

Employer obligations in Turkey during the coronavirus epidemic

Turkey · 18.03.2020

On 11 March 2020, the World Health Organisation (WHO) declared the coronavirus outbreak an epidemic, indicating also that it "expects the number of cases, deaths and affected countries to climb even higher".

On the same day, the Turkish Ministry of Health announced a Turkish citizen had tested positive, marking the first official case in Turkey. Since then, the number of infections has risen steeply, both globally and in Turkey.

While everyone is alert to the pandemic, observing necessary legal precautions should assist in minimising the risk of an infection in the workplace, and help employers keep order and avoid liability later.

The following are the most commonly asked questions about employer options and employee rights in the face of the coronavirus pandemic.

1. Precautions - What is an employer obligated to do to prevent the spread of the coronavirus?

Turkish labour law imposes an obligation on employers to protect their employees. This includes taking necessary measures to ensure that work is performed in a healthy and disease-free environment.

Turkish law already imposes an obligation on all employers to appoint (subject to varying deadlines based on the number of employees and the risk group of the employer's activities) a health and safety expert (iş sağlığı ve güvenliği uzmanı) and a workplace doctor (işyeri doktoru) or qualified service provider to keep the workplace free from occupational risks and health hazards.

Subsequently, employers should first consult their occupational health and safety experts and workplace doctors regarding the measures to be taken against the current pandemic. For those employers who have not yet appointed these officials, it is highly advisable to do so now.

Where applicable, the employer should also convene its occupational health and safety board (iş sağlığı ve güvenliği kurulu) to evaluate this matter and determine the relevant health and safety measures to be taken.

Employers should strictly follow any recommendations made by the occupational health and safety experts, workplace doctors and occupational health and safety boards, especially concerning high-risk employees (e.g. pregnant women, employees with pre-existing conditions).

A common-sense approach should also be followed to maintain compliance by taking precautions such as disinfecting the workplace, restricting travel and banning face-to-face meetings.

To ensure compliance with these precautions and to avoid claims by employees that they were not made aware of safety protocols, employers should officially notify employees about these measures. This can be done by intranet, e-mail or letter. The communication should explain the measures put into effect.

2. Health inspections - Can an employer impose health examinations in the workplace?

Relevant health examinations can be performed in the workplace, but only to a limited extent and by the workplace doctor. Based on these examinations, the employer can unilaterally ask certain employees to leave the workplace in order to protect other employees.

However, the specific results of these examinations must be kept confidential and not shared with any unauthorised personnel. Any personal health data arising from an inspection must be processed according to Turkish occupational health rules and data protection legislation.

3. Work from home structures during the pandemic - Can the employer ask an employee to work from home?

It is legally permissible for an employer to request that employees do not come to the office and instead work from home in order to avoid any risk of infection in the workplace as well as any risks that may arise from using public transportation.

In this case, the employment agreement will continue to be effective in its ordinary course and its provisions cannot be amended (i.e. the employer can not impose longer working hours because the employee stays at home). Further, the employer must provide the necessary tools to allow the employee to work from home (e.g. laptop) and advise him on any applicable health and safety measures that would need to be observed while working from home.

4. Refusal to work - Can the employee refrain from work during the pandemic?

Turkish law gives an employee the right to refrain from performing work in the presence of a serious and present threat to the employee's wellbeing. In this case, the employee has the right to request that the employer determine the relevant risks and take necessary measures against a possible infection in the workplace via the occupational health and safety board or occupational health and safety expert. If these measures are not put in place, the employee will have the right to discontinue work but will still be entitled to his rights (e.g. salary) arising from the employment agreement. Furthermore, where this risk is deemed high, an employee may terminate his employment for cause and with immediate effect.

On the other hand, where the stated danger is not considered serious and in close proximity by the occupational health and safety expert or the occupational health and safety board of the employer or if the relevant safety measures have been determined and implemented accordingly, the employee can no longer refrain from working. If the employee insists on not working, the employer can terminate the employee for cause and with immediate effect.

5. Leave – how should leave be regulated during the pandemic?

Turkish law allows employees to take a leave in various situations. First, an employee who is unwell may take sick leave. In the current circumstances, an employer is obligated not to allow any sick employees into the workplace at any time. An employee who is sick and can prove that he is ill must continue to receive his salary based on the provisions of social security legislation. In this case, the employer is entitled to request a doctor's report proving the worker's condition. Extended sick leave without evidence of illness can result in a valid termination by the employer. Secondly, an employee and employer may agree that the employee will use his statutory paid leave during this period. Lastly, an employer may grant casual leave (mazeret izni) to employees in which case the days used as leave will not be deducted from the periods of statutory leave granted under the law and the employee will receive his usual pay.

6. Personal Travel - Can an employer restrict personal travel?

Given the ever-growing nature of the pandemic, employers are able restrict employee personal travel and make any travel subject to employer consent. In the absence of established precedent and the freedom granted under the Turkish Constitution for travel and settlement, it is unclear whether a breach of this instruction can be grounds for the employee's termination.

Even if there are no grounds for the termination of employment, an employer is entitled to prohibit an employee, who has travelled against his instructions, from entering the workplace. During this time, the employee may be asked to work from home and submit a doctor's report of his health condition before being allowed back into the workplace. A failure by the employee to submit this report despite the employer's request to this effect may be considered a valid reason for termination of employment.

7. Suspension of work - Can an employer suspend work and refrain from making payments to employees during this suspension?

If an employer freely suspends work for a certain period for the protection of its employees, he is obligated to continue to pay their salaries.

However, if regulatory action closes or restricts certain businesses (e.g. shops in malls where crowds gather), the employer's obligations toward employees will be significantly relaxed. In this case, during the one-week period after the closure or restriction by regulatory action, an employer will only be obligated to pay half the salary of each employee.

At the end of the one-week period, there will be no further payment obligations. During the entire period that this regulatory action is in effect, the employment agreement will be considered suspended and once the action is lifted, the employment agreement will automatically become effective again.

For more information of employer obligations in Turkey during the current crisis, contact your regular CMS advisor or local CMS experts: [Döne Yalçın](#) or [Sinan Abra](#).

KEY CONTACTS



Döne Yalçın

Partner, Istanbul

Managing Partner Turkey



Sinan Abra

Counsel, Turkey

