

CLIENT ALERT

EMPLOYMENT | TURKEY

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POST-EARTHQUAKE LABOUR RECEIVABLES AND COMPENSATION

Rights And Receivables Related To Employees Who Die In An Earthquake

The employment agreement with an employee who dies in an earthquake will terminate upon the employee's death. The rights and receivables related to the employee's work also pass to the employee's legal heirs upon the employee's death. These rights and receivables are briefly discussed below.

Severance payment

According to Article 14 of Labour Law No 1475, which is still in force pursuant to Article 120 of the Labour Law No 4857 (the "**Labour Law**"), the legal heirs of a deceased employee who worked for the employer for at least one year are entitled to request a severance payment from the employer, by certifying that they are the heirs.

The legal heirs can claim severance pay from the employer within five years from the date of the employee's death.

Annual paid leave

Under Article 53 of the Labour Law, if an employee has worked with the employer for at least a full year before dying in an earthquake, the legal heirs can claim the equivalent of any outstanding paid annual leave to which the employee was entitled at the time of employee's death.

The legal heirs can claim the annual leave equivalent from the employer within five years from the date of the employee's death.

Salary and other receivables

The legal heirs of a deceased employee can claim from the employer any due salary, overtime pay, week holiday pay, general holiday pay, along with any other rights and receivables that can be measured in monetary terms, such as premiums, bonuses, additional payments, etc. that the employee was entitled to before his/her death.

Pursuant to Article 32 of the Labour Law, the legal heirs can claim any due these receivables from the employer within five years from the date of the employee's death.

Legal status of employees who died due to an earthquake while working at the workplace – occupational accident

Although the occurrence of an earthquake while working at the workplace falls under the scope of natural disasters, it is accepted as an occupational accident regarding the employer's protection and supervision obligation.

If an employee dies while working at the workplace and is subject to Article 4/a of the Social Security and General Health Insurance Law No 5510 – provided that the conditions (specified in Article 32 of that law) are met, i.e. being insured for at least five years (excluding all kinds of borrowing periods) and having a total of nine hundred days of disability, old age and death insurance premiums reported on behalf of the employee – then a death pension can be

granted to the spouse of the employee's and any non-working children under the age of 25, or to other descendants if there is no spouse or children, and the employee's funeral expenses will be covered by the social security institution in accordance with Article 37 of that law.

In addition, if the employer is determined to have been at fault in the event of death at the workplace, the legal heirs of the deceased employee have the right to claim funeral expenses, compensation for deprivation of support, if the death did not occur immediately medical expenses and the earning losses as material compensation and moral compensation in accordance with Article 53 of the Turkish Code of Obligations No 6098 (the "TCO").

Rights And Receivables of Employees Who Survived The Earthquake

Severance payment and labour rights due to work stoppages caused by an earthquake

In the event of a work stoppage for more than one week in the workplace where the employee works as a result of an earthquake, surviving employees have the right to terminate the employment agreement for just cause and without notice, in accordance with Article 24/III of the Labour Law. If this happens, the employee can demand severance pay and pursuant to Article 40 of Labour Law 50% of the salary for each day of the one-week period that cannot be worked.

Legal status of employees who survived an earthquake at work – occupational accident

As stated above, an earthquake causing physical damage to an employee working at the workplace is considered an occupational accident within the scope of the employer's protection and supervision obligation, even though it is a natural disaster. Accordingly, all treatment costs and temporary or permanent incapacity allowance according to the loss of earning capacity are covered by the Social Security Institution.

If the employer is found to be at fault in the event of an injury at the workplace during an earthquake, the injured employee has the right to claim material compensation from the employer, such as treatment expenses, loss of earnings, temporary/permanent incapacity compensation and moral compensation, in accordance with Article 54 of the TCO.

Termination of the employment agreement by the employer within the scope of "Compelling Reasons" pursuant to Article 25/III of the Labour Law and the rights of the employee

Pursuant to Article 25/III of the Labour Law, within the scope of "Compelling Reasons", an employer who is unable to return the workplace/enterprise/factory to operation after an earthquake can terminate the employment agreement with an employee without prior notice. However, in this case, the employer is obliged to pay the employee the severance payment and the equivalent of any outstanding annual leave.

In addition, if an employee is injured in an earthquake and unable to work, and documents this situation with a medical report, the employer may unilaterally terminate the employment contract only if the report period exceeds the notice period regulated in Article 17 of the Labour Law for six weeks without interruption. However, in this case, the employer must pay the employee severance pay and any other receivables.



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

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