

TURKEY INTRODUCES REMOTE WORKING REGULATION

The Ministry of Labour and Social Security ("**Ministry**") introduced the Remote Working Regulation¹ ("**the Regulation**") on 10 March 2021. While the concept of remote working has been in the Labour Law (Law No: 4857) since 2016, it has gained an increasing attention since March 2020 and enabled many industries to continue their operations during COVID-19. The Regulation addresses several issues related to remote working that were not previously addressed by the Labour Law, which will eliminate uncertainties in addition to repeating various concepts already existing under the Labour Law.

Form and Context of Remote Working Agreement

Pursuant to the Regulation, a remote working agreement must be executed in writing, and include provisions in relation to (i) definition of "work", (ii) how such work should be carried out, (iii) duration and place of work, (iv) payment of salaries, (v) equipment provided by the employer and means to protect such equipment, (vi) employer's communication with the employee and (vii) general and specific working conditions.

Costs that are directly linked to manufacturing of goods or provision of services resulting from performance of the work and reimbursement of such costs shall also be addressed in the remote working agreement. The employee and the employer have the freedom to set the working hours, provided that agreed working schedule is not against the limitations provided under the Labour Law.

Transition to Remote Working

Pursuant to the Regulation, the employer and the employee can agree to transition of their regular employment contract to a remote working contract. In such cases, the employee will make a written request to the employer in order to work remotely, and such request will be evaluated by the employer taking into consideration whether the employee or the work is suitable for working remotely and other criteria to be set by the employer. However, in cases where remote working will be implemented throughout the workplace, entirely or partially, due to a force majeure events set forth under the relevant legislation (e.g., COVID-19), a request or approval by the employee will not be sought for such transition.

Thereafter, the employer is required to notify the employee in writing within thirty days and if the request is accepted by the employer, the employee and the employer will enter into a remote working contract as described above. The transition to remote working is not a permanent change and the employee may request in writing to work physically in the work place.

Supply and Use of Work Equipment

In principle, all materials and work equipment required for the work will be provided by the employer, unless otherwise agreed under the remote working agreement. The employee will be informed by the employer on the principles of use, maintenance and repair conditions of such equipment. Additionally, the Regulation requires the employer to deliver a list of work equipment including their value on the date of delivery to the employee. Such list may also be included in or attached to the remote working agreement, in which case the employer will not be obliged to prepare and deliver a separate list.

¹ Published by in the Official Gazette dated 10 March 2021 and numbered 31419.

Data Protection

The Regulation requires the employer to inform the remote worker on the company rules and applicable legislation relating to protection and sharing of data pertaining to the work and workplace. The employer is also required to define, under the employment contract, the data subject to protection, and take necessary measures for the protection of such data.

Unsuitable Works for Remote Working

Under the Regulation, the following works cannot be performed remotely:

- Working with dangerous chemicals and radioactive materials, and processing of such materials or working with the wastes of such materials; and
- Works which may expose the employees to biological agents.

In addition to the foregoing, public institutions will determine the types of work unsuitable for remote working amongst those provided to such public institutions through procurement and that are strategically important in terms of national security.

Occupational Safety and Health

The Regulation requires the employer (i) to inform and provide training to remote workers on occupational health and safety precautions taking into consideration the nature of their work, (ii) to monitor occupational health conditions of the employees, and (iii) to adopt occupational health and safety measures regarding the work equipment, which is a restatement of occupational health and safety provisions of the Labour Law.

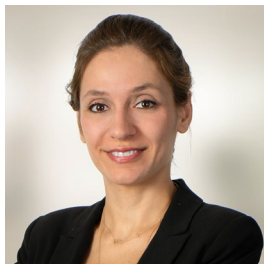
With the changing conditions of the global economy, lead by the pandemic, it is safe to say that remote working is here to stay. Many industries heavily relied on remote working to continue their operations last year and still continue to do so. In an attempt to ensure employees' rights under these circumstances, the Regulation clears certain important questions that remained in the minds of many employers. We may expect to see further developments and clarifications in this field in the years to come.

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