



ICLG

The International Comparative Legal Guide to:

Employment & Labour Law 2018

8th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group with contributions from:

A. Lopes Muniz Advogados Associados
BAS – Sociedade de Advogados, SP, RL
Carnelutti Law Firm
CDZ Legal Advisors
Debarliev, Dameski and Kelesoska, Attorneys at Law
Deloitte Kosova Sh.p.k.
Deloitte Legal Sh.p.k.
DQ Advocates Limited
EmpLaw Advokater AB
Erdinast, Ben Nathan, Toledano & Co. Advocates
FCLAW – LAWYERS & PRIVATE NOTARIES
GANADO Advocates
Global Law Office
Gün + Partners
Gürlich & Co.
Hamdan AlShamsi Lawyers and Legal Consultants
Hogan Lovells
Homburger
Hughes Hubbard & Reed LLP

Koushos Korfiotis Papacharalambous LLC
Lakshmikumaran & Sridharan
Latournerie Wolfrom Avocats
Law firm Šafar & Partners, Ltd
Mariscal & Abogados, Asociados
McCann FitzGerald
Meridian Law Chambers
Mori Hamada & Matsumoto
Pachiu & Associates
People + Culture Strategies
Rátkai Law Firm
SEUM Law
Shahid Law Firm
Skrine
Stikeman Elliott LLP
Sulaiman & Herling Attorneys at Law
Udo Udoma & Belo-Osagie
Wildgen S.A.
Winkler Partners



global legal group

Contributing Editors

Stefan Martin &
Jo Broadbent, Hogan Lovells

Sales Director

Florjan Osmani

Account Director

Oliver Smith

Sales Support Manager

Toni Hayward

Sub Editor

Jenna Feasey

Senior Editors

Caroline Collingwood
Suzie Levy

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Publisher

Rory Smith

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd
April 2018

Copyright © 2018

Global Legal Group Ltd.

All rights reserved

No photocopying

ISBN 978-1-912509-03-4

ISSN 2045-9653

Strategic Partners



General Chapter:

1	Where Next for the Gig Economy? – Stefan Martin & Jo Broadbent, Hogan Lovells	1
---	--	---

Country Question and Answer Chapters:

2	Albania	Deloitte Legal Sh.p.k.: Sabina Lalaj & Ened Topi	5
3	Australia	People + Culture Strategies: Joydeep Hor & Therese MacDermott	15
4	Bahamas	Meridian Law Chambers: Dywan A – G. R. Rodgers	22
5	Brazil	A. Lopes Muniz Advogados Associados: Antônio Lopes Muniz & Zilma Aparecida S. Ribeiro	28
6	Canada	Stikeman Elliott LLP: Patrick L. Benaroch & Hélène Bussi��res	35
7	China	Global Law Office: Weiwei Gu & Kelly Cao	43
8	Cyprus	Koushos Korfiotis Papacharalambous LLC: Loizos Papacharalambous & Marilia Ioannou	51
9	Czech Republic	G��rlich & Co.: JUDr. Richard G��rlich, Ph.D. & Mgr. Kamila Janou��skov��	60
10	Egypt	Shahid Law Firm: Rasha Maurice	67
11	France	Latournerie Wolfrom Avocats: Sarah-Jane Mirou	74
12	Germany	Hogan Lovells: Dr. Kerstin Neighbour & Dr. Tim Gero Joppich	83
13	Hungary	R��tkai Law Firm: Dr. Ildik�� R��tkai & Dr. N��ra Feith	90
14	India	Lakshmikumaran & Sridharan: Neeraj Dubey	97
15	Indonesia	Sulaiman & Herling Attorneys at Law: Allover Herling Mengko, S.H. & Valery Sarumpaet, S.H.	106
16	Ireland	McCann FitzGerald: Mary Brassil & Stephen Holst	112
17	Isle of Man	DQ Advocates Limited: Leanne McKeown & Jessica McManus	120
18	Israel	Erdinast, Ben Nathan, Toledano & Co. Advocates: Miriam Kleinberger-Attar	128
19	Italy	Carnelutti Law Firm: Giuseppe Bulgarini d'Elci & Marco Sartori	135
20	Japan	Mori Hamada & Matsumoto: Shiho Ono & Yuko Kanamaru	144
21	Korea	SEUM Law: Steve Ahn & Byungil Lee	154
22	Kosovo	Deloitte Kosova Sh.p.k.: Ardian Rexha & Vjosa Misini	161
23	Luxembourg	Wildgen S.A.: Jackye Elombo	167
24	Macau	FCLAW – LAWYERS & PRIVATE NOTARIES: Miguel Quental & Paulo Cordeiro de Sousa	174
25	Macedonia	Debarliev, Dameski & Kelesoska, Attorneys at Law: Emilija Kelesoska Sholjakovska & Ljupco Cvetkovski	181
26	Malaysia	Skrine: Selvamalar Alagaratnam & Siva Kumar Kanagasabai	189
27	Malta	GANADO Advocates: Dr. Matthew Brincat & Dr. Lara Pace	196
28	Mexico	Hogan Lovells: Hugo Hern��ndez-Ojeda Alv��rez & Luis Ruiz Guti��rrez	204
29	Mozambique	BAS – Sociedade de Advogados, SP, RL: Pedro Madeira de Brito & Lara Tarciana Sousa dos Mucudos Macamo	211
30	Nigeria	Udo Udoma & Belo-Osagie: Jumoke Lambo & Mary Ekemezie	217
31	Poland	CDZ Legal Advisors: Weronika Papucewicz & Piotr Kryczek	224
32	Portugal	BAS – Sociedade de Advogados, SP, RL: D��lia Cardadeiro & Alexandra Almeida Mota	232
33	Romania	Pachiu & Associates: Mihaela Cracea	240

Continued Overleaf ➔

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice.

Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.

This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Country Question and Answer Chapters:

34	Slovenia	Law firm Šafar & Partners, Ltd: Martin Šafar	249
35	Spain	Mariscal & Abogados, Asociados: Ana Gómez & Sara Moukayed	259
36	Sweden	EmpLaw Advokater AB: Annika Elmér	267
37	Switzerland	Homburger: Dr. Balz Gross & Dr. Gregor Bühler	273
38	Taiwan	Winkler Partners: Christine Chen	281
39	Turkey	Gün + Partners: Pelin Baysal & Beril Yayla Sapan	286
40	United Arab Emirates	Hamdan AlShamsi Lawyers and Legal Consultants: Hamdan Al Shamsi & Dr. Ghandy Abuhawash	293
41	United Kingdom	Hogan Lovells: Stefan Martin & Jo Broadbent	299
42	USA	Hughes Hubbard & Reed LLP: Ned Bassen & Nathan Cole	306

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

One general chapter titled “Where Next for the Gig Economy?”.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 41 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Stefan Martin and Jo Broadbent of Hogan Lovells International LLP for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Turkey

Pelin Baysal



Beril Yayla Sapan



Gün + Partners

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are as follows:

- The Constitution.
- Turkish Labour Act numbered 4857 (the “TLA”).
- Law on Trade Unions and Collective Bargaining Agreements numbered 6356 (the “Union Law”).
- Law on Civil Service Trade Unions and Collective Bargaining Agreements numbered 4688.
- Maritime Labour Law numbered 854.
- Press and Media Labour Law numbered 5953.
- Turkish Code of Obligations numbered 6098 (the “TCO”).
- Occupational Health and Safety Law numbered 6331.
- Labour Courts Act numbered 7036.
- The secondary laws and regulations including annual leave, working hours, overtime work, minimum wage and female and child employees.
- Communiqués and circulars published by the Ministry of Labour and Social Security with regards to the application and recommendation of the labour legislation.
- Court of Appeal’s Assembly of Civil Chambers decisions on the unification of the conflicting judgments.
- Employment contracts, collective bargaining agreements, internal regulations/personnel regulations.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Different types of employment contracts are regulated under Turkish employment law such as: continual – transitory; definite-(fixed) term – indefinite-term; full-time – part-time; and temporary employment contracts. Additionally, there are on-call, team and seasonal service employment contracts.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

In principle, employment contracts do not have to be in writing. However, fixed-term employment contracts with a term of at least one year should be in writing.

In other cases, the employer should provide a written document to his/her employees, which demonstrates the general and special working conditions, daily or weekly working hours, basic salary and other benefits (if any), salary payment period and parties’ obligations in the case of termination.

1.4 Are any terms implied into contracts of employment?

Workplace practices can be considered as terms implied into employment contracts. Workplace practices come into existence when a benefit is unilaterally provided by the employer consistently and under the same conditions and, thus, it becomes a provision of the employment contract in case such practices continue for at least three years.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Employers are under the obligation to pay the employees’ salary, taking all necessary precautions to ensure the health and safety of employees, abiding to the equal treatment principle. They also have a duty of care to their employees including protection of employees’ personal rights, personal data and protection of employees against mobbing.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining agreements can be made between trade unions of employees and employer unions or with employers which are not affiliated to a union. In this regard, there are certain conditions that need to be fulfilled in order for a trade union to be authorised to conclude a collective bargaining agreement and an employee to be subject to a collective bargaining agreement. Bargaining usually takes place at workplace or company level, in fact more than 50% of employees in the workplace or at least 40% of the employees in the enterprise subject to the collective bargaining agreement to be made must be affiliated to a trade union seeking to make a collective bargaining agreement for the workplace or enterprise.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions can be established with at least seven workers and they can be established without prior authorisation. There are 20 different lines of business (such as the food industry, communication, construction, health and social services, etc.) enumerated in the Union Law and they need to conduct their activities in one of these lines of business in compliance with the main business activity conducted in the workplace.

2.2 What rights do trade unions have?

Trade unions are entitled to enter into collective bargaining and negotiate the terms and conditions of collective employment contracts.

Trade unions are entitled to act on behalf of the employees and represent them. They can take collective actions in order to enforce the terms and conditions of collective bargaining agreements, file actions and represent the employees or their successors during the proceedings for protecting their rights arisen from the employment relationship, legislation and/or custom.

Trade unions are also authorised to assign a workplace union representative among the employees.

2.3 Are there any rules governing a trade union's right to take industrial action?

Trade unions are entitled to take industrial action in order to protect the economical and social statutes, working terms and conditions of the employees.

In the event that one of the parties fails to attend the collective bargaining meeting, or does not start negotiations or continue negotiations despite attending the meeting, or parties do not reach an agreement within the negotiation term, then one of the parties should notify the dispute to the authorised institution (Regional Directorate of Employment and Labour or the Ministry of Labour and Social Security depending on the jurisdiction) within six days.

Upon receiving the notification of the dispute, the authorised institution appoints a mediator within six days. The term of mediation is 15 days but it can be extended for a maximum of six working days by the agreement of parties. If the parties fail to reach an agreement at the end of the term of mediation, then the mediator drafts an official report within three days regarding the dispute and his/her suggestions for resolution and submits it to the authorised institution. The authorised institution notifies the official report to the parties within three working days. Following the notification of the official report, strike action can be taken within 60 days.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

It is not regulated under the related law and regulations to set up works councils. Employee representation in the company takes place primarily through trade unions.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Although there is no legal obligation for setting up works councils, it is upon the employer's initiative to establish one.

2.6 How do the rights of trade unions and works councils interact?

Trade unions may have an impact on workplaces through workplace trade union representatives and their rights do not interact with work councils since the related law did not regulate such interaction.

2.7 Are employees entitled to representation at board level?

No, employees are not entitled to represent at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Turkish Constitution, TLA, and the Law on Human Rights and Equality Institution of Turkey numbered 6701 ("Law No. 6701") prohibit discrimination of the employees.

According to the TLA, discrimination regarding language, race, political opinions, philosophical beliefs, religion and sex or similar reasons are prohibited.

3.2 What types of discrimination are unlawful and in what circumstances?

According to the principle of equal treatment regulated by the TLA, discrimination of the employees who sign different types of employment contracts and/or work in similar positions and/or who are trade union members is prohibited.

Law No. 6701 also prohibits employers from discriminating while determining the conditions regarding job applications and recruitment.

3.3 Are there any defences to a discrimination claim?

In principle, the employee should prove discrimination. However, if the employee proves a strong likelihood that the equal treatment principle has been violated, then the employer should prove that the discrimination did not take place. According to the TLA, except for biological requirements or requirements due to nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conditions, execution and termination of his/her employment contract due to the employee's sex or maternity.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

The employee can apply to the employer or directly file a claim before the court. The parties can settle claims before or after they are initiated.

3.5 What remedies are available to employees in successful discrimination claims?

If an employer breaches the equal treatment principle, the employee is entitled to request compensation up to four months of his/her salary. The employee can also claim rights, to which he/she has been deprived, i.e., loss of salary. The employer will also be subject to an administrative fine amounting to TRY 146 (subject to review) per employee.

3.6 Do “atypical” workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Provided that there is no essential reason, the employer cannot make discrimination between full-time and part-time employees or between an employee who works under a fixed-term agreement and one who works under an open-ended employment contract. This principle is also applicable for temporary agency workers.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Employees are entitled to take maternity leave of 16 weeks; eight weeks before, and eight weeks after confinement. In case of multiple pregnancies, an extra two-week period shall be added to the eight-week period before confinement. Upon the employee's request and doctor's approval, female employees can continue to work until three weeks before confinement. If necessary, these periods may be extended depending on the employee's health and special requirements of the job, subject to a medical report.

Following the maternity leave, the employee is also entitled to part-time leave (a 60-day period for the first child, 120 days for the second child and 180 days for more children). An additional 30 days will be added in the case of multiple pregnancy or 360 days in the case of the birth/adoption of a disabled child. Employees who are taking part-time unpaid leave are paid in ratio by their employer. For the hours not worked due to their part-time leave, they can be entitled to a part-time payment from the Social Security Institution. An employee can also take unpaid maternity leave for six months.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During the 16 weeks of maternity leave (for multiple pregnancies, 18 weeks), employees are entitled to receive maternity payment from the Social Security Institution in the amount of two-thirds or half of their gross daily salary depending on the treatment. In this regard, the employers are not obliged to make maternity leave payment.

4.3 What rights does a woman have upon her return to work from maternity leave?

Employees are entitled to have daily nursing leave for one-and-a-half hours for feeding their child under the age of one.

4.4 Do fathers have the right to take paternity leave?

Paternity leave is five days.

4.5 Are there any other parental leave rights that employers have to observe?

Provided that both parents work, one of the parents can work part-time until the child reaches the age to attend primary school. This leave is unpaid and the employee's request to take such leave is required. There is also three days of paid leave for adoptive parents and ten days of paid leave for the parents of a disabled or chronically ill child.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Employees are provided paid leave up to 10 days which they can use in whole or separately within one year provided that it is used by one of the working parents and based on the doctor's report showing that their child is at least 70% disabled or chronically ill.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

In the case of a share sale, the employer will not change and the employment shall continue.

In the case of an asset transfer, employment contracts which are effective on the transfer date will be automatically transferred to the transferee together with all the rights and obligations.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In the case of an asset transfer, after the transfer date, the transferor employer will be jointly and severally liable together with the transferee for two years, regarding the obligations arising from the TLA and employment contracts.

According to the Union Law, rights and obligations arising from the applicable collective agreement remain in force until the conclusion of a new collective agreement unless there is a collective agreement applied in the incoming employer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

There are no information and consultation rights on a business sale.

5.4 Can employees be dismissed in connection with a business sale?

The employees cannot be dismissed due to the business sale. However, the employer's right to terminate the employment due to economic, technological grounds or changes in working organisation and just causes, is reserved.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Employers are not entitled to freely change the terms and conditions of employment due to a business sale without the employee's written consent.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The TLA sets forth the minimum notice periods. If the length of the employee's service is less than six months, the notice period must be at least two weeks; if it is six to 18 months, the notice period must be at least four weeks; if it is 18 months to three years, the notice period is six weeks; and if it is more than three years, the notice period must be at least eight weeks. The parties can increase those periods through employment contracts.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Garden leave is not regulated under the TLA. However, the parties can agree on garden leave terms in writing.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The termination of a fixed-term agreement before its expiration should be based on just cause. Otherwise, the employee may request the amount that he would have earned until the end of the fixed-term agreement. As for the termination of an indefinite-term agreement, in principle the employer can terminate it by complying with notice periods. If there is a probation period in the employment contract, the employee can terminate the agreement during the first two months without complying with any notice.

Consent from a third party for termination of the employment is not required.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

According to the job security provisions, if an employee has been working for at least six months at a workplace which has 30 or more employees, the employer can only terminate the employment contract by relying on a valid reason or just cause. However, the employer's representative and his/her deputies who are entitled to manage the entire enterprise with authorisation to hire and terminate employees, cannot benefit from job protection provisions.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

If the employee benefits from job security provisions, then the employer should rely on a valid reason or just cause to terminate the employment. Valid reasons can be related to the individual employee such as the employee's capability or behaviour, or business-related reasons such as requirements of the enterprise, workplace or work. Just causes are classified under three categories: health reasons; cases incompatible with morals, goodwill and similar circumstances; and *force majeure*.

If there is just cause, the employment will be terminated with immediate effect. The employer will not pay severance payment if the just cause is based on the cases incompatible with morals, goodwill and similar circumstances. If the just cause is based on health reasons or *force majeure*, the employer should pay severance payment.

If there is valid reason, the employer should comply with the notice period or pay notice compensation. If the employee has at least one year's service, the employer must also pay severance payment at the rate of 30 days' salary for each full year as of the date on which the employment relationship has commenced. Payment must be made *pro rata* to the service period of the employee within a year. In any case, the maximum amount to be paid to an employee as severance payment is TRY 473,248 per year (subject to review).

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

If the employer terminates the employment contract relying on a just cause for cases incompatible with morals, goodwill and similar circumstances, the employer must use his right within six working days as of the date when it learns of the employee's act. In any case, the employer cannot use this right if the act took place a year or more before the employer discovers it.

For the employees who are subject to job security provisions, the employer must inform the employee of his/her low performance or misbehaviours and obtain his/her written statements regarding the reasons for his/her low performance or behaviours before terminating the employment.

If the terminations arising from the requirements of the enterprise, workplace or the work, according to the Court of Appeals' precedent, the employer should take an operational decision before terminating the employment.

The employer should state the termination reasons in writing in the termination letter.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The employee is entitled to file a reinstatement action in one month as of the notice of termination and request determination of the invalidity of the termination and his employment.

If the court accepts the case, it also decides for the employee's four-month salary and other benefits to be paid for the period in which the employee has not worked. Considering the possibility of the employer not to reinstate the employee upon his/her application, the court also determines the compensation amount between four to eight months of the employee's salary.

6.8 Can employers settle claims before or after they are initiated?

Yes, employers can settle claims before or after they are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

In case the employer terminates the employment contracts of:

- at least 10 employees out of a total workforce of between 20–100 employees;
- at least 10% of the employees out of a total workforce between 101–300 employees; or
- at least 30 employees out of a total workforce of 301 or more employees,

within one month on the same date or different dates as a result of economic, technological, structural or similar enterprise, business or work requirements, it constitutes a collective dismissal.

As a first step the employer should take an operational decision. Then, the employer should notify the trade union representative (if any), the Provincial Directorate of Social Security Institution and Turkish Employment Agency at least 30 days in advance. This notification must be in writing and include reasons for the termination, number and the group of employees to be dismissed and a timeframe for redundancy proceedings. According to the TLA, the termination notice will be deemed effective after 30 days from the employer's notification to the said official authorities.

After the notification, the employer should also consult with the trade union representative, if any, regarding such redundancy.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The employer is obliged to pay an administrative fine for each employee subject to the collective redundancy if it does not comply with its obligations. The administrative fine is TRY 606 per employee (subject to review).

The employee can file a reinstatement action if the employee benefits from job security provisions.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Non-compete, non-solicitation and confidentiality clauses are included in employment contracts as restrictive covenants.

7.2 When are restrictive covenants enforceable and for what period?

According to the TCO, the non-compete clause should be in writing and applicable for the employees who are in contact with customers and have access to customers' trade secrets. The covenant should be reasonably limited with regard to place, time and subject. The restricted period should be limited to two years but it can exceed two years in specific circumstances.

Regarding confidentiality, as per the TCO, the employee is also under the confidentiality obligation during the post-employment period, as long as it is required for the protection of the employer's rightful interest.

7.3 Do employees have to be provided with financial compensation in return for covenants?

According to the TCO, employees do not have to be provided with financial compensation in return for covenants.

7.4 How are restrictive covenants enforced?

Employers can request their damages arising from the breach of a non-compete agreement. If the parties agreed on a penalty clause, the employer can demand from the employee to pay the penalty clause. Also, the employer can request from the court to cease such breach provided that there is a clause in the employment contract which gives the employer such right.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

According to the TLA, employers are obliged to process employee's data lawfully and in good faith. As per the TCO, employers can use employee's personal data only if it is related to the employee's tendency to work or the execution of the employment contract is required to do so.

For the transfer of employees' personal data outside of Turkey, the employee's explicit consent is required. Under the Data Protection Law numbered 6698 ("DPL"), if there is an exceptional situation, transfers abroad can only happen if the foreign country has sufficient measures. Otherwise, the employer in the foreign country must guarantee in writing to the Data Protection Institution ("DPI") sufficient protections for equivalent measures.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

According to the DPL, an employee should apply to their employer in writing in order to obtain a copy of any personal data. The employer should conclude the request within 30 days at the latest, free of charge. If there is a cost to provide employees with their own data (e.g., photocopying), the employer may charge a fee according to the tariff which will be prepared by the DPI.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employees are not entitled to carry out a criminal record check against potential employees since criminal records can only be provided to the individual to whom it relates or his/her proxy. However, in practice, employers request from the potential employees to provide their criminal records during the recruitment period.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

According to precedents of the Court of Appeals, employers can monitor their employees' email messages and it is deemed legal regardless of the employees' consent, as long as the employer's/company's computer, equipment, etc. are used. The Constitutional Court made a decision on 24 March 2016 and stated that if an employer has notified its employees that business email accounts can be reviewed and used only for business purposes, the employer has a right to review these emails even if they contain personal information. The Constitutional Court also stated in this decision that the conflicted interests of the employer and employees should be balanced in a fair way and intervention by monitoring the email accounts should be evaluated on the grounds of whether or not it is proportional with the legitimate purpose of the employer.

Employees' phone conversations and text messages cannot be examined or recorded. The judge may decide to listen or record telephone communications for the purpose of conducting an investigation or criminal prosecution if there is no other way for obtaining evidence and there are strong grounds for such investigation concerning the crime that has been committed.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

Under Turkish law, there is no specific regulation regarding the act of monitoring employees' use of social media. It is accepted that employers can monitor employee's social media activities without having the prior consent of the employee if the social media content is public, if it is not, then the employer cannot control it.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

For employment-related complaints, simple procedure is applied. Therefore, only plaint and response petitions can be filed by the parties and no further exchange of petitions can be carried out.

Conciliation is not mandatory. However, the new Law of Labour Courts published on 12 October 2017 made it mandatory for employees to apply for mediation before initiating lawsuits regarding employee receivables, reinstatement claims and employment and collective bargaining agreements.

The main costs of civil proceedings such as application fees, litigation expenses and official attorney fees should be paid. The Turkish Civil Code of Procedure enables those who cannot afford litigation expenses to request legal aid from the court.

9.3 How long do employment-related complaints typically take to be decided?

A usual first instance proceeding before a Labour Court takes around one year excluding the mandatory mediation period.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Final decisions rendered by Labour Courts can be subject to examination before regional appellate courts within two weeks as of the notification of the decision. Depending on the dispute type and the monetary value of the case, decisions given by regional appellate courts can be appealed before the Supreme Court within two weeks as from the notification date of the regional appellate court's decision.

Regional appellate courts began to operate on 20 July 2016. Therefore the total appeal stage before the regional appellate court is usually shorter than the final appeal stage before the Supreme Court and since regional appellate courts are newly established, depending of the kind of the labour dispute an appeal before a regional appellate court usually takes six to 12 months and appeal before the Supreme Court takes around one year.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Labour Courts are the specialist courts for disputes related to employment relationships and are entitled to hear all claims arising out of the employment relationship.

**Pelin Baysal**

Gün + Partners
Kore Şehitleri Cad. 17 Zincirlikuyu
34394 İstanbul
Turkey

Tel: +90 212 354 00 00
Email: pegin.baysal@gun.av.tr
URL: www.gun.av.tr

Pelin Baysal is one of the partners in the commercial and corporate department of Gün + Partners. She received her LL.M. from Ruprecht-Karls University and her LL.B. from Ankara University Faculty of Law.

She concentrates on commercial and corporate law matters with a special focus on dispute resolution and arbitration in addition to insurance and reinsurance matters. She has advised on large-scale arbitration matters and represented many international and local clients on high-value commercial disputes.

Her practice also focuses on labour law; she represented and advised local and multinational clients in various employment issues including termination of employment, restructuring, confidentiality and non-compete obligations.

She is recommended for commercial litigation, insurance and reinsurance in Turkey by several global publications and directories.

**Beril Yayla Sapan**

Gün + Partners
Kore Şehitleri Cad. 17 Zincirlikuyu
34394 İstanbul
Turkey

Tel: +90 212 354 00 00
Email: beril.yayla@gun.av.tr
URL: www.gun.av.tr

Beril Yayla Sapan is a managing associate in the commercial and corporate department of the firm. She received her LL.M. in Economy Law from Galatasaray University and her LL.B. from Bilkent University Faculty of Law.

Beril's practice focuses on corporate and commercial litigation, business crimes and employment. She has been involved in several high-profile commercial conflicts and various high-profile debt collection procedures. Beril successfully represents many companies' interests before various courts in this field.

Beril is experienced also in areas where commercial and criminal laws overlap. She has advised several multinational companies in relation to white collar crimes. She has also been involved in several compliance and legal audits.

Beril's practice also includes labour law issues. She has advised several clients in relation to employment contracts and policies, restrictive covenants, collective bargaining agreements, employee related data protection, business immigration, terminations, collective redundancies and settlement. She also represents several clients in litigation relating to termination, employment-related debts, mobbing and discrimination claims.

GÜN + PARTNERS

AVUKATLIK BÜROSU

Gün + Partners is one of the largest law firms in Turkey. It provides a full range of legal services for local and international corporate clients. The firm has nine partners and over 60 lawyers. All the firm's lawyers are bilingual and fluent in English, and some have German, French and/or Russian as a third language. The firm has working offices in Ankara and Izmir and corresponding attorneys in other major cities.

Gün + Partners has a specialist employment practice group providing advisory and litigation services. The employment practice group regularly advises and represents clients on employment contracts, internal policies, confidentiality and non-compete obligations, internal investigation of mobbing claims, data protection, collective bargaining, employee-related IP rights and employee inventions, terminations, restructurings and reorganisations, collective redundancies, business immigration, workplace accidents and related litigation.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com