GIDE LOYRETTE NOUEL

ÖZDİREKCAN DÜNDAR ŞENOCAK

AVUKATLIK ORTAKLIĞI

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TEMPORARY EMPLOYMENT AGREEMENTS, PRIVATE EMPLOYMENT AGENCIES AND REMOTE WORKING SYSTEM

Law no. 6715 amending Labour Law and Turkish Labour Institution Law ("Amending Law") was published in the Official Gazette no. 29717 dated 20 May 2016, and entered into force on the same date. The amendments offer employees of private employment agencies ("**agency**") the possibility to be reemployed by a third party employer as a temporary employee, and introduce a remote working system in Turkish law.

TEMPORARY EMPLOYMENT AGREEMENT

Pursuant to Law no. 6715, Article 7 entitled "temporary employment relationship" of the Labour Law no. 4857 was amended. According to such amendment, a temporary employment relationship between an employer and the agency's employee may be established via a temporary employee supply agreement ("**agreement**") to be signed between the related employer and the agency.

This agreement shall provide the activity scope of the employee to be recruited, an agreement term, specific liabilities of the employer or the agency, amount to be paid to the agency, a cancellation option if the employee is not called in to work for a maximum of 3 months, and shall not stop the employee from working with another employer. The agreement shall not impose worse conditions than those of other ordinary employment agreements entered into by the employer.

The temporary employment agreements can only be concluded under specific circumstances according to the amended Article 7. However, and contrary to the former provisions of the law, the business shall not necessarily be similar to the employee's already existing assignment:

- For employees working part-time, on maternity leave, with suspended agreements, on military service until the end of any such status;
- For seasonal farming activities or housekeeping, with no time limit;
- For provisional activities, in cases of health and safety emergencies, in cases of unforeseeable production capacity surplus necessitating temporary employment, or periodic business gains, limited to 4 months maximum, renewable once (8 months maximum).

Agreements for the transfer of an employee between two entities within the same holding or enterprise system are deemed as a special Temporary Employment Agreement with a period limitation of 6 months, renewable once and partially subject to the provisions related to the agreement.

According to the amendments, a temporary employment agreement cannot be concluded:

- For the 6 months following the end of such an agreement;
- During the 8 months following a collective redundancy procedure;
- During strikes and lock-outs;
- In public institutions and organisations;
- In mining facilities;
- For 6 months following cancellation of the labour agreements of a particular employee by the same employer, or for the same business.

Additionally, an employer may not recruit in this way more than ¼ of the number of its employees already present. This prohibition does not apply to companies with 10 employees or less, which may recruit up to 5 temporary employees.

The Amending Law brings further responsibilities to the employers, such as the obligation to advise the agency of any work accidents or illnesses that affected the temporary employee. In cases of unforeseeable production capacity surplus necessitating temporary employment, the employer shall verify each month whether the agency has made the payment to the temporary employee from the documentation to be provided each month by the agency. Should the employer find any non-payment, it shall not make payments to the agency and deduce the salary of the assigned employee. Such salary will directly be paid to him/her for a maximum period of 3 months.

Per Article 99 of the Labour Law, failure to comply with these rules is punishable by an administrative fine of TRY 250 for each temporary employee working in infringement of the Law, and TRY 1,000 where the maximum period of recruitment is exceeded in case of unforeseeable production capacity surplus necessitating temporary employment. However, according to the Temporary Article 7 added to the Labour Law, temporary employment agreements concluded prior to the amendments will remain in force until the end of their term.

PRIVATE EMPLOYMENT AGENCIES

Additional requirements for agencies still requiring authorisation, which were previously regulated by Regulation on Private Employment Agencies, published in the Official Gazette no. 28592 dated 19 March 2013 and still in force ("**Regulation**"), were implemented with the amendments to the Turkish Labour Institution Law. Persons managing an agency activity must be educated to at least Bachelor Degree level, not be in a state of financial bankruptcy, not have not committed economic or major crimes, and must employ qualified personnel. The agency shall fulfil formal requirements including the submission of their trade registry number as well as the payment of a fee and of a guarantee to be determined by the Labour Institution, in line with Article 17. Any activity conducted without such authorisation is punishable under Article 20, with an administrative fine of TRY 20,000 (TRY 40,000 in case of recurrence) for the agencies and TRY 10,000 for employers contracting with such unauthorized agencies.

As indicated in Article 17, authorisation to conduct temporary employment relations must be obtained in a licence that is separate from that issued for the establishment of the agency itself. The agency shall have been in activity for at least two years prior to the application and shall not have any debt to the public institutions whatsoever. It must also fulfil requirements such as having a physical office, and pay an additional guarantee that will be returned to the agency if it ceases its activity.

Both authorisations are granted for a period of three years which can be renewed by application within the 15 days preceding the elapse date, if the aforementioned conditions still remain valid. Should three infringements against a same requirement or six infringements against different requirements be observed by the Institution in two years, or if the agency fails

to operate within the 12 months following the issuance of its authorisation, the authorisations will be stripped from the agency. Such agency cannot then re-obtain them for three years, as per the Article 17. Entering into such relations without authorisation is punishable by an administrative fine of TRY 50,000 (TRY 100,000 in case of recurrence) and TRY 20,000 for employers who are a party to such contract.

Such agencies can conduct activities related to employment mediation, services related to human resources, give vocational training, conclude temporary employment relations (if authorised) and receive fees from those employers it provides employment services to. As before, agencies shall not act as intermediaries for employment in public institutions, advertise by way of electronic media without the permission of the Labour Institution, or ask any fee whatsoever from the temporary employees who are the subject to a temporary employment agreement, except for jobs determined within the Regulation, namely professional sportsmen, coaches, trainers, models, fashion models, artists and persons ranked as general managers or higher.

Agencies shall submit a report to the Labour Institution once every three months, which will be reviewed by the Labour Committee of Inspection, in compliance with the Regulation on Private Employment Agencies, published in the Official Gazette no. 28592 dated 19 March 2013.

If an agency's temporary employment authorisation is cancelled for any reason whatsoever, the temporary institution agreements remain in force until the end of the period determined therein. If the agency is closed, these agreements are automatically terminated upon such closing, and are transformed into employment agreements between the employer and the temporary employee, should the working relationship continue between these parties. Where an agency becomes bankrupt or defaults on payments, the employee's receivables are covered via the guarantee previously provided.

All the above requirements are subject to administrative fines explicitly regulated in the Turkish Labour Institution Law.

REMOTE WORKING AS PER LABOUR LAW NO. 4857

Remote working has been introduced to the Labour Law under the article 14 as an "employment relationship established in writing between the employer and the employee based on rendering services within the scope of the work organisation established by the employer from outside of the workplace".

The minimum content of such agreement is determined in the Amended Articles. It is also specified that employees who conduct remote working shall not be subject to a treatment that differs from that of ordinary employees, and that the employer must inform and educate such employees working under such a system and its occupational hazards.

Further procedures and principles will be determined with a new Regulation to be issued by the Ministry of Labour and Social Security.

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.

CONTACTS

MATTHIEU ROY
roy@gide.com

ALI OSMAN AK
ak@@odsavukatlik.com