Employment and Employee Benefits in Turkey: Overview

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A Q&A guide to employment and employee benefits law in Turkey.

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; relocation of employees; and proposals for reform.

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

Under Article 27 of the Act on Private International and Procedural Law No. 5718, employment contracts with a foreign element are subject to the governing law chosen by the parties, without prejudice to the minimum protection that employees are afforded under the mandatory provisions of the law of their habitual workplace. Therefore, the parties can choose the governing law for their employment contract, but where Turkish law provides more favourable rules that give employees a higher standard of protection than the law chosen to govern the employment contract, Turkish law will still apply.

In the absence of a foreign law chosen by the parties to govern an employment contract with a foreign element, the employment laws of the employee's habitual workplace will apply to the employment contract. If the employee performs their job in another country temporarily, then this workplace will not be considered the employee's habitual workplace. However, depending on all

the facts of the case, if there is a law more closely related to the employment contract, this can be applied to the employment contract instead of the law of the employee's habitual workplace (when there is no choice of governing law).

Laws Applicable to Nationals Working Abroad

Under Article 27 of the Act on Private International and Procedural Law No. 5718, if the employee does not work in a particular country, and constantly works in more than one place, the employment contract will be subject to the law of the country where the employer's main workplace is located. Depending on the facts of the case, if there is a law more closely related to the employment contract, this law can be applied to the employment contract instead of the country where the employer's main workplace is located.

In addition, the Turkish social security provisions (such as the Social Insurance and General Health Insurance Law No. 5510) still apply to Turkish nationals sent to foreign countries for temporary duty (the provisions differ depending on whether there is a bilateral social security agreement signed between Turkey and the host country).

Employment Status

> 2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, 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

Employee, worker or independent contractor? The contractual relationships of individuals who provide personal services to employers are regulated mainly under the Turkish Labour Act No. 4857 (Labour Act) and the Turkish Code of Obligations Act No. 6098 (Code of Obligations). There are also other laws which apply specifically to the employment relationships of individuals who perform certain specific activities (for example, to seamen and individuals providing intellectual and artistic works for press).

Whilst the terminology used in the law does not distinguish between the categories of individuals who provide personal services to employers (for example, between "employees", "workers" or "independent contractors"), employees are generally regulated under the Labour Act. Where an individual does not fall under the scope of the Labour Act, but still in fact has an employment relationship, their relationship will be governed by the Code of Obligations. Further, where the Labour Act is silent on any matter, the provisions of the Code of Obligations will apply. For the purposes of this article, "employee" will refer to those individuals subject to the Labour Act, and "worker" will refer to those individuals subject to the Code of Obligations.

Turkish law does not expressly distinguish between employees/workers and independent contractors, who also provide personal services to employers. However, unlike employees/workers, independent contractors:

- Perform their obligations at their own risk.
- Have the freedom to reject work requested by the employer.

- Are not subject to the Labour Act.

An independent contractor can, however, still be considered to be a de facto employee if the agreement between the independent contractor and the employer has the characteristics of an employment contract, irrespective of how the parties have defined the relationship in the contract. An employment agreement will exist where the employee:

- Undertakes to conduct work for the employer and is dependent on the employer.
- Undertakes that work in exchange for a salary payment.

If these elements exist, the relationship will be considered to constitute an employment relationship.

Entitlement to Statutory Employment Rights

Only those persons categorised as employees and workers are entitled to statutory employment rights, such as the provisions concerning:

- Minimum wage.
- Statutory leaves.
- Notice periods.
- Severance pay.

In addition, further statutory rights apply to certain individual employment relationships where those relationships fall within the scope of the relevant laws.

Time Periods

There is no requirement to engage any particular category of individual for a maximum period of time. However, fixed-term employment contracts are considered to constitute exceptional employment contracts under Turkish law (as generally employment contracts are considered to be indefinite term contracts), and can only be concluded where there is an objective reason to use a fixed-term rather than an indefinite term contract (*see Question 10*).

Background Checks

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

Restrictions/Prohibitions on Conducting Background Checks

There is no law that specifically regulates conducting background checks on applicants. However, the data protection provisions are applicable when conducting these checks. For background checks that concern the applicant's health, criminal records, political opinions, association or foundation memberships or any other sensitive personal data, the applicant's consent is required. For background checks concerning the applicant's previous work experience, educational background or any other non-sensitive personal data, employers can rely on other grounds (for example, the requirement to process such data to establish the performance of a previous employment contract or another legitimate interest of the employer) and consent will not usually be required in this respect.

In any case, personal data must be:

- Processed lawfully and in accordance with the principles of good faith.
- Processed for definite, explicit and legitimate purposes.
- Acquired in a measured way that is relevant to the purpose for which it is collected, and not excessive in relation to the purpose for which it is processed.
- Accurate and updated, where necessary.
- Kept only for a duration that is necessary for the purpose for which it is processed.

In addition, and irrespective of whether the data is processed with the data subject's (the applicant's) consent or on another legal ground, when collecting sensitive or non-sensitive personal data, the data controller (the employer) must inform the data subject of:

- The identity of the data controller and its representative (if any).
- The purpose for which the personal data will be processed.
- To whom the processed personal data will be transferred, and for which purposes.
- The method of data collection used and the reason for the data's collection.
- The data subject's other vested rights, such as the right to request information on:
    - whether or not certain personal data is being processed;
    - whether data is being transferred to third parties, and details on those third parties; and
    - the purpose of the data controller in processing the personal data.

The data controller must ensure the security of the personal data, and sensitive personal data requires stricter security measures to be in place in accordance with the law and the Turkish Data Protection Authority's regulations relating to the administrative and technical measures applicable to the processing of sensitive personal data. Furthermore, background checks must not be used as a discriminatory tool when distinguishing between applicants during the recruitment process.

Background Checks by Third Parties

Third parties can conduct background checks on an employer's behalf provided that they adhere to the same data protection provisions outlined above. Employers must also inform applicants that their personal data is being processed by a third party for the purposes of conducting background checks. Where the third party has the discretion to determine, or a significant role in

determining, the scope of the sources to be used, the data systems to be used and/or the purposes for conducting the background check, the third party may be considered to be a separate data controller, together with the employer. In that case, the third party must also provide the same disclosures to the data subject as outlined above, including the legal grounds upon which they are conducting the background check (which should be evaluated separately from the employer's legal grounds). Any transfer of sensitive personal data between the employer and the third party must also be subject to strict security measures to ensure the security of the data (for example, encryption and the establishment of a secure VPN should be used).

Regulation of the Employment Relationship

4. How is the employment relationship governed and regulated?

Written Employment Contract

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

If the parties to a written employment contract are Turkish, the employment contract must be in Turkish. It is a mandatory requirement that fixed-term employment contracts be concluded in written form.

Implied Terms

The mandatory provisions of the Labour Act are implied into all employment contracts, including any provisions on workplace practices. In addition, under the Turkish Code of Obligations, employees are required to perform their job with due care and act in loyalty with the employer to protect the employer's rightful interests, whilst employers are required to protect and respect the employee's character during the course of their service, and ensure that work rules are in line with the principle of fair treatment. These duties of both employees and employers are implied into employment contracts.

Collective Agreements

Collective bargaining agreements (CBAs) can be agreed between employee trade unions and employer unions (or with employers which are not affiliated to a union), and they are automatically binding on employers. However, even where a CBA applies, if an individual employment agreement includes provisions which are more favourable to the employee than the relevant

provisions of the CBA, those more favourable provisions will apply. There are CBAs that are currently in force for different sectors, including (but not limited to) the metal, steel and agriculture sectors.

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

Material changes to the terms of employment, working conditions or any other workplace practices which are to the detriment of the employee can be made by providing the employee with a written notice specifying the changes. The changes must then be approved by the employee in writing within six working days of receiving the new terms, otherwise the changes will not bind the employee.

Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

Minimum Wage

The national monthly net minimum wage until 31 December 2022 is TRY5,500.35, which is applicable to all categories of employees regardless of their age, industry and experience. Under the Regulation on Payment of Salary, Bonus, Ex-Gratia and Similar Payments Through Banks, employers employing at least five employees within Turkey who are subject to the Labour Act must ensure that all payments made to these employees are made through banks.

Bonuses

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 receiving bonus payments (for example, that bonuses are subject to the employee's and/or the company's performance within a specified accounting period).

Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

Working Hours

Restrictions on working hours. The maximum working hours allowed is 45 hours per week. Working hours can be distributed over the working days during the week provided that daily working hours do not exceed 11 hours per day. Additionally, employees must be given a rest period of at least 24 hours in a working week. Employees cannot opt out of such restrictions either on an individual or collective basis. The employee must consent (in writing) to overtime work (that is, working time above the 45 hours per week), though in practice this consent is usually provided for in the employment contract.

Overtime pay. Overtime cannot exceed 270 hours per year. Overtime pay is calculated according to the employee's normal working hours, meaning that:

- Where the employee works overtime above the regular maximum working hours (that is, 45 hours per week), the salary for each hour of overtime worked must be compensated at 1.5 times the employee's normal hourly rate.
- Where the employee's normal weekly working hours are less than 45 hours per week and the employee works overtime:
    - the salary for each hour of overtime worked must be compensated at 1.25 times the employee's normal hourly rate, for all overtime worked up to 45 hours a week; and
    - overtime worked above the 45 hours per week must be compensated at 1.5 times the employee's normal hourly rate.

Provisions can be included in the employment contract that allow for overtime of up to 270 hours per year to be included in the employee's salary without additional overtime pay, provided that the employee's salary is higher than the minimum wage.

In addition to the above, rather than receiving overtime pay, the employee can instead take one and a half hours off work (time off in lieu of payment) for every one hour of overtime worked. Where this time off in lieu of payment is used instead of overtime payment, the employee has six months from the date the overtime was worked to use this entitlement. It is the employee's decision whether to take overtime payment or time of in lieu of payment. Similarly to the above provisions concerning overtime pay, where an employee's normal working week is less than 45 hours:

- The employee can take 1.25 hours off for every hour of overtime work, up to 45 hours of weekly time worked.
- The employee can take 1.5 hours off for every hour of overtime worked above 45 hours of weekly time worked.

Special restrictions applicable to shift workers. Night shift workers can only work up to a maximum of seven and a half hours each night.

Rest Breaks

Rest breaks during the working day. The mandatory rest breaks during the working day are as follows:

- Up to four working hours: 15 minutes.
- Up to seven and a half working hours: 30 minutes.
- More than seven and a half working hours: one hour.

Rest periods between working days. Employees must be granted a minimum rest period of at least 24 consecutive hours during each seven-day period. Daily working hours must not exceed 11 hours in a day.

Special provisions for night/shift work. Special provisions for shift worker employees are regulated under specific regulations on shift workers issued by the Ministry of Labour and Social Security. Employees working in shifts cannot be forced to work without a minimum of an 11-hour rest period between shift changes, and must be given a minimum of a 24-hour rest period during the working week.

Holiday Entitlement

Minimum paid holiday entitlement. Employees are granted paid holiday upon completion of one year of service with the employer. The minimum paid holiday for each year is regulated as follows:

- If the term of the employee's service is one to five years, the paid holiday period must be at least 14 days.
- If the term of the employee's service is five to 15 years, the paid holiday period must be at least 20 days.
- If the term of the employee's service is 15 years and over, the paid holiday period must be at least 26 days.
- For employees aged 18 years or less, and for the employees aged 50 years or more, 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 (28 October (half day) and 29 October).
- Ramadan and Eid Holidays (for 2023, the dates of Ramadan are 21 to 23 April, and the dates of Eid are 28 June to 1 July).

Flexible Working

Different flexible working models (such as part-time working, on-call working and remote working) are regulated both under the Labour Act and the Code of Obligations. In principle, there is no statutory right for employees to work flexibly and such working models are subject to the mutual consent of the employer and the employee.

However, one of the parents of a child who has not yet started primary school can request part-time working up until the beginning of the month following the child reaching the age to attend primary school, and the employer must fulfil this request (although if one of the parents is not working, then the working spouse cannot claim this part-time working). This same right is also granted to persons who have adopted a child under the age of three years old.

Illness and Injury of Employees

8. 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? Who pays the sick pay and, if the employer, can it 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 from the third day of sickness, equal to either two-thirds or one-half of the daily gross wage depending on the nature of the illness/injury.

The process to claim sick pay from the state is as follows:

- A medical report prepared by a doctor online is automatically sent to the 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 ten days of sick pay must be received from a doctors' panel instead of a single doctor.

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

Compassionate leaves (such as bereavement leave) are types of paid leave under Turkish law. However, by mutual agreement of the parties, unpaid time off can be provided. Either the employer or the employee can propose the unpaid leave. If the employer is the one proposing it, the procedure for imposing a material change must be followed as unpaid leave constitutes a material change to the terms and conditions of employment (*see Question 5*).

As a result of the measures taken due to COVID-19, employers were granted with the power to impose unilateral unpaid leave on employees, partially or in full, during the ban on the termination of employment contracts (*see below, Provisions Concerning COVID-19*).

Recovery of Sick Pay from the State

By signing a protocol with the relevant regional directorate of the Social Security Institution, employers can deduct the amounts they have paid during sickness (the portion equal to the amount of the allowance to be received from the Social Security Institution) from the premium debts that it owes to the Social Security Institution.

Provisions Concerning COVID-19

Ban on the termination of employment contracts and unilateral unpaid leave. The termination of employment contracts by employers was initially prohibited (other than in certain exceptional circumstances) between 17 April 2020 and 30 June 2021.

Alongside the ban on the termination of employment contracts, employers were granted the right to place employees on unpaid leave unilaterally (that is, without employee consent), partially or in full, during the term of the ban.

Short-time working. If working hours were temporarily reduced by least one-third or the activity at the workplace temporarily ceases (in full or partially) for at least four weeks, an employer could apply for short-time working before the Turkish Employment Agency. Applications for short-time working were filed on the ground that there were compelling reasons arising from COVID-19 to request these special provisions, Insured employees received a daily short-time working allowance equivalent to 60% of their daily average gross income based on their last 12 months' salary (subject to premiums). In any event the allowance could not exceed 150% of the gross monthly minimum wage. These allowances continued to be paid until 30 June 2021.

Under the relevant legislation, employees should not have worked while benefitting from the short-time working allowance. If employees continued working voluntarily while benefitting from the short-time working allowance, the Turkish Employment Agency was entitled to request, from the employer, a return of any affected short-time working allowances, together with legal interest (the statute of limitations on these claims is ten years).

Rights Created by Continuous Employment

> 9. 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 certain statutory rights, such as the right to paid holiday and dismissal-related rights (including the right to claim unfair dismissal) (*see Question 7 and Question 12*).

Consequences of a Transfer of Employee

If employees are transferred to a new entity, they retain their period of continuous employment.

Fixed-Term, Part-Time and Agency Workers

10. 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 the Labour Act, including:

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

Regardless of how the contract between the parties is qualified and/or how the employer classifies the employee, the factual content and nature of the contract are considered when determining the employee's actual status.

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 to constitute an indefinite term contract. 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 contract will be deemed to constitute an indefinite term contract 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 the employee's 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 treated less favourably than full-time employees unless such treatment can be objectively justified.

Discrimination and Harassment

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

Protection from Discrimination

Under Article 417 of Turkish Code of Obligations, employers are obliged to protect and respect their employees' personality, and especially in this regard they are responsible for preventing employees from being subject to psychological and/or sexual harassment. Employers are also responsible for taking all the necessary precautions to prevent those who have been subjected to such harassment from experiencing any further harm.

Employers also have an obligation to provide employees with equal treatment under Article 5 of the Labour Act. Accordingly, it is unlawful to discriminate against employees based on their:

- Language.
- Race.
- Sex.
- Political opinions.
- Philosophical beliefs.
- Religion.
- Any other 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 claim the rights to which that employee has been deprived (for example, loss of salary).
- The employer can be subject to an administrative fine amounting to TRY398 (applicable for 2022, and subject to adjustment each year) for each affected employee.
- The employee can terminate the employment based on just cause with immediate effect and claim a severance payment.

Protection from Harassment

Under precedents of the Supreme Court, harassment is defined as verbal or behavioural treatment committed by one or more individuals working in the same environment (or within the same organisation) that:

- Is committed in a systematic way with a certain purpose.
- Is aimed towards another employee.
- May give rise to frustration, fear, disquiet, concern, depression, distress, boredom or anxiety in that employee.

Such behaviour has the aim of creating psychological or emotional pressure on the employee in order to pacificate, humiliate, depreciate, devalue, weaken or alienate the employee, or lead that employee to act (or not act) in a certain way. Harassment at the workplace includes the entire process of intimidation, distress, suppression, boredom and/or pressure to act in a certain way. The target employee (or employees) is exposed to a systematic psychological, emotional and/or social assault throughout the entire process. This assault can be aimed at the target employee's dignity, personality, characteristics, beliefs, values, talents, experience, thoughts, choices, lifestyle and/or culture, and can take the form of actions that impact the target employee mentally, spiritually, psychologically and/or physically (including actions such as gossip, rumours, defamation, humiliation before other employees, underestimation, disparagement and neglect).

Harassment differs from stress, burnout syndrome, workplace bullying or workplace dissatisfaction, as harassment is aimed at a specific individual, has a certain purpose, and is carried out in a constant, systematic and frequent manner.

Employees who are subject to harassment can terminate the employment contract 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.

Termination of Employment

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

Notice Periods

The Labour Act regulates the minimum notice periods that must be provided by both employers and employees when terminating employment 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 the employment contract.

Severance Payments

If the employee has worked for the employer for at least one year and termination of the employment contract occurs for a reason other than for just cause, the employer must pay a severance payment at a rate of 30 days' gross salary for each full year of service (as of the date on which the employment relationship between the parties commenced). Payment must be made on a pro rata basis for periods of service that do not equate to a full year (for example, where an employee has been employed for one year and four months). The 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 TRY15,371.40 (gross) for each year worked (applicable for the period 1 July 2022 to 31 December 2022, subject to adjustment on a six-month basis).

The employer is not required to make a severance payment if the employment is terminated for just cause. Employment can be terminated for just cause on the following grounds:

- The employee's ill health.
- The employee's immoral, dishonourable or malicious conduct, or other similar behaviour that is incompatible with the principles of goodwill and/or morality.
- In compulsory cases.

Procedural Requirements for Dismissal

Where an employer terminates an employment for just cause, the employer must terminate the employment within six working days from the date on which it becomes aware of the conduct justifying the dismissal, with a written termination letter stating the grounds for the termination. If the employee is a protected employee (*see Question 13, Protected Employees*) and the dismissal is based on valid reasons (such as the employee's poor performance or misbehaviour), the employer must state the reasons for the termination in a written termination letter and provide this to the employee, and must also obtain the employee's written statement concerning the same before terminating employment. If the procedural requirements, including the requirement to obtain the employee's written statement where applicable, are not followed, the court will not examine the merits of the case and the termination will be deemed to be procedurally invalid by the court.

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

Protection Against Dismissal

Grounds for dismissal. 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 reasons that can be related to the employee's job performance or behaviour, or based on the requirements of the enterprise, workplace or the work (that is, redundancy), or for just cause (*see Question 12*).

Valid reasons for dismissals relating to the requirements of the enterprise, workplace or the work (redundancy) can include:

- A decrease in sales opportunities, market demand and/or orders.
- An energy shortage.
- A national or international economic crisis (provided that this has an impact on the business in a way that justifies the dismissal(s)).
- A general stagnation in the market.
- A shortage of raw materials.
- The application of new working systems.
- The application of new technology.
- Company or organisational restructuring.

Valid reasons for dismissals relating to the employee's job performance or behaviour, which do not constitute grounds for dismissal for just cause but still damage the relationship of trust between the employer and employee, can include (but are not limited to) instances where the employee:

- Disturbs the other employees while they are working.
- Provokes other employees against the employer.
- Has relations with other employees in a way which adversely affects the workflow or the work environment.
- Is repeatedly late for work.

Employment contracts can also be terminated with immediate effect for just cause (*see Question 12, Severance Payments*).

Procedural requirements for dismissal. See *Question 12, Procedural Requirements for Dismissal*.

Prerequisites to qualify for protection against dismissal. There are no prerequisites to qualify for the usual protections apart from the requirement that the employee has at least six months' service with the employer.

Protected Employees

The Labour Act provides that certain categories of employee are given special protection against dismissal and cannot be dismissed for the following reasons:

- Having union membership, or participating in union activities, outside of working hours, or during working hours with the employer's consent.
- Being a workplace union representative.
- Applying for legal remedies before the administrative or judicial authorities against the employer to claim for employee entitlements arising from the law or the employment contract, or participating in such proceedings.

- Causes related to race, colour, gender, marital status, family obligations, pregnancy, birth, religion, political opinion and other similar reasons.
- A woman employee's absence from work during the periods where a woman is prohibited from working (for example, during maternity leave).
- Temporary absence from work as the result of an incurable illness, or where the health committee has determined that the absence is necessary as working entails a risk for the employee.

Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

Employees can file complaints before the Labour Inspection Board and the Social Security Institution that concern any employment law violations for which there are administrative sanctions. However, this is not common in practice, and usually employees will apply for mandatory mediation without filing a complaint with either of these bodies.

Mandatory mediation is a prerequisite before filing a lawsuit that concerns monetary claims made by employees or employers which arise out of employment contracts, collective labour agreements or reinstatement claims. However, it is not mandatory to proceed with mediation before litigation for material or moral claims that arise from work-related accidents or occupational diseases. Applications for mediation must be filed with the Mediation Offices of the Department of Mediation (established within the General Directorate of Legal Affairs) under the jurisdiction of the competent court. A mediator will be appointed from those listed by the President of the Department of Mediation and notified to the relevant commission. There is no fee charged on submission of the application. If the parties settle at mediation, there is a proportionate fee for the mediator determined under the Mediation Fee Tariff and covered equally by both parties, unless otherwise agreed. If no settlement is reached, a fixed rate applies for the mediator, again covered equally by both parties unless otherwise agreed. The first two hours of the mediation meetings are covered by the budget of the Ministry of Justice.

Redundancy/Layoff

15. 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 from the employee's personality/behaviour. Redundancies are implemented because the employee's service is no longer required, or cannot be afforded, by the employer due to economic, re-organisational or technological reasons arising out of the business, the workplace or the work. The employer must prove the existence of at least one of these reasons to validly initiate redundancies. If the redundancies do not constitute a collective dismissal, the rules for individual termination will be applied (*see Question 12*).

Procedural Requirements

When a dismissal arises because of the requirements of the business, the workplace or the work, the employer must take an operational decision before proceeding with any dismissals. The operational decision must be taken by the employer's board of directors/managers and must clearly show the structural change in the organisation that gives rise to the redundancy situation. In the case of any dispute, the courts will check whether or not the content of that operational decision has been properly applied. The employer must state the reasons for the dismissals in writing in the termination letters that are provided to the affected employees. For cases of collective redundancy, see below, *Collective Redundancies*.

Redundancy/Layoff Pay

Employees have a right to notice and severance payments as is the case with other terminations of employment (other than those made for just cause) (*see Question 12*). If there is no valid reason for termination, the employee can file a reinstatement 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 terminations of employment. This notification must be in writing and include the reasons for the terminations, the 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

16. 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

It is possible for an employee to also be a member of the board of directors. However, there is no legal provision entitling employees to management representation.

Consultation

Consulting with the trade union representative is one of the procedural steps required for collective redundancies (*see Question 15, 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.

17. 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 an employer does not comply with its consultation obligations during collective redundancies, it will be obliged to pay an administrative fine for each employee subject to the collective redundancy, which is currently TRY1,559 (applicable for 2022, and subject to yearly adjustment).

Employee Action

In a collective redundancy, redundant employees are entitled to file a reinstatement action if they benefit from job security provisions (*see Question 13, Protected Employees*).

Consequences of a Business Transfer

18. Is there any statutory and/or common law protection of employees on a business transfer?

Automatic Transfer of Employees

In a transfer of a business (or 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 similarly transferring. In the case of an automatic transfer, employees do not have a right to object to the transfer and so cannot gain access to their statutory rights if they terminate the employment contract. The transfer of a workplace, unless it results in seriously detrimental changes to employees' working conditions, does not constitute just cause for employees to terminate the employment contract.

However, if a business transfer is made by way of merger, demerger or the conversion of the employing company's 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. Under precedents of the Supreme Court, if the employee objects to a transfer made by way of merger, demerger or the conversion of the employing company's type, the employment relationship ends at the end of the legal notice period and the employee acquires their statutory rights, such as severance pay, annual leave pay, other receivables and so on.

Protection Against Dismissal

Employees automatically transfer to the transferee on a business transfer, and the transfer itself is not a justifiable reason for terminating employment contracts.

Harmonisation of Employment Terms

An employee's consent is required if the terms or conditions of work are materially changed by the transfer (*see Question 5*).

Employer and Parent Company Liability

19. 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 the conduct of its employees in tort (where the employer is strictly liable for any tort(s) committed by its employees in the course of their employment) 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 it 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

20. 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 the case of an employer's insolvency, the employment relationships 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 employee 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

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

Under the Occupational Health and Safety Law No. 6331, 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 protection of the health and safety 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.

The Occupational Health and Safety Law No. 6331 provides for several administrative fines as penalties for each type of breach of the occupational health and safety obligations, which vary according to the hazard level of the workplace. The amount of these fines is subject to adjustment on an annual basis and for 2022, there is a fine range of between TRY1,500 up to TRY50,500. It further includes provisions on the criminal liability of both employers and employer representatives with respect to certain breaches of health and safety law. In some circumstances, under the same law, work can be suspended at a workplace where a life-threatening danger has occurred at an employer's workplace/premises, or where the methods of working or work equipment have been found to be dangerous.

Taxation of Employment Income

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

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

Foreign Nationals

Under Article 3 of the Income Tax Act, real persons who are resident in Turkey are subject to taxation based on the entire income and profit they earn both inside and outside of Turkey. Residency is determined under Article 4 of the same Act, and persons meeting either of the following criteria will be deemed to be resident in Turkey:

- Persons whose residence is registered in Turkey.
- Persons who stay in Turkey continuously for a period of at least six months within a calendar year.

However, the following foreign nationals will not be deemed to be resident in Turkey (even if they stay in Turkey for more than six months within a calendar year):

- Business and science persons, experts, officers, press respondents and similar individuals, all of whom are present in Turkey for a specific and temporary task or work, or those who are present in Turkey for education, treatment or recreational purposes.

- Those who are detained in Turkey due to compulsory reasons (such as imprisonment, detention or illness).

Real persons who are not resident in Turkey are only subject to taxation on the income and profit they earn within Turkey.

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 treaty will apply.

Nationals Working Abroad

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

23. 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

Income tax is charged on employment income at progressive tax rates, and for 2022 these are as follows:

- Income of up to TRY32,000: 15%.
- Income of between TRY32,001 up to TRY70,000: TRY4,800 tax payable for the portion up to TRY32,000, and 20% for the remainder.
- Income of between TRY70,001 up to TRY250,000: TRY12,400 tax payable for the portion up to TRY70,000, and 27% for the remainder.
- Income of between TRY250,001 up to TRY880,000: TRY61,000 tax payable for the portion up to TRY250,000, and 35% for the remainder.
- Income of TRY880,001 and over: TRY281,500 tax payable for the portion up to TRY880,000, and 40% for the remainder.

Social Security Contributions

Social security premiums are paid by both employers and employees, and the 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% (2% paid by the employer, 1% paid by the employee).

Intellectual Property (IP)

24. 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 about their creation, who then has a right to decide whether to buy the IP rights to these inventions or creations.

Formal agreements stating that the IP rights of these innovations and creations will automatically pass to the employer do not have any legal validity because the law in this area is intended to protect the employee. This means that when the relevant IP right is created, separate assignment agreements should be concluded for every IP right, 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

25. 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

Restriction of activities during employment. It is possible to restrict an employee's activities during employment. However, any such restriction should be in writing. As a general guide, the scope of the restriction should only concern the activities of the employee that are related to the employment contract, and should be no wider than is reasonably necessary to protect the relevant business interest.

Restriction of activities after termination of employment. It is possible to restrict an employee's activities after termination of employment. A non-compete clause should be reasonably limited with regard to place, time and subject (*see below, Post-Employment Restrictive Covenants*).

Post-Employment Restrictive Covenants

The parties can agree on a non-compete obligation in writing. A non-compete clause should be reasonably limited with regard to place, time and subject. The reasonableness of the restrictions concerning time and subject will be determined according to the special conditions of each employment relationship. Article 445 of the Code of Obligations states that the duration of a non-compete clause should not exceed two years unless there is a special reason for its extension beyond this duration. The duration of a restrictive covenant on confidentiality should reflect the period for which the relevant information is likely to remain confidential. Under Supreme Court precedents, in principle, the place/territory of a non-compete clause should be limited in terms of provinces or districts. Some restrictions covering the whole of Turkey have been held void by the Supreme Court. In some cases where the particular business sector is limited to a small region, even a geographical restraint for that small region may be declared void if this means that the employee can no longer perform any work within their skill set. Finally, the scope of the activities covered by a non-compete clause should only cover the activities with which the employee was concerned with during their employment with the employer. Broad activity restrictions will very likely be declared void by the courts. The key principle is that the restriction must not be such that the employee is unable to work in their particular profession, trade or calling. Whether or not a particular non-compete clause is too wide must be assessed on a case-by-case basis. In any event, a non-compete clause will no longer be valid once the employer ceases to have any interest in that business. The employer does not need to make any payment to the former employee to enforce this type of clause.

Relocation of Employees

26. 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. However, where the relocation constitutes a material change to the terms and conditions of employment, the employer must comply with the notice and consent procedure (*see Question 5*), otherwise the contractual provision concerning the relocation will not be applicable.

Proposals for Reform

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

There are currently no reform proposals or impending developments specifically on employment law in Turkey. However, the Ministry of Labour and Social Security is currently focused on the issue of delaying the pension age, which will affect numerous employees based on the date of their social security registrations. According to the current law, there are three criteria for retirement as follows:

- The number of premium payments made by an employee.
- The prescribed number of years that the employee has worked.
- The employee's age.

The Minister recently announced that they are aiming to introduce the most comprehensive and feasible solution by reviewing the status, the premium payments, and the number of days and years worked for all impacted employees. The Minister has further stated that they are also reviewing other issues, such as those that concern temporary workers, sub-contractors and covenanted employees.

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