts and victims of terrorism at a ratio of 6 per cent of the workforce. These workers must be assigned to work according to their occupational skills and physical and mental capacities. Priority in hiring disabled persons must be given to those who became disabled during previous employment with the same employer. If vacant positions are available and they wish to resume their old employment, the employer must give priority over other applicants to those persons who left the undertaking because of a disability. Failure to comply with this obligation incurs a fine.

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

Fixed-term employment contracts for a period of one year or more must be concluded in writing. A written form is also required for 'work-on-call' contracts, 'gang' contracts, and 'temporary employment' contracts. In the absence of a written contract, the employer must give the worker a certificate showing the conditions of employment.

The parties are free to define the terms of the employment contracts. No provision may be inserted in an employment contract that would violate the rights granted to workers for weekly rest periods, national and general holidays, and paid annual leave; conversely, more advantageous rights acquired by workers through the contract are permitted.

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

The maximum duration of fixed-term employment contracts is 10 years.

A fixed-term employment contract ends automatically with the lapse of the term, and the worker is not entitled to severance compensation. Contracts for a fixed-term are deemed renewed for the same period – but at most for one year – if the parties do not include an expiration date. Except when justified by an essential reason, an employment contract for a fixed term may not be concluded more than once. Otherwise, the renewed contracts shall be deemed made for an indefinite term.

12 What is the maximum probationary period permitted by law?

The maximum probationary period is two months. This period may be extended to a maximum of four months by collective agreement.

13 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

No statutory covenants exist with respect to non-competition. Nevertheless, courts would accept a non-compete provision for a one-year period for employees, as long as the provision is justified; for customer or suppliers or it may agreed by way of agreements as long as the provision is justified and the period is reasonable for the deal (eg, may be a three-year period at most, depending on the transaction).

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

An independent contractor will perform under a work contract drafted in accordance with the provisions of the Code of Obligations for a fee at his or her own account, with his or her own employees and tools, if necessary. At the end of the work contract, the contractor has to submit the work defined in the contract. The independent contractor will get his or her instructions from the representative of the employer. With the exception of the rights and obligations set out in the work contract, the independent contractor can freely design and decide on his or her other rights and engagements.

An employee will work under an employment contract drafted in accordance with the provisions of the Labour Law for a wage on the payroll of the employer. Except where explicitly defined otherwise, the work of an employee is for an indefinite period. The employer works in accordance with, and any and all his or her entitlements (eg, paid annual leave, dismissal) are regulated in, the employment contract, the employment conditions of the employer, if any, and the pertinent laws.

Foreign workers

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

There are no numerical limitations on short-term visas. If an employee is transferring from one corporate entity to another related entity, no visa will be required. However, if the transfer will be from a corporate entity to an unrelated entity, such unrelated entity needs to obtain a visa for the employee. A visa will be required in the event of changing jurisdiction (ie, from one country to another), even within a related entity.

16 Are spouses of authorised workers entitled to work?

Spouses of authorised workers are entitled to work.

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

The rules for employing foreign workers are to comply with the provisions of the Labour Law and the labour and employment regulations issued in accordance with the Labour Law, to obtain both residence and work permits. The sanctions of employing a foreign worker that does not have a right to work in the jurisdiction

tion are administrative fines pursuant to articles 98 to 108 of the Labour Law (each article deals with a different violation) and to deport such foreign worker from the country.

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

Not applicable.

Terms of employment

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

Day work means a part of the day beginning at or after 6am, ending at or before 8pm and lasting no more than eight hours.

Night work means a part of the day beginning at or after 8pm, ending at or before 6am, and lasting no more than 11 hours. A night shift may not exceed seven-and-a-half hours. Night shifts may last no more than one week and workers on a night shift must change to day work during the following week.

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

In principle, all categories of workers are entitled to overtime pay for working hours in excess of the weekly maximum of 45 hours. The hourly overtime is 50 per cent above the normal hourly wage.

If the working week is set out as less than 45 hours by contract, the work in excess of such weekly work less than 45 hours is defined as the 'extra hours' work. Workers are entitled to overtime pay for extra hours 25 per cent above the normal hourly wage.

Instead of receiving overtime pay, workers may choose to take one hour and 30 minutes for every hour of overtime worked described in the first paragraph, and one hour and 15 minutes of free time for every hour of overtime worked in the second.

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

Under the Labour Law, workers who have completed at least one year of service following the date of employment are entitled to annual leave with pay that varies according to their seniority. The leave period may be extended contractually.

Workers must use the paid annual leave to which they are entitled at the end of each full year of work during the following year without interruption; however, paid annual leave may be divided into three parts by mutual agreement of the worker and the employer.

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

The Social Insurance Law provides for the right to sick leave and sick pay. It covers the costs of all medication, and lasts until the workers recover. Under the Social Insurance Law, the social security system pays all costs, with the exception of the first two days of the sickness of the employee. If the employee is hospitalised, 50 per cent of his or her wage is paid by the social security system; if treatment is given at home, 50 per cent is paid. There is no liability on the employer.

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

Pregnant workers may not work during the eight-week period before or the eight-week period after birth.

Except for compulsory military service, the employment of a worker who is called up by the military or who leaves employment to perform statutory labour service is considered terminated two months from the date of separation.

Leave of absence of up to three days is granted in cases of the worker's marriage, or the death of the worker's parent, spouse, brother, sister, or child; other leave granted by the employer not exceeding one week, and sick leave or rest leave following a doctor's report are considered days worked for which the employee receives pay.

24 What employee benefits are prescribed by law?

No employee benefits are mandated by law. The Social Insurance Law, however, covers workers, including foreign employees, and provides for payments in cases of accidents at work, occupational illness, sickness, maternity, disability, retirement, and death; and free medical care for which employers must contribute to workers' social insurance benefits.

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

The Labour Law protects against discriminatory treatment that would be due solely to the part-time nature of a job. Monetary benefits must be prorated by comparing the length of the working time to a worker doing a full-time job of the same nature. Full- or part-time vacancies should be announced in a timely manner. A full-time worker's request to move to a part-time job or vice versa must be taken into consideration provided the worker is qualified for the vacant position.

Work-on-call is a part-time job where the worker will be called to perform work on an as-needed basis. Work-on-call contracts must be made in writing. Where no working time is determined in the contract, it is accepted as 20 hours per week by law. The worker is entitled to wages, regardless of whether the work was performed during the determined time.

Liability for acts of employees

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

An employer may be held legally liable for the acts or conduct of its employees who cause damages to third parties during performance of their duties.

Taxation of employees

27 What employment-related taxes are prescribed by law?

Income tax, stamp duty and the social insurance premium are mandated by law.

Employee-created IP

28 Is there any legislation addressing the parties' rights with respect to employee inventions?

There are provisions in the Code of Obligations, and Decree No. 551 concerning the protection of patent rights addressing the parties' rights with respect to employee inventions.

Business transfers

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

With respect to business transfer and employee rights, reference should be made to article 6 of the Labour Law (on transfer of a workplace or its part). Article 6 sets out that when a workplace or any part of it is transferred to a new owner (transferee employer), employment agreements existing in the workplace or in the transferred part of the workplace part on the date of transfer shall pass onto the transferee employer with all rights and obligations therein. In other words, the transferee assumes all rights and obligations under employment agreement exists at the time of the transfer. The employment relationships continue to exist with the transferee employer with the same rights and obligations as with the transferor employer. With regard to entitlements, the employees are deemed to be employed by the transferee owner since the beginning of their current period of employment. Both the transferor and transferee employers shall be jointly liable for the obligations which accrued before the transfer. However, although the transferee employer and the transferor employer remains jointly and severally liable, the liability of the transferor employer is limited to a two-year period following the transfer date. Neither the transferor nor the transferee employer is authorised to terminate the employment agreement solely because of the transfer of the workplace or its part, nor shall the transfer shall grant a just cause to employees for the termination of the employment agreements. However, the termination rights of transferor or transferee employer due to economic or technological reasons or organisational change of work, or the termination rights of both employees and employer for immediate termination due to just cause are reserved. The above provisions however, shall not be applicable in the event of the transfer of the workplace to a third party as a result of liquidation of the employer's assets due to its insolvency. The terms of the employment relationships also include rights and liabilities under occupational pension schemes. However, the transferee owner is not liable for claims of employees who have retired or resigned before the time of the transfer.

In the event of transfer of the worksite or otherwise changing of the ownership, both employers have been responsible for the accrued severance pay in accordance with article 14 (severance pay) of the former Labour Law No. 1475 (only article 14 is in force). The employer cannot transfer the liability arising from severance payment to special persons or to insurance agencies.

The dismissal of an employee by either the transferor employer or the transferee employer is invalid if the transfer was the main reason for the dismissal. A termination is permissible only insofar as it does not constitute a circumvention of the Labour Law.

Termination of employment

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

Under Turkish law, regarding dismissal of employees, the following distinctions must be made:

- termination of a probationary worker – during the probation period, either party may terminate the employment contract without cause and without giving notice or paying compensation;
- termination without cause – in workplaces where there are 29 or less employees, either the employer or the worker may

terminate a permanent employment contract made for an indefinite period without cause, by giving the other party written advance notice, which varies according to the seniority of the worker;

- termination for cause with advance notice – in workplaces where 30 or more employees work, any dismissal must be for valid cause. A valid cause may be the requirements of the job or the workplace; or claims about the capacities or behaviour of the worker, which the worker must be given the opportunity to defend. Some particular cases such as the worker's union membership or activities, race, colour, gender, marital status and familial duties, pregnancy, religion, political belief, ethnic or social origin, or the fact the employee brought a suit against the employer will not constitute valid causes;
- termination for cause without advance notice – the employer may immediately terminate a contract, whether for a fixed or an indefinite period, on grounds of: the employee's health; the employee's bad faith, immorality or other misconduct; and force majeure as specified in the Labour Law (for detailed causes, see question 27). In these cases no severance pay and notice pay will be due; and
- other causes – where the worker is taken into custody or arrested, or the worker's absence from work exceeds the notice period set forth in the law, the employer may terminate the contract.

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

Except in termination for cause with advance notice as explained above, notice of termination should be given prior to dismissal. However, an employer can provide pay in lieu of notice.

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

An employer may dismiss an employee immediately for a just cause, as follows:

- health reasons – absence of a worker for three successive working days or more than five working days in a month because of illness or disability resulting from his or her deliberate act, debauchery or drunkenness; or if the worker's illness is chronic and his or her work is deteriorating.
- conduct that does not comply with morals and good faith, and similar conduct – for example, if the worker:
 - misleads the employer by claiming that he or she possesses the required qualifications, or gave false information at the conclusion of the contract;
 - offends the honour and dignity of the employer or a member of his family, or makes groundless accusations against the employer;
 - sexually harasses another employee;
 - assaults the employer, members of the employer's family or a fellow worker;
 - commits a dishonest act against the employer such as theft, breach of trust, etc;
 - commits an offence within the workplace for which he or she is sentenced to more than seven days' imprisonment;
 - is absent from work for two consecutive days or twice in one month on the working days after rest days or on a total of three working days in one month, without a valid reason;
 - refuses to perform his or her duties, despite being warned; or

- wilfully or negligently imperils work safety or damages machinery, equipment or other materials that cannot be reimbursed by 30 days' salary;
- force majeure – force majeure prevents the worker from performing his or her duties for more than one week; or
- incarceration – absence continues for more than the notice period because the worker has been taken under police supervision or arrested.

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

Severance pay is regulated by article 14 of the former Labour Law No. 1475 (article 14 is the Law's only surviving provision).

Unless an individual contract or collective agreement increases the amount, severance pay is equal to 30 days of the worker's latest wage and supplements, for each full year of service from the commencement of the employment contract. For periods less than one year, payment must be prorated. However, there is a cap on the severance payment. Severance pay is free from income tax and subject only to stamp duty.

34 Are there any procedural requirements for dismissing an employee?

Excepting dismissals for cause without advance notice and because of the requirements of the job or workplace, the employee should be granted an opportunity to defend himself or herself. No prior approval from a government agency is required by law to dismiss an employee.

35 In what circumstances are employees protected from dismissal?

In principle, employees' contracts may be terminated upon paying their legal entitlements and compensation, when applicable. However, union representatives have a specific protection against dismissal. They can only be terminated with just cause. Otherwise, the representative will be reinstated by the court and entitled to recover lost wages.

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

Mass termination because of economic, technological, structural and similar reasons is at the employer's discretion. In the event of mass termination, the employer is obliged to give one month's

advance notice to the government agencies specifying the causes of termination, and the number and date of the dismissals. The termination will become effective 30 days after notification. Otherwise, in cases of site closures, posting the announcement at the workplace and notification to the government agencies is sufficient.

Dispute resolution

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

With respect to dispute resolution, Turkish labour legislation contains a set of compulsory rules for different forms of peaceful dispute resolution:

- rights disputes – a rights dispute arises from the interpretation or application of legal norms or contracts and must be resolved either by the courts or by arbitration;
- voluntary arbitration – in a collective dispute, the parties may agree to bring the case before an arbitrator or arbitration board. The High Arbitration Board may also be designated a private arbitral institution;
- mediation – if the parties are not able to reach agreement within 60 days from the beginning of collective negotiations, the Official Mediation Organisation provides mediation services as a compulsory phase; and
- the High Arbitration Board – arbitration becomes compulsory in cases where strikes and lockouts are prohibited, or if a strike is postponed by the Council of Ministers, or when the majority of workers vote against the strike and the parties are not able to reach an agreement. Except for the postponement of a strike, either party may refer a dispute to the High Arbitration Board; and its award is final and binding on the parties.

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

An employee cannot agree to waive statutory and contractual rights to potential employment claims.

39 What are the limitation periods for bringing employment claims?

The limitation periods for bringing employment claims are 10 years for severance payment, notice payment, compensation for abusive termination, and union compensation, and five years for wage and annual leave with pay.

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