

# Basics of Turkish Employment Law

## Turkish Employment Law

### Definition

- Labour law or employment law is the branch of law that deals with labor rights, working conditions, workers' wages, trade unions and employer-employee relations issues

#### branches:

- individual labour law (personal employment contracts)
- collective labour law (collective bargaining agreements)

## Turkish Employment Law

### Legal Sources of Turkish Employment Law

#### A) The Constitution

#### B) Special statutes:

- • Labour Law No. 4857 (the Labour Law)
- Law No. 6552 on Amendment to Labour Law and Several Laws and Executive Orders and Restructuring of Some Credits
- Law No. 6325 on Mediation of Legal Disputes
- Trade Union Act No. 2821
- Law No. 6356 on Trade Unions and Collective Bargaining Agreements;
- • Work Permit for Foreign Workers Law No. 4817
- Maritime Labour Law No. 854
- Law No. 6458 on Foreigners and International Protection
- Press Labour Law No. 5953
- Labour Courts Law No. 7036 (the Labour Courts

#### Law)

- Social Insurance and Universal Health Insurance Law No. 5510

#### C) General statutes:

- Law of Obligation
- Civil Code

#### D) Regulations

#### E) By-laws

## Turkish Employment Law

### Contractual Sources

A) Collective Bargaining agreements

B) Employment contracts

C) Internal regulations

D) Business practices

## Entering an employment relationship

### Employment Contract

- The employment contract is a contract governed by private law through which the employee undertakes to perform work within a period of time or indefinitely and the employer undertakes to pay a salary in consideration for that work.
- It is a consensual contract resulting in reciprocal obligations
- The parties are not obliged to explain their intent
- It can be implicit
- It can be made for a fixed or indefinite term

## Entering an employment relationship

### Employment Contract

With an employment contract:

- The employee undertakes to execute work dependently
- The employer undertakes to pay a salary.
- The employment contract does not need to be in a specific form (verbal or written)
  - Contracts lasting one year or more must be drawn up in writing.

## Entering an employment relationship

### Components of an employment contract

- payment time and amount
- sanctions to be imposed if payment is delayed
- the wages to be paid to the employee in case of overtime and work on non-business days
- any provisions relating to the obligations of the employer regarding the surveillance of the employee, assisting the employee or providing equipment for the employee
- a job description
- the obligations of the employee regarding compliance and commitment
- the procedures and sanctions to be followed if the employee violates the requirements of the job
- the start date of the employment contract
- the terms for termination

## Entering an employment relationship

### Gap in contract

- The provisions specified in the contract cannot be inconsistent with the provisions stipulated in the Labour Law.
- However, as it is not obligatory to draw up an employment contract in writing (with some exceptions).
- Even if there is no arrangement made regarding the components, the provisions specified in the Labour Law shall be applied

## Entering an employment relationship

### Start date of the contract

- The parties can determine in the contract the date from which the contract provisions shall apply.
- Employers should draw up a **statement of employment** for the purposes of social security registration.
- The date the employee signs the employment agreement is considered the start date.

## Entering an employment relationship

### Types of employment contracts

- a) Employment contracts for “temporary” and “permanent” work
- b) Employment contracts for a “definite period” or an “indefinite period”
- c) Employment contracts for “part-time” and “full-time” work
- d) Employment contracts for “work-upon-call”
- e) Employment contracts with a trial period (probationary period)
- f) Employment contracts constituted with a team contract

## Entering an employment relationship

### Fixed-term contracts

- Fixed-term employment contracts are permissible in Turkish labour law.
- It terminates upon the expiration.
- There is no obligation to provide notice of termination to either party
- It can **only be concluded** if the work that the employee undertakes lasts for a certain period of time.
- A work that will last for an indefinite period cannot be the subject of a fixed-term employment contract.
- If a party's intention is to terminate the contract before the expiration date, it must have a justifiable reason to do so.
- Without a justifiable reason, a premature termination shall be deemed as unjust.
- Regarding fixed-term contracts, employees are entitled to severance payment but are not entitled to a payment in lieu of notice.

## Entering an employment relationship

### Trial periods (Probationary periods)

- The probation period can last for a maximum of 2 months. This period can be extended to 4 months through a collective bargaining agreement.
- During the probation period, the parties can terminate the employment contract
  - without advance notification
  - without paying compensation
- The employee shall still be entitled to the wages and other rights accrued during employment.

## Entering an employment relationship

### Amending the terms of contract

- Amendments of the terms of employment can be specified in the employment contract.
- If not specified, the parties can amend the contract terms by a new contract or a supplementary protocol.
- The parties can also amend provisions stipulated in the contract implicitly (verbally).

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## Entering an employment relationship

### Working time

- Maximum working time: 45 hours per week.
- Can be reduced by mutual agreement of the parties.
- Working hours are divided equally among the working days of the week unless otherwise agreed.
- In any case an employee cannot work more than 11 hours in one day.
- Equalisation: Employees may work more than 45 hours in a normal working week but the average weekly working hours of the employee over 2 months can not exceed 45 hours.
  - The 2 month basis for calculation can be increased to 4 months with a collective bargaining agreement.

## Entering an employment relationship

### Working time: night work

- The **night work** cannot exceed 7:30 hours.
- Employees who work at night cannot work overtime.
- If an employee works a night shift for 1 week, the employer must schedule the employee for day shifts in the following week.
- It is possible to work night shifts for 2 consecutive weeks provided that this is followed by 2 weeks of day shifts.
- An employee whose shift will be changed from night to day or vice versa must be given 11 continuous hours off before starting a new shift.



## Entering an employment relationship

### Working time: night work

- A health report must be obtained before recruitment certifying that the workers who will perform night work are suitably healthy to do so.
- Night workers must undergo a medical check by the employer at least once every two years.
- The costs of such medical checks are covered by the employer.

## Entering an employment relationship

### Working time: underground mining work

- The maximum working hours of underground mining employees shall:
  - not extend beyond 36 hours per week
  - not exceed and 6 hours per day.

## Entering an employment relationship

### Working time: Overtime

- Overtime is work exceeding 45 hours weekly.
- It is permissible to work overtime:
  - for general national interest
  - for increasing production
  - overtime is permissible for certain types of work.
- If the employer equalises working hours (45h/w), this work will not qualify as overtime.
- The working hours exceed daily working hours + the weekly working hours exceed 45 hours = the employer must pay overtime.
- If the parties agreed to a weekly working schedule of less than 45 hours + working time exceeds the average weekly working time but remains under 45 hours = the employer must still pay overtime.
- The total overtime cannot exceed 270 hours per year.

## Entering an employment relationship

### Working time: Overtime payment

- Overtime pay = hourly rate x 1,5
- For extra work (which exceeds the agreed weekly amount but is under 45 hours), the employer must increase the usual hourly remuneration by 25 per cent.
- This amount can be increased according to employment contracts and collective bargaining agreements.
- Instead of receiving overtime, the employee may elect to take compensatory time off of 90 minutes for each hour of overtime worked.
- The employee's approval is required for working overtime.
- Underground mining employees shall not be asked to work overtime unless urgent and extraordinary conditions as set out in the Labour Law apply.
  - Under such urgent or extraordinary circumstances, the hourly payment for every hour exceeding 37.5 hours shall not be less than the full normal hourly payment.

## Entering an employment relationship

### Restrictive Covenants

- Non-compete provisions can be specified in an employment contract.
- Even if it is not specified, an employee may not compete with his or her employer during the period of employment.
- Because an employee's duties of privacy, secrecy, loyalty and non-competition arise out of the employment contract.
- Non-competition after termination of an employment contract is dependent on an additional non-compete agreement drawn up between the employee and employer or included in the employment contract.

## Entering an employment relationship

### Termination of Employment Contract

- According to the provisions of the Labor Law No. 4857, employers and employees are required to give specified notice periods prior to the termination of an employment contract:

Required minimum notice periods for employers and employees	
Tenure	Prior notice required
0 - 6 months	2 weeks
6 - 18 months	4 weeks
18 - 36 months	6 weeks
More than 36 months	8 weeks

## Entering an employment relationship

### Termination of Employment Contract

There are two types of termination for an employment contract:

- 1) Termination with notice
- 2) Premature termination

## Entering an employment relationship

### Termination of Employment Contract

#### 1) Termination with notice

- Both the employee and the employer may terminate an employment contract concluded for an indefinite period based on the notice periods indicated in the previous table.
- Should either party fail to abide by the rule to serve notice, a *payment in lieu of notice (PILON)* shall be due to the other party.
- PILON shall serve as an immediate compensation to terminate the employment contract at an amount equal to the notice period.

## Entering an employment relationship

### Termination of Employment Contract

#### 2) Premature Termination

- Both the employer and employee have the right to terminate an employment contract before the expiration thereof or without having to comply with the prescribed notice periods, in the following cases:
  - Reasons of health
  - Cases arising from immoral, dishonorable or malicious conduct or other similar behavior
  - Force majeure

## Entering an employment relationship

### Termination of Employment Contract

#### Severance Pay

- An employee whose employment contract is terminated by the employer must be compensated with a severance pay to be calculated based on the employees' years of service.
- This indemnity pay is calculated on the basis of the last 30 days' gross wage per year of the employment contract from the commencement date of employment.
- Severance pay may be agreed to be paid at an amount higher than the limit indicated above in case a provision to this effect is set out in the employment contract.

## Entering an employment relationship

### Termination of Employment Contract

#### Reasons for Severance Pay

- Termination of employment to fulfill compulsory **military service** obligations (for males)
- **Retirement** (in order to receive old age, retirement pension or disability allowance from the relevant insurance institutions)
- Employee's resignation upon completing **3,600 premium days and 15 years of insurance period** (in case of fulfillment of retirement conditions except the age limit and resignation with the submission of the document from the Social Security Institution indicating the fulfillment of retirement conditions, excluding the age limit, to the employer)
- Voluntary termination by **female** employees within one year following **the date of marriage**
- **Death** of the employee
- **Termination** of the employment contract in the **absence of a valid reason** as set forth in the Labor Law by the employer and/or for a valid reason

## Entering an employment relationship

### Termination of Employment Contract

#### Job Security

- In case the employment contract is terminated by the employer, it is required that the underlying **reason of this termination be notified to the employee.**
- The employee may initiate a legal action before a Labor Court within **one month from the date of notification of termination.**
- In the legal proceedings, the **burden of proof that termination is based on a valid reason** falls upon the employer.
- If the employee claims that termination is due to another reason, they are obligated to prove their claim.
- If the court decides that the termination is unfair it can rule for the reemployment of the employee

## Entering an employment relationship

### Termination of Employment Contract

#### Job Security

- **Compulsory** Intermediation has been introduced for employee-employer conflicts as of 2018.
- Parties to a conflict **shall** refer to an intermediary before a lawsuit can be filed.
- In the event that a lawsuit is filed **without first referring to an intermediary to conclude the matter, the lawsuit may be directly declined.**