



GUIDE TO GOING GLOBAL EMPLOYMENT

Turkey

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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TURKEY



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Turkish lira (TRY). The official language is Turkish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company without local corporate registration cannot directly engage employees in Turkey. When a foreign entity engages in commercial activities in Turkey, these activities should be performed through a branch office or a company. The employees should be registered under the payroll of the branch office or the company. If a foreign entity only engages in market research in Turkey and not in any commercial activity, the activities may be performed through a liaison office. The employees should be registered under the payroll of the liaison office.

All employers should register the employees with the Social Security Institution as of their first day of employment and make the statutory contributions.

PRE-HIRE CHECKS

Required

None.

Permissible

Pre-hire checks (eg, criminal and credit reference or reference and education checks) are only permissible with the applicant's consent. Depending on the position of the employee, pre-hire checks are common.

IMMIGRATION

Foreign employees can work in Turkey once they obtain work and residence permits. Within 30 days after obtaining a work permit (as the work permit applications are made by the employer, this date also corresponds

to the start date of the work), such expats (who are registered under the social security of a foreign country) must be registered by the employer under the social security system of Turkey, subject to bilateral social security treaties executed with the relevant foreign countries.

HIRING OPTIONS

Employee

Definite period; indefinite period; full-time; part-time; for a maximum or minimum term; seasonal, temporary or on call; and in office, hybrid or remotely based. All employees have the right not to be discriminated against due to their status.

Independent contractor

Independent contractors may be engaged directly by the company.

Agency worker

Companies may outsource agency workers for certain positions stipulated under Turkish legislation. Establishment of a subcontractor relationship for (i) auxiliary works for production of goods and services or (ii) dividable parts of main work which require expertise due to technological reasons or features of the workplace and business is permissible under Turkish law. If the conditions for establishment of a subcontractor relationship are not met, the relationship is likely to be deemed "collusive payroll subcontracting," which, while sometimes used in practice, is not permissible, and is subject to an administrative fine. In addition, the employees lent from the agency would be regarded as employees of the hiring company.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

In principle, it is not mandatory to execute an employment contract, but it is common practice to do so. In cases where there is no written employment contract, within 2 months of the commencement of employment, the employer must provide the employee with a written document bearing the employer's signature and stating the general and special conditions of employment. However, the following types of employment contracts must be executed in writing in order to be valid and binding:

- Indefinite-term employment contracts that will remain in effect for at least 1 year
- Definite-term employment contracts
- Employment contracts with a probationary period (maximum of 2 months)
- Employment contracts with a non-compete undertaking
- Employment contracts signed with foreign individuals
- Employment contracts for on-call work

- Employment contracts for teleworking (remote working)
- Team employment contracts (concluded between an employer and an employee, who represents a team of various employees)
- Temporary employment contracts

Probationary periods

According to Turkish Labor Law, the parties may agree on a probationary period of up to 2 months, which can be extended to up to 4 months through collective bargaining agreements. The parties may terminate the employment contract within the probationary period without prior notice, and no compensation liability arises.

Policies

No mandatory policies.

Third-party approval

No requirement to lodge employment contract or policies with or get an approval from any third party.

LANGUAGE REQUIREMENTS

Employment contracts must be in Turkish if they are executed by and between employees who are Turkish citizens and businesses incorporated under Turkish law. However, employment contracts may be drafted in a dual-column format in Turkish and any other language, but the Turkish version is the prevailing language.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

There is a limit of 45 hours a week on working time, and working time cannot exceed 11 hours daily.

Overtime

Overtime work is any work performed beyond 45 hours in a week (or the shorter duration as designated under the relevant employment contract). Employee consent is required for overtime work. Employers are required to obtain employees' written consent to work overtime either in the employment contract or whenever it is necessary. Employees have the right to withdraw such consent by providing 30 days' prior written notice to the employer.

Wages

Minimum monthly gross wage is TRY10,008 for 2023.

Vacation

14 days' paid leave for 1 to 5 years (including 5th year) of employment; 20 days' paid leave for more than 5 but less than 15 years of employment; 26 days' paid leave for 15 years of employment and more (including 15th year). For employees below the age of 18 and above 50, the length of annual paid leave with pay shall not be less than 20 days. These periods are the minimum and may be increased by the mutual agreement of the parties. Unused annual leave days must be paid to the employee upon termination if claimed within the 5 years' statute of limitations after termination.

Sick leave & pay

If an employee is medically certified as being unable to work, the employer is obliged to pay the employee wages for the first 2 days of absence. From the third day of absence, under the Social Security and General Health Insurance Law, temporary disability allowance (ie, sickness allowance) shall be paid for each day of temporary incapacity to insured persons who have paid sickness insurance contributions for a certain time determined under this law. The temporary disability allowance paid by the Social Security Institution may be deducted from the wage paid to a salaried employee on a monthly basis. If an employee is absent from work owing to illness or injury for more than a certain period between 8 and 14 weeks, the employer is entitled to terminate the employee's contract without notice.

Maternity/parental leave & pay

As a rule, an employee receives a disability allowance for the maternity leave period from the Social Security Institution (SSI), which will be calculated as 2/3 of the employee's income notified to SSI. In practice, employers continue to pay employees' salary during the maternity leave at their own discretion and recoup the disability allowance paid by SSI to the employee. However, this is not mandatory, and employers are not obligated to pay employees' salary during the maternity leave period.

Employees have the right to work part time – that is, up to 2/3 of the total weekly working time – following completion of statutory maternity leave. An employee wishing to work part time may make such a request at any time from the end of the statutory maternity leave until the child's compulsory elementary education age. The request for part-time work may be made either by the mother or father, but such leave may be used by only one of them.

On the request of a female employee, an employer must give unpaid leave of up to half the weekly working time following the end of statutory maternity leave for 60 days for the first birth, 120 for the second birth and 180 for the third birth.

A male employee whose spouse has given birth is entitled to 5 days of paid leave.

Other leave/time off work

Employees may also be entitled to leave for other purposes, such as public holidays, adoption, marriage, bereavement, sickness of child or searching for a new job (if the employment contract is terminated with notice).

DISCRIMINATION & HARASSMENT

No discrimination based on language, race, color, sex, disability, political opinion, philosophical opinion, religion or similar reasons, union membership or non-membership, or maternity is permissible. Furthermore, the employer cannot treat part-time and full-time employees differently unless the difference in treatment can be objectively justified by there being a material reason.

WHISTLEBLOWING

The concept of whistleblowing is not regulated under any specific regulations in Turkish law, although Article 9 of the European Council Civil Law Convention on Corruption and Article 33 of the United Nations Convention against Corruption, which are in force in Turkey, set forth an obligation on States Parties to legislate on the protection of whistleblowers. Under Turkish law, the concept of whistleblowing is mostly regarded as an obligation, rather than a mean for protection. For example, the Turkish Code of Obligations provides the basis for whistleblowing of employees to their employer, under employees' loyalty obligation towards their employer, which stipulates acting loyally in order to protect the righteous interest of the employer. Employees are implicitly obligated to notify the employer about unlawful situations which may harm the employer's financial well-being and reputation. The Turkish Criminal Code sets forth that all individuals having knowledge of a criminal offense which (i) is still in progress or (ii) has been committed but its consequences can still be avoided or limited, must report such offense to the relevant authorities. Failure to report such criminal offense is punishable by imprisonment up to one year. While these obligations are not specific to whistleblowers, they can apply to whistleblowers. In addition, the Turkish Labor Law specifically prohibits employers from terminating an employment agreement on the basis that the employee has filed a complaint or participated in proceedings against the employer, seeking fulfillment of obligations or rights arising from the law of the employment agreement.

BENEFITS & PENSIONS

Under the Private Pension Savings and Investments System Law No. 4632, it is compulsory for employers to include employees under 45 years in a private pension plan.

Under the system, if the employer employs 5 or more employees, it must execute a private pension plan agreement with one or more pension companies. It must enroll its employees who are under the age of 45 in the relevant pension plan(s). The employer must deduct the contribution fee (ie, 3 percent of the gross salary of the employee) from the monthly salaries and deposit such fees with the pension companies.

DATA PRIVACY

Employees must be notified of personal data processing, and their prior written consent should be obtained (unless exceptions stipulated under the relevant legislation are present) for such processing and transfer of their personal data. Personal data should be processed:

- In accordance with the law
- In good faith
- For definite, clear and legitimate purposes

- In a relevant and measured manner

Data controllers (ie, individuals or legal entities that determine the purposes and means of processing personal data – for example, employers) are required to be registered with the Data Controllers Registry provided that they meet certain criteria.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There are several provisions under separate laws governing transfer of employees from 1 employer to another:

- Turkish Code of Obligations No. 6098 (TCO)
- Labor Law
- Turkish Commercial Code No. 6102 (TCC)

The provisions under the TCO govern transfer of employment contracts from a company to another in a broader sense, while the Labor Law specifically governs transfer of workplace and the TCC specifically governs transfer of employment contracts in corporate transactions.

The application of the above laws may differ depending on the nature of the transaction: whether the employees will be transferred through a spinoff or by way of a business transfer.

In the event of a spin-off transaction

If the employees are to be transferred to another entity within the context of a spinoff transaction to take place in Turkey, the provisions under the TCC will be applicable. According to Article 178 of the TCC, the employees will be transferred to the transferee with all rights and obligations unless the employees object to such transfer. In this regard, the TCC provides "a right of objection" to the employees.

Turkish law does not stipulate any specific requirement as to when and how a notification must be made to the employees. However, it is naturally advisable for the transferor to notify the employees in writing regarding the contemplated transfer before the spinoff is affected. Upon such notification, if the employees do not object to the transfer of their employment contracts, the transferee becomes their new employer once the spinoff transaction is effective.

If the employees are going to be transferred with exactly the same terms and conditions – that is, no special benefit will be provided to employees of different seniority or position – a template letter addressed to each employee will suffice.

If an employee objects to the transfer, their employment contract will be deemed terminated following completion of their notice period. In this event, the employee will be paid their outstanding salary and other labor entitlements (eg, annual leave entitlements, premiums or bonuses). The TCC remains silent on whether or not the employees become entitled to receive severance pay in the event of such termination. However, certain scholars opine that, in the event of such termination, the employees become entitled to receive severance pay. Importantly, as per the 3rd paragraph of Article 178, both the transferor and the transferee are jointly liable for payment of the employees' such entitlements, including severance pay.

In the event of a business transfer transaction

If the employees are to be transferred to the transferee within the context of a business transfer transaction to take place in Turkey, the provisions under the Labor Law and the TCO will be applicable.

According to the TCO, if the employment contracts will be transferred from 1 employer to another, the employees' prior written consent must be obtained. However, the TCO remains silent on what would happen if the employee were to not consent to the transfer. As modern Turkish labor law's main concern is protecting employees' benefits, it suggests permanence in employment relations. In line with this concern, contrary to what the TCC provides, Article 6 of the Labor Law states that the transfer itself does not constitute a just cause or valid reason for termination of the employment contracts on its own, and, if the employer intends to terminate the employee's contract, it must base the termination on economic or technological reasons or an organizational restructuring.

Contrary to what the TCC provides, Article 6 of the Labor Law should be taken into consideration.

EMPLOYEE REPRESENTATION

A trade union representing at least 1 percent of the employees who are engaged in a given branch of activity and more than half of the employees employed in the workplace of a company or, if there is more than 1 workplace, 40 percent of the employees employed in all workplaces of the company at the enterprise level shall have the power to conclude a collective bargaining agreement covering the workplace or workplaces in question.

Apart from the union's workplace representatives, work councils or employee committees are not regulated under the Law on Unions and Collective Bargaining Agreement. The union's workplace representatives are appointed by the union, which is authorized to execute a collective bargaining agreement and appointed from among the employees working in the workplace who are members of such union. If there are up to 50 employees, 1 representative may be appointed; 51 to up to 100 employees, at most 2 representatives; 101 to up to 500 employees, at most 3 representatives; 500 to up to 1,000 employees, at most 4 representatives; 1,001 to 2,000 employees, at most 6 representatives; and more than 2,000 employees, at most 8 representatives.

TERMINATION

Grounds

Requirements for termination of an employment contract vary depending on whether such contract is for an indefinite or definite term.

Employment contracts for a definite period terminate automatically with the expiration of the period or with a just cause stipulated under the Labor Law or based on mutual consent. Employers may terminate an indefinite employment contract for valid or just cause or based on mutual consent.

Terminations based on just cause

Under the Labor Law, just causes that may lead to immediate termination (ie, without the employer giving notice as prescribed by the Labor Law) are classified under 4 categories:

- Long-term absence due to health reasons
- Immoral, malicious and dishonorable employee conduct
- Force majeure
- Absence due to detention or arrest

When an employment contract is terminated with just cause, the benefits and rights of the employee arising from the employment contract (eg, an amount equivalent to the accrued but unused annual paid leave days and any payment arising from workplace practice) as well as the employee's statutory entitlements under Labor Law are payable. No notice is due, but severance may need to be paid unless the employment was terminated on the grounds of immoral, dishonorable or malicious conduct or similar behavior.

Terminations based on valid cause

Under the Labor Law, if an employee who has an indefinite-term employment contract is employed in a company with 30 or more employees and has a minimum seniority of 6 months, the job security provisions of the Labor Law apply, and therefore the termination must be based on a valid cause.

A termination based on valid cause triggers notice and severance payments. Such valid cause could relate to efficiency or behavior of an employee or requirements of the enterprise, workplace or work.

For companies with fewer than 30 employees, the valid cause requirement does not kick in, and employment may be terminated for any reason, but notice and severance pay are still required.

Termination based on mutual consent

Whether the employment contract has a definite duration or not, it may be terminated with the mutual consent of the parties by executing a settlement agreement.

Employees subject to termination laws

Employees in companies with fewer than 30 employees and/or employees who have less than 6 months' employment in a company are not entitled to job security. The employer's representatives who act on behalf of the employer and participate in the management of the work, workplace and business and their deputies are also not entitled to job security.

Restricted or prohibited terminations

The employment contract cannot be terminated for the following reasons: participation in union activities; filing of a complaint against the employer involving alleged violations of laws and contracts; race, color, sex, marital status, family responsibilities, pregnancy confinement, religion, political opinion and similar reasons; absence from work during maternity leave when female employees must not engage in work; or temporary absence from work during the waiting period due to illness or accident foreseen in the relevant article of the Labor Law.

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

Collective redundancy occurs when, in establishments employing between 20 and 100 employees, a minimum of 10 employees are dismissed on the same date or in a 1-month period; in establishments employing between 101 and 300 employees, a minimum of 10 percent of employees are dismissed on the same date or in a 1-month period; and, in establishments employing 301 and more employees, a minimum of 30 employees are dismissed on the same date or in a 1-month period due to economical, technological, structural or similar reasons in business, work and the workplace with written notice at least 30 days prior to the union's workplace representative, relevant regional directorate and Turkish Employment Agency.

Notice

Less than 6 months of employment: 2 weeks; 6 months to 1.5 years of employment: 4 weeks; 1.5 years to 3 years of employment: 6 weeks; more than 3 years of employment: 8 weeks. These periods are the minimum periods and may be increased by the mutual agreement of the parties. However, such change must be applicable for both parties and should be reasonable.

No need to comply with the notice in case of termination based on just cause determined under the Labor Law.

Statutory right to pay in lieu of notice or garden leave

Payment in lieu of notice is permissible. A company is entitled to pay wages corresponding to the term of notice (i.e., notice pay).

There is no set garden leave concept under Turkish law. However, it may be agreed upon in the employment contract.

Severance

An employee is only entitled to severance if they have completed 1 year of service for the employer.

Severance payments must be paid if the employer terminates the employment contract with notice based on an objective, valid cause relating to the efficiency or behavior of an employee, or business requirements (i.e., redundancy). In principle, an employee is entitled to severance payment upon termination of employment without notice based on a just cause specified under the Labor Law, unless the termination is based on immoral, dishonorable or malicious conduct or similar behavior. An employee is also not entitled to a severance payment upon voluntary resignation except for cases where the employee resigns due to retirement, marriage (only for female employees) or military service. If the employment contract is terminated by the employee on just cause, they are entitled to severance payment.

For each complete year of work – and pro rata for any incomplete year – the employee must be paid an amount equal to their monthly salary. The Labor Law provides an upper limit for severance pay. Regardless of the amount of an employee's last month's salary, the upper limit of severance pay for each year of work is capped at TRY 19,982.83 for the first half of 2023 – the amount is indexed twice a year. Accordingly, even if the employee's salary for their last month is higher than the mandatory upper limit, the employer is only required to pay the severance pay to be calculated as per the upper limit.

POST-TERMINATION RESTRAINTS

Written form is a condition for the validity of a non-compete agreement. Non-competes are valid only if the employee is employed in a position whereby they have the opportunity to acquire valuable knowledge or trade secrets and the use of such information may harm the employer.

Non-competes

Non-compete undertakings:

- Must be limited to a certain period of time (ie, maximum 2 years)
- Must be effective within a specified territory
- Must be in relation to a specific business field

Limitation is not regulated under the law and must be determined according to the particular case. However, based on Court of Appeal decisions, it is not possible to stipulate the non-compete territory as "all over the world" or "Turkey as a whole."

For example, "within the provinces in Turkey that the company operates" is a valid territory for a non-compete obligation.

Customer non-solicits

Permissible.

Employee non-solicits

Permissible.

WAIVERS

A release deed is valid provided that it is executed in written form after at least 1 month has passed since the termination of the employment contract.

REMEDIES

Discrimination

Compensation of up to 4 months' wages plus other claims, such as unpaid wages, bonuses or other social allowances of which the employee has been deprived due to discriminatory acts of an employer.

Unfair dismissal

If the employee benefits from job security provisions and the court re-instates the employee back to work, provided the employer re-instates the employee in accordance with the court's decision, the employer shall make

payment of up to 4 months of the employee's total wages and other entitlements. If the employer does not re-instate the employee within 1 month, it shall:

- Make payment of up to 4 months of the employee's total wages and other entitlements
- Pay re-instatement compensation of not less than 4 months of the employee's wages and not more than 8 months' wages

In the calculation of the re-instatement compensation, only the basic wage of the employee shall be taken into consideration.

Failure to inform & consult

Subject to administrative fines.

CRIMINAL SANCTIONS

Criminal sanctions are not generally a concern, except in cases such as sexual harassment or an occupational accident.

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