

client alert

EMPLOYMENT LAW | TURKEY |

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NEW LAW ON MOBBING AND DISCRIMINATION AT WORKPLACE

A new “Law on Turkish Human Rights and Equality Institution” (“**Law**”), no. 6701, was published in the Official Gazette no. 29690 dated 20 April 2016. It entered into force on its publication date.

This new Law revoked the “Law on Turkish Human Rights Institution” no. 6332, dated 21 June 2012 (“**Amended Law**”).

Pursuant to Article 3 of the Law, each person may equally benefit from legal rights and freedoms. The Law forbids discrimination based on gender, ethnicity, nationality, skin colour, language, religion, philosophical or political opinion, wealth, birth, marital status, medical condition, disability or age.

The Law stipulates nine types of discrimination, with mobbing listed as one of them with regard to Employment Law. The Law specifically describes mobbing as “intentional actions to disincite, to isolate and to make him/her wary of a person in the workplace based on the discrimination types listed in the Law under Article 2 § 1(g).”

According to Article 4 § 2 of the Law, adverse treatment of people and/or their representative, following the application of administrative and judicial procedures to prevent discrimination or maintain compliance with the principle of equal treatment, are also regarded as discrimination.

Article 6 of the Law is directly related to Employment Law issues. Pursuant to said article:

- During processes for the acquisition of information, job applications, selection criteria, recruitment conditions, working and ending a working relationship, an employer or person authorised by said employer cannot discriminate against the employee, job applicant, person taking place in a workplace to obtain practical job experience or applying for this purpose, person applying for getting information to work in any title or obtaining practical job experience in this workplace.
- The above paragraph also applies to job adverts, the workplace, working conditions, access to all levels and types of occupational guidance and occupational training, promotion and access to all levels of hierarchy, in-service training, social benefits and the like.
- An employer or person authorised by such employer cannot reject a job applicant for reasons of pregnancy or child care.

- Discrimination is also forbidden in the recruitment of freelancers, license, registration, discipline and other similar issues.
- These rules shall apply to employment contracts that do not fall within the scope of the Turkish Employment Law No. 4857.

The Law also provides for exclusions in certain special circumstances, where:

- Occupational conditions require it by providing a proportional and expedient treatment in the private sector,
- The nature of the job requires the hiring of only a particular gender,
- Different treatment based on age is necessary in recruitment and employment processes that provide proportional and expedient treatment,
- Hiring people believing in a certain religion is necessary, for instance to give religious education or a service in a religious institution.

1. APPLICATIONS TO THE TURKISH HUMAN RIGHTS AND EQUALITY INSTITUTION (“INSTITUTION”)

All real and legal entities (“**Applicant**”) may apply to the Institution free of charge. Any such applications may be made through Governorships in cities, and District Governorships in counties.

Where concerned, the Applicants shall first request from the Violator entity a revision of, and improvement to, their treatment before applying to the Institution. If the Violator party rejects this request or does not respond within 30 days, the injured party may apply to the Institution. Nevertheless, in urgent situations, the Institution has a right to examine the applications without such 30-day delay. The Institution shall then request a written explanation from the Violator, which must be delivered to the Institution within 15 days and notified to the Applicant.

If the Applicant can prove the violation, the burden of proof showing that no violation was made against the Applicant shall rest on the Violator. The head of the Institution may call the parties to a conciliatory meeting. Applications that cannot be resolved with such a meeting shall be presented to the Institution within 20 days.

2. LEGAL SANCTIONS

The Law prescribes an administrative fine of minimum TRY 1,000 and maximum TRY 15,000 if a real person, public or private institution violates the Law. When setting the amount of the fine, the Institution shall consider the impacts of the violation and the economic situation of the Violator.

An administrative fine of between TRY 500 and TRY 2,000 shall be imposed under the following circumstances, where the Violator:

- Prevents the Institution from conducting an investigation,
- Prevents the Institution from visiting the places where the violation occurred,
- Prevents the Institution from taking a copy or example of related documents,
- Does not reply to the Institution’s questions when it seeks information.

According to the Article 25 § 4 of the Law, the Institution may alter the administrative fine to a legal warning one time only. If the Violator once more infringes the Law, the administrative fine shall be increased 50%. This increase cannot exceed the maximum amount of the fines stated above.

Administrative fines shall be paid by the Violator within one month following the notification date, as per the Article 25 § 5.

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

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