

# Law on occupational health and safety

July 2012

The Law on Occupational Health and Safety No. 6331 ("**Law No.6331**"), governing the health and safety standards to be adopted by employers in Turkey, has been published in the Official Gazette No. 28339 dated 30 June 2012. This Article provides information on the major novelties brought by Law No. 6331 and their implications on employers.

## Scope and Effectiveness of Law No. 6331

The aim of Law No. 6331 is to regulate the duties, powers, responsibilities, rights and obligations of employers and employees in order to ensure occupational health and safety in workplaces and to improve existing health and safety conditions. This Law covers all types of employment, work and workplaces that belong to public and private sectors, owners and/or employers of subject workplaces and representatives/agents of such employers, and all employees including apprentices, interns and trainees, regardless of the fields of activity in which they are involved, other than a few explicitly stated exceptions. These exceptions, as stated in Article 2 of Law No. 6331 are as follows: (i) activities of the Turkish Armed Forces, police, gendarmerie and other law enforcement forces, and the Undersecretariat of National Intelligence Organization, excluding persons or employees serving at factories, maintenance centers, sewing/tailoring workshops and similar workplaces, (ii) response and intervention activities of disaster control and emergency response units, (iii) household services, (iv) persons involved in the production of goods and services on their own behalf and account and who do not employ any workers or other employees and (v) education, security and vocational courses provided for convicts and detainees within the scope of rehabilitation.

For the purposes of this Article, the term "employee" includes any and all persons working either in the private sector or in public authorities, within the scope of Law No. 6331, regardless of their positions under their own organizational laws.

As to the effectiveness of Law No. 6331, although it has been published in the Official Gazette on 30 June 2012 and some of its provisions which are generally related to enforcement rules became effective at the time of its publication, the effectiveness of most of the material provisions concerning the maintenance of occupational health and safety (except the provisions relating to workplace doctors and occupational health experts, as discussed in detail in the following sections), are postponed to 30 December 2012. Law No. 6331 will replace the relevant provisions of Labor Law No. 4857<sup>1</sup> (the "**Labor Law**") and become the general legislation governing occupational health and safety in Turkey.

Finally, pursuant to Article 21 of Law No. 6331, a "National Occupational Health and Safety Council" shall be established to make recommendations for the determination of nationwide policies and strategies in connection with occupational health and safety matters.

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

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## New Concepts Introduced by Law No. 6331

Among other novelties, Law No. 6331 introduces several brand new concepts to the Turkish workplace health and safety legislation. The major concepts are as follows:

**Employee Representative:** Pursuant to Article 20 of Law No. 6331, employers are now obliged to have one or more “employee representative(s)” elected from amongst its employees (or appointed, if election is not possible), the number of which shall be determined pursuant to the number of current employees. Such representative shall be authorized to contribute to and follow the studies on occupational health and safety, request that the employer take precautions against workplace risks and submit proposals in this respect, and represent the employees in relation to similar subjects. In other words, through such representative, employers are requested to encourage their employees to cooperate in the attainment of the objectives set forth by Law No. 6331 and create sufficient opportunities for them to participate in occupational health and safety related matters. This is a new requirement applicable to all employers whereas the union representative requirement is applicable only in workplaces subject to collective bargaining agreements.

### **Hazard Classes and Risk Assessment of the Employer:**

Pursuant to Article 9 of Law No. 6331, workplaces shall be categorized under hazard classes with a communiqué to be issued by the Ministry of Labor and Social Security (the “Ministry”), in accordance with the characteristics of each occupation. Nevertheless, Article 25 of Law No. 6331 already states mining, metal and construction works as examples of very dangerous occupations.

Article 10 of the Law provides that employers are obliged to make a risk assessment themselves or have the same made by others for its workplace and to determine the precautions required for maintenance of occupational health and security and the use of protective equipment for such purpose.<sup>2</sup>

The details of the principles and procedures to be followed in determining hazard classes and conducting risk assessments shall be further elaborated with regulations to be issued by the Ministry.

## Workplace Doctors and Occupational Safety Experts

Pursuant to Article 6 of Law No. 6331, employers are under the obligation to appoint occupational safety expert(s), workplace physician(s) and other health personnel from amongst its employees. In the event there are no qualified persons for such positions amongst its employees, such services, either entirely

or partially, shall be obtained from “common health and safety units” established for such purpose and authorized by the Ministry in this respect. It should be noted that contrary to the relevant provisions of the Labor Law, Law No. 6331 does not provide any particular thresholds or qualifications for employers in appointing such persons. Thus, it can be interpreted that the above referenced requirement is applicable to all employers falling within the scope of Law No. 6331. However, with the secondary legislations expected to be published soon, the applicability of this requirement may be narrowed.

Additionally, in the event the workplace doctor or occupational safety expert is required to be employed full time due to the applicable working period, the employer shall establish a workplace health and safety unit.

Except for public authorities and institutions, Article 7 of Law No. 6331 provides a financial support mechanism to workplaces having less than ten employees and which are classified under hazardous and very hazardous categories. However, workplaces having less than ten employees and which are classified under the less hazardous category may also benefit from such financial support based on an affirmative decision of the Ministry. Accordingly, the costs for the provision of occupational health and safety services (i.e., appointment of occupational safety experts, workplace doctors and other medical staff) for workplaces benefiting from such mechanism can be covered by the Social Security Institution.

The effective date of Articles 6 and 7 relating to workplace doctors and occupational safety experts and Article 8 relating to the duties and liabilities of those persons varies according to number of employees and hazard categories. For public authorities and workplaces with less than 50 employees and which are classified as less hazardous, such Articles shall enter into force on 30 June 2014. For workplaces with less than 50 employees and which are classified as hazardous and very hazardous, such Articles shall enter into force on 30 June 2013. With regard to other workplaces, the relevant Articles shall enter into force on 30 December 2012.

## Education and Medical Examination of Employees

### Information Requirement on Health and Safety Risks

Pursuant to Article 16 of Law No. 6331, employers are obliged to inform employees on the health and safety risks of the workplace, the protective measures to be taken against such risks, the rights and obligations of employees under Law No. 6331 and the persons in charge of first aid, extraordinary circumstances, disasters, fire-fighting and evacuation procedures.

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<sup>2</sup> The persons and/or legal entities authorized to conduct risk assessments on behalf of employers will be determined by a separate regulation to be issued by the Ministry.

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### **Educational Training on Occupational Health and Safety Related Matters**

Article 17 of Law No. 6331 provides that employers shall arrange educational training on occupational health and safety related matters. Such training shall be repeated to the extent new risks and circumstances arise in the workplace. In workplaces classified under dangerous and very dangerous categories, the employer shall only recruit employees who have certificates proving that they have undergone educational training and have sufficient knowledge of the occupational health and safety associated risks. In parallel with this general rule, employers are not entitled to reflect the costs of such training onto employees' salaries and such training shall be considered as within their working hours.

### **Medical Examination of Employees**

In accordance with Article 15 of Law No. 6331, employers are also obliged to provide medical examinations for their employees (i) upon return to work after a workplace accident, occupational disease or sickness, if requested, and (ii) within specific periods as determined by the Ministry, taking into consideration the characteristics of the employees, the occupation and the hazard category of the relevant workplace. In workplaces classified under hazardous and very hazardous categories, employers shall not recruit any employees who do not have a health report showing that he is suitable for the position. All costs arising from such examinations shall be covered by the employer.

### **Other Important Provisions of Law No. 6331**

- Pursuant to Article 11 of Law No. 6331, employers are required to identify in advance the potential and/or possible states of emergency of their workplaces taking into consideration the working environment, materials used, equipment and environmental conditions and shall take the required preemptive measures and precautions.
- With Article 13 of Law No. 6331, employees are vested with the right to reject working in case of severe and imminent danger. In such a case, the rights of such employees arising from the applicable laws or employment contracts shall be reserved.
- Pursuant to Article 29 of Law No. 6331, for workplaces on which large industrial accidents may occur, employers are required to prepare an accident prevention policy certificate or a security report before commencing operations. Accordingly, such employers under the obligation to prepare a security report shall commence their operations once the content and sufficiency of their report is approved by the Ministry.

### **Conclusion**

As explained above, Law No. 6331 introduces several new concepts and additional obligations to employers in relation to occupational health and safety related issues. This Law, upon its full entry into force, replaces the relevant provisions of the Labor Law and aims to become the main legislation governing occupational health and safety matters. As of today, the implementation of Law No. 6331 is unclear since no secondary legislation has yet been issued to set forth the principles and procedures on the newly introduced provisions.