

# Recent Amendments to the Labor Law and the Employment Agency Law

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Law No. 6715 amending the Turkish Labor Law No. 4857<sup>1</sup> and the Employment Agency Law No. 4904<sup>2</sup> (the “Amending Law”) was published in the Official Gazette on 20 May 2016. Long and widely discussed matters regarding certain types of employment relationships relevant both to employers and employees have thereby entered into force. The Amending Law regulates aspects pertaining to (i) the establishment of temporary employment relationships via special recruitment offices or the placement of workers in another workplace within the same holding structure or connected to the same company group and (ii) the concept of working remotely.

## Main Features of the Amending Law

### 1. Temporary employment relationships

The amendment made to Article 7 of the Labor Law stipulates that a temporary employment relationship may be established through a contract with so-called special recruitment offices or through a relocation of a worker to another workplace that is part of the same holding structure or company group. With this amendment, the establishment of temporary employment relationships between companies which do not belong to the same group has been abolished.

#### a. Through Special Recruitment Offices

##### i. General

The Amending Law foresees the establishment of temporary employment relationships via contracts to be signed between an employer that wishes to temporarily employ a worker and a special recruitment office that is approved by the Turkish Employment Agency. The employer in temporary employment relationships is the special recruitment office. The new text of Article 7 of the Labor Law enlists the types of employment and circumstances in which temporary employment relationships may be established. Accordingly, a temporary employment relationship may only be set up in relation to;

- a) maternity and paternity leaves specified under Article 13 (5) and Article 74 of the Labor Law and leaves due to military service and other circumstances in which the employment contract remains pending,
- b) seasonal agricultural works,
- c) domestic services,

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<sup>1</sup> Published in the Official Gazette No. 25134, dated 10 June 2003.

<sup>2</sup> Published in the Official Gazette No. 25159, dated 5 July 2003.

- d) works which are not deemed to constitute routine works of the business and performed intermittently,
- e) urgent works regarding occupational health and safety or cases of force majeure that affect production to a large extent;
- f) unforeseeable cases in which the average production and service capacity unexpectedly increases in a manner that requires the establishment of a temporary employment relationship;
- g) increases in periodical works other than seasonal work.

## ii. Applicable time limits

Temporary employment relationships to be established through special recruitment offices are subject to certain time limits. The below are the time restrictions applicable to different types of work and circumstances enlisted above.

Type of work	Duration
a	Throughout the duration of the situation.
b	No time limit.
c	
d	
e	Maximum four months. This period may be extended twice at most; provided that the total duration does not exceed eight months.
f	
g	Maximum four months.

The contract between the special recruitment office and the employer of the temporary employee shall include clauses regarding the commencement and termination date of the contract, the nature of work, the fee to be paid to special recruitment office and special clauses, if any, regarding the employer and the special recruitment agency. It is important to note that in cases the agreed duration of the contract is exceeded, the temporary nature of the employment relationship automatically changes into an indefinite employment relationship. In other words, the employment relationship that was intended to be temporary will become indefinite in cases the employment relationship continues beyond the termination date set in the contract.

## iii. Important limitations

The amendment introduces certain rules regulating the temporary employment relationship that must be adhered to by the parties in an attempt to ensure that the concept of temporary employment is not abused so as to creating adverse effects for job seekers, as follows:

- With regard to the time limits mentioned above, it must be underlined that an employer employing a temporary employee may not re-employ another temporary employee for the same task for a period of six months as of the expiry of the stipulated time. Hence, an employer that has employed a temporary employee for a specific work is prohibited to re-employ a temporary employee for the same work as long as the mandated break of six months has not passed.
- The Amending Law further prescribes that a temporary employment relationship via special recruitment offices cannot be established (i) for a period of eight months in workplaces in which a mass termination has occurred in accordance with Article 29 of the Labor Law, (ii) in public institutions and organization and (iii) in workplaces engaged in underground mining activities.
- Another limitation deals with the situation of strikes and lock-outs; and provides that employers may not employ temporary employees in the course of strikes or lock-outs, without prejudice to Article 65 of Law No. 6356 on Trade Unions and Collective Bargaining Agreements<sup>3</sup>, which regulates the employees who may not attend legal strikes and lock-outs.

<sup>3</sup> Published in the Official Gazette No. 28460, dated 7 November 2012.

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- In cases of temporary employment falling within the category of item (f) above, the number of temporary employees may not exceed one fourth of the number of employees working at the workplace. Yet, in workplaces with ten or less employees, temporary employment relationships may be established for up to five workers. For the purposes of determining the number of employees of a workplace, employees working on a part-time basis are accepted as full-time employees.
  - In the event that a contract of an employee is terminated, the Amending Law provides that the employer cannot hire the same employee through a temporary employment relationship for a period of six months following his employment termination date.

#### **iv. Establishment and nature of special recruitment offices**

The Amending Law introduces a definition of special recruitment offices under Article 2 of the Turkish Employment Agency Law No. 4904, which provides that special recruitment offices are offices that are established by natural and legal persons and approved by the Turkish Employment Agency to act as an agency to establish employment relationship between job seekers and employers and/or engage in temporary employment relationships.

Article 17 of Law No. 4904 provides the applicable rules for the establishment of special recruitment offices, their field of activity and the conditions for obtaining the permit necessary to establish temporary employment relationships. The amended provision includes conditions regarding employment arrangement services on the one hand, and conditions for the competence to establish temporary employment relationships on the other. One of the most important conditions enlisted under Article 17 is that offices that wish to engage in temporary employment relationships must be active special recruitment offices that are registered with the Turkish Employment Agency at least for two years prior to the date of their application for such permit.

The Amending Law stipulates that the permit for temporary employment services is given for a three years' term and may be extended for further three years provided that the required conditions exist and the application for extension is made within the prescribed time.

#### **b. Relocation of workers within a holding structure or company group**

The second method of establishing temporary employment relationships is by way of a temporary transfer of an employee to another workplace that is within the same holding structure or company group, which is a practice also recognized under the former version of Article 7 of the Labor Law. The Amending Law however narrowed the scope of this concept by removing the practice of temporarily hiring an employee from a third party employer. However, Provisional Article 7 of the Labor Law provides that temporary employment relationships established between two companies which are not in the same group shall continue throughout the term of the respective contract.

The establishment of a temporary employment relationship through such relocation requires the written consent of the employee to be temporarily employed in another workplace. With regard to duration and time limits, the Amending Law stipulates that the temporary employment may be established in writing for a maximum period of six months, which may be extended twice at most.

The duty of paying wages and social security premiums remains with the employer that temporarily transfers the employee. The employer employing the temporary employee is jointly responsible with the employer transferring the employee for the unpaid wage relating to the period of temporary employment, for the duty to take care of the employee and for the payment of the employee's social security premiums.

## **2. The concept of working remotely**

The Amending Law introduces the concept of working remotely into Article 14 of the Labor Law that previously solely regulated the concept of working on call. This concept is defined as an employment relationship that is established on the basis of a written agreement which foresees that the work within the scope of the employer's working organization is undertaken by the employee from home or outside the office via technological devices.

The Amending Law envisages certain aspects that must be included into this type of employment contracts, however, other than those special provisions, it regulates that employees working remotely should not be subject to different treatments simply on the basis of the nature of the employment relationship and without

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the existence of a significant reason. The duty of employers to inform and educate the employee about occupational health and safety measures and to observe implementation of such measures remains. The amendment provides that principles and procedures relating to the concept of working remotely shall be further specified with a regulation to be adopted by the Ministry of Labor and Social Security.

### 3. Administrative Fines

Administrative fines that are applicable in case of breach of provisions regulating the newly introduced concepts are specified under Article 99 of the Labor Law. The determined administrative fines are in the range between TL 150 and TL 250 per employee and the Amending Law further includes certain circumstances in which such fines may be increased up to four times.

## Conclusion

Despite the removal of the regulation related to employee relocations between companies that do not belong to the same group, it is expected that the novelties introduced with the amendment will lead to an increase in the number of temporary employment relationships with the expanded scope of work of special recruitment offices. Yet, in order to mitigate and prevent adverse effects of such method and to ensure that the rights of employees are protected, it is important that special recruitment offices remain subject to clear rules and strict supervision.

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