

# LABOUR ACT OF TURKEY

Law No. 4857

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## CHAPTER ONE

### General Provisions

#### Purpose and Scope:

Article 1. The purpose of this Act is to regulate the working conditions and work-related rights and obligations of employers and employees working under an employment contract.

With the exception of those cited in Article 4, this Act shall apply to all the establishments and to their employers, employer's representatives and employees, irrespective of the subject matter of their activities.

Establishments, employers, employer's representatives and employees shall be subject to this Act irrespective of the date of the notification to be made to the regional directorate of labour under Article 3.

#### Definitions:

Article 2. The employee is a real person working under an employment contract; the employer is a real or corporate person or a noncorporate institution or organisation employing employees; and the relationship established between the employee and employer shall be referred to as the employment relationship. The unit wherein the employees and material and immaterial elements are organised with a view to ensure the production of goods and services by the employer is called the establishment.

All premises used by reason of the nature and execution of the work and organised under the same management, including all facilities annexed to the establishment such as rest rooms, day nurseries, dining rooms, dormitories, bathrooms, rooms for medical examination and nursing, places for physical and vocational training and courtyards as well as the vehicles are deemed to be part of the establishment.

The establishment is an integrated organisational entity within the meaning of the annexed and adjunct facilities and vehicles.

The employer's representative is the person acting on behalf of the employer and charged with the direction of work, the establishment and enterprise. The employer is directly liable towards the employees for the conduct and responsibilities of his representative acting in this capacity.

Any obligations and responsibilities for which the employer is liable under this Act shall also be borne by the employer's representative. Bearing the status of an employer's representative does not abrogate the rights and obligations which one has as an employee.

The connection between the subcontractor who undertakes to carry out work in auxiliary tasks related to the production of goods and services or in a certain section of the main activity due to operational requirements or for reasons of

technological expertise in the establishment of the main employer (the principal employer) and who engages employees recruited for this purpose exclusively in the establishment of the main employer is called "the principal employer-subcontractor relationship". The principal employer shall be jointly liable with the subcontractor for the obligations ensuing from this Labour Act, from employment contracts of subcontractor's employees or from the collective agreement to which the subcontractor has been signatory.

The rights of the principal employer's employees shall not be restricted by way of their engagement by the subcontractor, and no principal employer – subcontractor relationship may be established between an employer and his ex- employee. Otherwise, based on the notion that the principal employer- subcontractor relationship was fraught with a simulated act, the employees of the subcontractor shall be treated as employees of the principal employer. The main activity shall not be divided and assigned to subcontractors, except for operational and work- related requirements or in jobs requiring expertise for technological reasons.

Declaring the establishment:

Article 3. The employer who sets up or takes over an establishment covered by this Act, who completely or partly changes the nature of his business, or who permanently closes down an establishment due to the completion of work or for any other reason must, within one month, notify the regional directorate of labour of the name and surname or trade mark and address as well as the names, surnames and addresses of employer representatives, if there are any.

The subcontractor must also make notification for his own establishment set up in order to produce goods or services in his capacity as subcontractor, according to the stipulations envisaged in the first sentence of this Article

Exceptions:

Article 4. The provisions of this Act shall not apply to the activities and employment relationships mentioned below.

- a. Sea and air transport activities,
- b. In establishments and enterprises employing a minimum of 50 employees (50 included) where agricultural and forestry work is carried out.
- c. Any construction work related to agriculture which falls within the scope of family economy,
- d. In works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3 rd degree (3 rd degree included),
- e. Domestic services,
- f. Apprentices, without prejudice to the provisions on occupational health and safety,
- g. Sportsmen,
- h. Those undergoing rehabilitation,
- i. Establishments employing three or fewer employees and falling within the definition given in Article 2 of the Tradesmen and Small Handicrafts Act,

However, the following shall be subject to this Act;

- a. Loading and unloading operations to and from ships at ports and landing stages,

- b. All ground activities related to air transport,
- c. Agricultural crafts and activities in workshops and factories manufacturing implements, machinery and spare parts for use in agricultural operations,
- d. Construction work in agricultural establishments,
- e. Work performed in parks and gardens open to the public or subsidiary to any establishment,
- f. Work by seafood producers whose activities are not covered by the Maritime Labour Act and not deemed to be agricultural work.

The principle of equal treatment:

Article 5. No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship.

Unless there are essential reasons for differential treatment, the employer must not make any discrimination between a full-time and a part-time employee or an employee working under a fixed-term employment contract (contract made for a definite period) and one working under an open-ended employment contract (contract made for an indefinite period).

Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his (her) employment contract due to the employee's sex or maternity.

Differential remuneration for similar jobs or for work of equal value is not permissible.

Application of special protective provisions due to the employee's sex shall not justify paying him (her) a lower wage.

If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his (her) four months' wages plus other claims of which he (she) has been deprived. Article 31 of the Trade Unions Act is reserved.

While the provisions of Article 20 are reserved, the burden of proof in regard to the violation of the above – stated provisions by the employer rests on the employee.

However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer.

The transfer of the establishment or one of its sections:

Article 6. When, due to a legal transaction, the establishment or one of its sections is transferred to another person, employment contracts existing in the establishment or in the section transferred on the date of the transfer shall pass on to the transferee with all the rights and obligations involved.

In the calculation of all the entitlements based on the employee's length of service, the transferee (new employee) must act, in regard to the transactions concerning the employee, according to the date on which the employee had started work under the transferor (previous employer).

In a transfer executed in accordance with the above provisions, the transferor and transferee shall be jointly liable for the obligations which have materialised before the transfer and which must be defrayed on the date of the transfer.

The liability of the transferor is limited, however, to the two – year period following the date of the transfer.

Provisions on joint liability shall not be applicable in cases where the corporate (legal personality) status ceases to exist as a result of a merger, participation or where the corporate type is changed.

The transferor or transferee is not authorised to terminate the employment contract solely because of the transfer of the establishment or a section thereof, nor shall the transfer entitle the employee to terminate the contract for just cause. The right of the transferor or the transferee to terminate for reasons necessitated by economic, technological or organisational changes is reserved; so is the employer's and the employee's right to break the contract for just cause.

The provisions stated above shall not be applicable in the event of the transfer of the establishment as a result of liquidation of the employer's assets due to the insolvency of the employer.

Temporary employment relationship:

Article 7. A temporary employment relationship is established when, in order to have work performed similar to what the employee was doing, the employer transfers the employee, upon obtaining his written consent at the time of transfer, to another establishment within the structure of the same holding company or the same group of companies, or to another employer. While in this case the employment contract between the employer and the employee continues to be in effect, the employee is obligated to perform work for the employer with whom the temporary employment relationship has been established. While the employer who is the party to the temporary employment relationship has the right to give commands to the employee, he is under the obligation to provide the employee with the necessary training against health and safety risks.

Temporary employment relationship may be established for a period not to exceed six months, and it may be renewed twice, if required.

The employer's (transferor's) obligation to pay the employee's wages shall continue. The employer with whom temporary employment relationship is established (transferee) shall be jointly liable with the employer (transferor) for the employee's unpaid wages for the period during which the employee was engaged in his establishment as well as for the duty to protect the employee and the payment of social security contributions.

For the payment of damages, which the employee has inflicted due to his own fault in relation to the establishment and employment, the employee shall be liable to the employer with whom temporary employment relationship has been established.

Unless the contrary can be inferred from the temporary employment contract of the employee, the provisions of this Act relating to other rights and obligations of the employee shall also apply to his relationship with the employer with whom temporary employment relationship has been established.

In the event the employer who has taken over the employee temporarily is the party to a collective labour dispute which has reached the strike and lock-out stage, the employee must not be engaged in work during the execution of the strike and lock-out. The provisions of Article 39 of Act No. 2822 on Collective Agreements, Strikes and Lock-outs are, however reserved. The transferor employer must engage such employees in work at his own establishment.

In establishments where collective dismissals have taken place, no temporary employment relationship may be established in jobs affected by the collective dismissal within the six-month period following the collective dismissal.

## SECOND CHAPTER

### Employment Contract; Types and Termination

Definition and form:

Article 8. Employment contract is an agreement whereby one party (the employee) undertakes to perform work in subordination to the other party (the employer) who undertakes to pay him remuneration. The employment contract is not subject to any special form unless the contrary is stipulated by the Act.

Written form is required for employment contracts with a fixed duration of one year or more, Such written documents are exempt from the stamp tax and all kinds of fees.

In cases where no written contract has been made, the employer is under the obligation to provide the employee with a written document, within two months at the latest, showing the general and special conditions of work, the daily or weekly working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract. This subsection shall not apply in the case of fixed term contracts whose duration does not exceed one month. If the employment contract has expired before the lapse of two months, this information must be communicated to the employee in written form on the expiration date at the latest.

The freedom to determine the type and conditions of the employment contract:

Article 9. The parties are free to draw up the employment contract in a manner commensurate to their needs, without prejudice to the limitations brought up by legislation.

Employment contracts shall be made for a definite (fixed term) or indefinite (open-ended) period. In terms of the manner of working, these contracts may be concluded on a full-time or part-time basis, or with a trial (probation) period or in other forms possible.

Employment contracts in continual and transitory work:

Article 10. Employment which, owing to its nature, lasts only up to 30 days is transitory; and employment which requires a longer period is continual.

Articles 3,8,12,13,14,15,17,23,24,25,26,27,28,29,30,31,34,53,54,55,56,57,58,59,

75,80 and transitional Article 6 of this Act shall not be applicable in employment contracts made for transitory work. If employment is transitory, provisions of the Obligations Act shall apply on matters contained in these Articles.

Employment contract for a definite (fixed) term and for an indefinite (open-ended) term:

Article 11. An employment contract is deemed to have been made for an indefinite period where the employment relationship is not based on a fixed term. An employment contract for a definite period is one that is concluded between the employer and the employee in written form, which has a specified term or which is based on the emergence of objective conditions like the completion of a certain work or the materialisation of a certain event.

An employment contract for a definite period must not be concluded more than once, except when there is an essential reason which may necessitate repeated (chain) contracts. Otherwise, the employment contract is deemed to have been made for an indefinite period from the very beginning.

Chain contracts based on essential reasons shall maintain their status as contracts made for a definite period.

Limitations on the distinction between fixed-term and open-ended contracts:

Article 12. An employee working under an employment contract for a definite period shall not be subjected to differential treatment in relation to a comparable employee working under an employment contract for an indefinite period.

Divisible amounts for a given time period relating to wages and other monetary benefits to be given to an employee working under a fixed-term contract shall be paid in proportion to the length of time during which the employee has worked. In cases where seniority (length of service) in the same establishment or the same enterprise is treated as the criterion in order to take advantage of an employment benefit, the seniority criterion foreseen for a comparable employee working under an open-ended contract must be applied to an employee with a fixed-term contract, unless there is a reason justifying the application of a different seniority criterion for an employee working under a fixed-term contract.

The comparable employee is the one who is employed under an open-ended contract in the same or a similar job in the establishment. If there is not such an employee in the establishment, then an employee with an open-ended contract performing the same or a similar job in a comparable establishment falling into the same branch of activity will be considered as the comparable employee.

Part-time and full-time employment contracts:

Article 13. The employment contract shall be considered as a part-time contract where the normal weekly working time of the employee has been fixed considerably shorter in relation to a comparable employee working full-time.

An employee working under a part-time employment contract must not be subjected to differential treatment in comparison to a comparable full-time employee solely because his contract is part-time, unless there is a justifiable cause for differential treatment. The divisible benefits to be accorded to a part-time employee in relation to wages and other monetary benefits must be paid in accordance to the length of his working time proportionate to a comparable employee working full-time.

The comparable employee is the one who is employed full-time in the same or a similar job in the establishment. In the event there is not such an employee in the establishment, an employee with a full-time contract performing the same or similar job in an appropriate establishment which falls into the same branch of activity will be considered as the comparable employee.

If there are vacant positions suited to the qualifications of employees working in the establishment, the employees' requests to move into full-time from part-time jobs or vice versa shall be taken into consideration; vacancies shall be announced without delay.

Work on call:

Article 14. Employment relationship which foresees the performance of work by the employee upon the emergence of the need for his services, as agreed to in the written employment contract, qualifies as a part-time employment contract based on work on call.

In the event the length of the employee's working time has not been determined by the parties in terms of time slices such as a week, month or year, the weekly working time is considered to have been fixed as twenty hours. The employee is entitled to wages irrespective of whether or not he is engaged in work during the time announced for work on call.

Unless the contrary has been decided, the employer who has the right to request the employee to perform his obligation to work upon call must make the said call at least four days in advance.

The employee is obliged to perform work upon the call communicated to him within the said time limit. If the daily working time has not been decided in the contract, the employer must engage the employee in work for a minimum of four consecutive hours at each call.

Employment contract with a trial (probation) clause:

Article 15. If the parties have agreed to include a trial clause in the employment contract, the duration of the trial term shall not exceed two months. However, the trial period may be extended up to four months by collective agreement.

Within the trial term the parties are free to terminate the employment contract without having to observe the notice term and without having to pay compensation. The employee's entitlement to wages and other rights for the days worked is reserved.

Employment contracts based on a "gang contract":

Article 16. The contract concluded between an employer and a gang of employees represented by one of the employees acting as the gang leader is called a gang contract.

The gang contract must be made in written form irrespective of the duration of employment contracts which will emanate from it. The gang contract must specify the identity and wage of each employee separately.

Once each employee named in the gang contract begins work, an employment contract is deemed to have been concluded between the employer and the employee with the conditions specified in the gang contract. However, the provision of Article 110 of the Obligations Act also apply to the gang contract.

The employer or his representative must pay the employees' wages separately as each employee named in the gang contract begins work. For the gang leader's acting as an intermediary or for any other reason, no deductions may be made on behalf of the gang leader from the wages of employees who form the gang.

Notice of termination:

Article 17. Before terminating a continual employment contract made for an indefinite period, a notice to the other party must be served by the terminating party.

The contract shall then terminate:

- a. in the case of an employee whose employment has lasted less than six months, at the end of the second week following the serving of notice to the other party;
- b. in the case of an employee whose employment has lasted for six months or more but for less than one-and-a-half years, at the end of the fourth week following the serving of notice to the other party;
- c. in the case of an employee whose employment has lasted for one-and-a-half years or more but for less than three years, at the end of the sixth week following the serving of notice to the other party;
- d. in the case of an employee whose employment has lasted for more than three years, at the end of the eighth week following the serving of notice to the other party.

These are minimum periods and may be increased by contracts between the parties.

The party who does not abide by the rule to serve notice shall pay compensation covering the wages which correspond to the term of notice.

The employer may terminate the employment contract by paying in advance the wages corresponding to the term of notice.

The employer's non-observance of the rule of giving notice or his terminating the employment contract by paying in advance the wages corresponding to the term of notice shall not preclude the application of Articles 18,19,20 and 21 of this Act. In cases where employment contracts of employees who fall outside the scope of Articles 18,19,20 and 21 of this Act by definition of subsection I of Article 18 have been ended by the abusive exercise of the right to terminate, the employee shall be paid compensation amounting to three times the wages for the term of notice. If the rule to give notice has not been observed either, the employee must be paid an additional compensation (notice pay) in accordance with subsection 4 above.

In the computation of compensations to be paid in accordance with this Article as well as the advance notice pay, all the monetary benefits plus other benefits which can be measured in monetary terms emanating from the contract and from the law shall be taken into consideration in addition to the wage defined in subsection 1 of Article 32.

Justification of termination with a valid reason:

Article 18. The employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service.

In the computation of the six-months' seniority, time periods enumerated in Article 66 shall be taken into account.

The following, inter alia, shall not constitute a valid reason for termination:

- a. union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- b. acting or having acted in the capacity of, or seeking office as, a union representative;
- c. the filing of a complaint or participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative or judicial authorities;

- d. race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- e. absence from work during maternity leave when female workers must not be engaged in work, as foreseen in Article 74;
- f. temporary absence from work during the waiting period due to illness or accident foreseen in Article 25 of the Labour Act, subsection I (b).

The "six month" minimum seniority (length of service) of the employee shall be calculated on the basis of the sum of his employment periods in one or different establishments of the same employer. In the event the employer has more than one establishment in the same branch of activity, the number of employees shall be determined on the basis of the total number of employees in these establishments.

This Article and Articles 19 and 21 and the last subsection of Article 25 shall not be applicable to the employer's representative and his assistants authorised to manage the entire enterprise as well as the employers' representative managing the entire establishment but who is also authorised to recruit and to terminate employees.

Procedure in termination:

Article 19. The notice of termination shall be given by the employer in written form involving the reason for termination which must be specified in clear and precise terms.

The employment of an employee engaged under a contract with an open-ended term shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made. The employer's right to break the employment contract in accordance with Article 25/II of the Labour Act (for serious misconduct or malicious or immoral behaviour of the employee) is, however, reserved.

Procedure of appeal against termination:

Article 20. The employee who alleges that no reason was given for the termination of his employment contract or who considers that the reasons shown were not valid to justify the termination shall be entitled to lodge an appeal against that termination with the labour court within one month of receiving the notice of termination. If there is an arbitration clause in the collective agreement or if the parties so agree, the dispute may also be referred to private arbitration within the same period of time.

The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer.

The court must apply fast-hearing procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month.

Consequences of termination without a valid reason:

Article 21. If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer.

In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work.

The employee shall be paid up to four months' total of his wages and other entitlements for the time he is not re-engaged in work until the finalization of the court's verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above-stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work.

For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination.

The provisions of subsections 1,2 and 3 of this Article shall not be altered by any agreement whatsoever; any agreement provisions to the contrary shall be deemed null and void.

Change in working conditions and termination of the contract:

Article 22. Any change by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, may be made only after a written notice is served by him to the employee. Changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. If the employee does not accept the offer for change within this period, the employer may terminate the employment contract by respecting the term of notice, provided that he indicates in written form that the proposed change is based on a valid reason or there is another valid reason for termination. In this case the employee may file suit according to the provisions of Articles 17 and 21.

By mutual agreement the parties may always change working conditions. Change in working conditions may not be made retroactive.

Responsibility of the new employer:

Article 23. If the employee working for an employer under a contract with a definite or indefinite period quits employment before the expiration of the fixed term or without respecting the notice period and accepts employment under another employer, the new employer is also liable jointly with the employee, in addition to the employee's liability for ending the contract in this fashion, in the following cases;

- a. if the new employer has caused the employee to act in this manner,
- b. if the new employer has engaged the employee in work even though he was aware of the employee's action, or
- c. if the new employer has retained the employee in his service after becoming aware of the latter's action.

Employee's right to break the contract for just cause:

Article 24. The employee is entitled to break the contract, whether for a definite or an indefinite period, before its expiry or without having to observe the specified notice periods, in the following cases.

- I. For reasons of health

- a. If the performance of the work stipulated in the contract endangers the employee's health or life for a reason which it was impossible to foresee at the time the contract was concluded;
- b. If the employer, his representative or another employee who is constantly near the employee and with whom he is in direct contact is suffering from an infecting disease or from a disease incompatible with the performance of his duties.

II. For immoral, dishonourable or malicious conduct or other similar behaviour

- . If, when the contract was concluded, the employer misled the employee by stating the conditions of work incorrectly or by giving him false information or by making false statements concerning any essential point of the contract;
- a. If the employer is guilty of any speech or action constituting an offence against the honour or reputation of the employee or a member of the employee's family, or if he harasses the employee sexually;
- b. If the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honour;
- c. If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct;
- d. If the employer fails to make out a wages account or to pay wages in conformity with the Labour Act and the terms of the contract;
- e. If, in cases where wages have been fixed at a piece or task rate, the employer assigns the employee fewer pieces or a smaller task than was stipulated and fails to make good this deficit by assigning him extra work on another day, or if he fails to implement the conditions of employment.

III. Force majeure

Force majeure necessitating the suspension of work for more than one week in the establishment where the employee is working.

The breaking of the employment contract by the initiative of the employer (summary termination):

Article 25. The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:

I. For reasons of health

- a. If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.
- b. If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In cases of illness or accident which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in article 17. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the period stipulated in Article 74. No wages are to be paid for the period during which the employee fails to report to work due to the suspension of his (her) contract.

II. For immoral, dishonourable or malicious conduct or other similar behaviour

- . If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;
- a. If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;
- b. If the employee sexually harasses another employee of the employer;
- c. If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84;
- d. If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets.;
- e. If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;
- f. If, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;
- g. If the employee refuses, after being warned, to perform his duties;
- h. If either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.

III. Force majeure:

Force majeure preventing the employee from performing his duties for more than one week.

IV. If due to the employee's being taken into custody or due to his arrest, his absence from work exceeds the notice period indicated in Article 17.

The employee may file a lawsuit according to Articles 18,20 and 21 by claiming that the termination was not in conformity with the subsections cited above.

The prescribed period within which the right to summary termination may be exercised:

Article 26. The right to break the employment contract for the immoral, dishonourable or malicious behaviour of the other party may not be exercised after six working days of knowing the facts, and in any event after one year following the commission of the act, has elapsed. The "one year" statutory limitation shall not be applicable, however, if the employee has extracted material gains from the act concerned.

The employee or employer who has terminated the contract for any of the reasons mentioned above within the period indicated in the above subsection is entitled to claim compensation from the other party.

Permission to seek new employment:

Article 27. During the term of notice the employer must grant the employee the permission to seek new employment within working hours without any deduction from his wage. The time devoted to this purpose should not be less than two hours daily and if the employee so requests such hours may be added together and taken at one time. But if the employee wishes to take these hours at one time, he must do so on the days immediately preceding the day on which his employment ceases and must inform the employer in advance.

If the employer does not grant the permission to seek new employment or allows less time than that stipulated in this Article, he must pay the employee the wages corresponding to the time to which he was entitled.

If the employer makes the employee work during the time to be allowed for seeking new employment, he must compensate the employee twice the amount of wages he is entitled to even for no work during the time which should be allowed for seeking new employment.

Certificate of employment:

Article 28. The employer must furnish the employee leaving employment with a certificate stating the nature and duration of employment.

The employee who suffers a loss or the new employer who has recruited him may claim compensation from the previous employer for the latter's failure to furnish the certificate on due time or for the incorrect information contained in the certificate.

Such certificate is exempt from taxes and fees.

Collective dismissal:

Article 29. When the employer contemplates collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, he shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off.

A collective dismissal occurs when,

- a. in establishments employing between 20 and 100 employees, a minimum of 10 employees; and
- b. in establishments employing between 101 and 300 employees, a minimum of 10 percent of employees; and
- c. in establishments employing 301 and more workers, a minimum of 30 employees, are to be terminated in accordance with Article 17 on the same date or at different dates within one month.

The said written communication shall include the reason for the contemplated layoff, the number and groups to be affected by the lay-off as well as the length of time the procedure of terminations is likely to take.

Consultations with union shop-stewards to take place after the said notification shall deal with measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimize their adverse effects on the workers concerned. A document showing that the said consultations have been held shall be drawn up at the end of the meeting.

Notices of termination shall take effect 30 days after the notification of the regional directorate of labour concerning the intended lay-offs.

In the event of closing the entire establishment which involves a definite and permanent stoppage of activities, the employer shall notify, at least 30 days prior to the intended closure, only the regional directorate of labour and the Public Employment Office and shall post the relevant announcement at the establishment.

If in seasonal and campaign work layoffs are carried out in conjunction with the nature of such work, provisions on collective dismissals shall not apply.

The employer shall not apply the provisions on collective dismissal to evade and prevent the application of Articles 18,19,20 and 21; otherwise the employee may file suit according to these articles.

The requirement to employ disabled persons, ex-convicts and victims of terror:

Article 30. In establishments employing fifty or more employees, employers shall employ disabled persons, ex-convicts, and victims of terror - who must be engaged in work in accordance with the annex Article (B) of Act No. 3713 on the Struggle Against Terrorism - , and assign them to jobs consistent with their occupational skills and physical and mental capacities; the ratios to be employed in each category shall be determined by the Council of Ministers in a manner to go into effect at the beginning of January of each year. The total ratio of employees to be employed within the scope of this article is six percent. But the ratio of the disabled shall not be less than half of the total ratio. For employers who have more than one establishment within the boundaries of a province, the number that the employer must employ shall be computed according to the total number of employees.

In determining the number of employees to be employed within the scope of this provision, employees with open-ended and fixed term contracts shall be considered together. Taking their working time into consideration, part-time employees shall be converted into full-time numbers.

In the computation of the ratios, fractions up to one half are to be omitted; those above half shall be elevated to one.

Priority in hiring these categories must be given to those who have become disabled or ex-convicts or victims of terror during their previous employment in the establishment.

Employers shall recruit such employees through the Public Employment Organisation of Turkey (Türkiye İş Kurumu).

The nature of employees who shall be employed in the meaning of this clause, the types of jobs in which they may be engaged, the special conditions that will apply to them and their occupational orientation and how they shall be recruited professionally is to be indicated in a regulation which will be issued jointly by the Ministry of Justice and the Ministry of Labour and Social Security.

No disabled person shall be employed in any underground and underwater work, and employees engaged in underground and underwater works shall not be taken into consideration in determining the number of employees according to the provisions mentioned above.

The employer must give priority to applicants who have left his establishment because of disablement but who have later recovered should they wish to resume their old jobs, either immediately if vacant positions are available, or if not, when vacancies occur in their previous jobs or in other corresponding jobs, subject to the prevailing conditions of employment. Should the employer fail to respect his obligation to conclude the said employment contract despite the existence of the above - mentioned requirements, he shall pay his ex-employee making the application a compensation equal to his six months' wages.

The employment of ex-convicts shall be without prejudice to the provisions concerning services related to public security.

Concerning employers who employ disabled persons, ex-convicts or victims of terror above the quotas designated by the Council of Ministers, or who employ these categories although they are not obligated to do so, or employers employing disabled persons who have lost more than 80 percent of their working capacity, and for each disabled person thus employed; the employer shall pay only fifty percent of the employer's share of contributions according to Act No. 506 on Social Insurance, and the Treasury shall pay the remaining fifty percent.

In the event of violations of this clause the fines which will be collected according to Article 101 shall be appropriated as income to a special account of the Turkish Employment Organisation (İş-Kur) which will be opened by the Ministry of Finance. The money thus collected in this account shall be transferred to the Turkish Employment Organisation to be spent for the vocational training and rehabilitation of the disabled or for promoting self-employment businesses or similar projects for such people.

The subject matter and amounts of such appropriations shall be decided, under the coordination of the general Directorate of the Turkish Employment Organisation, by a committee to be composed of a representative from the general Directorate of Labour of the Ministry of Labour and Social Security, General Directorate of Occupational Health and Safety, Directorate of the Administration for the Disabled, General Directorate of Penal and Prison Institutions of the Ministry of Justice, the Confederation of the Disabled of Turkey and top level organisations of labour and employers with the largest membership. The working methods of the committee will be determined by a regulation to be issued by the Ministry of Labour and Social Security.

Employment in relation to military and statutory duty:

Article 31. If an employee is recalled to military services to take part in maneuvers or for any other reasons, or if he leaves his employment to perform statutory labour service, his employment contract shall be deemed to have ended after two months have elapsed from the date of his departure.

To be entitled, the employee must have been employed for a minimum of one year.

Employees who have been employed for more than one year are allowed two additional days for each year of service, provided that the total period of absence must not exceed 90 days.

The employee is not entitled to wages within the period which must elapse in order for his employment contract to be deemed terminated, without prejudice to the provisions of special legislation on this matter. Even in cases where notice has been given by either party for any other reason based on law, the notice period for termination designated by law shall begin to be operative after the lapse of the time indicated. The provisions of this Article shall not apply if the employment contract is a fixed-term one and if it expires within the period indicated above.

If employees who leave their employment to carry out any military or statutory duties apply to their employer within two months of the completion of such duties, the employer shall re-hire them by giving priority over other applicants, when there is a vacancy equal or similar to their previous jobs, under the prevailing conditions; if there is no vacancy, the employer shall re-hire them to the first job which will become vacant. If the employer does not fulfill his obligation to conclude the employment contract despite the presence of the required conditions, he shall pay the ex-employee applying for re-employment compensation equal to three-months' wages.

### THIRD CHAPTER

## Wages

The wage and its remuneration:

Article 32. Wage is, in general terms, the amount of money to be paid in cash by an employer or by a third party to a person in return for work performed by him.

As a rule the wage shall be paid in Turkish money (legal tender) at the establishment or shall be deposited into a specially opened bank account. If the wage has been decided in terms of a foreign currency, it may be paid in Turkish money according to the currency rate on the date of payment.

Wage payment must not be made in bonds, coupons or another paper claimed to represent the national currency valid in the country or by any other means whatsoever.

Wage may be paid on a monthly basis at the latest. The time of remuneration may be reduced down to one week by employment contract or by collective agreement.

Upon the expiration of the employment contract, employee's wage claims as well as all the benefits based on the employment contract and law must be paid in full.

No wage payments may be made to employees in bars and similar entertainment areas where alcoholic beverages are served as well as in retail stores, with the exception of employees working in such establishments.

Statutory limitation on wage claims is five years.

Insolvency of the employer:

Article 33. In case of the employer's inability to pay as evidenced by the declaration of a concord by him or the issuance of a certificate attesting to his insolvency or bankruptcy, a separate Wages Guarantee Fund shall be established within the Unemployment Insurance Fund with a view to meet the employees' wage claims for the last three months accruing from the employment relationship.

The Wages Guarantee Fund shall comprise one percent of the total unemployment insurance contributions paid by employers. The formation and working methods of the Wages Guarantee Fund shall be laid down in a regulation to be issued by the Ministry of Labour and Social Security.

Non-payment of wages on the day due:

Article 34. The employee whose wage has not been paid within twenty days of the day it was due, except for force majeure, may refrain from fulfilling his obligation to work. Even if refraining from work by employees based on their personal decisions takes on the character of a concerted action in quantifiable terms, it shall not qualify as a strike. The highest interest rate charged to bank deposits shall be levied on wage debts not paid on the day they were due.

Employment contracts of such employees shall not be terminated solely because they have refrained from working for this reason; no replacements shall be hired, nor may such work be performed by others.

Protected portion of the wage:

Article 35. Not more than one - fourth of the wages in a month may be seized, transferred or assigned to a third party, provided that any maintenance allowances awarded by a judge to members of the employee's family whom he is required to support shall not be included in this sum. This provision shall apply without prejudice to the rights of persons entitled to alimony.

The obligation of public agencies to deduct wage claims from contractors' entitlements:

Article 36. Public agencies administered by the general and annexed budgets, local governments, state economic enterprises, and banks and organisations established under special laws must ensure, before making any progress payment to a contractor carrying out construction work such as construction of buildings, bridges, railways and roads of any kind as well as repair work, that all the employees hired for such work have been paid their wages adequately by the contractor or a subcontractor, and if there are any employees who have not yet been paid, as determined by the payrolls to be produced by the contractor or subcontractor on demand, must deduct the appropriate amounts from the contractor's progress payment and pay the employees' wages that are due.

Before any progress payment is made to a contractor, a notice by the agency concerned must be prominently displayed in written form in places where the employees gather together. The agency concerned is not liable, however, for any wage claims exceeding the amount of three months' earnings to which the employee is entitled.

Any transaction involving a transfer, takeover, sequestration or enforced sale on the guarantees and entitlements accorded by the said contractors to the employers (agencies) concerned may be implemented only on the sum obtained after apportioning the wage claims of the employees who have been employed in such ventures.

Any sequestration and enforced sale on the equipment, materials, raw, semi-finished and finished products and other assets in the establishment of an employer for his debts to a third party may be implemented on the sum obtained only after apportioning the wage claims of the employees for the three months' period preceding the date on which the decision for forced sale was taken.

All employers responsible within the meaning of subsection 6 of Article 2 are authorised as well to use the powers given to public legal bodies and other organisations defined in this Article.

Wage account slip:

Article 37. In wage payments which the employer makes at the establishment or through a bank, he must deliver to the employee a signed slip showing the wage account and bearing the special mark of the establishment.

This slip must indicate clearly the date of payment, the pay period, all supplements to basic wages such as overtime earnings, payments for weekly rest days and national or general holidays, and all deductions such as taxes, insurance contributions, reimbursement of advance payments, payments for alimony and sequestered deductions.

These transactions are exempt from all stamp taxes and fees.

Deductions of fines from wages:

Article 38. No employer may impose a fine on an employee's wage for reasons other than those indicated in the collective agreement or the employment contract. The employee must be notified at once, together with the reason, of any wage deductions as fines.

Deductions made in this way must not exceed three days' wages in any one month, or in the case of piece work or amount of work to be done, the wages earned by the employee in two days.

These deductions shall be credited within one month to the account of the Ministry of Labour and Social Security in a bank established in Turkey and must be designated by the Ministry for use in the training of and social services for employees. Every employer must maintain a separate account in his establishment showing such deductions. A committee presided over by the Minister of Labour and Social Security and including employees' representatives shall decide where and in what amounts the fines thus collected are to be used. Rules for the establishment and working methods of this committee shall be indicated in a regulation to be issued.

Minimum wage:

Article 39. With the object of regulating the economic and social conditions of all employees working under an employment contract, either covered or uncovered by this Act, the minimum limits of wages shall be determined every two years at the latest by the Ministry of Labour and Social Security through the Minimum Wage Fixing Board.

The Minimum Wage Fixing Board, presided over by one of its members to be designated by the Ministry of Labour and Social Security, shall be composed of the General Director of Labour or his deputy, the General Director of Occupational Health and Safety or his deputy, the chairman of the Economic Statistics Institute of the State Institute for Statistics or his deputy, representative of the Under-Secretariat of Treasury, the head of the relevant department of the State Planning Organisation or his representative, five employees' representatives from different branches of activity selected by the highest-ranking labour organisation representing the majority of employees and five employers' representatives selected by the employer organisation representing the majority of employers. The Minimum Wage Fixing Board meets with at least ten members present. The Board takes its decisions by majority vote. In the event of a tie, the chairman has a casting vote.

Decisions of the Board are final. Decisions become effective upon their publication in the Official Gazette.

The meeting and working methods, and rules that shall apply to fixing the minimum wage as well as the honorariums to be paid to the chairman, members and the reporter of the Board shall be set out in a regulation to be issued jointly by the Ministry of Finance and the Ministry of Labour and Social Security.

Secretarial services of the Minimum Wage Fixing Board shall be handled by the Ministry of Labour and Social Security.

Half wage:

Article 40. The employee who can not work or who is not engaged in work due to the reasons set forth in subsections III of Articles 24 and 25 shall be paid, up to one week, half his wages for each day.

Overtime wage:

Article 41. Overtime work may be performed for purposes such as the country's interest, the nature of the operation or the need to increase output. Overtime work is work which, under conditions specified in this Act, exceeds forty-five hours a week. In cases where the principle of balancing is applied in accordance with Article 63, work which exceeds a total of forty-five hours a week shall not be deemed overtime work, provided the average working time of the employee does not exceed the normal weekly working time.

Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.

In cases where the weekly working time has been set by contract at less than forty-five hours, work that exceeds the average weekly working time done in conduction with the principles stated above and which may last only up to forty-five hours weekly is deemed to be work at extra hours. In work at extra hours, each extra hour shall be remunerated at one and a quarter times the normal hourly rate.

If the employee who has worked overtime or at extra hours so wishes, rather than receiving overtime pay he may use, as free time, one-hour and thirty minutes for each hour worked overtime and one hour and fifteen minutes for each extra hour worked.

The employee shall use the free time to which he is entitled within six months, within his working time and without any deduction in his wages.

No overtime work shall be done in work of short or limited duration due to health reasons mentioned in the last subsection of Article 63 as well as in night work stated in Article 69.

The employee's consent shall be required for overtime work.

Total overtime work shall not be more than two hundred seventy hours in a year.

Overtime work and its methods shall be indicated in a regulation to be issued.

Compulsory overtime work:

Article 42. All or some of the employees may be required to work overtime either in the case of a breakdown, whether actual or threatened, or in the case of urgent work to be performed on machinery, tools or equipment or in the case of force majeure, provided that it shall not exceed the time necessary to enable the normal operating of the establishment. In these cases employees must be allowed an adequate time for rest.

In any case the first, second and third subsections of Article 41 shall apply to compulsory overtime work.

Overtime work in emergency situations.

Article 43. During periods of mobilization, the Council of Ministers may, if it deems it necessary and limited only by that period, extend the daily hours of work up to the maximum of which the employees working in establishments serving the needs of national defense are capable, according to the nature of the operations and urgency of the needs in question.

For overtime pay of employees engaged in such work, subsections 1,2 and 3 of Article 41 shall apply.

Work on the national day and public holidays:

Article 44. The issue of whether or not work will be done on the national day and public holidays will be decided by the collective agreement or by employment contracts. The employee's consent is required if there is no provision in the collective agreement or in employment contracts.

Wages for such days shall be paid in accordance with Article 47.

Protected Rights:

Article 45. No provisions may be inserted into collective agreements or employment contracts contrary to the rights granted to employees on the weekly rest day, national and public holidays, paid vacations and to the rights of employees working under a percentage system recognised to them by this Act.

Any vested rights based on law, collective agreement, employment contract or custom which provide employees with more favourable rights and benefits shall be protected.

Remuneration for weekly rest day:

Article 46. The employees working in establishments covered by this Act shall be allowed to take a rest for a minimum of twenty-four hours (weekly rest day) without interruption within a seven-day time period, provided they have worked on the days preceding the weekly rest day as indicated in Article 63.

For the unworked rest day, the employer shall pay the employee's daily wage, without any work obligation in return.

For entitlement, the following shall be reckoned as days worked;

- a. time periods deemed to be part of the working time although no work has been done, and any periods of holidays, with or without pay, either statutory or based on contract,
- b. up to three days' leave of absence in the event of the employee's marriage and up to three days' leave in the event of the death of the employee's mother, father, spouse, brother or sister, and child,
- c. any leave granted by the employer and any sick or convalescent leave based on a medical report, subject to a maximum of one week,

If the employer, without being obliged to do so by force majeure or economic reasons, suspends work on one or more days of the week, these days on which no work has been done shall be reckoned as days worked in order to be entitled to paid weekly rest day. If work is suspended in an establishment for more than one week on account of force majeure, the wages payable to employees for days not worked due to force majeure in accordance with subsections III of Articles 25 and 26 shall be paid also for the weekly rest day.

In establishments where a percentage wage system is in effect, the wage for the weekly rest day shall be paid to the employee by the employer.

Remuneration for holidays:

Article 47. Employees in establishments covered by this Act shall be paid a full day's wages for the national and public holidays on which they have not worked; if they work instead of observing the holiday, they shall be paid an additional full day's wages for each day worked.

In establishments where a percentage wage system is in effect, the wage for the national and public holidays shall be paid to the employee by the employer.

Temporary disability:

Article 48. Where employees must be paid temporary disability benefits, pay for national holidays, public holidays and weekly rest days which coincide with the duration of temporary disability shall be remunerated, in proportion to the criterion of temporary disability, by the social security institutions or funds making such payments.

The disability compensation paid by the Social Insurance Organisation due to sickness shall be deducted from the wage paid to the salaried employee remunerated on a monthly basis.

Holiday pay in respect of the remuneration method:

Article 49. Holiday pay of an employee is the daily amount in proportion to the total sum of the days he has worked.

Holiday pay of an employee working at a piece or job rate or on a percentage basis shall be calculated by dividing his total earnings within a pay period by the number of days he has worked during that period.

The holiday pay of an employee working on an hourly basis is 7.5 times his hourly rate.

Article 46, 47 and subsection I of Article 48 shall not be applicable to salaried employees who are remunerated monthly in full despite the days they are absent from work due to illness, leave of absence or for any reason. If they have worked on national and public holidays, however, they shall be paid an additional one day's wage for each such holiday on which they have worked.

Payments not included in holiday pay:

Article 50. The following payments shall not be considered for the purpose of calculating payments in respect of national or public holidays or weekly rest days: overtime and incentive premiums, the wages paid to permanent employees when they are employed outside normal working hours in preparatory, complementary or cleaning operations; and fringe benefits.

Percentage wages:

Article 51. In hotels, restaurants, places of entertainment and quick-lunch stands serving alcoholic beverages and similar workplaces where a percentage wage system is used, the employer shall pay all the employees in the establishment such sums of money, without deduction, as are obtained by the employer's adding to the customer's bill a percentage service charge and any amounts of money voluntarily left by customers with the employer or collected under the employer's direction.

The employer or his representative is under the obligation to produce documentary evidence that, upon receiving these sums of money, he has apportioned the exact amounts to his employees without deduction.

Provisions shall be made in a regulation, to be prepared by the Ministry of Labour and Social Security for the principles and rates to be observed in the apportionment of sums collected by means of percentage additions among the employees according to the nature of the jobs performed.

Documenting percentage payments:

Article 52. In establishments where the percentage wage method is practised, the employer is under the obligation to submit a document showing the general total of each account slip to an employee representative elected by the employees from amongst themselves. The form and application methods of such documents shall be indicated in employment contracts or collective agreements.

Annual leave with pay and leave periods:

Article 53. Employees who have completed a minimum of one year of service in the establishment since their recruitment, including the trial period, shall be allowed to take annual leave with pay.

The right to annual leave with pay shall not be waived.

The provisions of this Act on annual leave with pay are not applicable to employees engaged in seasonal or other occupations which, owing to their nature, last less than one year.

The length of the employee's annual leave with pay shall not be less than;

- a. fourteen days if his length of service is between one and five years, (five included),
- b. twenty days if it is more than five and less than fifteen years,
- c. twenty-six days if it is fifteen years and more (fifteen included).

For employees below the age of eighteen and above the age of fifty, the length of annual leave with pay must not be less than twenty days.

The length of annual leave with pay may be increased by employment contracts and collective agreements.

Entitlement to annual leave with pay and its application period

Article 54. In the computation of the length of service required to qualify for annual leave with pay, the total period during which the employee has been employed in one or more establishments belonging to the same employer shall be taken into consideration. Furthermore, any length of time spent by an employee in an establishment covered by this Act plus any length of time previously spent by the same employee in an establishment belonging to the same employer but not covered by this Act shall also be considered.

If within the one-year period the employee's work is interrupted for reasons other than those enumerated in Article 55, the expiry date of the one year of service period which must have elapsed for entitlement to annual leave with pay shall be shifted to the following year of service by adding additional time to compensate for the outstanding gaps caused by interruptions.

The length of the "one-year service" which must elapse for the employee's entitlement to his upcoming annual leave with pay shall commence from the day on which his entitlement to his previous annual leave became effective, to be computed towards the following year according to the subsection above and the provisions of Article 55.

The employee shall use his annual leave with pay computed for each year of service according to the subsections above and Article 55 within the following year of employment.

In computing the length of service for annual leave, account shall be taken of periods of employment in establishments belonging to the same ministry, establishments belonging to legal bodies attached to the same ministry, state economic enterprises, banks and organisations established by authorisation under special laws as well as the subordinate establishments of such banks and organizations.

Unworked periods treated as part of the one-year requirement to qualify for annual leave with pay:

Article 55. In determining the right to annual leave with pay the periods shown below shall be treated as having been worked;

- a. Days on which the employee fails to report to work owing to an accident or illness (however, time which exceeds the period foreseen in subsection I (b) of Article 25 shall not be treated as worked);
- b. Days on which the female employee is not permitted to work before and after her confinement, in accordance with Article 74;
- c. Days on which the employee is unable to report to work through having been called up for military exercises or for the performance of a statutory obligation, other than compulsory military service, (up to a maximum of 90 days in a year);
- d. Fifteen days of any period during which the employee has not worked because of the temporary but interrupted suspension of operations for longer than one week owing to force majeure, on condition that he has subsequently resumed work;
- e. Periods reckoned as having been worked, envisaged in Article 66;
- f. Weekly rest days and national and public holidays;
- g. Half-days of leave granted in addition to Sundays to employees working in radiological clinics, in accordance with the regulation issued under Act No. 3153;
- h. Days on which the employee is unable to report for work because of having to attend meetings of mediation and arbitration boards, acting as an employees' representative on such boards or before a labour court, serving as an employees' or union representative on boards, committees or meetings organised under the relevant legislation or attending conventions, conferences or committee meetings of international organisations dealing with labour matters;
- i. Up to three days' leave on the occasion of the employee's marriage and up to two days' leave on the occasion of his parent's, spouse's, sister's or brother's or child's death;
- j. Other leave granted by the employer;
- k. Annual leave with pay granted to the employee in pursuance of the application this Act.

Implementing annual leave with pay:

Article 56. Annual leave with pay may not be divided by the employer.

This leave must be granted without interruption in conformity with the days indicated in Article 53.

However leave periods foreseen in article 53 may be divided, by mutual consent, into three parts at the maximum, provided that one of the parts shall not be less than ten days.

Other kinds of leave, with or without pay, granted by the employer during the year or taken by the employee as convalescent or sick leave must not be deducted from annual leave.

National holidays, weekly rest days and public holidays which coincide with the duration of annual leave may not be included in the annual leave period.

If the employee so requests, the employer must grant him up to four days' leave without pay in order to make good his round-trip travel time, on condition that he provides documentary evidence that he is spending his annual leave at a place other than that where the establishment is located. The employer must keep a roster showing the paid annual leaves of the employees working in his establishment.

Remuneration during annual leave:

Article 57. The employer must pay the employee using his annual leave the remuneration corresponding to his leave period either as a lump sum or as an advance payment prior to the beginning of the leave.

Provisions of Article 50 shall apply to the computation of this remuneration.

The annual leave remuneration of employees who are not paid daily, monthly or weekly but who are remunerated according to an indefinite period of time or amount of money, such as a piece-rate, commission, profit sharing or percentage, must be calculated on their average daily earnings by dividing the total wages earned during the previous year by the number of days actually worked during that year.

If the employee has been granted a raise in pay within the previous year, the annual leave remuneration shall be computed by dividing the total wages earned between the date of the month in which the employee uses his leave and the date when his pay was raised by the number of days worked within that period.

For employees working on a percentage basis, remuneration for annual leave must be paid by the employer in addition to any amount of money derived from current percentage earnings.

Wages for weekly rest days, national and public holidays which coincide with annual leave shall be paid in addition to the annual leave pay.

Restriction on working during annual leave:

Article 58. If the employee is found to have accepted gainful employment during his annual leave, he may be asked by the employer to reimburse the annual leave remuneration already paid to him.

Annual leave pay upon the termination of the contract:

Article 59. Any annual leave remuneration due to but not yet drawn by an employee must be paid to him or to other persons entitled on his behalf, upon the termination of his employment contract for any reason, at the wage rate prevailing on the date of termination.

Statutory limitations on such wages which have become due shall begin as of the date of the termination of the contract.

Where the employment contract has been terminated by the employer, the terms of notice prescribed in Article 17 and the leave of absence to be granted according to Article 27 for seeking new employment must not overlap with the annual leave period.

Regulations concerning annual leave with pay

Article 60. A regulation indicating the methods and conditions applicable to annual leave with pay, the periods within the year during which leaves will be made available according to the nature of employment, the persons authorised to decide and the order to be observed in exercising the right to leaves, the measures to be taken by the employer in order to

implement annual leave in ways useful for employees as well as the form of registers to be kept by the employer shall be issued by the Ministry of Labour and Social Security.

Social insurance contributions:

Article 61. With the exception of contributions for insurance against work accidents and occupational diseases, social insurance contributions to be levied on wages paid to the insured during annual leave shall continue to be paid by employees and employers in accordance with the principles set forth in the Social Insurance Act No 506.

Cases where reduction in wages is not permissible:

Article 62. No deductions of any kind may be made from an employee's wages on the grounds that the daily or weekly working hours applicable to any type of work have been reduced by law, or by reason of the fulfilment by the employer of any legal obligation or because of any mandatory obligation imposed on the employer by the provisions of this Act.

## CHAPTER FOUR

### Organization of work

Working time:

Article 63. In general terms, working time is forty-five hours maximum weekly. Unless the contrary has been decided, working time shall be divided equally by the days of the week worked at the establishment.

Provided that the parties have so agreed, working time may be divided by the days of the week worked in different forms on condition that the daily working time must not exceed eleven hours. In this case, within a time period of two months, the average weekly working time of the employee shall not exceed normal weekly working time.

This balancing (equalising) period may be increased up to four months by collective agreement.

The application methods of working time in line with the principles mentioned above shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security.

The types of work where the daily working time must be seven and half hours maximum or less for health reasons shall be indicated in a regulation to be prepared jointly by the Ministry of Labour and Social Security and the Ministry of Health.

Compensatory work:

Article 64. In cases where time worked has been considerably lower than the normal working time or where operations are stopped entirely for reasons of suspending work due to force majeure or on the days before or after the national and public holidays or where the employee is granted time off upon his request, the employer may call upon compensatory work within two months in order to compensate for the time lost due to unworked periods. Such work shall not be considered overtime work or work at extra hours.

Compensatory work shall not exceed three hours daily, and must not exceed the maximum daily working time in any case.

Compensatory work shall not be carried out on holidays.

Shorter working time and its pay:

Article 65. The employer who temporarily shortens the weekly working time in his establishment or who temporarily suspends work wholly or partially in his establishment due to a general economic crisis or force majeure must communicate this matter, along with the reasons, immediately to the Employment Organisation of Turkey and to the union signatory to the collective agreement if there is one. The acceptability of the request shall be decided by the Ministry of Labour and Social Security. The methods and principles of procedure shall be indicated in a regulation.

In cases where work is suspended or shorter working hours are applied at the establishment for at least four weeks due to the above-mentioned reasons, employees shall be paid benefits for shorter working time corresponding to the time not worked. Shorter working time shall not exceed the period during which force majeure was effective and in any case three months. In order to have the right to insurance benefit payments for working shorter, the employee must meet the conditions required for entitlement to unemployment benefits both in terms of his length of employment and the number of days for which unemployment insurance contributions should have been paid.

The daily amount of benefit payment for working shorter is the same as the unemployment benefit.

In case where work in the establishment is suspended temporarily wholly or partially due to force majeure, payment of unemployment benefits shall start after the lapse of the one-week period envisaged in subsection III of Article 24 and Article 40.

Within the period during which the employee receives benefits for working shorter, his contributions for illness and maternity insurance shall be transferred by the Unemployment Insurance Fund, at a two-thirds ratio, to the Social Insurance Organization. These contributions shall be computed at the lowest rate of earnings serving as a basis for fixing insurance contributions.

If the employee starts working again before exhausting the time during which he could avail himself of unemployment benefits and becomes unemployed again before the conditions for access to unemployment insurance foreseen by Act No. 4447 have been met, he shall keep having access to unemployment benefits, provided that the period for which he had received benefit payments for working shorter is deducted, until the expiry of the time limit for receiving unemployment benefit to which he was entitled previously.

Payments for temporary disability which must be defrayed within the period during which benefits for working shorter are paid shall not be more than the amount of the benefit for working shorter. The illness and maternity contributions foreseen in this Article shall not be paid within the period during which temporary disability benefits are paid.

Time periods reckoned as part of the statutory hours of work:

- a. the time required for employees employed in mines, stone quarries or any other underground or underwater work to descend into the pit or workings or to the actual workplace and to return there from to the surface
- b. travelling time, if the employee is sent by the employer to a place outside the establishment,
- c. the time during which the employee has no work to perform pending the arrival of new work but remains at the employer's disposal,
- d. the time during which the employee who ought to be performing work within the scope of his duties in the establishment is sent on an errand for his employer or is employed by him in his household or office, instead of performing his own duties,

- e. the time allowed to a female employee who is a nursing mother to enable her to feed her child,
- f. the time necessary for the normal and regular transportation of groups of employees engaged in the construction, maintenance, repair and alteration of railways, roads and bridges to and from a workplace at a distance from their place of residence.

Time for transportation to and from the establishment which is not a requirement of the activity but is provided by the employer solely as a form of amenity shall not be regarded as part of the statutory working time.

The beginning and ending of the daily working time:

Article 67. The beginning and ending of the daily working time and rest breaks shall be announced to workers at the establishment.

Depending on the nature of activity, the beginning and ending times of work may be arranged differently for employees.

Rest breaks:

Article 68. Employees shall be allowed a rest break approximately in the middle of the working day fixed with due regard to the customs of the area and to the requirements of the work in the following manner;

- a. fifteen minutes, when the work lasts four hours or less,
- b. half an hour, when the work lasts longer than four hours and up to seven and a half hours (seven and a half included),
- c. one hour, when the work lasts more than seven and a half hours.

These are minimum durations and the full period must be allowed at each break.

These break periods may, however, be split up by contracts where the climate, season, local custom or nature of the work so requires.

Breaks may be taken at the same or varying times by the employees at the establishment.

The breaks shall not be reckoned as part of the working time.

Night hours and night work:

Article 69. For the purposes of working life, "night" means the part of the day beginning not later than 20.000 hours and ending not earlier than 6.00 hours, and lasting not longer than 11 hours in any case.

According to the nature and requirements of certain activities or regional characteristics in the country, regulations may be issued with a view to move back the beginning of night work to an earlier time or, in determining the methods of implementing the provisions of the first subsection, to rearrange summer and winter hours or to fix the beginning and ending of daily working time, or to apply payment of extra wages to certain night work, or to prohibit night work altogether in establishments where there is no economic necessity for night work.

Night work for employees must not exceed seven and a half hours.

Suitability of employees for night work shall be certified by a health report to be obtained before they begin work. Employees who are employed on night work shall be subjected by the employer to a periodic health examination at least once every two years. The costs of employees' health examinations shall be met by the employer.

The employer shall assign, to the extent possible, the employee who presents documentary evidence that his health has been impaired because of night work to a suitable job in the day shift.

The employer is under the obligation to submit to the relevant regional directorate of labour the list of employees who shall be employed on night shifts as well as a copy of the health reports issued before the said employees have begun work and then given periodically.

In establishments where operations are carried on day and night by alternating shifts of employees, the alternation of shifts must be so arranged that employees are engaged on night work for not more than one week and are then engaged on day work the following week. Alternation of work on night and day shifts may also be carried out on a two-week basis.

The employee whose shift will be changed must not be engaged on the other shift unless allowed a minimum rest break of eleven hours.

Preparatory, complementary and cleaning operations:

Article 70. The provisions on the organisation of work that shall not apply to employees who are engaged in preparatory, complementary and cleaning operations generally carried out at an establishment before and after normal working hours or to what extent, under which conditions and with what modifications they shall apply to such employees shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security.

Working age and restrictions on the employment of children:

Article 71. Employment of children who have not completed the age of fifteen is prohibited. However, children who have completed the full age of fourteen and their primary education may be employed on light works that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance.

In the placement of children and young employees in jobs and in the types of work where they are employable, their security and health, physical, mental and psychological development as well as their personal suitability and capability shall be taken into consideration. The job the child performs must not bar him for attending school and from continuing his vocational training, nor impair his pursuance of class work on a regular basis.

The types of works where employment of children and young employees who have not completed the full age of eighteen is prohibited and the works where young employees who have not completed the age of eighteen may be permitted to work, as well as the light works and working conditions in which children who have completed the age of fourteen and their primary education may work shall be determined in a regulation of the Ministry of Labour and Social Security to be issued within six months.

The working time of children who have completed their basic education and yet who are no longer attending school shall not be more than seven hours daily and more than thirty-five hours weekly. However this working time may be increased up to forty hours weekly.

The working time of school attending children during the education period must fall outside their training hours and shall not be more than two hours daily and ten hours weekly. Their working time during the periods when schools are closed shall not exceed the hours foreseen in the first subsection above.

Restrictions on underground and underwater work:

Article 73. Boys under the age of eighteen and women irrespective of their age must not be employed on underground or underwater work like in mines, cable-laying and the construction of sewers and tunnels.

Restrictions on night work:

Article 73. Children and young employees under the age of eighteen must not be employed on industrial work during the night.

The principles and methods for employing women who have completed the age of eighteen on night shifts shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security upon receiving the opinion of the Ministry Health.

Work during maternity and nursing leave:

Article 74. In principle female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement. In case of multiple pregnancy, an extra two week period shall be added to the eight weeks before confinement during which female employees must not work. However, a female employee whose health condition is suitable as approved by a physician's certificate may work at the establishment if she so wishes up until the three weeks before delivery. In this case the time during which she has worked shall be added to the time period allowed to her after confinement.

The time periods mentioned above may be increased before and after confinement if deemed necessary in view of the female employee's health and the nature of her work. The increased time increments shall be indicated in the physician's report.

The female employee shall be granted leave with pay for periodic examinations during her pregnancy.

If deemed necessary in the physician's report, the pregnant employee may be assigned to lighter duties. In this case no reduction shall be made in her wage.

If the female employee so wishes, she shall be granted an unpaid leave of up to six months after the expiry of the sixteen weeks, or in the case multiple pregnancy, after the expiry of the eighteen weeks indicated above. This period shall not be considered in determining the employee's one year of service for entitlement to annual leave with pay.

Female employees shall be allowed a total of one and a half hour nursing leave in order to enable them to feed their children below the age of one. The employee shall decide herself at what times and in how many instalments she will use this leave. The length of the nursing leave shall be treated as part of the daily working time.

Personnel file of the employee:

Article 75. The employer shall arrange a personnel file for each employee working in his establishment. In addition to the information about the employee's identity, the employer is obliged to keep all the documents and records which he has

to arrange in accordance with this Act and other legislation and to show them to authorised persons and authorities when requested.

The employer is under the obligation to use the information he has obtained about the employee in congruence with the principles of honesty and law and not to disclose the information for which the employee has a justifiable interest in keeping as a secret.

Regulations:

Article 76. In jobs and establishments where, due to their nature, the application of daily and weekly working times is not possible as foreseen in Article 63, procedures to provide for the implementation of working time in a manner not to exceed the legal daily working time and by allowing an equalisation (balancing) period of up to six months shall be indicated in the regulations to be issued by the Ministry of Labour and Social Security.

In works where, due to their nature, operations have to be carried on continuously by the disposal of successive or rotating shifts of employees, special principles and procedures concerning working time, weekly rest days, night work and mandatory rest breaks shall be indicated in regulations to be issued by the Ministry of Labour and Social Security.

## FIFTH CHAPTER

Occupational health and safety obligations of employers and employees:

Article 77. With a view to ensure occupational health and safety in their establishments, employers shall take all the necessary measures and maintain all the needed means and tools in full; and employees are under the obligation to obey and observe all the measures taken in the field of occupational health and safety.

In order to ensure compliance with and supervision of the measures taken for occupational health and work safety at the establishment, the employer must inform the employees of the occupational risks and measures that must be taken against them as well as employees' legal rights and obligations and, in this connection, he must provide the employees with the necessary training on occupational health and safety.

The principles and methods of training shall be indicated in the regulation to be issued by the Ministry of Labour and Social Security.

Employers shall notify, in written form, any work accident and occupational disease which occurs in the establishment to the relevant regional directorate of labour within two working days at the latest.

The provisions contained in this chapter as well as in the bylaws and regulations related to occupational health and work safety shall also apply to the apprentices and trainees in the establishment.

Bylaws and regulations on occupational health and safety:

Article 78. The Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall issue bylaws and regulations, with a view to ensure the adoption of occupational health and safety measures in the establishments, the prevention of work accidents and occupational diseases which may arise from the use of machinery, equipment and tools as well as the arrangement of working conditions for persons who must be protected because of their age, sex and special circumstances.

Furthermore, a regulation to be prepared by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall indicate, in view of the number of employees, size, the nature and the precariousness and dangers posed by the operations, in which establishments covered by this Act an opening permit should be obtained from the Ministry of Labour and Social Security upon submitting to the relevant authorities of the Ministry operation plans before setting up the establishment as well as for which establishments an operations permit should be obtained from the same authority after the setting up of the establishment.

Suspending operations or closing the establishment:

Article 79. If any defects endangering the lives of employees are found to exist in the installations and arrangements, in the working methods and conditions or in the machinery and equipment, operations shall be stopped partly or completely or the establishment shall be closed until the danger is eliminated, following the decision to that effect taken by a five-member committee consisting of two labour inspectors authorised to carry out occupational health and safety inspections in establishments, an employee and an employer representative and the regional director of labour. The committee shall be presided over by the senior labour inspector.

The work and secretarial services of the committee shall be conducted by the regional directorate of labour.

The composition as well as the working methods and principles of the committee for military establishments and establishments producing materials for national defense shall be indicated in a regulation to be jointly prepared by the Ministry of National Defense and Ministry of Labour and Social Security .

The employer is entitled to lodge an appeal with the competent local labour court within six working days against the suspension or closing decision taken in view of this Article.

Appeal to the labour court shall not preclude the execution of the decision to suspend the operations or to close the establishment.

The court shall take up the appeal as a priority issue and issue its decision on the objection in six working days. Decisions of the court are final and binding.

Where an employee's age, sex or health is incompatible with his employment in the establishment, he shall not be permitted to work,.

The manners by which the installations and arrangements or machinery and equipment which pose danger for employees, as explained in the above subsections, are to be barred from operating and how they will be permitted to operate again as well as the closing and reopening of the establishment, the measures to be taken in urgent cases until a decision is taken to suspend the operations or to close the establishment, as well as the qualifications and election of the employee and employer representatives to function in the committee, and the working methods and principles of the said committee shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security .

The permission to set up and operate an establishment shall in no way preclude the application of the provisions foreseen in Article 78.

The employer shall pay his employees their wages or employ them on other jobs in accordance with their occupational skills or status, without any reduction in wages, if they remain without work because of the suspension of the machinery, installations or working arrangements or the closing of the establishment in accordance with the first subsection of this article.

Occupational health and safety boards:

Article 80. In establishments deemed to be industrial according to this Act, where a minimum of fifty employees are employed and permanent work is performed for more than six months, the employer shall set up an occupational health and safety board.

Employers are under the obligation to enforce the decisions of the occupational health and safety boards taken in accordance with the legislation on occupational health and safety.

The constitution, working methods, functions, powers and obligations of occupational health and safety boards shall be laid down in a regulation to be prepared by the Ministry of Labour and Social Security .

Physician at the establishment:

Article 81. In establishments where a minimum fifty employees are employed, the employers are under the obligation, in order to meet the needs of employees for medical treatment which fall outside those provided for by the Social Insurance Organisation, to employ one or more physicians at the establishment and set up a health unit with a view to protect the health of the employees, to take occupational health and safety measures and to provide first aid, urgent treatment and preventive health services depending on the number of employees and the risk factors involved.

The qualifications of physicians, their number, recruitment, duties, powers and responsibilities, training and working conditions and methods of performing their duties as well as the health units to be set up at establishments shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security after receiving the opinion of the Ministry of Health and the Union of Physicians of Turkey.

Engineers or technical staff in charge of safety at work:

Article 82. With a view to conduct services for providing measures of safety at work and determining the measures aimed at preventing work accidents and occupational diseases as well as following up their execution, employers of establishments where a minimum of fifty employees are employed on a continued basis and where permanent work is performed for more than six months shall employ one or more engineers or technical staff, depending on the number of employees, the nature of the establishment and the degree of accident risks involved.

The qualifications of work safety engineers or technical staff, their number, duties, powers and responsibilities, training and working conditions as well as the methods of performing their duties shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security after obtaining the opinion of the Union of Chambers of Engineers and Architects of Turkey.

Rights of employees:

Article 83. In connection to occupational health and safety in an establishment, any employee faced with an imminent, urgent and life-threatening danger which may do harm to his health or endanger his bodily integrity may make an application to the occupational health and safety board with a request for the determination of the case and a decision for the adoption of necessary measures. The board shall hold an urgent meeting and decide on the same day, and lay down the case in a written report. The decision shall be communicated to the employee in written form.

In establishments where there are no occupational health and safety boards, the request shall be made to the employer or the employer's representative. The employee may request the determination of the case and demand a written report to that effect. The employer or his representative must give a written reply.

In the event the board takes a decision consistent with a employee's request, the employee may refrain from working until the necessary occupational health and safety measure is taken.

The employee's wages and other rights shall be reserved during the period he refrains from working.

In establishments where the necessary measures have not been taken despite the decision of the occupational health and safety board and the employee's request, employees may terminate, with no obligation to respect the notice term, their employment contracts with a definite or indefinite period, within the six working days in accordance with subsection (I) of Article 24 of this Act.

Provisions of Article 79 of this Act shall not apply in the event of suspension of operations or the closing of the establishment.

Prohibition of alcohol and narcotics:

Article 84. It shall be unlawful for an employee to enter an establishment while drunk or under the effect of narcotics or to consume alcoholic beverages or to take narcotic substances within its premises.

The employer may determine the circumstances, time and conditions for consuming alcoholic beverages in parts of the establishment treated as subordinate facilities.

The prohibition of consuming alcoholic beverages shall not apply to:

- a. employees assigned to quality control in establishments where alcoholic beverages are manufactured,
- b. employees obliged to consume alcoholic beverages owing to the requirements of the job in establishments which hold a license to sell liquor in closed containers or in open cups,
- c. employees allowed to consume alcoholic beverages with customers owing to the requirements of the job.

Arduous and dangerous work:

Article 85. Young employees who have not completed the age of sixteen years and children must not be employed on arduous or dangerous work.

A regulation shall be issued by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, to specify the categories of work deemed to be arduous or dangerous and the categories of arduous or dangerous work in which young employees who have completed the age of sixteen but are aged under eighteen, as well as women may be employed.

Medical certificate in arduous or dangerous work:

Article 86. An employee shall not be engaged for or employed on any arduous or dangerous work without a certificate based on the results of a medical examination made either at the time of his recruitment or during his employment at least once a year to prove that he is physically fit for the job in question and robust; the medical certificate shall be obtained from the medical practitioner attached to the establishment or from an employees' health dispensary, or in the absence of either, from the medical services of the nearest Social Insurance Organisation, health centre, government or municipal medical practitioner, in that order.

The Social Insurance Organisation may not refrain from conducting the first medical examination at the time of the employee's recruitment.

In the event of an objection to the certificate given by the medical practitioner attached to the establishment, the employee concerned shall be examined by the medical council of the nearest hospital of the Social Insurance Organisation, in which case the medical certificate given shall be definitive.

Such certificates shall be produced by the employer on request by any competent official.

Such certificates shall be exempt from all fees and taxes.

Medical certificate for employees aged under eighteen years:

Article 87. Before being admitted to any employment whatsoever, children and young employees aged between fourteen and eighteen (including those in their eighteenth year) shall be examined by the medical practitioner attached to the establishment or by an employees' health service, or in the absence of either, by the medical services of the nearest Social Insurance Organisation, health centre, government or municipal medical practitioners, in that order, and shall be certified as being physically fit for the job to be performed, taking into consideration the nature and conditions of the work.

Until they have reached the age of eighteen, such employees shall be subject to medical examinations at least every six months in the same manner, to determine whether or not there is any drawback in their continuing their employment; all such certificates shall be filed in the establishment and produced by the employer on request by any competent official. The Social Insurance Organisation may not refrain from conducting the first examination before the employee's admission to employment.

In the event of an objection against the certificate issued by any of the medical services mentioned above, the employee in question shall be examined by the medical council of the nearest Social Insurance Organisation hospital, in which case the certificate given shall be final.

Such certificates shall be exempt from all stamp duties, fees and taxes.

Regulation for pregnant or nursing women:

Article 88. A regulation to be prepared by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall specify during which periods and in what types of jobs the employment of pregnant and nursing women is to be prohibited, what conditions and procedures they shall abide by while working on jobs in which they may be employed as well as how the nursing rooms and child care centers are to be established.

Other regulations:

Article 89. After taking the opinion of the Ministry of Health, the Ministry of Labour and Social Security may also issue regulations foreseeing

- a. the medical examination of employees before being admitted to employment in jobs other than those which are arduous and dangerous,
- b. a general medical examination of employees in certain jobs at certain intervals,
- c. preclusion of employees from certain jobs where their health conditions are affected adversely or where their work does harm to their products, to general health or to other employees with whom they work,
- d. specification of the situations and conditions in establishments where bathing, sleeping, resting and dining facilities as well as employee housing and labour training premises are to be established.

## SIXTH CHAPTER

### Employment Service

Acting as an intermediary in finding employment and employees:

Article 90. The task of acting as an intermediary in providing employees with jobs suitable to their qualifications and in finding employees qualified for different kinds of work for employers shall be performed by the Employment Organisation of Turkey and by the private employment agencies permitted to function in this capacity.

## SEVENTH CHAPTER

### Supervision and Inspection of Working Conditions

Powers of the State:

Article 91. The State shall follow up, supervise and inspect the implementation of labour legislation governing working conditions.

This duty shall be performed by officials of the Ministry of Labour and Social Security in sufficient numbers and with the necessary qualifications, specially empowered to exercise supervision and to make visits of inspection.

The supervision and inspection of military establishments and of workplaces where materials for national security are manufactured as well as the procedures concerning their end-results shall be carried out according to a regulation to be prepared jointly by the Ministry of National Defense and the Ministry of Labour and Social Security.

Competent authorities and officials:

Article 92. For the purpose of implementing Article 91, the administrative authorities and the competent officials responsible for following up, supervising and inspecting working conditions shall be entitled, whenever they deem it necessary, to inspect or examine at any time, subject to the provisions of Article 93, establishments, their administration, registers, records, accounts and other documents relating to working arrangements, the equipment, tools, apparatus, raw materials, manufactured products and all materials and accessories required for carrying on operations, and all arrangements and facilities for the health, safety, cultural development, recreation, resting and boarding of employees, and if they find any actions constituting an offence under this Act, to forbid them in the manner prescribed by the labour inspection regulations to be issued by the Ministry of Labour and Social Security.

During an inspection it shall be the duty of the employer, his representatives, the employees and any other person concerned to attend whenever summoned by the authorities or officials responsible for inspection, to give them any information requested, to present for their inspection and, if necessary, to hand over all relevant documents and records, to provide them with every assistance in the exercise of their functions as indicated in the first paragraph, and to comply, without any attempt at evasion, with all relevant orders and requests received in this connection.

The reports prepared by the authorities and officials empowered to follow up, supervise and inspect working conditions shall be held as valid until they are disproven.

Duties of competent officials:

Article 93. The authorities and officials responsible for following up, supervising and inspecting working conditions shall not, in the performance of their duties, cause any derangement of or hindrance to the normal progress of operations and the work of the establishment, except in so far as may be deemed necessary by the nature of their responsibilities; and they shall observe strict secrecy with respect to all they have seen and learned concerning the technical secrets of the employer and the establishment and his financial and commercial circumstances, unless it is necessary to disclose these matters in order to institute official proceedings, and they shall not reveal the names and identities of employees and other persons from whom they have received information or who have made reports to them.

Exemptions from fees and taxes:

Article 94. In written applications to the Ministry of Labour and Social Security by the employees and employers as well as their respective occupational organisations on matters of concern to them and to working conditions, such petitions and reports, documents, books and procedures of all kinds shall be exempt from stamp duties, fees and taxes.

Inspections by other authorities:

Article 95. The municipalities and other authorities competent to issue permissions for the setting up and opening of establishments shall, before giving the said permissions, investigate the existence of the opening and operating certificate which must have been granted by the Ministry of Labour and Social Security in accordance with pertinent labour legislation.

Municipalities and other authorities may not give opening and operating licences to establishments which have not yet been granted opening and operating certificates by the Ministry of Labour and Social Security.

Public institutions and organisations shall communicate to the competent regional directorate of labour the results of their occupational health and safety inspections and supervisions at establishments as well as the actions they will take regarding these establishments.

Municipalities and other authorities competent to give permits for setting up and opening establishments shall communicate every month to the relevant regional directorates of labour lists of names and addresses of employers and establishments for which they have issued permits as well as the nature of the work to be performed until the fifteenth day of the following month.

Responsibilities of employees and employers:

Article 96. Employers and their representatives shall not make suggestions as a basis for replies by employees from whom information is requested by the authorities responsible for supervision and inspection, nor shall they incite or

compel employees in any manner whatsoever to conceal or distort the facts, or discriminate against them in any way on account of information supplied or communications or applications addressed by them to the competent authorities.

Employees shall not provide the authorities or officials with information contrary to the facts respecting their employers or the establishments in which they are or have been employed, thereby giving rise to unnecessary official action by such authorities and officials; they shall not bring false accusations or unlawful actions against their employers, or reply incorrectly to questions addressed to them by the labour inspectors, or abusively hamper, complicate or misdirect supervision or inspection work.

Police Assistance:

Article 97. On application by the competent labour inspectors responsible for supervision and inspection of establishments and with a view to ensuring the application of the provisions of this Act, the police authorities shall provide all necessary assistance to enable the said labour inspectors to perform their duties.

## EIGHTH CHAPTER

### Administrative Penal Provisions

Violation of the obligation to notify the establishment:

Article 98. The employer or employer's representative who acts in violation of the obligation to give notification about the establishment as indicated in Article 3 of this Act shall be liable to a fine of fifty million liras per employee.

In the event of the repetition of this violation after the penalty has become definitive, the same fine shall be applicable for each ensuing month.

Violation of general provisions:

Article 99. The employer or his representative who;

- a. acts in violation of the principles and obligation foreseen in Articles 5 and 7 of this Act,
- b. does not give the employee the document mentioned in the last paragraph of Article 8, acts in violation of the provisions of Article 14, and
- c. violates the obligation to arrange a work certificate in accordance with Article 28 or writes incorrect information on this certificate, shall be liable to a fine of fifty million liras for each employee in this category.

Violation of the provisions on collective dismissals:

Article 100. The employer or his representative who lays off employees in contravention of the provisions of Article 29 of this Act shall be liable to a fine of two hundred million liras for each employee thus terminated.

Violation of the obligation to employ disabled persons and ex-convicts:

Article 101. The employer or employer's representative who does not employ disabled persons and ex-convicts in contravention of the provisions of Article 30 of this Act shall be liable to a monthly fine of seven hundred fifty liras for each disabled person and ex-convict for whom this obligation is not fulfilled. Public organisations shall by no means be exempt from this penalty.

Violation of the provisions as to wages:

Article 102.

- a. An employer or his representative shall be liable to a fine of three hundred million liras for each aggrieved employee and for each month if he deliberately fails to pay the full wages to which the employee is entitled under this Act specified in Article 32, or in the collective agreement or the employment contract, or if he fails to pay the minimum wage in full fixed by the commission as defined in Article 39.
- b. An employer or his representative shall be liable to a fine of two hundred million liras if he fails to deliver an employee the wage slip in contravention of Article 37 or if he makes deductions from the employee's wages as fines or if he fails to specify the reasons or to produce the accounts for such deductions in contravention of Article 38, or fails to deliver the document mentioned in Article 52.
- c. An employer or his representative shall be liable to a fine of one hundred million liras for each employee in the following categories: if he fails to pay the employee overtime wages indicated in Article 41; if he fails to allow the employee to use the free time to which he is entitled within six months; and if he does not obtain the employee's approval for work at extra hours.

Violation of the provisions on annual leave with pay:

Article 103. The employer or his representative shall be liable to a fine of one hundred million liras for each employee in the following categories: if he divides the annual leave with pay into segments in contravention of Article 56 of this Act; or if he pays annual leave with pay in contravention of the third or fourth paragraphs of Article 57 or if he pays less than the amount which is due; or, in the event of the termination of the employment contract before the employee has availed himself of the annual leave to which is entitled in accordance with Article 59, if he fails to pay the wages corresponding to this leave; or if he fails to implement in full the provisions of the regulation mentioned in Article 60.

Violation of the provisions on organisation of work:

Article 104. An employer or his representative shall be liable to a fine of five hundred million liras if he causes employees to work beyond the hours fixed in Article 63 or in the regulation issued in pursuance of this Article, if he fails to comply with the provisions of Article 68 as to rest periods; if he causes his employees to work more than seven-and-a-half hours on night work or fails to alternate night and day shifts contrary to Article 69, if he acts contrary to the provisions of Article 71, if he employs boys under the age of eighteen years or girls or women irrespective of their age on work in which their employment is prohibited by Article 72, if he employs children and young employees on night work contrary to the provisions of Article 73 and the regulation mentioned in that Article or acts contrary to the prohibition mentioned in the first paragraph of that Article, if he causes pregnant or confined women to work in periods before and after birth or fails to grant them leave without pay contrary to the provisions of Article 76, if he fails to keep personnel files mentioned in Article 75, or if he fails to comply with the provisions of the regulation mentioned in Article 76.

The employer or his representative shall be liable to a fine of one hundred million liras for each employee concerned if he acts contrary to the provisions envisaged in Article 64 and 65.

Violation of the provisions as to health and safety:

Article 105. The employer or his representative shall be liable to a fine of fifty million liras for each health and safety measure not taken if he fails to abide by the provisions prescribed in the regulation mentioned the first paragraph of Article 78 of this Act. A fine of the same amount shall be applicable for each ensuing month to the extent the said measures have not been taken .

The employer or his representative shall be liable to a fine of five hundred million liras for each of the following offences: if he acts contrary to the provisions of Article 77; if he opens an establishment without obtaining a permit for its establishment or operation as prescribed by the second paragraph of Article 78; if he, contrary to Article 79, resumes operations which have been stopped or reopens an establishment which has been closed down without being permitted to do so; if he fails to establish an occupational health and safety board in the establishment as set out in Article 80 or obstructs the operations or fails to enforce the decisions of such boards; if he, in contravention of Article 81, fails to employ a medical practitioner or to form a health unit in the establishment; and if he fails to employ engineers or technical staff for occupational safety in contravention of Article 82.

The employer or his representative shall be liable to a fine of five hundred million liras if he employs, in contravention of Article 85, children under the age of sixteen in arduous and dangerous work or if he violates the age limits prescribed in the said Article.

The employer or his representative shall be liable to a fine of one hundred million liras for each employee involved if he fails to produce medical certificates for employees in accordance with Article 86 of this Act, and to a fine of one hundred million liras for each child involved if he does not procure medical certificates for children in accordance with Article 87.

The employer or his representative shall be liable to a fine of five hundred million liras if he does not respect the conditions and procedures set out in the regulations mentioned in Article 88 and 89 of this Act.

Violations as to employment services:

Article 106. The employer who performs employment services without procuring the permit envisaged in Article 90 of this Act shall be liable to a fine of one billion liras.

Violation of provisions as to the supervision and inspection of working conditions

Article 107. The employer or his representative shall be liable to a fine of five billion liras;

- a. if he fails to discharge the duties envisaged in Article 92, or
- b. if he fails to comply with the prohibitions listed in Article 96 of this Act.

Persons who obstruct the performance and conclusion of the labour inspector's supervision and inspection work based on this Act as well as on other legislation shall be liable to a fine of five billion liras, in addition to any other penalty which may be inflicted by law for a different offence.

Provisions as to application of administrative fines:

Article 108. The fines of an administrative nature envisaged in this Act shall be enforced, along with an explanation of the underlying reason, by the regional director of the Ministry of Labour Social Security.

The administrative fines indicated in this Act shall be enforced by the regional director of the Ministry of Labour and Social Security competent in the region concerned. Decisions on administrative fines shall be communicated to the

persons concerned according to the Act No. 7201 of 11 February 1959 respecting administrative communications. Appeals may be lodged against such fines with the competent administrative court in seven days at the latest. Appeal shall not discontinue the enforcement of penalty given by the administration. The decision given upon appeal is final. Where a hearing is not deemed necessary, the appeal shall be concluded in the shortest time possible by the examination of documentary evidence.

Administrative fines levied in accordance with this Act shall be collected according to the provisions of Act No. 6183, dated 21 July 1953, on the collection procedures for public claims.

## NINTH CHAPTER

### Supplementary, Transitional and Concluding Provisions

#### Written Notification:

Article 109. The notifications envisaged in this Act shall be made to the person concerned in written form and upon obtaining his signature. The refusal to sign by the person to whom notification is communicated shall be documented on the spot in written form. However notifications within the scope of Act No. 7201 shall be made in accordance with the provisions of the said Act.

#### Special working conditions of janitors:

Article 110. Special procedures and principles concerning the scope and nature of janitors' work as well as their working time, weekly rest day, national and public holidays, right to annual leave with pay and the janitors' dwellings shall be laid down in a regulation to be prepared by the Ministry of Labour and Social Security.

#### Industrial, commercial, agricultural and forestry works:

Article 111. The Ministry of Labour and Social Security shall determine in a regulation whether or not an activity is to be deemed industrial, commercial, agricultural and forestry work.

Working conditions, employment contracts, wages and organisation work of those employed in activities deemed as agricultural and forestry work shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security.

#### Severance pay of employees working in certain public institutions and public organisations:

Article 112. Payments made, in the form of leave pay, to the personnel of institutions and organisations established by law or for whom the provisions of this Act and of Acts Nos. 854, 5953 and 5934 are not applicable, as well as employees of public institutions engaged on a contract basis, shall be regarded as severance pay.

#### Guarantee of wages of employees employed in certain jobs:

Article 113. Provisions of Articles 32,35,37 and 38 shall apply to employees working in establishments cited in subsections (b) and (i) of the first paragraph of Article 4 of this Act. In the event of violations of these articles, relevant penal provisions shall apply to the persons concerned.

#### The Tripartite Consultation Board:

Article 114. With a view to promoting labour peace and industrial relations and following up legislative developments and implementations, a tripartite board of advisory nature shall be established in order to provide for effective consultations between the government and confederations of employers, public servants, and labour unions.

The working methods and principles of the Board shall be indicated in a regulation to be issued.

Opening canteens:

Article 115. With a view to meeting the needs of employees and their families, the employers shall assign adequate space for consumption cooperatives to be established by employees in establishments employing a minimum of one hundred fifty employees.

Article 116. The last paragraph of Article 6 of Act No. 5953 of 13 June 1952 on labour – management relations in the press has been amended as follows:

Articles 18,19,20,21 and 29 of the Labour Act shall be applicable by analogy.

Article 117. The phrase "of the Labour Act No. 1475" in the first paragraph of Article 30 of Act No. 2821 of 5 May 1983 on Trade Unions has been amended as "Article 21 of the Labour Act".

Article 118. The following amendments have been made to Article 31 of Act No. 2821: the phrase "in 13/A, 13/B, 13/C, 13/D, 13/E" in the sixth paragraph has been amended as "in Article 18,19,20 and 21 of the Labour Act,,"; the phrase "13/D of Act No. 1475 is amended as "Article 21 of the Labour Act,,"; the phrase "13/A of Act No. 1475" in the seventh paragraph has been amended as Article 18 of the Labour Act ", the phrase "13/A, 13/B, 13/C, 13/D and 13/E" has been amended as "Articles 18,19,20 and 21".

Regulations:

Article 119. The regulations envisaged by this Act shall be issued within six months of its publication.

TRANSITIONAL ARTICLE 1. All other references made to Act No. 1475 in other legislation shall be deemed to have been made to this Act.

References to Articles 16,17 and 26 of Act No. 1475 made in Article 120 of this Act as well as in the first and second subsections of the first paragraph and in the eleventh paragraph of Article 14 of Act No. 1475 which has been left in force shall be deemed to have been made to Articles 24,25 and 32 of this Act.

TRANSITIONAL ARTICLE 2. Provisions of regulations and bylaws issued in accordance with Act No. 1475 which are not contrary to this Act shall remain in force until the issuance of new regulations.

TRANSITIONAL ARTICLE 3. The decision on minimum wages taken in accordance with Act No. 1475 shall remain in force until the fixing of the minimum wage according to Article 39 of this Act.

TRANSITIONAL ARTICLE 4. The right severance pay mentioned in transitional Article 6 of this Act for those to whom Article 13 of the Labour act No. 3008 is not applicable shall commence from the date 12 August 1967.

Severance pay entitlements of those who are covered by this Act for the first time shall begin as of the date on which this Act comes into force.

TRANSITIONAL ARTICLE 5. The ratios envisaged in Article 25 of Act No. 1475 as well as in paragraph (B) of the annex article I of Act No. 3713 shall (be valid) remain in force until they are redefined by the Council of Ministers in accordance with Article 30 of this Act.

TRANSITIONAL ARTICLE 6. A severance pay fund shall be established for the severance pay of employees. Employees' entitlements to severance pay in view of Article 14 of the Labour Act no. 1475 shall be protected until the passage of the new Act relating to severance pay.

Coming into force:

Article 121. This Act shall come into force on the date of its publication

Administration:

Article 122. The Council of Ministers shall be responsible for the administration of this Act.

(Full Turkish text published in the Official Gazette of Turkey on 10 June 2003 and translated to English by Toker Dereli)