



# ICLG

The International Comparative Legal Guide to:

## **Employment & Labour Law 2014**

4th Edition

A practical cross-border insight into employment and labour law

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# Turkey

Başak Arslan



Sahra Karakışlak



## Egemenoğlu

### 1 Terms and Conditions of Employment

#### 1.1 What are the main sources of employment law?

The main sources of employment law in Turkey are Labour Law No. 4857, the Code for the Regulation of Relationships between Press Members and Employers No. 5953, the Maritime Employment Law No. 854, the Turkish Code of Obligations No. 6098, and other by-laws supporting these main regulations.

#### 1.2 What types of workers are protected by employment law? How are different types of worker distinguished?

All workers providing services who are dependent on an employer are protected under Turkish employment law. We could categorise the types of protection by the relationship between the employer and the employee as: open-ended; fixed-term; seasonal; on-call; part-time; or full-time employment relationships. However, the main principle is equality and there is a strict prohibition against discrimination.

#### 1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Fixed-term employment contracts shall be entered into in writing, whereas there is no such obligation for open-ended employment contracts. However, for open-ended employments, the employer shall present the employee with a written document determining the working conditions (remuneration, payment, time, working hours, workplace, etc.) within two (2) months of recruitment.

#### 1.4 Are any terms implied into contracts of employment?

For cases not regulated in the employment agreement, the parties are subject to the relevant regulations of the Turkish employment law.

#### 1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

There are certain terms and conditions in the Labour Code that cannot be amended by agreement. However, the employer could amend some of the terms and conditions with a written contract if, by law, he is allowed to do so. According to Turkish employment law, even with the employee's open acceptance, parties are

prohibited from making any contrary agreements on matters such as daily and weekly working hours, night work, breaks, paid vacations, leave of absence, holidays, overtime work, weekly rest days, conditions regarding the termination of the employment agreement, maternity leave, and occupational health and safety.

#### 1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

In terms of collective employment, mostly remuneration, benefits, leave entitlement, and disciplinary applications are agreed through collective bargaining. Collective employment contracts are applied throughout the country at company level. However, it is also possible to have sector-based collective agreements.

### 2 Employee Representation and Industrial Relations

#### 2.1 What are the rules relating to trade union recognition?

Regarding collective employment, the rights and obligations of trade unions, employers, and employees are regulated under the Trade Unions and Collective Employment Agreement Code No. 6356 (the Code). Under the Code, trade unions are entitled to enter into collective employment agreements with an employer or business concern, if:

- at least 3 per cent of the workers in that *sector* are members of the trade union; and
- more than half of the employees of the employer or more than 40 per cent of the workers in that business concern are members of the union at the date of application.

#### 2.2 What rights do trade unions have?

Trade unions are entitled to become members of international employee and employer institutions, upon written application, to file and/or follow customary lawsuits arising out of employment contracts or employment relationships by proxy to represent employees or employers and their legal heirs, to enter into collective employment agreements (if the criteria in the relevant regulations are met), to brief the employees on their rights and liberties, to organise meetings, to strike, and/or to take lockout resolutions.

### 2.3 Are there any rules governing a trade union's right to take industrial action?

Workers' unions and employers' unions could enter into agreements regulating the employment terms and conditions for multiple member employers and business concerns, operating in the same sector. These types of collective agreements are named "group collective employment agreements". They are signed between a workers' union and an employers' union, and they cover the terms and conditions of multiple-member employers and business concerns from the same sector.

### 2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen or appointed?

Employers are not required to set up works councils. However, if the employer is party to a collective employment agreement, a union representative should be elected.

A union entitled to enter into a collective employment agreement shall, within 15 days of the finalisation of his authority, notify the employer of the union representatives which shall be at most:

- one (1) person if there are less than 50 employees in the workplace;
- two (2) people if there are 51 to 100 employees;
- three (3) people if there are 101 to 500 employees;
- four (4) people if there are 501 to 1,000 employees;
- six (6) people if there are 1,001 to 2,000 employees; and
- eight (8) people if there are over 2,000 employees.

One person shall be appointed as the head representative. Representatives shall be appointed as long as the union is authorised.

Union representatives and head representatives are obliged to listen to the employees' complaints, come up with solutions to their problems, secure the cooperation between the employer and the employees, protect peace and harmony in the workplace, protect the rights and liberties of the employees, and assist in the process of the terms and conditions set forth under relevant regulations to be applied. Union representatives are provided with facilities to perform their union duties quickly and effectively.

### 2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

There are no circumstances set forth in a regulation to prevent the employer from proceeding without the works council's approval. If the parties agree, such cases could be determined by the collective employment contract.

### 2.6 How do the rights of trade unions and works councils interact?

As mentioned under question 2.4, employers are not required to set up works councils. However, if the employer is a party to a collective employment agreement, there should be a union representative.

### 2.7 Are employees entitled to representation at board level?

Although there is no such legal obligation, employees can be represented.

## 3 Discrimination

### 3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Employees are protected against discrimination under Turkish employment law. There should be no discrimination between employees in terms of employment agreements and working conditions along with a strict prohibition of discrimination for any restrictions against employee union rights.

### 3.2 What types of discrimination are unlawful and in what circumstances?

In employment relationships, no discrimination should be made based on nationality, race, political views, beliefs or gender. Employers may not, without just cause, treat their full-time and part-time employees differently.

Provided that biological necessities do not exist or are not required, employers may not treat their employees differently when entering into an employment contract, establishing the terms and conditions, or terminating the agreement and maternity leave. Employees working in similar positions cannot be paid differently based on their gender.

Regarding union rights, recruitment of an employee may not be subject to their membership to a union; whether joining or ending union membership, continuing membership or joining a different union. Employers are not entitled to condition the employment on union matters. Employers shall not discriminate between union members and non-member employees or employees that are members of different unions in terms of working hours, employment conditions, and termination of employment, among other conditions.

Employers can grant employees the permission to join union activities outside working hours. Employees may not be discriminated against based on the reasons mentioned above.

### 3.3 Are there any defenses to a discrimination claim?

In discrimination cases, the employee may file a lawsuit against the employer, claim material and moral damages, and issue complaints against the employer before public authorities.

If such discrimination restricts any of the employee's freedoms, which include union rights, the employer may also face criminal charges.

### 3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Parties may reconcile if they mutually agree. The courts also urge the parties to reconcile.

### 3.5 What remedies are available to employees in successful discrimination claims?

Employees can claim damages of up to four (4) months' remuneration, along with any other violated rights and withheld benefits. Union members in particular may claim damages of at least one (1) year of remuneration.

### 3.6 Do “atypical” workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Since atypical workers are also within the scope of the equal treatment obligations of the employer, they must be provided equal rights. For example, a part-time employee may not be discriminated without just cause, solely due to the reason that he is working less hours than a previous employee. Part-time employees’ remuneration and other apportionable benefits shall be provided in proportion to their working hours.

## 4 Maternity and Family Leave Rights

### 4.1 What is the duration of maternity leave?

Female employees should take time off between eight (8) weeks before the estimated delivery of the child and eight (8) weeks after the child is born. In the case of multiple births, two (2) weeks shall be added to a female employee’s maternity leave. However, a female employee can work up to three (3) weeks prior to the estimated delivery date if she gets approval from her doctor. In this case, the weeks that the female employee worked prior to delivery shall be added to her leave after birth. During pregnancy, the female employee shall be paid for the days taken off for the periodic pregnancy check-ups.

### 4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During maternity leave, the employer does not have to pay the employee. However, the employee gets benefits from the Social Security Institution due to her temporary incapacity. This benefit is equal to two-thirds (2/3) of her wages. The employer is not liable to provide any other social rights.

### 4.3 What rights does a woman have upon her return to work from maternity leave?

After the end of the maternity leave, the female employee is entitled to take unpaid leave of up to six (6) months, with a one-and-a-half (1.5)-hour breastfeeding break each day. The employee can determine how and when to use that break, including splitting it up over a certain period of time. Breastfeeding leave will be counted as working hours.

### 4.4 Do fathers have the right to take paternity leave?

The Labour Code does not regulate paternity leave for male employees in the private sector.

### 4.5 Are there any other parental leave rights that employers have to observe?

According to the Labour Code, it is compulsory for the employer to have a nursery for breast feeding and for the care of children no older than six (6) years of age. The nursery should be kept separate from the workplace, but should be in close proximity if there are more than 150 female employees.

### 4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependents?

There is no such regulation under the Turkish Labour Code.

## 5 Business Sales

### 5.1 On a business sale, which can be a share sale or asset transfer, do employees automatically transfer to the buyer?

On a business transfer, employees automatically transfer to the buyer. However, if there are any opposed situations against employees, approval of the employees is required.

Under the Turkish Commercial Code, in the case of mergers and acquisitions, the buyer shall guarantee receivables if employees make the demand. If there are no objections, all employment contracts are transferred with all their rights and obligations to the buyer. If the employees object, the employment contracts of those employees will be terminated upon the legal notice period.

### 5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

With the full or partial sale of business, all employment contracts shall transfer to the buyer, including the rights and obligations of the parties. If there are collective employment agreements in force, the rights and obligations which are carried out at the transferred workplace shall be in force as per the contract provision.

### 5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

There are no information and consultation rights.

### 5.4 Can employees be dismissed in connection with a business sale?

Full or partial transfer of a business does not constitute a valid reason for termination for either party. However, the buyer or the seller have the right to terminate the employment contract when the business plan requires modifications due to economic or technological concerns.

### 5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Under the Turkish Labour Law, the terms and conditions of employment in connection with a business sale cannot be altered without the written approval of the employee.

## 6 Termination of Employment

### 6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employers must notify employees of their termination in a written form that is clear and concise. Minimum notice periods for termination are regulated by law. These periods can be increased with the agreement but may not be reduced.

**6.2 Can employers require employees to serve a period of “garden leave” (employee is not obliged to come to work, even when still in employment) during their notice period?**

Employers may not apply any unpaid holidays without the employee’s consent.

**6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss an employee?**

The employment agreement of an employee shall only be terminated with a valid and justified cause. If a justified reason is not provided, the employment agreement should not be terminated because of an employee’s action or outturn without taking the employee’s defence. If an employee is unlawfully terminated, under the provisions for job security they can sue for reemployment by claiming the termination’s invalidity.

Employees with fixed-term employment contracts shall claim remuneration for the remaining period in case of early termination.

The employer is not obliged to receive approval from a third party for dismissal. However, with an individual or collective agreement, a disciplinary board can be formed and terminations can be subject to their consent.

**6.4 Are there any categories of employees who enjoy special protection against dismissal?**

Employees with an open-ended employment contract are covered by job security and are entitled to demand reemployment. On the other hand, fixed-term employees are not covered by job security and are not entitled to demand reemployment.

**6.5 When will an employer be entitled to dismiss for 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?**

The employer may terminate the employment with a valid reason in the situations mentioned below:

- 1) Health Reasons:
  - a) A disease or an event of disability caused by the employee’s own intent, loose living or addiction, which results in absence for three (3) successive working days or five (5) working days in a month.
  - b) A disease that cannot be treated, and working in the workplace is determined inconvenient by the Health Committee.
- 2) Immorality or Bad Intentions:
  - a) False claims on the necessary qualifications and conditions for employment or providing false information.
  - b) Offensive claims against a member of the employer’s family, false and offensive claims about the employer.
  - c) Sexual harassment of another employee.
  - d) Harassing the employer or his family members or another employee or coming to work under the influence of alcohol or illegal substances.
  - e) Abusing the employer’s trust, committing theft, disclosing trade secrets, etc.
  - f) Committing a criminal offence in the workplace that is punishable by more than seven (7) days’ imprisonment.

- g) Discontinuing work without the permission of the employer or a justified reason for two (2) successive working days or two (2) times a month after any holiday, or three (3) working days in a month.
- h) Persistent failure in complying with duties despite constant reminders.
- i) Willfully or unintentionally endangering the workplace, thereby causing damages in the workplace that could not be covered by thirty (30) days’ remuneration.

3) *Force Majeure*:

*Force majeure* prevents the employee from working for more than a week. Except for justified reasons arising from the employee, the employer shall terminate the employment agreement with a valid reason arising from business, workplace or requirements of the job. However, with *force majeure*, termination needs to be the last resort.

**6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?**

The employer shall make a written notice of termination, inform the cause of termination clearly and precisely and take the employee’s statement if the termination is based on a cause arising from the employee.

In justified terminations, the employer shall not use the right of termination after the six (6) working days and in any case after one (1) year of learning of the employee’s behaviour. However, the one-year time period shall not be applied in cases where the employee meets a material interest in the event.

**6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?**

The employee could ask the courts for the determination of the invalidity of the termination claiming the termination procedure is not valid, cannot be justified, or is not in compliance with the relevant legislation. If the severance and notice pays are not paid to the employee upon termination, the employee may also claim the termination is not justified and therefore the severance and notice pay needs to be paid.

As results of these cases, the employer could be obliged to re-employ the employee or, if not, to pay up to four (4) months of remuneration and other benefits and four (4) to eight (8) months of remuneration as damages. The employee could also claim severance and notice pays, along with any material or moral damages if necessary.

**6.8 Can employers settle claims before or after they are initiated?**

Parties can reconcile if the mutually agree. Also, at the first stages of a labour dispute, the courts urge the parties to reconcile.

**6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?**

The employer shall notice the union representatives, related regional directorate and the Turkish Employment Agency at least thirty (30) days in advance in case of a mass dismissal as a result of economic, technological, structural or similar business, workplace or job requirements.

### 6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The employees benefit from job security provisions in case of mass dismissals. Employers have certain obligations to their employees and in the absence of legal notices, they could also face administrative fines.

## 7 Protecting Business Interests Following Termination

### 7.1 What types of restrictive covenants are recognised?

The employee could be prevented from working in competitor companies in the same field as the employer if the employee has intimate commercial information on the employer. Also, the employee has the choice of compensating the employer if there is a violation of the restrictive covenant.

### 7.2 When are restrictive covenants enforceable and for what period?

The employee can be prevented from working in competitor companies for two (2) years.

### 7.3 Do employees have to be provided with financial compensation in return for covenants?

There is no financial support provided to employees regarding the non-compete clause.

### 7.4 How are restrictive covenants enforced?

Non-competition could be regulated with a written agreement signed between the employer and employee. The agreement should include a specific period for competition prohibition, geographical limitation, and type of job.

## 8 Court Practice and Procedure

### 8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Under the Turkish employment law, Labour Courts have jurisdiction regarding disputes arising from employer-employee relations. All disputes arising from employment law are examined by these courts, whether there is an individual or collective labour agreement. These courts consist of a single judge.

### 8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The employee shall file a complaint to the Ministry of Labour and Social Security or bring a lawsuit before the Labour Courts. Mediation is possible but not mandatory. The fees and court costs shall be paid in advance by whoever has filed the lawsuit (in this case, the employee). However, the employee shall be exempted from payment if he/she can provide documentation proving his/her inability to pay the court fees due to financial hardship.

### 8.3 How long do employment-related complaints typically take to be decided?

The court shall settle the cases brought in front of a court by the employee related to job security within two (2) months. There are no deadlines set forth for other types of employment cases. Generally, a case lasts for about 12 to 18 months.

### 8.4 Is it possible to appeal against a first instance decision? If so, what is the duration of the process?

In lawsuits arising from the employer-employee relationship, both the employer and the employee have the right to appeal. The appellate review, in cases related to the job security provisions, should be completed within two months. There are no deadlines for other types of employment cases. Generally a lawsuit – which includes the appellate review – lasts for about six (6) to 12 months.

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