

COVID-19 and Labour Law: Turkey

Ceren Kasım*

Abstract

Although neither a national health emergency nor a state of emergency was declared, citizens' fundamental freedoms and rights were restricted in severe ways. A programme was introduced by the government to limit the economic decline. Employers were given the opportunity to apply for a short-time work fund and the conditions for benefitting from it were eased and the procedures were accelerated.

Keywords: COVID-19; Labour Law; Short-time work; Health and safety.

After the outbreak of COVID-19, and especially after it spread around the world and the WHO declared a pandemic, the Turkish authorities imposed drastic restrictions on everyday life, in order to slow down and/or stop any further spread of the virus. Although neither a national health emergency nor a state of emergency was declared, citizens' fundamental freedoms and rights were restricted in severe ways.

Strict limitations on the freedom of movement in order to prevent the spread of COVID-19 were put in place in the country. Counted among these are the termination of all international flights, the closure of border crossings, the requirement for permission for inter-city travel and restrictions on entering and leaving cities with a higher population. Besides, some cities and villages are in quarantine to prevent the spread of the virus. Particular mention should be made of a total curfew that has been imposed on those aged 65 years and above, those aged 20 years and below, and those who are chronically ill. Health workers, mayors, provincial directors, officers in social services institutions, public servants are exempted from the curfew imposed on people aged 65 and over. Furthermore, public employees, employees in the private sector and seasonal agricultural workers between the ages of 18 and 20 are also exempted. All kinds of scientific, cultural, artistic and similar meetings or activities to be held both outside and inside were postponed. Primary, middle, and high schools, and also universities, were closed. Besides the closure of all public gathering

* PhD Candidate, Göttingen University, ORCID: 0000-0003-1232-6916. This report was written on 10th of April 2020. Taking into account the rapidly changing nature of the COVID-19-related regulations, please contact the author for any further new development. For example, the presidential government is planning to introduce a dismissal ban for the following three months and in cases where a dismissal ban is imposed, the employer will be having the right to leave the employee on unpaid leave.

places, businesses, such as hairdressers and restaurants were closed, which affected small enterprises in particular.

The measures taken by the government is changing speedily. To counteract the effects of the pandemic on working relations, till now the following particular issues and measures emerged:

a) Interruption of business operations:

The programme introduced by the government to limit the economic decline included detailed financial relief. Particular mention should be made of the low-interest loans for craftspeople and artisans. The repayments will be deferred for three months without interest, on condition that the number of employees is not decreased during this deferral period.

Moreover, the pandemic can be defined as force majeure, and relevant rights became effective under Turkish labour law and the law on contracts. If a force majeure event, such as the curfew for people aged 65 and over or quarantine restrictions, prevents an employee from continuing to work for more than a week, the employer has a right of extraordinary termination. If he does not terminate the contract, he is not obliged to pay any salary until the employee starts to work again. On the other hand, if the company ceases to operate for longer than a week because of the pandemic, or if another employee in the company has the COVID-19 illness, the employee has the right to terminate his/her employment contract as the result of the force majeure.

The most important regulation introduced in the field of labour law during the COVID-19 pandemic concern the short-time working fund. With the recognition that COVID-19 represents force majeure, employers were given the opportunity to apply for short-time work fund. Moreover, the conditions for benefitting from it were eased and the procedures were accelerated. Without the employer having to meet any other conditions, if the operations in a workplace are stopped completely or partially for at least four weeks, a short-time working allowance for employees and the general health insurance premiums of employees will be paid for a period not exceeding three months. Short-time working applications have to be made by employers on behalf of their employees. The conditions relating to working hours and premium payments, which an employee who is subject to short-time working restrictions must meet at the start of the short-time work if he/she is to benefit from the funding, were also eased for applications made because of the effect of COVID-19 (an employment contract for the previous 60 days and 450 days of social security premium in the last three years). The crucial part of the regulation about the short-time working fund is that, in order to benefit from it, the employer should not dismiss any employee during the period in which short-time working is applied, with exception of a dismissal on the grounds of breaking the rules of ethics and goodwill.

The regulation about catch-up work has also been adapted to the current situation. If the work available falls substantially below that available in normal work periods or completely stops because of COVID-19, the employer may call upon catch-up work within four months – in other cases two months- in order to compensate for the time lost due to unworked periods. Such work shall not be considered overtime work or work at extra hours.

Additional payments were made to staff working in health facilities headed by the Ministry of Health for a period of three months.

Financial aid will be provided to families in need according to criteria specified by the Ministry of Family, Labour and Social Policies.

The government introduced a COVID-19 credit for wage earners, minimum wage earners, retirees, the self-employed, and middle and low income earners with a monthly household income of less than nearly twice the minimum monthly wage.

b) Health and safety of workers:

Social distancing and staying at home are the precautions that the authorities are urging people to take.

Flexible working methods, such as remote working and rotating work, were ordered to be allowed for staff (civil servants or workers) in public institutions and organizations.

Flexible working methods are also advised in the guidelines published by The Ministry of Family, Labour and Social Services, which lay down very detailed measures to be taken in workplaces. Centring on regulations about social distancing, they cover the reorganization of work to permit social distancing, hygiene rules, minimum contact with objects, the use of personal protective equipment and health checks.

Rules have been made in some sectors, like banks and markets, to limit working hours and, in others, like public transport, to limit the number of customers, and there are rules about using face masks during working hours.

The most interesting development is the digitalisation of a great number of services that were previously provided through personal contact or in writing.

c) Increased caregiving duties because of school closures or the closure of daycare services:

No particular measures have been taken.

d) Particularly vulnerable workers:

Ankara Metropolitan Municipality has banned waste picking. The homes of people who had previously picked waste have been disinfected and those who do not have a home have been accommodated in sheltered facilities. Food aid is being provided.

e) Involvement of social partners:

Social partners were not involved in the design of the measures. The measures were taken by the presidential government with advice from a board made up of a group of medical scientists that was set up by the Ministry of Health.

f) Issues and needs that have not been sufficiently addressed:

A nationwide regulation about the most vulnerable workers, such as domestic workers, and workers in the informal economy, such as street vendors, as well as workers in the most risky groups, such as waste pickers or prison workers, would be welcomed.

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