

KILIC & **PARTNERS**
International Law Firm

Turkish Employment Laws & Employer Obligations Overview

KILIC & **PARTNERS**
International Law Firm

Astoria Kempinski Tower A, Floors 8-10
Büyükdere Cad. No. 127 - 34394 Esentepe
Şişli - İstanbul - Turkey

T: +90 212 277 41 11

F: +90 212 340 76 01

info@tr.kilicandpartners.com

www.kilicandpartners.com

Introduction:

A comprehensive overview of Turkish Employment Laws and regulations provided by KILIÇ and Partners law firm Istanbul, for International & locally based companies. We can provide both a comprehensive Employment Law schedule and applicable working contracts

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Scope of employment regulation

Employment laws in Turkey apply to Turkish nationals and foreign nationals alike. In addition, special provisions exist which regulate the employment and residence permits of foreign nationals who intend to work in Turkey.

The main pieces of employment related legislation applicable to both Turkish nationals and foreign nationals are as follows:

Turkish Labour Code (No. 4857), published in the Official Gazette dated 22 May 2003 and numbered 25134.

Turkish Code of Obligations (No. 6098), published in the Official Gazette dated 4 February 2012 and numbered 27836, which entered into force on 1 July 2012.

Social Insurance and General Health Insurance Code (No. 5510), published in the Official Gazette dated 16 June 2006 and numbered 26200.

Code of Work Permits for Foreigners (No. 4817), published in the Official Gazette dated 6 March 2003 and numbered 25040.

Code on Trade Unions and Collective Bargaining (No. 6536), published in the Official Gazette dated 7 November 2012 and numbered 28460.

Workplace Health and Safety Code (No. 6331), published in the Official Gazette dated 30 June 2012 and numbered 28339.

Under the Code on International Private and Procedural Law (No. 5718, published in the Official Gazette dated 12 December 2007 and numbered 26728), parties' choice of law in an employment agreement bearing a foreign element is valid and enforceable on the condition that the minimum standard of protection ensured by the laws of the country where the work is being performed is reserved. Where the parties have not explicitly chosen an applicable law, the laws of the country where the work is performed is applicable.

In addition, where international or bilateral treaties are in place between Turkey and the employee's country of origin, the related terms of that treaty will principally be applied, to the extent possible.

Laws applicable to nationals working abroad

There is no specific legislation regulating different or specific principles for Turkish nationals working abroad. However, if an international or bilateral employment treaty is signed with the country where Turkish nationals are employed, the provisions of that treaty will apply.

Employment status

Categories of worker

The Turkish Labour Code and labour law principles do not define specific categories of workers. However, employment contracts are classified into categories. The main categories of employment contracts are:

- Continuous and non-continuous.
- Fixed term and indefinite term.
- Full-time and part-time.
- Seasonal.
- Temporary.
- Team employment contracts.
- Employment contracts with or without trial periods.
- Provisional employment contracts.

Although no specific provision is made under the Turkish Labour Code regarding worker categories, such as white-collar and blue-collar workers, such a distinction has developed as a result of long lasting practice by some companies to be used for the purposes of workplace regulation.

Further, there is also a distinction developed in practice with regard to regular employees and executive managers (who are deemed to be the representatives of the employer). This distinction originates from court precedents which hold that executive managers who are responsible for the administration of the workplace are not entitled to sue for reinstatement to work if the employment contract is terminated for just cause. Another distinction regarding these employees is that, contrary to the general rule under labour law, the fixed-term employment contract of an executive manager will not be considered as an indefinite employment contract even if it is renewed more than once.

Entitlement to statutory employment rights

Under the provisions of the Turkish labour laws, employees are entitled to certain rights that for the most part cannot be excluded. These statutory rights, which are not differentiated based on employee categories, are as follows:

The right to remuneration. Without discrimination, each employee has a right to demand remuneration for the work they conduct. The amount of wages will vary depending on the position of the employee, the nature of the work and market standards. Nevertheless, the salary of an employee cannot be lower than the minimum wage amount which is determined by the state and redefined two times every year.

Overtime pay. Under the Turkish Labour Code, an employee's work hours in a week cannot exceed 45 hours. If the employee works overtime, the employer is obliged to pay overtime compensation. However, under court precedents, certain employees (for example, high level executives and employees who can fix their work hour schedules themselves and who earn salaries which are higher than market standards) are not entitled to request overtime payment where it can be determined that the salary is high enough to include overtime payment.

Annual leave. Each employee who has been working for at least a year in the same workplace is entitled to annual paid leave. The length of the allotted annual leave varies depending on the term of employment:

- employees who have worked between one year and five years (including the fifth year) are given 14 days;
- employees who have worked more than five years up to 15 years are given 20 days;
- Employees who have worked for 15 years and more are given 26 days.

Weekend break. Each employee who has worked for 45 hours per week is entitled to a continuous 24-hour weekend break. Employers do not have the right to deduct this weekend break from the employees' salaries.

Rest break. Each employee is entitled to a rest break the duration of which varies depending on the working hours.

Public holidays. Each year employees are entitled to public holidays during which they do not have to work and the duration of which cannot be deducted from the employee's salary. If employees work during the public holidays, they are entitled to an additional payment for each day.

Insurance. The employer must inform the Social Security Institution (SSI) about each employee that works in his workplace for whom the employer will be paying social security premiums. Under the social security laws, each employee becomes insured from the first day of work.

Severance payment. Upon termination of the employment contract, employees are entitled to a severance payment on the condition that the employee has completed at least one year of continuous employment. This payment is calculated by multiplying the number of years of employment with the employee's monthly salary at termination (the salary basis for this calculation is subject to a statutory ceiling of TL 3,254.44 per month, as last adjusted in the second quarter of 2013).

Notice payment. The following minimum notice periods are applicable under Turkish labour laws:

- where employed for less than six months, two weeks' notice;
- where employed for between six months up to 18 months, four weeks' notice;
- where employed for between 18 months up to three years, six weeks' notice;
- where employed for more than three years, eight weeks' notice.

If the employer terminates the employment contract on the basis of a valid cause, the employer is expected to respect the notice periods stipulated under the Turkish Labour Code. If that prior notice is not given to the employee, then the employee will be entitled to a notice payment corresponding to the amount of the salary which would have been earned by the employee if they had worked during that notice period. The obligation to give notice is also imposed on employees, and their failure to give proper notice is also subject to the same compensation principle.

Reinstatement to work. Under the Turkish Labour Law, if the employment contract of an employee is terminated without just cause, the employee has the right to sue the employer for reinstatement to work. It should be noted that this right only applies for employees who fall under the scope of the job security provisions, which are applied to workplaces employing more than 30 employees. Employees must also have worked for at least six months in that qualifying workplace in order to benefit from these provisions.

Time periods

Under Turkish labour law principles, there are no legal restrictions regarding the duration of an employment contract. The Turkish Labour Code states that an employment contract can be enacted for an indefinite period of time and no specific duration is imposed. As for fixed-term contracts, labour laws state that such contracts cannot be renewed more than once unless doing so is specifically necessitated by the circumstances, and the nature of the work must also lend itself to a fixed-term contract. In other words, it is not possible to enter into fixed-term contracts with an employee where the work is continuous in nature. Where this happens, the fixed-term contract will be considered to be an indefinite employment contract from the beginning.

Recruitment

Grants or incentives

Several employment-oriented incentive regimes are applied within the scope of the Turkish social security laws.

The Turkish National Assembly passed a law in 2011 (Law No. 6111, published in the Official Gazette dated 25 February 2011 and numbered 27857) that made certain amendments to the Social Security Law. This amendment stipulated that unemployment premiums (which, under general terms, were paid by the employer) for employees recruited as of 1 March 2011 would be compensated from an Unemployment Insurance Fund rather than be paid by the employer. This provision is set to end on 31 December 2015.

In addition, the Social Insurance and General Health Insurance Code contains a five-point social security premium discount in favour of employers, to be paid by the State Treasury instead. An additional incentive regime was introduced for certain geographic regions of the country in a recent law passed by the Turkish National Assembly (Law No. 6486, published in the Official Gazette dated 29 May 2013 and numbered 28661) which will enable adding up to six additional social security premium points (in addition to the aforementioned five-point discount) for employers who employ at least ten employees. The geographical scope in which the law is to apply is to be determined by the Council of Ministers, and the application period of the incentive will vary between the determined cities as stipulated by the Council of Ministers.

Various other incentive regimes, such as incentives for employers who employ disabled workers, are also found under the Turkish labour and social security laws.

Filings

Under Article 8 of the Social Security and General Health Insurance Code, employers must give a statement of employment to the SSI for each employee before the employee starts working.

In addition, under the same Article, the employee can also notify the SSI of their employment within one month of the commencement of their employment. Although this avenue to self-report has been open to employees for a long period of time, in practice employees generally do not take advantage of this procedure, and most of them do not even know that they are provided with such a possibility. It is clear that the unregistered employment issue could be substantially solved if employees were to self-report to the SSI upon commencement of employment.

Background checks

There are no legal restrictions on background checks under Turkish law. Under the Turkish Labour Code, the employer must keep a personnel file for each employee, though what the file must contain is not specified. Therefore, employers in Turkey generally keep employees' criminal records, health reports, and so on, on file. The employer is not limited in requesting health or criminal records from the employee. However, it should be borne in mind that the records and documents cannot be used for discriminatory purposes, and any personal information that is collected cannot be disclosed by the employer without the employee's permission. Under the personal data protection provisions, the explicit consent of the related person must be obtained in order to record, process or share their personal data. Although the rules do not stipulate that it is necessary to obtain a written consent, it is advisable to obtain such consent in written form for evidentiary purposes.

Laws applicable to foreign nationals

Permission to work

Visa

Procedure for obtaining approval. Foreign nationals must obtain a work visa and a work permit before starting work in Turkey. The work visa can be obtained from Turkey's foreign missions, and the work permit is granted by the Ministry of Labour and Social Security. Under the Code of Work Permits for Foreigners, work permits are not valid without a work visa.

Foreign nationals who have obtained a residence permit valid for at least six months will not need to obtain a work visa through Turkey's foreign missions, as they can directly apply for a work permit in Turkey.

Cost. The cost for obtaining a work visa depends on the country from where the application is filed. Visa costs should be checked with the Turkish foreign missions in the related country where an application will be filed.

Time frame. There is no specific time frame envisaged for Turkish foreign missions to grant a work visa. However, it is suggested that the application is filed at least one month prior to the desired departure date, as there can be delays in the visa process.

Permits

Procedure for obtaining approval. Foreign nationals must also obtain a work permit in order to be employed in Turkey. The application for a work permit can be filed either within Turkey or from abroad, as follows:

Outside of Turkey. The foreign national will need to apply to Turkey's foreign missions with a passport, a work visa, a copy of the employment agreement and a single passport picture.

Inside Turkey. Foreign nationals who have obtained at least a six-month residence permit will be able to directly apply to the Ministry of Labour and Social Security to obtain a work permit.

The applicant must also file a residence permit application with the police department in the city in which they will work in order to obtain a residence permit within 30 days following their arrival in Turkey and before starting to work (in the instance where the applicant does not already have a residence permit). The work permit becomes valid with the granting of the residence permit.

The work permit can be for a definite or an indefinite term. The definite-term work permit can initially be granted for a maximum period of one year. At the end of one year, the permit can be renewed for up to three years, and then renewed again for up to six years in total (that is, for a further three years).

The indefinite-term work permit can be granted to foreign nationals who have resided in Turkey for at least eight years, or to those who have been working in Turkey for at least six years.

Cost. The fee for obtaining a definite-term work is TL 158.25 for a permit of up to one year and TL 476.30 for a permit of up to three years and for a second renewal for an additional three years. The fee for obtaining an indefinite-term work permit is TL 794.50. These fees are subject to revision every year.

Time frame. Following the submission of the required documentation by the applicant, the Ministry of Labour and Social Security will finalise the application within one month provided that the application is complete.

Sanctions. Employers who employ foreign nationals who do not have a work permit will be subject to a fine of TL 7,352 for each employee who does not have a work permit. In addition, each employee who works without a work permit will be given a fine of TL 2,928 for each employee who works independently). These fines are subject to revision every year.

Restrictions on managers and directors

Age restrictions

There are no legal restrictions regarding the age of a manager or company director. The only age restriction under the Turkish legislation is contained in the Turkish Labour Code, stating that it is prohibited to employ children below the age of 15. It is also forbidden to employ children below the age of 18 for certain jobs and for jobs that require night shifts.

Nationality restrictions

There are no nationality restrictions. Every foreign national is allowed to work in Turkey provided that they fulfil the work visa, permit and residence requirements.

Other

Under the Turkish Commercial Code, board members who become insolvent or whose legal capacity becomes restricted must cease to hold the title of board member of a joint stock company. The same rule applies to managers of limited liability companies. Additional rules may be applied by way of company articles of association. There are also specific and detailed rules for independent board members of companies that are subject to capital markets regulations.

Regulation of the employment relationship

Written employment contract

Generally, the employment agreement is not subject to a specific legal form. The parties can enter into written or verbal agreements. However, the Turkish Labour Code states that employment contracts with terms of longer than one year must be executed in written form. However, the absence of a written contract is never interpreted against the employee in the event of conflict between the parties.

Whether in written or oral form, the employment agreement must contain the employee's undertaking to perform work under the direction of the employer and the employer's undertaking to pay a salary in return.

In the event that there is no written contract between the employer and the employee, the employer must inform the employee in writing of the following:

- Term of employment.
- Salary.
- Working hours.
- Benefits.

Implied terms

There are mandatory rules of the Turkish Labour Code and these rules will be incorporated as implied terms into employment contracts even if the parties have agreed on different terms. The mandatory rules of the Turkish Labour Code cannot be circumvented to the employee's disadvantage, and as a general principle the provisions that are more favourable to the employee are upheld. There are many mandatory rules which are separately defined under the Turkish Labour Code, such as provisions in relation to overtime work, probation period, re-instatement to work, the obligation that the termination notice be given by the employer in written form, and the requirement to hear an employee's defence in cases of termination on valid cause, and so on.

Collective agreements

Collective bargaining agreements are allowed under Turkish law. These agreements have the purpose of protecting the rights of those employees who are in weaker positions vis-à-vis their employers. Trade unions or employee representatives, provided they are given the authority, have the right to negotiate collective agreement terms in the name of the

employees. Once the collective agreement is executed, the employer will be bound by the terms and conditions of that agreement. Collective bargaining agreements are subject to specific regulations under the Turkish Labour Code with regard to certain matters, such as trial periods, salary payment terms, and so on.

If the employer wishes to effect a unilateral change to the terms and conditions of the employment agreement, it must note that substantial changes to employment terms and conditions cannot be implemented without a written notification addressed to the employee. In order for the substantial change to become effective, it must be approved within six days by the employee following the employer's notification. If the employee does not give consent to the change within that period, the employer can proceed with termination of the employment contract on the ground that the change is based on a reasonable cause, the employee's right to claim compensation being reserved. Changes such as decreases in compensation, changes of workplace, or changes in working hours are deemed to be substantial changes that require employee consent before being implemented.

Employers can make changes regarding work conditions without employee consent, provided that those changes are not material.

Minimum wage

There is a national minimum wage that applies to all employees in Turkey. Under Article 39 of the Turkish Labour Code, the minimum wage is determined and revised by the related commission of the Ministry of Labour and Social Security twice every year.

The minimum monthly gross wages that apply as follow:

01.01.2015 - 30.06.2015:

Gross: 1.201,50 TL

Net: 949,07 TL

01.07.2015 - 31.12.2015 :

Gross: 1.273,50 TL

Net: 1.000,54 TL

Restrictions on working time

Working hours

Under Article 63 of the Turkish Labour Code, working hours in a week cannot exceed 45 hours. Further, working hours per day cannot exceed 11 hours. The 45 hours of work time can be distributed unevenly between the days of the week by mutual agreement of the parties (through employment contracts or collective agreements) to the extent that the maximum daily limit of working hours is not exceeded. These limits cannot be exceeded even by way of agreement between the employer and employee. The working hours exceeding these limits are considered as overtime work and must be compensated by an

overtime work payment by the employer. The upper limit for overtime work (which is regulated by the Turkish Labour Code) is 270 hours in a year. In certain fields, such as health or the armed forces, the nature of the work may oblige overtime work. In addition, the working hours and conditions of public servants are regulated by special laws, regulations and communiqués and may vary depending on the field of work.

Rest breaks

Under the Turkish Labour Code, each employee is entitled to a rest break in a work day. The length of the rest breaks depend on the length of work (Article 68, Turkish Labour Code):

- Up to four hours: 15 minutes of break.
- Up to 7.5 hours: 30 minutes of break.
- More than 7.5 hours: one hour of break

Shift workers

Under Article 69 of the Labour Code, if the work requires a night shift, this shift cannot exceed 7.5 hours and an employee cannot work overtime following a night shift.

Holiday entitlement

Minimum holiday entitlement

Under Article 53 of the Turkish Labour Code, employees who have worked for at least one year are entitled to paid annual leave. The length of the paid annual leave will vary depending on the length of employment. The minimum holiday entitlements for employees are contained in the Turkish Labour Code, and are as follows:

- One to five years of employment (including the fifth year): 14 days per year.
- More than five years to 15 years of employment: 20 days per year.
- More than 15 years of employment: 26 days per year.
- Employees who are below the age of 18 or above the age of 50 are entitled to a minimum of 20 days of annual leave.

These holiday entitlements can be extended through employment contracts or collective bargaining agreements.

Public holidays

Turkey has 14.5 days of public holidays each year. 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).
- Victory Day (30 August).
- Republic Day (afternoon of the 28 October and 29 October).
- Feast of Ramadan and Feast of Sacrifice (eight days in total).
- Public holidays are not included in the minimum paid annual leave entitlements.

Illness and injury of employees

Entitlement to time off

Employees are entitled to time off in the case of injury or illness. Employees who can document their injury or illness with a doctor's report will be entitled to time off during the period of rest recommended in the report. However, if the period of illness or injury exceeds the employee's valid notice period by six weeks, the employer will have the right to terminate the employment agreement with immediate effect by paying the employee's severance payment on the grounds that the employee's sickness cannot be cured.

Entitlement to paid time off

Employers are not obliged to provide sick pay to employees during sick leave. Employees are entitled to compensation during such time through government disability programmes. If the illness or injury can be classified as occupational, then the employee will be entitled to temporary sick pay for every day starting from the first day of their time off. However, where the illness or injury is not occupational, sick pay will be available for every day starting from the third day of illness or injury (additional conditions are applied under the related regulations). In practice, employers continue to pay the full salary to employees even during sick leave and then deduct the amount paid by the Social Security Institution from the employee's salary.

Under the Code on Social Security and General Health Insurance, in the event that an employee loses at least 10% of their work ability due to a work-related accident, the employee will be entitled to continuous sick pay, and the amount of the sick pay will be calculated based on the percentage of the work ability lost and other relevant criteria.

Recovery of sick pay from the state

If the employer decides to make additional payments to the employee during sick leave, it is not possible for the employer to recover those payments from the state.

Statutory rights of parents

Maternity rights

Under Article 74 of the Turkish Labour Code, pregnant employees can take fully paid leave for:

The Law Amending the Income Tax Law numbered 6663 and various laws ("Amendment") was accepted in to force on the 29.01.2016 and published in the Official Gazette on February 10, 2016 entering into effect on the same day. Law No. 6663, which is considered to be an omnibus law and makes alterations to the Income Tax Law along with various laws.

One of the most important of these Amendments is to Labour Law numbered 4857 and

related legislation. This amendment strengthens rights and permissions regarding maternity periods and bringing a new leave entitlement and option of part-time work for either parent.

Law No. 6663 grants women, either parent or adoptive parents, unpaid leave up to six months after expiry of their maternity leave and in cases of adoption immediately after adoption. It also acknowledges the right for such persons to use unpaid leave for up to half of their normal working hours, for a period of up to six weeks.

Accordingly additional provisions to Article 74 of the Labour Law where made in the event that the mother dies during or soon after child's birth, the father will be entitled to use unused maternity leave.

After the expiry of the maternity leave, in order to raise the child, mothers will be entitled to work half of their daily working hours for a period of two months for their first births, four months for their second births, and six months for their subsequent births, without any of their financial or social rights being interrupted.

In addition, if they request one of the parents can work part-time until the beginning of the child's compulsory education and employers cannot terminate the employment contract for this reason. The employees adopting child under three years old are also entitled to use this part-time work right. However due to the reason that working part-time, the financial rights will be paid as half and the service time and period will be calculated as half of the full time.

Continuous periods of employment

Statutory rights created

Under the Turkish Labour Code, certain rights such as annual paid leave, severance payment or the right to request reinstatement to work depend on continuous employment and it is required that a certain duration of employment is completed in order for these rights to arise, which is one year for entitlement to annual paid leave and severance payment rights, and six months for the implementation of re-instatement procedures to apply.

Consequences of the transfer of employee

If an employee wants to transfer to another entity owned by a different person, the employee will not retain their rights based on continuous employment, and employment benefits linked to the length of employment will be reset. However, if the employee is transferred to a new entity owned by a different person as a result of a business transfer made by the employer, then the employee will retain all rights linked to the length of employment as they continue to work in the same place, and in such case the working conditions of the employee cannot be changed to the employee's detriment in the new workplace. In such a transfer, all of the employment agreements will also be directly transferred to the new owner.

Fixed term, part-time and agency workers

Article 5 of the Turkish Labour Code embraces the principle that all employees should be treated equally. Accordingly, employers cannot treat temporary and agency workers or part-time workers differently from the permanent employees unless justifiable grounds exist for the different treatment.

Temporary workers

Under Article 7 of the Turkish Labour Code, employers can temporarily transfer or assign an employee with their consent within the same holding company or within the same group of companies or to another employer that works in a similar business. In such a case, the employment relationship between the employee and the employer remains intact. With that being said, during the continuation of the temporary employment relationship the employee must perform their duties originating from the employment contract for the benefit of the temporary employer.

Temporary work agreements must be in written form, cannot exceed a period of six months, and can only be renewed twice. The original employer continues to pay the salary of the employee during the temporary employment period.

Agency workers

Under the provisions of the Turkish Labour Code, employers are entitled to enter into subcontractor agreements for work that is deemed to be supplementary to the main work, or for work requiring technical expertise. In such arrangements, the subcontractor remains primarily liable for its employees' employee rights arising out of the Labour Code, employment agreements or collective employment agreements, but the main contractor can also face liability along with the subcontractor itself in events of work-related accidents and other exceptional circumstances.

However, if the subcontractor agreement is found to delegate work in contravention of the law, then the main employer will be obligated to treat the subcontractor's employees equally with its own employees, and the subcontractor employees will be considered to be main contractor's employees from the beginning of the arrangement.

Part-time workers

Under Article 13 of the Turkish Labour Code, if an employee's weekly work hours are established at substantially less than the normal working hours (maximum 45 hours per week), then the employee is considered to be a part-time worker.

Employers establish the payment and other financial rights of part-time employees in proportion with their working hours.

Data protection

Employees' data protection rights

Under Article 75 of the Turkish Labour Code, employers are obliged to keep a file on each employee in which will be included documents such as the employee's identification information along with their health report, diploma, CV, performance and progress reports, payments made to the employee, and annual paid leave records.

Employers' data protection obligations

Employers are under an obligation to keep confidential the information contained in employee files.

Article 419 of the Turkish Code of Obligations sets out that employers are prohibited from using the personal data of their employees unless this is necessary for the execution of the employment agreement.

Discrimination and harassment

Protection from discrimination

Under Article 5 of the Turkish Labour Code, employers are under obligation to treat employees equally and to not discriminate between them on prohibited grounds such as:

- Language.
- Race.
- Religion.
- Gender/sex.
- Political or philosophical view.

It is explicitly stated under Article 5 that different treatment must not be applied in relation to employment conditions, or while initiating or terminating an employment relationship, or during the implementation of an employment agreement, based on gender/sex or pregnancy unless the nature of the work or any biological reason requires that different treatment. It is also emphasised that a lower fee for the same work cannot be paid within the scope of employment agreements solely based on gender/sex discrimination. In addition, positive discriminative implementation cannot be used as grounds for providing lower fees.

If an employer does not comply with this legal obligation, it can be subject to an indemnity equal to up to four months' worth of the related employee's salary, without prejudice to any of the employee's other rights of claim.

Protection from harassment

The Turkish Labour Code sets out the employee's right to immediately terminate the employment agreement where that employee is subject to harassment. The protection from harassment is not limited to sexual harassment but also includes the protection of the employee's dignity and honour, in which case the employee may be entitled to a right to demand immediate termination of the employment relationship. Employees are entitled to collect severance payment and all other earned rights when the employment agreement is terminated on these grounds.

Further, the Turkish Code of Obligations provides another protection against harassment and mobbing at the workplace. Under the relevant Article of Turkish Code of Obligations, employers are obliged to provide necessary protections against all harassment situations. Employees are also entitled to request compensation of damages in the event that the harassment results in the injury or death of the employee.

Termination of employment

Notice periods

The termination of an employment contract is not valid unless a written notice is served to the employee and legal notice periods are respected. However, there are certain cases where employers are entitled to terminate the employment relationship on the basis of a just cause (Article 25 of the Turkish Labour Code, which can be briefly summarised as health reasons, lack of good faith and moral character and the employee's absence), in which case the employer is not obliged to comply with the legal notice periods and can effect immediate termination. In the case of termination based on just cause, the employee is not entitled to a notice period payment. In the event that there is no just cause, employers are obliged to comply with the notice periods which vary depending on the length of the employment:

- Less than six months' employment: two weeks' notice.
- Between six months up to 18 months' employment: four weeks' notice.
- Between 18 months up to three years' employment: six weeks' notice.
- More than three years' employment: eight weeks' notice.

These notice periods are the minimum legal periods, the length of which can be prolonged through mutual agreement of the parties or through collective bargaining agreements. The notice periods can be prolonged for both parties, but court precedents state that the notice periods cannot be prolonged to the employee's detriment.

Employers need not continue to employ terminated employees for the duration of these notice periods, as employers can terminate an employee's employment effective immediately by making a payment in lieu of the notice period (that payment will correspond to the gross salary of the employee for the notice period).

Further, employees and employers are also entitled to terminate the employment agreement based on just causes, such as sexual harassment, damage to honour and dignity, and so on. Articles 24 and 25 of the Turkish Labour Code set out the just causes based on which employees and employers can terminate the employment relationship without having to comply with the legal notice periods. These just causes (which can be briefly summarised as health reasons, lack of good faith and moral character, the employee's absence or the cessation of work at the workplace) are similar for both parties and give the parties the right to effect immediate termination. However, in such a case there is no requirement to make a notice period payment.

Severance payments

The termination of the employment contract by an employer based on just cause or without cause imposes a severance payment duty on the employer. The employee's service time must exceed one year before the employee will be entitled to a severance payment. The severance payment is calculated by multiplying the employee's monthly salary with the number of years they have been employed by the employer.

The severance payment cannot exceed a certain ceiling amount which is revised every six months by the government. The ceiling is currently set at TL 3,254.44 per month effective until the end of December 2013.

In addition, employers are obliged to pay the amount that equals the employee's unused annual leave, any unpaid overtime work payments and other earned benefits and bonuses.

Procedural requirements for dismissal

If an employer terminates the employment relationship by complying with the legal notice periods, the termination will become effective at the end of the applicable notice period.

The Turkish Labour Code determines the mandatory advance notice to be made to employees before dismissal. Under those rules, prior notice is required where an employer decides to dismiss an employee for reasons concerning the employee's behaviour or efficiency. Court precedents also state that employees must be called for an interview in order to defend themselves by way of a written notice given in a reasonable period of time in advance. Such notice must explicitly include the reason for the notice. The employee must be informed of the interview date, hour and place, and should be reminded that they can also choose to respond in writing. The notice must also include a warning that the employee will be accepted to have waived their defence rights where they do not appear at the interview on the specified date and place or do not respond in writing. Failure to follow these requirements will likely result in the labour courts invalidating the dismissal. However, employers terminating the employment agreement based on just cause are not obliged to obtain the prior written defence of the employee.

Protection against dismissal

The Turkish Labour Code sets out job security provisions for employees with at least six months of seniority who work in workplaces where at least 30 employees are employed. Employers are obliged to base the termination of employees falling under the scope of the job security provisions on a valid cause.

The valid causes are stated as follows in Article 18 of the Turkish Labour Code:

- Inadequacy of the employee.
- Behaviours of the employee.
- Requirements originating from the needs of the business or the necessities of work.

If an employee believes that there exists no valid cause or just cause, then the employee will be entitled to sue their employer for reinstatement to work under the job security provisions. Upon the initiation of such an action, the court must decide whether or not the termination was valid. If the court determines that valid or just cause did not exist, the employer must either reinstate the employee upon their request within one month, or it must compensate the employee with an amount equal to four months' wages and an additional amount of compensation that equals four to eight months' worth of wages.

Protected employees

Although there is no official or legal definition of a protected employee, employees who fall under the scope of job security provisions can be deemed as protected employees. In addition, dismissals based on language, race, religion, sex, political or philosophical views or pregnancy are prohibited, and so employees who are discriminated against in these ways can be considered to be protected employees.

Redundancy/layoff

Procedural requirements

Employers can terminate employment contracts on the basis of collective redundancy, and this is considered to be a valid cause under the provisions of the Turkish Labour Code. Under Article 29 of the Turkish Labour Code, employers can proceed with collective redundancies to the extent that dismissal is based on either:

- Economic reasons.
- Technological development.
- Reorganisation of the work.

Dismissals are considered collective if they extend to:

- Ten employees if the total number of employees is between 20 and 100.
- 10% of the employees if the total number of employees is between 101 and 300.
- At least 30 employees if the total number of employees is 301 or more.

In the case of collective redundancy, employers must notify the trade union representatives, the regional directorate of the Ministry of Labour and Social Security and the Turkish Labour Authority 30 days prior to initiating a collective dismissal.

The notification must contain:

- The grounds for the dismissals.
- The total number of employees to be effected by the dismissals.
- The period of time during which the dismissals will take place.

Further to the notification, a meeting will be held between the trade union representatives and the employer, which aims to either:

- Prevent the collective dismissal decision.
- Reduce the number of employees to be dismissed.
- Reduce the adverse effects of the collective dismissal on the employees.
- The collective dismissal will become effective within one month following the notification.

Redundancy/layoff pay

In the case of dismissal on the grounds of collective redundancy, employees will have the right to all of the rights mentioned above (see Question 19, Severance payments).

Collective redundancies

Turkish law only addresses redundancy layoffs in the context of collective redundancy. Layoffs are deemed collective if the number of employees being dismissed reaches the thresholds given above (see above, Procedural requirements). In the event that the employer proceeds to lay off employees in numbers that do not reach these limits, then the dismissal will be treated under the terms applying to regular termination or where the employer must comply with the legal notice periods and severance payments.

Employee representation and consultation

Management representation

Employees are not entitled to management representation and they need not be consulted about issues that affect them. However, substantial changes to any employee's working conditions cannot be effected unless the employee gives their consent (see Question 8).

Consultation

- Employers are not obliged to consult with employees.

Major transactions

- Employers are not obliged to obtain employee consent regarding major transactions.

Remedies upon failure by employer

There is no employer obligation to consult with employees. Therefore, there are no remedies available for failure to consult.

Employee action

As there is no obligation to consult with employees, employees cannot take action to prevent any proposals from going forward. However, in line with Article 178 of the Turkish Commercial Code, in transactions such as merger, demerger and conversion, the employee is entitled to oppose and prevent their employment agreement from being automatically transferred. Although the employee does not have a right to take any action against the transaction itself, they are granted the right to do so as regards their own employment relationship. In such a case, the employee effectively ends the employment relationship on just cause and will be entitled to all of their earned rights such as a severance payment, unused annual leave, earned bonuses and so on (however, the notice period payment will not be payable, as this does not arise in cases of termination for just cause).

Consequences of a business transfer

Automatic transfer of employees

Under Article 6 of the Turkish Labour Code, in the event that the workplace or a part of the workplace is transferred through a legal transaction, all of the existing employment agreements will also be transferred to the new owner together with all rights and obligations that have accrued under those agreements.

The transferee will be held liable for debts accrued before the transfer date along with the transferor. However, the transferor's liability will expire following the end of two years following the transfer date.

In the event that the company merges with another company, spins off or changes its type, the related provisions of the Turkish Commercial Code will apply, and the employee will be entitled to prevent the automatic transfer of their own employment agreement based on Article 178 of the Turkish Commercial Code (see Question 23, Employee action).

Protection against dismissal

Under the provisions of the Turkish Labour Code, neither the transferor nor the transferee is entitled to terminate employment agreements based on the transfer of the workplace, since the principle of the automatic transfer is accepted in such cases. However, the transferee or the transferor may be entitled to terminate the employment contracts based on economic, technological and reorganizational reasons, on the condition that the compensation rights of the employees are reserved.

Further, the employee does not have the right to terminate the employment contract based on the transfer, either. However, the employee can end the employment relationship where the transfer constitutes a material change in the employee's working conditions.

Change of employment terms

The new employer is entitled to make changes to the employment terms for harmonisation purposes. However, it should be noted that these changes must not worsen the working conditions of the transferred employees.

Employer and parent company liability

Employer liability

Under Article 66 of the Turkish Code of Obligations, employers will be held responsible for the actions of their employee taken during the course of performing the work assigned by the employer. In the event that an employer proves to have taken all necessary measures in order to prevent the wrongful act of its employee, the employer will not be considered liable for the employee's wrongful act (specific provisions apply for works which are classified as dangerous in nature).

Employers are entitled to seek indemnification from the employee for any damages to the extent that the damages have resulted from the employee's fault.

Parent company liability

Provided that the employee does not have any direct link to the parent company, it is not possible to hold the parent company liable for the actions of a subsidiary company's employees. Subsidiaries and parent companies are recognised as two separate legal entities.

Employer insolvency

Employee rights on insolvency

The insolvency of an employer does not result in the termination of employment contracts. However, employees may have the right to collect from any sale of assets their salaries and other monetary claims in the first place after all privileged claims have been paid out. In other words, employees' salary and monetary claims take precedence over unprivileged claims against the company, though they are ranked after privileged claims (which are the first to be covered in cases of insolvency).

State guarantee fund

In the event that an employer becomes insolvent, employees who have been working for the same employer for at least a year and whose unemployment insurance contributions were being paid by the employer are entitled to demand the payment of three months' worth of their salary, to be collected from the wage guarantee fund held by the state.

Health and safety obligations

Employers are responsible for the health and safety of their employees during the course of employment. The health and safety obligations are no longer regulated under the Turkish Labour Code, as a new code specific to this matter has recently been adopted, namely the new Code on Workplace Health and Safety (No. 6331) (New Code). This New Code is applicable to all public and private workplaces and employers (with some exceptions stated in its Article 2).

Under the New Code:

Employers are obliged to take all necessary actions to prevent occupational risks, by:

- educating employees on relevant matters;
- making all necessary organisational arrangements;
- Having all necessary equipment in place.

Employers must appoint an occupational safety expert, an occupational physician and other medical personnel. Employers must provide all equipment required for the realisation of the service.

Employers must take all necessary steps in order to educate the employees regarding workplace health and safety.

The New Code has a wide scope and it regulates a great breadth of issues and introduces new obligations and requirements in order to improve workplace conditions across Turkey.

Taxation of employment income

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?
- Foreign nationals
- Tax liability under Turkish tax codes can be either:
 - Full liability.
 - Partial liability.

A real person will be considered as fully liable if they are a Turkish citizen or a resident of Turkey. In this regard, foreign nationals who have been living in Turkey for more than six months will be considered to be resident in Turkey (except for those who are in Turkey on temporary business, or for educational, health or journalism related reasons, in which case they are exempt from the income tax). These people are fully liable for income tax, and are obliged to pay income tax on all sources of income.

Those who are not resident in Turkey are partially liable and are subject to income tax for all income received from Turkish sources, provided that such income can be regarded as being received in Turkey under the criteria set out in the relevant legislation.

Double taxation agreements may exist between Turkey and the country of which the employee is a resident. In that case, the provisions of any relevant treaties regarding the matter will be applied.

Nationals working abroad

Turkish nationals working abroad will be subject to income tax if their income is incurred in Turkey or from a Turkish source (for example, if the employee works for the government, for a government-related institution, or for a company with headquarters in Turkey).

Rate of taxation on employment income

Under the provisions of the Income Tax Law (Article 94), employment income is taxed through withholding. Employers are obliged to withhold the income tax before disbursing employee salaries. The yearly rates for the year of 2013 are as follows:

- TL 0 to TL 10,700: 15%.
- TL 10,701 to TL 26,000: 20%.
- TL 26,001 to TL 94,000: 27%.
- More than TL 94,000: 35%.

Social security contributions

Both employers and employees are required to contribute social security premiums. Employers must pay their portion as well as the employee's portion, which they can deduct from the employee's salary. The contribution portions are as follows:

Short-term insurance contributions are in the range of 1% up to 6.5%, depending on the dangerousness of the work, and must be wholly paid by the employee.

Long-term insurance contribution rates are:

- 9% to be paid by the employee;
- 11% to be paid by the employer.

Unemployment insurance contribution rates are:

- 1% to be paid by the employee;
- 2% to be paid by the employer;
- 1% to be paid by the state.

Bonuses

Employers and companies, at their own discretion, can decide to reward employees through contractual or discretionary bonuses based on performance. There are no legal restrictions or regulations regarding bonus types. The only rule is that established bonus practices are deemed as part of the employment contract under court precedents, and therefore cannot be unilaterally revoked by employers.

Intellectual property (IP)

Under Turkish IP laws, the general principle is that intellectual property which is created within the scope of the employee's work, using the work resources and during office hours, is owned by the employer. However, where the related intellectual property right can be separated fully from the work, then such property may be considered to be owned by the employee.

Restraint of trade-Non Competition

Restriction of activities

Although there are no legal restrictions in this respect, in practice employees are generally bound with non-competition restrictions contained in the employment contract. Such restrictions generally cover situations where the employee is prohibited from engaging in activities that conflict or compete with the employer's work during the term of the employment. This restriction is generally based on the employee's duty of loyalty and arises out of market practice.

Post-employment restrictive covenants

Employers are allowed to demand non-compete clauses in employment contracts regulating the permissible work activities that may be undertaken by the employee after termination. This agreement or clause will be legally valid and binding only if the conditions set out under the Turkish Code of Obligations are fulfilled:

- The non-compete obligation does not exceed two years.
- The undertaking must be limited geographically (the geographical area must be limited so as not to limit the employee in an unreasonable way).
- The undertaking must cover only a certain scope of activities and cannot be general.
- The non-compete undertaking can be included in the employment agreement as a clause or can be signed by the parties as a separate agreement following the termination of the employment agreement.

Employees violating the non-compete undertaking may be required to remedy all of their former employer's losses based on the agreement between the parties. In the event that a penalty clause is set out, the employee will have to pay the amount provided in the penalty clause, on the condition that the penalty amount is deemed reasonable. However, if the employer's actual loss exceeds the amount agreed under the penalty clause, the employee will also be responsible to remedy the loss exceeding the agreed penalty amount. However, where the actual loss of the employer is considered high according to the financial condition of the employee, then the courts will consider deduction options in order not to cause the financial destruction of the related employee.

KILIC & Partners' Employment Package

"Applicable One of Employment"



- Includes full employment contract
- Written in target language plus Turkish copy if required by a fully qualified target jurisdiction employment lawyer

Our International Employee, Contract Preparation, Variation and Compromise Agreement Service:

Here at KILIC & Partners Law Firm Istanbul, we are best placed to assist both foreign companies and Turkish organisations, wishing to employ foreign nationals whether inside or outside of Turkey. We have experienced native legal professionals in International employment laws of multiple jurisdictions, which are to our legal teams. The preparation of the employment and working contracts or agreements are completed in full, by a native qualified legal professional

International Employment agreements are individual and need to be drafted in accordance with the seniority and position of the intended employee, such as managers, directors, country managers or partners and are not subject to the same simple terms or formats used for traditional employees. All legal precedents will be evaluated and all applicable protection and laws will be applied to every contract, agreement or variation.

Our bespoke service is the provision of a jurisdictional legally binding, drafted agreement in both the native language of the employee or employer and a designated target language. This gives both parties the legal protection and confidence in the recruitment process. Our employment agreements are provided as originals and not inferior translations of other contracts, which can often be the case

Employment Law Legal Support Jurisdictions:

- | | |
|--------------|----------------|
| ▪ UK | ▪ South Africa |
| ▪ Germany | ▪ Turkey |
| ▪ Russia | ▪ Italy |
| ▪ Kazakhstan | ▪ Spain |
| ▪ Azerbaijan | ▪ Portugal |
| ▪ Uzbekistan | ▪ Brazil |
| ▪ Ukraine | ▪ US |
| ▪ France | ▪ Canada |
| ▪ Holland | |

The main issues covered in our Employment agreements are:

- Agreed Working Terms & Conditions
- Governing Law Jurisdiction, Due Diligence
- Employee Duties, Obligations & Warranties
- Termination & Variation Clauses
- Data & IP Protection and Rights
- Confidentiality & Announcements
- Waiver of Claims & Termination of Contracts
- Non-Competition & Restrictions

In addition to our Employment law & Contract service we offer international companies full legal advice regarding Employment Law issues:

- General Principles of Employment Law
- Employment terms
- Minimum wage
- Health and safety
- Discrimination
- Dismissal
- Trade unions
- Workplace participation
- Collective bargaining
- Collective action

Other Legal Services Packages

Legal Risk Management

We provide risk analysis, contract reviews, mediation and dispute resolution and to protect financial exposure. Our service is designed to give your company security and confidence in your business procedures, operations, contract application, and service, product delivery when operating cross border business in and outside Turkey.

Corporate Business Structures

From the full initial legal advice and due diligence, with international legal expertise and support in all aspects of setting up a business structure and an essential service to guarantee business success inside or outside of Turkey. For further information contact our International legal desks on +90 212 277 4111 or Email: info@tr.kilicandpartners.com