

Compensatory working under COVID-19 measures

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Compensatory working Comment

The COVID-19 outbreak, which was declared a pandemic by the World Health Organisation on 11 March 2020, the date on which the first case in Turkey was discovered, has inevitably had a significant impact on economic life. The measures taken to minimise this impact eventually resulted in labour law having to be restructured according to the pandemic's circumstances. In this respect, the duration of compensatory working, which is stipulated under the Labour Act, has been increased.

Compensatory working

Pursuant to Article 64 of the Labour Act, employers can impose compensatory working for unworked periods within two months (such work does not qualify as overtime) if:

- work is stopped for compulsory reasons;
- the workplace is closed before or after national and general holidays;
- an employee's normal working hours have been significantly decreased;
- the workplace is closed completely; or
- an employee is granted leave on request.

However, pursuant to Law 7226 on Amendment of Certain Laws, published in the repeated *Official Gazette* on 26 March 2020 (Number 31080), employers can impose compensatory working within four months instead of two months. Further, the president can now increase this term up to two times.

Under Article 64 of the Labour Law, compensatory working cannot be imposed on holidays and cannot exceed three hours per day, as long as this is not more than the daily maximum working hours.

In a 17 March 2008 decision (2007/27667 E and 2008/5298 K), the Ninth Civil Chamber of the Court of Cassation ruled that the termination of an employee who abstained from compensatory working of more than three hours per day, which was imposed on a Saturday at a workplace where Saturday is allocated as a contractual holiday, is not qualified to rely on a just or valid reason. Therefore, compensatory working cannot be imposed on Saturday for employees who do not work on Saturdays.

Comment

Pursuant to the measures taken to reduce the impact of the COVID-19 pandemic on the economy and businesses, the duration of compensatory working has been increased from two months to four months. As such, employers can impose compensatory working for the unworked periods within four months, once the impact of the current extraordinary circumstances on businesses is reduced and activities return to normal. Employees' consent need not be sought in order to implement compensatory working.

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