

The Law on Labor Courts

October 2017

Authors: Özlem Kızıl Voyvoda, Elif Demiröz Tan and Doğa Usluel

The Law on Labor Courts ("New Law"), which regulates the establishment, powers and authorization of the labor courts, was recently enacted following its acceptance by the General Assembly of the Turkish Parliament. The New Law, which repeals and replaces the former Labor Courts Law No. 5521¹ ("Former Law"), will enter into force following its publication in the Official Gazette.

Compulsory Mediation

The New Law requires that a party must seek mediation of its dispute before it initiates a legal proceeding before the courts. Under this provision, seeking mediation is now a precondition for filing a lawsuit concerning disputes arising out of (i) applicable law or individual and collective labor contracts concerning receivables and (ii) reemployment lawsuits including compensation requests. In relation to reemployment lawsuits where an employer – sub-employer relationship is present, all employers must attend the mediation meetings together, and further provide consistent intent. Furthermore, journalists under the scope of the Press Law No. 5187² and shipmen under the Maritime Labor Law No. 854³ shall be regarded as "employees" under the Article of the New Law that regulates the mediation process, and therefore compulsory mediation will also be applicable for journalists and shipmen.

If a plaintiff files a lawsuit without first having applied for mediation, the lawsuit will be rejected by the courts based on procedural grounds, without considering the merits of the case. In order to file a lawsuit, the plaintiff is required to attach to its lawsuit petition a report from mediation stating that the parties were unable to reach an agreement. However, the compulsory mediation shall not apply to monetary or moral claims for compensation arising out of disputes relating to working accidents and occupational-vocational diseases, and the revocation claims concerning these disputes. The mediation reports will have the same effect as court decisions without requiring additional annotations of enforceability. As such, the parties also cannot file any lawsuits with regard to issues settled during the mediation.

The mediation applications must be finalized within three weeks, and one additional week may be added if required by the circumstances. Inevitable costs related to the mediation procedures which shall be paid by (i) the parties equally where the parties are able to settle the dispute, or (ii) the party whose claims are found unjust by the labor courts, at first are paid from the special allowance envisaged in the budget for this purpose. A party who does not attend the mediation proceedings without an excuse will be held liable for all litigation costs, even if its claims were partly or wholly accepted by the court, and the non-attendeo will not be awarded attorneys' fees. The mediation proceedings may also be attended

¹ Published in the Official Gazette No. 7424 dated 4 February 1950.

² Published in the Official Gazette No. 25504 dated 26 June 2004.

³ Published in the Official Gazette No. 12586 dated 29 April 1967.

by a lawyer via proxy and do not require the parties to personally attend. The application for mediation will suspend the running of the statute of limitations as well as the lapse of time.

The provision regarding the compulsory mediation process will become enforceable as of 1 January 2018.

Legal Proceedings

The matters concerning legal remedies in labor courts will be subject to the Civil Procedure Law No. 6100⁴ (“CPL”), under the provisions of the New Law. Another new provision provides that the application period for legal remedies will begin with the written notification of the decision to the parties; this effectively ends the discussion about whether the time limits would begin to run following verbal notification of the decision during the hearing or following a written notification. Furthermore, the first appeal and second appeal time limits set as eight days under the Former Law have been changed to two weeks, as a result of their being subject to the CPL.

The New Law also provides that Regional Judicial Courts and the Supreme Court of Appeals will urgently evaluate the decisions. While the Former Law also contained time limits concerning the legal remedies, the New Law sets out the urgency requirements without imposing specific time limits.

The decisions rendered prior to the entry into force of the New Law shall be subjected to the legal remedy provisions provided under the Former Law.

Provisions Regarding Labor Law

The New Law provides a statute of limitations for certain disputes under the Laws No. 4857⁵ and No. 1475⁶. Further to the amendment made by the New Law, a five-year statute of limitations, which has been applicable to the employee-wage related claims including monetary claims related to unused annual paid leaves shall be applicable to disputes concerning: (i) severance pay; (ii) notice pay; (iii) malicious intent compensation; and (iv) compensation due to non-compliance with the equal treatment principle in labor contracts. This statute of limitations shall apply to all disputes arising out of a labor contract, regardless of which particular law applies to the dispute. The New Law envisages that the amendments concerning the five-year statute of limitations shall not apply to the time limits which have already begun to run prior to the enforcement of the New Law. However, the same Article further provides that where the remaining statute of limitations exceeds this five-year time limit, then the five-year time limit will be applicable.

Çakmak Avukatlık Ortaklığı

Piyade Sokak, No. 18
C Blok, Kat:3, 06550
Çankaya, Ankara - Turkey

T +90 312 442 4680

This information is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the website.

Çakmak Avukatlık Ortaklığı has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This information is protected by copyright and may not be reproduced or translated without the prior written permission of Çakmak Avukatlık Ortaklığı.

⁴ Published in the Official Gazette No. 27836 dated 4 February 2011.

⁵ Published in the Official Gazette No. 25134 dated 10 June 2003.

⁶ Published in the Official Gazette No. 13943 dated 1 September 1971.