

Draft Law on Labour Courts and proposed mandatory mediation phase

March 29 2017 | Contributed by [Gün + Partners](#)

Introduction
Proposed amendment
Comment

Introduction

The Ministry of Justice recently prepared a new draft Law on Labour Courts and shared it with the relevant public institutions and organisations for review.

The principle of employment cases is to conduct litigation in a timely manner. However, in practice, the labour courts' heavy workload obstructs this principle and employment cases take a considerable amount of time. The draft law aims to ease the judiciary's workload in this regard and accelerate the judicial process in employment cases.

The draft law also provides for certain amendments to the Labour Act (4857), the Law on Negotiation in Legal Disputes (6325) and the Law on Trade Unions and Collective Bargaining Agreements (6356), in order to reflect the new draft law.

Proposed amendment

The most important amendment stipulated in the draft law is the introduction of a mandatory mediation phase. If the draft law is adopted, it will be mandatory for employees to apply for mediation before initiating lawsuits regarding:

- employee receivables;
- reinstatement claims; and
- employment and collective bargaining agreements.

Unless an employee appeals during the mandatory mediation phase before filing for one of the abovementioned issues, his or her claim will be dismissed due to the lack of requirements for initiating a lawsuit as provided under the Procedural Code. In such cases, the court will grant no additional time to the employee to correct the deficiency and will dismiss the claim in its entirety. At that point, the employee will have the right to apply for mediation only within two weeks from the finalisation of the court's dismissal decision.

Under the draft law, the application for mediation must be filed before the mediation office where the counterparty resides (or in the case of multiple counterparties, the office where one of the parties resides or where the work has been performed).

The parties will choose the mediator from a list to be issued by the Department of Mediation. This list will contain mediators who are registered with the mediators' registry and willing to act as a mediator, together with an indication of their field of specialty, if any. Where the parties cannot agree on a mediator, the mediation office will make an appointment from the listed mediators.

The appointed mediator will:

AUTHORS

[Beril Yayla Sapan](#)



[Asena Aytuğ Keser](#)



[Can Yöney](#)



- notify the parties regarding the appointment and invite them to the first meeting using all means of communication;
- issue the final minutes at the end of the mediation negotiations;
- immediately inform the mediation office that the meetings have ended; and
- send a copy of the final minutes to the mediation office.

The draft law also stipulates that the mediation phase must be completed within three weeks and that the mediator must deliver his or her decision on the application within this period. If required, the mediator can extend this period by a maximum of one week.

If the parties reach a settlement, the mediation fee will be paid equally, unless otherwise agreed. The mediation fee will be determined as per the minimum wage tariff for mediators. If the parties fail to reach a settlement, the fees corresponding to the first two hours of the meetings will be paid by the Treasury, while the fees corresponding to the remaining period will be paid equally by the parties, unless otherwise agreed.

Comment

The draft law aims to ease the judiciary's workload and accelerate the judicial process in employment cases. However, as the mediation phase has been introduced as a mandatory pre-litigation phase, it is unclear whether the aim to accelerate the judicial process can be fulfilled. It seems possible that parties that have failed to reach a settlement before litigation will be unable to settle before this additional phase. Conversely, certain parties, especially employers, may be inclined to use this additional phase to extend the litigation process, mainly for financial reasons.

The question of whether employees will be sufficiently protected during this additional mediation phase appears to have also been left unanswered. Before preparation of the draft law, concerns were expressed – mainly by scholars – regarding the need for the legal representation of employees. Free legal assistance through a lawyer appointed by the Union of Turkish Bar Associations was one of the options proposed during the preparation stage. However, no such protective provision has been included in the draft law.

For further information on this topic please contact [Beril Yayla Sapan](#), [Asena Aytuğ Keser](#) or [Can Yöneş](#) at [Gün + Partners](#) by telephone (+90 212 354 00 00) or email (beril.yayla@gun.av.tr, asena.keser@gun.av.tr or can.yoney@gun.av.tr). The [Gün + Partners](#) website can be accessed at www.gun.av.tr.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).