LONG-AWAITED LABOUR LAW AMENDMENTS: MANDATORY MEDIATION PHASES

On 25 October 2017, the Law on Labour Courts No. 7036 (the "new Labour Courts Law") abrogating the Law on Labour Courts No. 5521 (the “abrogated Law No. 5521”) was published in the Official Gazette No**.** 30221 and entered into force on 25 October 2017 except for the provisions with respect to the mandatory mediation phases.

This Client Alert looks at the impact of the amendments to Abrogated Law No. 5521, as well as the amendments made to other laws. For instance, while new Labour Courts Law substantially modifies the Labour Law No. 4857 (the "Labour Law"), it also introduces changes to the Law on Negotiation in Legal Disputes No. 6325 and the Law on Trade Unions and Collective Bargaining Agreements No. 6356 in order to ensure legal compliance of the new appeal procedures to be held before the Courts of Appeal.

The main amendment made to the abrogated Law No. 5521 is the introduction of a mandatory mediation phase. This phase is in addition to the procedures concerning the establishment, the duties and the operation of the labour courts. Besides, it is applied to specific claims and must be conducted in a clear-cut manner and follow a certain timeline.

The aim of this amendment is to ease the judiciary’s workload, which has tended to obstruct the principle of conducting litigation in a timely manner. Indeed, employment cases should now be accelerated and therefore be completed in a more reasonable amount of time.

All of the changes introduced by the new Labour Courts Law will be referred to and explained in the subsequent sections, and will be effective starting from 1 January 2018 (except as regards the starting date of statute of limitation for compensation claims).

LAW ON LABOUR COURTS NO. 5521

The amendments that have been introduced by the new Labour Courts Law have the most impact on the abrogated Law No. 5521.

Concerning the introduction of the mandatory mediation phase, the following provisions have been enacted:

- Labour disputes arising from individual or collective labour agreements on the basis of labour receivables, indemnities or a reinstatement to work must first be reviewed by an independent mediator. Therefore, employees and employers are obliged to apply to a mediator before initiating any lawsuit based on such claims (i.e. labour receivables, indemnities or a reinstatement to work). Any claim that is initiated without first being reviewed by a mediator will be rejected by the Court *ex officio* during the preliminary examination of the file.

- Claimants apply to a mediator's office located in the adverse party's or adverse parties' registered address, or the office for the location of the workplace.

- By mutual agreement, the parties may appoint a mediator from the list announced by the relevant commission of the Ministry of Justice; otherwise, a mediator will be appointed *ex officio* by the respective authority.

- The mediator examines the application and invites the parties to an initial meeting. After that meeting, the process must be completed within three weeks, though it can be extended for no more than one week. Upon completion, a final report regarding the final situation is issued, and the mediator notifies the relevant authority in relation to the outcome of the meetings.

- The statute of limitations is suspended from submitting the application to the mediator until the mediator's report has been prepared and issued.

- In the event that one of the parties does not accept the invitation to meet with the mediator, that party will then bear the adjudication fees and will not be entitled to the return of legal fees, even if the lawsuit is found in that party's favour. In the event of a subcontractor relationship where the claimant applied to the mediator for re-instatement to work, both employers will be invited to the meeting.

- The rules do not apply to claims initiated in connection with the compensation of pecuniary and/or non-pecuniary damages arising from an occupational illness or an accident at work.

- Compulsory expenditures that are made during the mediation procedures are borne equally by the parties in the event that the parties reach a compromise. Otherwise, the expenditures are covered by the party that the court rules against.

The new Labour Courts Law also introduces some other new provisions regarding the procedural rules that will be observed by the Labour Courts, such as;

- The parties cannot apply to the Court of Cassation for reversal of the decisions which are rendered by the Court of Appeal with respect to the reinstatement to work lawsuits initiated as per the Article 20 of the Labour Law.

- The appeal period for the Labour Law disputes commences following the notification of the reasoned decision of the Court.

- In the event that multiple claims are filed within the same case, the burden of proof and respective evidence is determined separately for each claim.

Finally, new Labour Court Law introduces a temporary article on the implementation of the mandatory mediation phases. Accordingly, lawsuits that have been filed or appealed before the effective date of the new amendments will continue to be heard before the Labour Courts according to the abrogated provisions.

LABOUR LAW NO. 4857

As a result of the amendments with respect to the mediation procedure, Article 20 of the Labour Law on the initiation of reinstatement to work lawsuits and the respective term of litigation for the employee has also been amended.

In this regard, the term in which employees can initiate reinstatement to work lawsuits has also been amended. In this context, an employee who intends to file a reinstatement to work lawsuit, must apply to a mediator within one month following the notification of the termination of his/her employment contract, prior to commencing the relevant lawsuit. In the event that the employee and employer cannot reach an amicable settlement, then the employee must initiate the relevant lawsuit within two weeks of the assigned mediator issuing the final report on the dispute

In addition, under the amendments introduced by the new Labour Courts Law, the calculation of the statutory redundancy package that is paid to employees pursuant to Article 21 of the Labour Law in the event that the employment contract is adjudged to have been terminated unlawfully has also changed. Under the amendments, the monetary receivables consist of reinstatement compensation and payment of up to four months' salary, along with any other entitlements of the employee for the time they are not reinstated to work, which are calculated by the court based on the salary that would have been paid to the claimant employee on the date of bringing the lawsuit.

Where the parties reach a mutual agreement on reinstatement to work as a result of the mediation phase, the mediator's final report will also include the following, as per amended Article 21 of the Labour Law:

- the actual date of reinstatement to work,
- the specific amounts to be paid under the statutory redundancy package.

Otherwise, the negotiations made between the parties will be deemed to have failed.

Finally, Article 15 of the new Labour Courts Law bringing a new provisional article to the Labour Law amends the statute of limitation periods set out for claims in relation to severance pay, notice pay, compensation for bad faith and compensation for discrimination. The statute of limitation periods of the latter is reduced from 10 years to 5 years.

CONCLUSION

The main aim of the above-mentioned changes is to ease the judiciary's workload and accelerate the process of employment cases; whether this will have the desired effect remains to be seen. Similarly, it is as yet unclear whether employees will be sufficiently protected during this mandatory pre-litigation phase.

In compliance with Turkish bar regulations, information relating to Turkish law matters which are included in this client alert is given by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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