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«Актуальні проблеми приватного та публічного права»

**Матеріали IV Міжнародної науково-практичної конференції
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У матеріалах збірника представлені результати наукових досліджень вчених, присвячених актуальним проблемам приватного та публічного права.

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The parties can put a probationary period record of up to 2 months in their existing employment contracts. In collective bargaining agreements, the trial period can be extended up to 4 months.

Putting a trial period in each of the fixed-term service contracts continuing as a chain should not be considered valid, except for the first contract. The decision of the 9th Civil Chamber of the Supreme Court of Appeals, dated 13.11.1996 and numbered 1996/12701 and decision numbered 1996/21173, is a precedent for this situation.

During the trial period, both parties have the right to terminate the employment contract without compensation and without prejudice.

The employee whose employment contract is terminated during the trial period has the right to file any lawsuit regarding the wages (wage, overtime, National Holiday General Holiday Claim, Minimum Living Allowance Claim, etc.) until the period he worked. In case of termination of employment during the probationary period, the employer is not obliged to declare a reason for termination.

Even if the employer, who terminated the employment contract during the probationary period, declared a reason for termination, it is accepted that he has to prove this reason. If the parties have set a notice period for termination in the trial period employment contract, they must comply with this period.

Accordingly, the employer is not obliged to grant prior notice if the employee “resigns within the probationary period”. In parallel, the answer to the question “Is notice indemnity paid during the trial period” is negative. Employees and employers who terminate the employment contract for just or unjust reasons during the trial period are not obliged to pay notice indemnity to the other party.

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FEATURES OF EMPLOYMENT OF FOREIGNERS IN TURKEY

Foreigners have the right to work in Turkey within the framework of international law. In this bulletin, we will convey the most frequently asked questions about the subject such as the conditions required for foreigners to benefit from the right to work in Turkey, the procedure to be followed, the necessary applications and documents, and foreigners who need and do not have a work permit.

General rules regarding the employment of foreigners in Turkey are regulated in the International Labor Law No. 6735. According to this law, the employment of foreigners in Turkey is conditional upon obtaining a work permit from the competent authority.

- A foreigner cannot work in Turkey without obtaining the necessary work permit; It is forbidden to operate and is subject to administrative fines.³

- Foreigners are not allowed to work in some sectors and occupations.⁴ . Which Authority Belongs to Work Permit?

Competent authority in the work permit application process Family, Labor and Social Security

What are the Types of Work Permits?

- Temporary Work Permit: According to the International Labor Law, a foreigner whose work permit application is evaluated positively is given a maximum one-year work permit at the first application. With a temporary work permit, a foreigner can work in a specific workplace belonging to a real or legal person or public institution or organization, or in a specific job in their workplaces in the same business line. If the foreigner applies for an extension of the work permit with the same employer and it is positive, the first extension period is maximum 2 years; in the next extension applications, it will be 3 years at the most.

- Indefinite Work Permit: Foreigners who have a long-term residence permit or a work permit for at least eight years in Turkey can apply for an indefinite work permit. However, it is not enough for the foreigner to meet the application requirements alone. Granting an indefinite work permit

The Ministry has the discretion to not give. A foreigner who has an indefinite work permit can benefit from all the rights enjoyed by a long-term residence permit.

- Independent Work Permit: Professional foreigners can be granted an independent work permit, provided that the special conditions specified in other laws are met.

- Turkuvez Card: Thanks to the positive contribution of its activity or investment in Turkey to the country's economy and employment, for reasons such as its contribution to science and technology, education, professional experience, and capital share if it is a foreign company partner.

Turquoise Card is given to foreigners whose applications are approved in accordance with the procedures and principles determined by the Ministry.

Work permit applications can be made in two ways, from abroad or domestically. The main acceptance is to apply from abroad.

In order to be able to apply from within the country, the foreigner must have a valid residence permit for at least 6 months.

ATTENTION: In Turkish law, the work permit mostly includes the right of residence.

Considering the fact that the application is made from abroad, it may be more advantageous to make the application from abroad in order not to increase the number of bureaucratic procedures to be made. However, it is a convenience to carry out all applications by proxy, by first obtaining a short-term residence permit and then applying for a work permit from Turkey through the person you will authorize by proxy. Since the advantage situation in this matter will vary according to your sector or foreign investor qualification, you can ask our expert team to help you by identifying the most practical and advantageous way for you and informing you.

The Turkish foreign representatives and the Ministry follow up the work permit applications from abroad in electronic environment. What the foreigner has to do is to apply to the Turkish consulates in the country where he is a citizen or legally located, with an employment contract, assignment letter or documents showing the company partnership. It is possible for the employer in Turkey to apply for a work permit through the online system with the reference number given to him by the foreign representative office to which the foreigner applies. your employer

Within ten working days following the application date to the representative offices, he/she must make the electronic application and submit the necessary information and documents to the Ministry of Family, Labor and Social Services in person or by mail.

Applications to be made from within the country can be made electronically. Foreigners who have a residence permit valid for at least six months on the date of application or their employers can apply for a work permit. The documents required for the application must be submitted to the Ministry of Family, Labor and Social Services in person or by mail within six working days following the electronic application.

5. What are the Documents Required for a Work Permit Application?

Required documents in the work permit application whether the applicant is the employer institution or

It differs depending on whether it is a foreign person. Some of these documents are scanned during the electronic application and sent only electronically. On the other hand, wet signed copies of some documents must be submitted to the Ministry separately. Detailed information on this subject is presented below;

The following documents requested from the foreign employer institution can only be submitted electronically. It is sufficient to scan and send it online

Turkish Trade Registry Gazette showing the latest capital and partnership structure of the organization

- Balance sheet and profit/loss statement for the last year approved by the tax office or certified public accountant

- Information and documents proving that the workplace is within the scope of Special Foreign Direct Investments

- Document proving that organizations (including consortia) that have the right to carry out projects for which international tenders have been opened by public institutions and organizations have undertaken the work to be received from the relevant institution and organization.

- Within the scope of engineering, architecture, contracting and consultancy services in legal entities that will employ foreign experts, Turkish in the same profession

Payroll to prove that an engineer/architect/urban planner is employed • As a user on behalf of the institution and organization that will employ foreign personnel

Notarized power of attorney of the person authorized to make the electronic application or a document showing that the person in the capacity of user works in the institution or organization that made the application.

It is not enough to send the following documents electronically; must be physically submitted to the Ministry.

Application petition: The petition containing the work permit request must be scanned and forwarded during the electronic application, and must also be handed over to the relevant authority by the employer with a wet signature.

Foreign personnel application form: The form to be filled in electronically is sent to the Ministry as a paper copy after it is printed and signed by the employer and the foreigner. In the absence of a signed form, the parties

employment contract between The form is unsigned and the employment contract is also If not, the application will not be processed.

The following documents requested from the foreigner are only scanned during the electronic application and submitted online.

Copy of passport: In cases where the passport is not written in Latin letters, its official translation must be attached to the application.

Diploma or Temporary Graduation Equivalency Certificate of the foreigner who requests a work permit within the scope of professional services: In addition to the above documents, in case of higher education abroad, "Overseas Higher Education Diplomas Equivalency Certificate"

In case the application is made with missing documents, the Ministry informs/ It is also required to send the equivalence certificate to be obtained in accordance with the Regulation.

In case the foreigner is in the status of key personnel, Direct Foreigner 10/b of the Regulation on Employment of Foreign Personnel in Investments information and documents stipulated in the article. For domestic applications, valid for at least six months on the date of application. temporary residence permit sample.

Copy of diploma or temporary graduation certificate: It must be officially translated into Turkish and approved by the competent authorities.

ATTENTION: this document must be submitted both electronically and on paper.

If the foreigner requesting a work permit does not have a valid residence permit, it is obligatory to apply for a work permit to the Turkish Republic representations in the country where the foreigner is a citizen or permanently residing abroad, by submitting a document showing the employment contract or company partnership.

Foreigners with key personnel status to be employed in companies that meet at least one of the Foreign Direct Investments criteria.

Work permit application can be made directly to the Ministry of Family, Labor and Social Services if it is proved that it is legally available (by submitting a letter from the Police Department or a certified copy of the part of the passport showing the visa and entry date). In this context, foreigners in the status of key personnel who are given work permits must enter Turkey by obtaining a work visa from the foreign representatives of the Republic of Turkey.

6. When should a foreigner who has obtained a work permit to enter Turkey?

The person who obtains a work permit must enter Turkey within 6 months from the validity date of the permit. In addition, foreigners who enter Turkey by obtaining a work permit from the consulates, within twenty working days following the date of entry into the country.

They are required to register with the Address Registration System in Turkey.

Work permit applications made in accordance with the relevant legislation are finalized by the Ministry within thirty days at the latest, provided that the documents are complete. The applicant by requesting the application and the completion of the missing documents. In this case, the thirty-day period starts from the date the missing documents are submitted to the Ministry.¹¹

Persons who are expected to contribute to the country with the services they will render to the country in our laws and whose protection is deemed beneficial due to their characteristics are exempted from work permit. Foreigners who are exempted from a work permit do not need to obtain a work permit to work in Turkey. However, even if they are exempt from obtaining a work permit, complying with the following rules and they are responsible for fulfilling the requirements;

They must obtain a residence permit by informing the General Directorate of Migration Management within the provincial governorship of the province where they will be assigned, within thirty days at the latest from the date of their entry into the country, and in any case before starting their activities, the information about the purpose of their arrival, how long and where they will stay.

They have to fulfill their obligations regarding social security. They are obliged to comply with the obligations specified in special laws.

Foreign architects, engineers and city planners, who are within the scope of professional services and subject to exemption provisions, must complete their academic and professional qualifications, obtain a work permit from the Ministry, become a temporary member of the relevant professional organization, and comply with the practices of national institutions and organizations, in case their service period exceeds one month.

Provided that they comply with the obligations we have mentioned, it is possible for a foreigner who fulfills at least one of the following conditions to work in Turkey without the need for a work permit;

a) Persons exempted from work permit under bilateral or multilateral agreements to which Turkey is a party,

b) Foreigners whose permanent residence is abroad and who will come to Turkey temporarily for less than one month for scientific, cultural and artistic activities and less than four months for sports activities,

c) For the purpose of assembling, maintaining and repairing machinery and equipment imported to Turkey, providing training on their use or taking delivery of the equipment or repairing the malfunctioning vehicles in Turkey; Those who come to Turkey on condition that they do not exceed three months in total within one year from the date of entry and that they can prove this with the documents to be submitted,

ç) Not to exceed three months in total within one year from the date of entry to Turkey for training purposes on the use of goods and services exported from or

imported to Turkey, and to prove this with the documents to be submitted provided that those in Turkey.

d) Those who are present at fairs and circuses that will operate outside the borders of certified tourism establishments, provided that they do not exceed six months from the date of entry to Turkey as a show or similar officer and that they prove this with the documents to be submitted,

e) Foreigners who come to universities and public institutions and organizations to increase their knowledge and experience by proving their status with documents to be submitted, not exceeding two years and limited to the education period, a period not exceeding six months in socio-cultural and technological fields and education.

Those who are notified by the relevant authorities that they can provide important services and contributions to Turkey in a short period of time.

g) For foreigners who will come within the scope of the programs carried out by the European Union Education and Youth Programs Center (National Agency), during the program,

ğ) Foreigners who will undergo internship within the framework of international intern student programs, the scope and duration of which have been agreed by the Ministry, the Ministry of Interior and Foreign Affairs and the Council of Higher Education,

h) Tour operator representative foreigners who come to Turkey, provided that their term of office does not exceed eight months,

ı) During the contracts of foreign football players, other athletes and coaches whose demands are approved by the Turkish Football Federation or the General Directorate of Youth and Sports,

j) Foreign experts assigned to projects carried out within the scope of Turkey-European Union Financial Cooperation Programs do not need to obtain work permits during their duties.

Exemption periods cannot be extended. In addition, foreigners within the scope of subparagraphs (b), (d), (f) and (h) benefit from the exemption provisions only once in a calendar year.

Work permit applications can be made in two ways, domestically and abroad. Domestic applications are made to the Ministry, and applications from abroad are made to Turkish foreign representatives.

In order to obtain a foreign exemption permit, you must fulfill at least one of the conditions listed above.