

THE NEW LABOUR COURTS LAW IN TURKEY INTRODUCES A MANDATORY MEDIATION PROCESS

The new Labour Courts Law numbered 7036 (the "**New Law**") was adopted by the Turkish Parliament on 25 October 2017. It repeals the former Labour Courts Law (numbered 5521) and considerably amends the procedure to be followed in relation to labour disputes. The most important change introduced by the New Law is the mandatory mediation process, under which parties to a labour dispute are required to submit their cases to a mediator prior to filing a lawsuit before the labour courts. As such, the parties can no longer apply directly to the courts in seeking relief for compensation or reinstatement claims. The New Law has faced criticism for increasing procedural costs and emplacing barriers to routes to justice.

SCOPE OF THE MANDATORY MEDIATION

Under the New Law, the mandatory mediation process is a litigation condition for claims of employees and employers arising under the legislation, or individual or collective labour agreements and reinstatement claims of the employees. Accordingly, if the parties do not provide the court with an original or approved copy of the final report of the mediation proceedings, the court will dismiss the case on procedural grounds.

The New Law explicitly exempts claims arising from work-related accidents or occupational illnesses from the requirement to apply for the mandatory mediation process. As such, parties can directly apply to competent courts for claims of compensation arising from work-related accidents or occupational illnesses.

APPLICATION TO THE MANDATORY MEDIATION

In order to initiate the mediation process, the claimant party must apply to the mediation office located at the residency of the responding party and, if there are more than one responding parties, the application should be made to the mediation office located either at one of the respondents' residences, or the mediation office of the place where the work has been carried out or employment undertaken. If the dispute arises in a place where there are no mediation offices, then the registry office of the Civil Court of Peace (*Sulh Hukuk Mahkemesi Kalemi*) located at the relevant place will be authorised to process the mandatory mediation application. The mediator who will review the dispute will be selected by the relevant mediation office, unless the parties agree on a mediator whose name is included in the list of mediators published by the Mediation Department of the Ministry of Justice. Following his/her appointment, the mediator will inform both parties of such appointment and invite them to an initial meeting.

MANDATORY MEDIATION PROCESS

The mediator has three weeks to review and decide upon the dispute following his/her appointment. This time period may be extended by the mediator for one week. If the mediator cannot contact the parties, or if the parties do not participate in the initial meeting despite the mediator's invitation, or if the parties cannot reach a compromise, the mediator will end the mediation process, prepare the final report and notify the mediation office by sending the final report to the mediation office. Similarly, the mediator will issue and send the final report to the mediation office if an agreement is reached during the mediation process.

This New Law requires the participation of both parties in the mediation process. Parties may choose to personally participate in the proceedings or may choose to be represented by their lawful representatives or lawyers. Employers may also authorise one of their employees in writing, so enabling the relevant employee to appear before, and participate in, the proceedings on their behalf and to sign the final report on behalf of the employer.

If the parties reach a compromise at the end of the mediation process, the parties and their lawyers (if any) and the mediator will sign an agreement indicating such result. Parties may not file a lawsuit before the courts in relation to the matters that have been agreed upon through mediation process.

The New Law amended Article 20 of the Labour Law numbered 4857, providing a new procedure for reinstatement claims of employees dismissed without valid cause. According to the new provision, the dismissed employee shall apply to the mediator within one month following the termination of notice. If the parties agree that the unilateral termination of the employment contract by the employer is invalid and the employee shall be reinstated to work, then the date of reinstatement to work shall be determined by the parties. Similarly, the parties are also required to determine the amount of compensation that shall be paid to the employee if the employer fails to reinstate the employee to work.

If the parties cannot reach a compromise at the end of the mediation process, the employee may claim reinstatement before the labour courts within the two weeks following the final report of the mediator.

MEDIATION FEES

If parties reach a compromise at the end of the mediation process, unless otherwise agreed by the parties, they will be equally responsible for the mediation fees. Fees will be determined according to the Mediation Fee Tariff published by the Ministry of Justice.

If the mediation process ends due to the absence of a party in the initial meeting without a valid reason, the absent party will be liable for all costs of the process, even if that party is found to be partially or fully rightful in relation to the dispute.

If the mediation process ends due to the absence of both parties in the initial meeting, then each party will bear its own costs in any court proceedings initiated following the termination of mediation.

STATUTE OF LIMITATIONS IN RELATION TO SEVERANCE PAY CLAIMS

Before the enactment of the New Law, the statute of limitation applicable on severance pay claims was ten (10) years. The New Law reduces the relevant statute of limitation to five (5) years. This change would incentivise the parties to settle any disputes in relation to severance pay claims within a shorter period.

CONCLUSION

Although the mandatory mediation process in labour disputes is very new and rather unfamiliar, it is expected to decrease the burden of labour courts significantly and also to become an incentive for the parties to create their own way of a solution to the disputed matters.

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