

What does labour law say about COVID-19?

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Introduction

On 11 March 2020 the Ministry of Health announced that the first case of coronavirus (COVID-19) had been diagnosed in Turkey. At the time of writing, 46 additional cases have been confirmed and the total number has reached up to 47.

This pandemic will inevitably affect labour law; as part of employers' duty to protect employees, they must take occupational health and safety measures and protect employees' health and physical and mental integrity. Employers' duties in this respect are set out in the Act on Occupational Health and Safety and the Code of Obligations.

Pursuant to the Code of Obligations, employers must take any measure to ensure occupational health and safety at the workplace and provide the necessary resources. Employees must abide by any measures taken with regard to occupational health and safety.

Similarly, pursuant to the Act on Occupational Health and Safety, employers must ensure employees' occupational health and safety. When fulfilling this obligation, employers must:

- avoid creating risks;
- analyse risks that are inevitable;
- eliminate existing risks at their source;
- replace any dangerous conditions with non or less dangerous ones;
- prioritise collective protection measures over personal protection measures; and
- provide proper instructions to employees.

Employers must also adapt their health and safety measures in view of changing conditions.

Epidemics and pandemics which are deemed compulsory cause under labour law may trigger mechanisms such as employees' right to:

- refuse to work;
- engage in short-time working; and
- receive unpaid leave.

In addition, according to the Public Health Act, a ban on working may be imposed.

Employees' right to refuse work

Employees who encounter a serious and likely risk can apply to their workplace's board of occupational health and safety or, in the absence of such a board, to their employer and request them to determine the facts and take necessary measures. If the board or the employer agrees with the employee with regard to the risk, the employee may refuse working until the risk is eliminated.

Short-time working and allowance

Employees may have a right to engage in short-time working and receive an allowance for such during a general economic, industry-specific or regional crisis or where this is compulsory, such as during an epidemic.

For employees to benefit from a short-time working allowance, their workplace's working hours

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must be temporarily reduced by least one-third or the activity at the workplace must temporarily stop entirely or partially for at least four weeks. Employers activate this system by applying to the Employment Agency, which will pay a daily short-time working allowance to the employees for a maximum of three months if it finds the application appropriate.

Unpaid leave

Unpaid leave is another option available to employees during an epidemic, provided that the employer and employee mutually agree to its application. Either the employer or the employee may propose unpaid leave. If the proposal comes from the employee, the reason for the leave request must be reasonable and the duration must be temporary. If COVID-19 spreads significantly in Turkey, this may constitute a reasonable ground due to employees' health concerns. However, it is not as simple for employers to propose unpaid leave. In the absence of a request from an employee or their consent, employers should ensure that they are using this option as a last resort and that they are not forcing employees to take such leave.

Ban on working

Pursuant to the Public Health Act, the Public Health Council can temporarily prohibit individuals who are certain of being capable of transmitting an illness from working.

Comment

The labour law implications of COVID-19 must not be neglected. Employers should keep in mind that they have a duty to protect their employees and must take all possible measures to ensure their occupational health and safety.

Employers should:

- convene their workplace's occupational health and safety board (if one exists);
- inform employees of the measures being taken pertaining to COVID-19;
- restrict international travels, meetings or gatherings to the extent possible; and
- consider different working models, such as home office, in order to ensure employees' safety and prevent COVID-19 from spreading.

At the time of writing, the government has taken several precautionary measures and most private-sector workplaces have already switched to the home-office working model.

The Ministry of Health has announced that employees who have recently travelled abroad should obtain a 14-day medical report by applying to their family practitioner or other healthcare organisations with their passport as proof of their travel. In such cases, if employers follow the standard practice in terms of sick leave, employees may benefit from the temporary incapacity allowance paid by the Social Security Institution as of the third day of their sick leave.

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