

COVID-19 and Labour Law: Turkey

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Abstract

To counteract the effects of the pandemic on working relations, Turkish labour law, for the first time ever, imposed a ban on dismissals for all services and employment contracts. On the other hand, employers have been given the right to put their employees fully or partially on unpaid leave. Employers have been given the opportunity to apply for a short-time work fund, and the conditions for benefitting from this fund have been eased. Collective bargaining periods, periods for collective labour agreements and the resolution of collective labour disputes, and strike and lockout periods have been extended.

Keywords: COVID-19; Labour Law; Short-time work; Health and safety; Dismissal ban; Unpaid leave; Short-time work.

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

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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 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:

For the first time in the history of modern Turkey, a ban on dismissals was imposed for all kind of working relationships – services contracts or employment contracts – for the three months following 17 April 2020. In cases where an employer is banned from dismissing a worker/employee, the employer has been given the right to put the worker/employee fully or partially on unpaid leave for three months. The President is authorised to extend the three-month period to six months.

The pandemic was also defined as force majeure, and relevant rights became effective under Turkish labour law and the law on contracts. Besides; 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.

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.

For employees who are put on unpaid leave by their employers, those who cannot benefit from the short-time work allowance, and those whose employment contracts were terminated after 15 March 2020, support in the form of a daily cash amount is provided from the Unemployment Fund, so long as the individual does not qualify for unemployment benefits and is not receiving an old age pension from any social security institution. This support is limited to the time period of the ban on dismissals imposed by the presidential government.

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.

A COVID-19 credit was introduced 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.

The programme introduced by the government to limit the economic decline also included detailed financial relief. Several kinds of tax relief were given; some tax and other payments have been postponed and, in particular, terms have been extended. Particular mention should be made of the low interest rate loans for craftspeople and artisans. Repayments under these loans are deferred for three months without interest, on condition that the number of employees is not decreased during this deferral period.

Collective bargaining periods, the periods for collective labour agreements and the resolution of collective labour disputes, and strike and lockout periods have been extended for three months from the effective date of 17 April 2020. The President is authorised to extend the three-month period by up to three months.

b) Health and safety of workers:

Physical distancing, so called 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 physical distancing, they cover the reorganization of work to permit physical 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. An e-government system, digital technology providing access to government services via an ID number and password that had been in use for a long time, allowed the state to react to the emerging needs promptly.

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, would be welcomed.

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