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► Basic concepts of the Labour Law: obligations of the worker and the employer

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▶ Contents

Who is a worker?	3
Are apprentices and interns considered workers?	3
Who is the employer?	4
Who is the representative of employer?	4
Who are the principal employer and the subcontractor?	5
What is a workplace?	6
How is the employment relationship affected in the event of the transfer of a workplace or a part thereof?	7
What does the “principle of equal treatment” in the employment relationship cover?	8
What is a temporary employment relationship and how is it established?	8
What is an employment contract?	10
Elements of the employment contract	10
What is the probationary period?	11
What is the distinction between fixed-term and indefinite-term employment contracts?	11
What is a part-time employment contract?	
What is the difference from a full-time employment contract?	12
What is on-call work?	13
What is teleworking?	13
What is a team contract?	14
Obligations of the worker and the employer	15
What are the obligations of the worker arising from the employment contract?	15
What are the obligations of the employer arising from the employment contract?	16

▶ Who is a worker?



According to the Labour Law No. 4857, a worker is a natural person who works based on an employment contract.

▶ Are apprentices and interns considered workers?

Apprentices and interns are not considered workers. This is because, while workers work to earn wage income, the primary purpose for apprentices is to learn a profession or trade, and for interns to develop the profession or trade they have learned and to gain experience.

▶ Who is the employer?



Natural or legal persons, or institutions and organizations without legal personality, that employ workers.

▶ Who is the representative of employer?

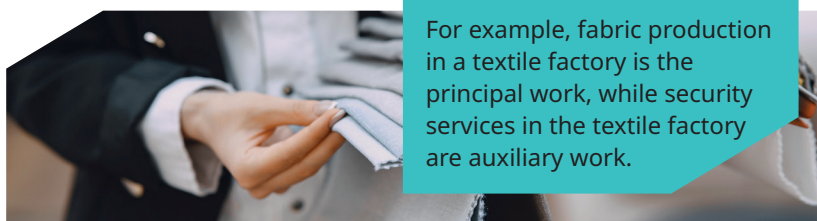
Persons who act on behalf of the employer and take part in the management of the work, the workplace, and the enterprise.

The employer shall be directly responsible for the actions and obligations of the employer representative toward workers arising from this capacity.

▶ Who are the principal employer and the subcontractor?

Another employer

- ▶ who undertakes work from an employer, either in auxiliary activities related to the production of goods or services carried out in the workplace or
- ▶ in a part of the principal work that requires expertise due to the requirements of the enterprise and the work and for technological reasons, and who assigns the workers engaged for this work exclusively to the job undertaken in that workplace, is referred to as the “**sub-contractor,**” and the relationship established is called the **principal employer-subcontractor relationship**.



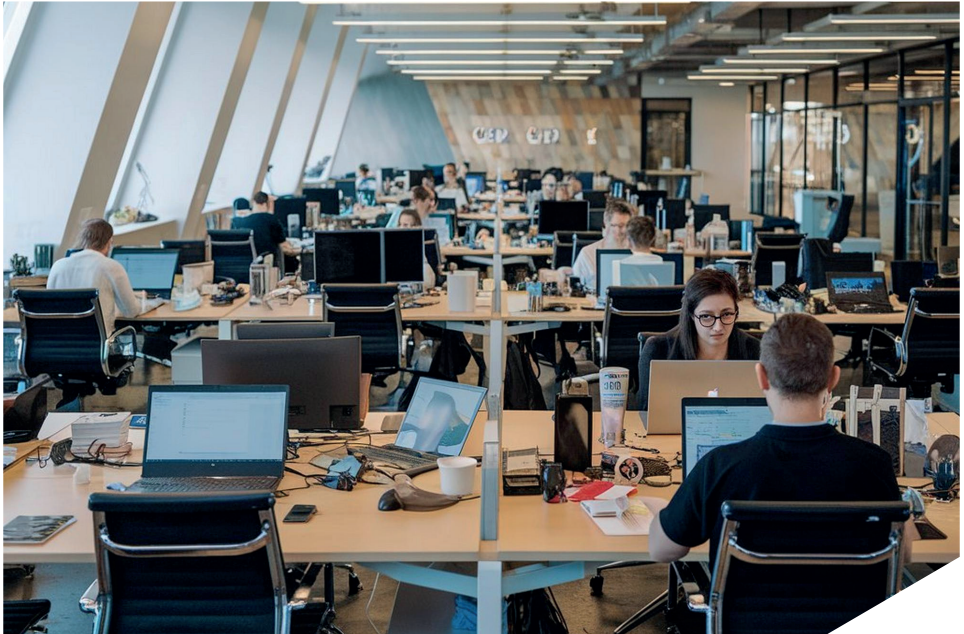
For example, fabric production in a textile factory is the principal work, while security services in the textile factory are auxiliary work.

The principal employer shall be jointly responsible with the subcontractor, in relation to that workplace, for the obligations of the subcontractor toward its workers arising from:

- ▶ the Labour Law No. 4857,
- ▶ the employment contract,
- ▶ the collective labour agreement to which the subcontractor is a party.

In the principal employer-subcontractor relationship;

- ▶ the rights of the principal employer's workers shall not be restricted by having them hired and continued to be employed by the subcontractor.
- ▶ A subcontracting relationship shall not be established with a person who has previously worked in that workplace as a worker of the principal employer.
- ▶ Except for work that requires expertise due to the requirements of the enterprise and the work and for technological reasons, the principal work shall not be divided and assigned to subcontractors.



► What is a workplace?

A unit organized by the employer for the purpose of producing goods or services, in which tangible and intangible elements are combined with the worker.

The workplace consists of:

- the main place where the work is carried out,
- places that are functionally linked to the goods or services produced by the employer in the workplace and are organized under the same management, as well as places attached to the workplace within the scope of the work organization,
- auxiliary areas (rest areas, breastfeeding rooms, dining, sleeping, washing, examination and care, physical and vocational training areas, courtyard, garage, etc.),
- fixed and mobile vehicles used in the workplace (automobile, bus, truck, bulldozer, crane, grader, etc.).

► How is the employment relationship affected in the event of the transfer of a workplace or a part thereof?

- When a workplace or a part of a workplace is transferred to another party on the basis of a legal transaction, the employment contracts existing in the workplace or in that part at the date of transfer shall pass to the transferee together with all rights and obligations.
- The transferee employer shall be obliged, in rights based on the worker's length of service, to take into account the date on which the worker commenced employment with the transferor employer.
- In the event of a workplace transfer, the transferee employer and, limited to a period of two years, the transferor employer shall be jointly responsible for debts that arose prior to the transfer and were due on the date of transfer. However, with regard to severance pay, no time limit is stipulated for the liability of the transferor employer under Article 14/2 of the repealed Labour Law No. 1475.
- In the event of termination due to merger, acquisition, or change of the legal entity's type, the provisions on joint liability shall not apply.
- Employers transferring or acquiring the workplace may have the right to terminate the employment contract due to economic or technological reasons or changes in work organization. However, they must not terminate the employment contract solely due to the transfer of the workplace. In other words, the transfer of the workplace does not constitute a justified ground for termination of the worker's employment contract.
- In the event of the transfer of a workplace or a part thereof to another party as a result of the liquidation of assets due to bankruptcy, these provisions relating to workplace transfer shall not apply.



► What does the “principle of equal treatment” in the employment relationship cover?

- In the employment relationship, discrimination based on language, race, color, sex, disability, political opinion, philosophical belief, religion, sect, and similar grounds shall not be permitted.
- Unless justified by substantial reasons, the employer shall not treat a part-time worker differently from a full-time worker, or a fixed-term worker differently from an indefinite-term worker.
- Unless required by biological reasons or the nature of the work, the employer shall not treat a worker differently, directly or indirectly, on the basis of sex or pregnancy in the conclusion, conditions, implementation, or termination of the employment contract.
- For the same or work of equal value, a lower wage shall not be agreed upon on the basis of sex.
- The application of special protective provisions due to the worker's sex shall not justify the application of a lower wage.



In the event of a breach of the principle of equal treatment in the employment relationship or upon its termination, the worker may claim, in addition to an appropriate compensation of up to four months' wages, the rights of which he or she has been deprived. In practice, this compensation is referred to as discrimination compensation.



► What is a temporary employment relationship and how is it established?

A temporary employment relationship may be established through a private employment agency or by assignment within a holding structure or to another workplace belonging to the same group of companies.

A temporary employment relationship through a private employment agency authorized by the Turkish Employment Agency may be established;

- ▶ In cases of maternity leave and nursing breaks, and where one of the parents works part-time following the end of maternity leave until the beginning of the month following the date on which the child starts primary education (those who adopt a child under the age of three, jointly with their spouse or individually, shall also benefit from this right from the date the child is actually handed over), in the event of the worker's military service and in other cases where the employment contract is suspended,
- ▶ In seasonal agricultural work,
- ▶ In domestic services,
- ▶ In work that is not considered part of the enterprise's routine daily activities and is performed intermittently,
- ▶ In work that is urgent from an occupational safety and health perspective or in the event of compelling reasons that significantly affect production,
- ▶ In cases where the average production capacity of goods and services of the enterprise increases to a level requiring the establishment of a temporary employment relationship in an unforeseeable manner,
- ▶ In cases of periodic increases in workload, excluding seasonal work.

- ▶ An employer employing temporary workers must not employ a worker whose employment contract has been terminated under a temporary employment relationship until six months have elapsed from the date of termination.



- ▶ Temporary workers shall not be employed, during the period they work temporarily, under conditions less favorable than the basic working conditions provided to workers directly employed in the same workplace.
- ▶ The employer may, by obtaining the worker's written consent, temporarily assign a worker to another workplace within the holding or to a workplace belonging to the same group of companies. In this case, the duration of the employment relationship shall be a maximum of six months, and this period may be extended no more than twice.

► What is an employment contract?

According to Labour Law No. 4857, an employment contract is a contract consisting of one party (the worker) undertaking to perform work in a dependent manner and the other party (the employer) undertaking to pay wages.

According to the Turkish Code of Obligations No. 6098, a contract of service is a contract in which the worker undertakes to perform work for a definite or indefinite period in a dependent manner for the employer, and the employer undertakes to pay wages based on time or the work performed.

► Elements of the employment contract

- **Performance of work:** The obligation of the worker to fulfill the duties undertaken toward the employer.
- **Wages:** Includes the provisions determining conditions such as the amount of wages to be received by the worker in return for the work performed, the method of payment, and the payment period.
- **Dependence:** Refers to the obligation of the worker to work under the employer's supervision and in accordance with the employer's instructions.

The employment contract shall not be subject to any specific form (unless otherwise provided by law).

However;

- Fixed-term employment contracts,
- Employment contracts with a duration of one year or more,
- Employment contracts based on on-call work,
- Employment contracts based on teleworking,
- Team contracts,

must be concluded in written form.

► What is the probationary period?

The probationary period is a period agreed at the beginning of the employment contract in order for the worker and the employer to become acquainted with each other or to evaluate the working conditions, and it may be applied for a maximum of two months (up to four months by collective labour agreement).

During the probationary period, the parties may terminate the employment contract without notice, without compensation, and without stating any reason.

The probationary period may be included in both fixed-term and indefinite-term employment contracts.

During the probationary period, the parties shall fulfill their mutual obligations. The worker shall be insured during the probationary period, shall receive wages, and this period shall be included in length-of-service rights (such as annual leave).

► What is the distinction between fixed-term and indefinite-term employment contracts?

An **“indefinite-term employment contract”** is a contract concluded between the worker and the employer where the employment relationship is not dependent on a specified period.

A **“fixed-term employment contract”**, on the other hand, is a written contract concluded between the worker and the employer based on objective conditions such as a fixed-term job, the completion of a specific task, or the occurrence of a particular event.



Employment contracts shall be indefinite-term as a rule, while fixed-term contracts are the exception.

- ▶ A fixed-term employment contract must not be concluded successively (chain contracts) more than once unless there is a substantial reason. Otherwise, the employment contract shall be deemed to be an indefinite-term contract from the outset.
- ▶ Successive employment contracts based on a substantial reason shall retain their fixed-term nature.
- ▶ A worker employed under a fixed-term employment contract shall not, unless there is a justified reason, be treated differently from a worker employed under an indefinite-term employment contract; wages and other divisible monetary benefits shall be provided in proportion to the period worked.

▶ What is a part-time employment contract? What is the difference from a full-time employment contract?

A “part-time employment contract” is a contract concluded where the worker’s normal weekly working time is determined to be significantly less than that of a comparable worker employed under a full-time employment contract.



Work performed up to two-thirds of the comparable work carried out under a full-time employment contract in the workplace shall be considered part-time work.

- ▶ A worker employed under a part-time employment contract shall not, unless there is a justified reason, be treated differently from a comparable full-time worker; wages and other divisible monetary benefits shall be provided in proportion to the period worked.

► What is on-call work?

A part-time employment contract based on on-call work is an employment relationship in which the worker works when needed.

In On-Call Work;

- If the worker's working time has not been determined, the weekly working time shall be deemed to be 20 hours.
- A worker engaged in on-call work shall be entitled to wages whether or not he or she is required to work within the specified period.
- The employer shall make the call at least four days in advance in order to request the worker to perform work (unless otherwise agreed).
- The worker shall be obliged to perform work upon being called. If the daily working time has not been determined, the employer must employ the worker for at least four consecutive hours for each call.



► What is teleworking?

“Teleworking” is an employment relationship established in writing, based on the principle that the worker performs work at home or outside the workplace through technological communication tools within the scope of the work organization established by the employer.

In the employment contract to be concluded for teleworking;

- The job description, the manner in which the work is to be performed, the duration and place of work, wages and matters relating to the payment of wages, the equipment provided by the employer and the obligations regarding their protection, the employer's communication with the worker, and provisions regarding general and specific working conditions shall be included.
- In teleworking, the worker shall not, unless there is a valid reason, be treated differently from other workers performing the same work. The employer shall inform the teleworking worker about occupational safety and health (OSH) measures in accordance with the work performed, provide the necessary training, conduct health surveillance, and take the necessary measures to ensure occupational safety.

► What is a team contract?

It is a contract concluded by one of the workers, acting as the team leader, with the employer on behalf of a team composed of multiple workers.

Team contract;

- The identity and wages of each worker shall be specified separately.
- When the workers included in the team start work, the team contract shall apply separately to each worker.
- The employer or the employer representative shall be obliged to pay the wages of the workers who have started work to each of them individually.
- No brokerage fee or similar deduction shall be made from the wages of the workers included in the team for the benefit of the team leader.



▶ Obligations of the worker and the employer

What is an Employment Contract?

The employment contract is a contract that establishes mutual rights and obligations for the worker and the employer.

Who are the Parties to the Employment Contract?

The worker and the employer are the parties to the employment contract.

▶ What are the obligations of the worker arising from the employment contract?

- ▶ **Obligation to perform work:** The worker shall be obliged to perform work in the manner and under the conditions agreed in the employment contract. The scope of this obligation shall be determined within the framework of the job description specified in the employment contract, workplace rules, and the employer's managerial prerogative.
- ▶ **Obligation to exercise due care:** Under the Turkish Code of Obligations, the worker shall be obliged to perform work with due care and diligence while fulfilling the obligation to perform work. The worker shall be obliged to use the employer's machines, tools and equipment, technical systems, facilities, and vehicles in accordance with proper procedures and to exercise due care in respect of the materials entrusted to him or her for the performance of the work.
- ▶ **Obligation of loyalty:** The worker's obligation of loyalty refers to acting with trust and commitment toward the employer, refraining from harming the employer's interests, and protecting trade secrets. Acts contrary to this obligation include any conduct constituting disloyalty, such as the worker's abuse of the employer's trust, theft, or disclosure of the employer's confidential information.

- **Obligation not to compete:** The worker shall not, for remuneration, provide services to another person during the employment relationship and, in particular, shall not engage in competition with the employer in order to avoid causing harm to the employer. After the termination of the employment contract, the worker's obligation not to compete may continue; however, for this, a written "non-compete agreement" must be concluded with the employer. The non-compete clause shall not include restrictions, in terms of place, time, and type of work, that would unfairly jeopardize the worker's economic future, and its duration shall not exceed two years, except in special circumstances and conditions. A worker who fails to comply with the non-compete obligation shall be obliged to compensate the employer for the damage caused.
- **Obligation to Comply with Regulations and Instructions:** According to Article 399 of the Turkish Code of Obligations, the employer may establish general rules regarding the performance of the work and the conduct of workers in the workplace and may issue specific instructions. Workers shall be obliged to comply with these rules and instructions in good faith. However, the rules and instructions that the worker is required to comply with must not be contrary to the law, the employment contract, or personal rights. This means that the employer may only make arrangements related to the requirements of the work and must not issue instructions that interfere with the worker's private life.

► What are the obligations of the employer arising from the employment contract?

- **Obligation to pay wages:** The employer shall be obliged to pay the wage specified in the contract to the worker in full and on time. Payment below the minimum wage shall not be made, and wages shall be paid at least once a month. The payment period may be shortened to one week by agreement. If the worker's wage is not paid within 20 days from the due date without a compelling reason, the worker may refrain from performing work. Furthermore, if the employer does not pay wages in accordance with the law or the contract, the employment contract may be terminated by the worker for just cause pursuant to Article 24/II of the Labour Law.

- ▶ **Obligation of equal treatment:** The employer shall act in accordance with the principle of equality among workers and shall avoid discrimination. Pursuant to Article 5 of Labour Law No. 4857, discrimination among workers on the grounds of language, race, color, sex, disability, political opinion, philosophical belief, religion, sect, and similar reasons is prohibited. Under the same provision, unless there is a substantial reason, the employer shall not treat a part-time worker differently from a full-time worker, or a fixed-term worker differently from an indefinite-term worker. Furthermore, unless there are mandatory reasons related to biological factors or the nature of the work, the employer shall not treat a worker differently, directly or indirectly, on the basis of sex or pregnancy in the processes of concluding, determining the conditions of, implementing, and terminating the employment contract. For the same or work of equal value, a lower wage shall not be set on the basis of sex.
- ▶ **Obligation to protect the worker:** Under the employment contract, while the worker has an obligation of loyalty toward the employer, the employer is also under an obligation to protect the worker. Within the scope of the employment relationship, the employer shall be obliged to protect the worker's personality, show respect to the worker, and ensure an order in the workplace in accordance with the principles of good faith. In particular, the employer shall be obliged to take the necessary measures to prevent workers from being subjected to psychological and sexual harassment and to ensure that those exposed to such harassment do not suffer further harm. The employer shall be obliged to protect all personal information belonging to the worker. Information of a personal data nature shall be maintained in accordance with the principles of confidentiality. At the same time, within the scope of the employer's obligation to protect and safeguard the worker, the employer also has the responsibility to ensure occupational safety and health in the workplace. The employer shall be responsible for taking all necessary measures to protect the worker's life and to prevent any loss during the performance of the work.
- ▶ **Obligation to provide tools and equipment:** The employer shall be obliged to provide the materials, equipment, and working environment necessary for the worker to perform his or her duties. This is a prerequisite for the fulfillment of the obligation to perform work. If the worker, by agreement with the employer, allocates his or her own tools or materials for the performance of the work, the employer shall, unless otherwise agreed or unless there is a local custom, be obliged to pay the worker appropriate compensation for this.

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