

**Харківський національний педагогічний університет
імені Г.С. Сковороди (Україна)**

Стамбульський університет (Турецька Республіка)

Вроцлавський університет (Республіка Польща)

Університет Цзинань (Китайська Народна Республіка)

***«Актуальні проблеми
приватного та публічного права»***

**Матеріали IV Міжнародної науково-практичної конференції
присвяченої 93-річчю з дня народження члена-кореспондента НАПрН
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Коваленко Олена Олександрівна (в.о. завідувача кафедри д-р юрид. наук, професор) +38(057)598-98-75;

Головань Тетяна Георгіївна (в.о. декана юридичного факультету канд. юрид. наук, доцент) +38(067)681-93-90;

Ждан Микола Дмитрович (канд. юрид. наук, доцент) +38(063)948-05-19;

Пономаренко Оксана Михайлівна (канд. юрид. наук, доцент) +38(097)332-55-70;

Гоц-Яковлєва Ольга Василівна (канд. юрид. наук, доцент) +38(067)724-29-49;

Гرابко Людмила Владиславівна (ст. лаборант) +38(057)274-83-23

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Yakup Yoldaş,
Student ID-11068858366
Law faculty 4th Grade Student
H.S. Skovoroda Kharkiv National Pedagogical University
(Graduate advisor: Doctor of Laws,
professor, acting Head of the Department of Civil Law Disciplines and Labor
Law named after Professor O.I. Protsevsky Olena Kovalenko)

OBLIGATIONS OF THE EMPLOYER UNDER THE EMPLOYMENT CONTRACT

The main obligations of the employer are the “paying wages”, “taking occupational health and safety measures”, “employing suitable employees for the job”, “compensating the tools, vehicles and animals that are damaged due to the work and belonging to the employee”, “equal treatment” and “to pay the employee for his inventions”. Apart from these, employers have some other obligations “to issue a work certificate”, “to keep the employee's personal file” and “to issue a declaration of termination in accordance with the Law No. 4447.”

The most important debt of the employer arising from the employment contract is the wage payment obligation. Because wage income is often the only income element of the employee. In accordance with the principle of protection of the employee, wages are protected in various ways in Turkish Labor Law. These will be discussed in detail in the unit on wages. Since wages are an element of income for the employee and an element of expense for the employer, it has always been one of the main causes of employee-employer disputes. First of all, wage is the price of the use of labor, which is perhaps the most important factor of production. In article 32 of the Labor Law, wages are defined as “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”. In general, the wage, which can also be defined as the main wage or the root wage, must be paid in cash and in return for a job. The employer or employer's representative can pay the fee, as well as third parties. An example of this is the money customers pay for service in restaurants. As a rule, the fee must be paid in Turkish currency and at the latest once a month. If the fee is determined in foreign currency, it can be paid in Turkish currency according to the current rate on the payment day. As a rule, wage payments should be made in a place where employees can easily reach them. In practice, it is done in a central place of the workplace or in its annexes. Payments can also be made to a specially opened bank account. A new application that is becoming widespread is to pay via bank cards.

It is stipulated that the claimant will receive an overtime wage determined by making a discount of $\frac{1}{2}$ based on the presumption, to the amounts calculated by accepting that the claimant works 36 hours a week, with an hour and a half rest between 08:00-23:00, six days a week. In the case at hand, the acceptance of the claim

that the claimant works eighteen hours a week, with a one-and-a-half hour break between 07:00 and 19:00, six days a week, is within the scope of the file, with the reference to the fact that the employees working at the same job in the same workplace cannot work at different hours and that unity should be ensured in practice. Whether it is appropriate or not - The paver operator, who is responsible for spreading and compacting the asphalt, where the road construction work undertaken by the defendant employer requires employees in different positions to work together at the same time. In this working system, where it is not possible to work alone without other employees and which has the obligation to work together, it is accepted that the claimant employee worked eighteen hours a week in the files of the employees who filed a lawsuit on the same date as the claimant based on the same claims and facts, while the claimant working with these employees worked thirty-six hours a week. It would not be true to accept that he did overwork... (Supreme Court Assembly Of Civil Chambers Date: 16.03.2021 File/Decision Number: (7)9-1295/260)

Dispute brought before the Supreme Court Assembly Of Civil Chamber (HGK) through resistance; whether the requirement of the first annulment decision has been fully complied with, whether the claimant's wife M. Ödev has made a statement regarding the transfer of the workplace to the claimant, who is her spouse; here according to the conclusion to be reached, it is necessary to decide on the basis of the minutes kept by the respondent Institution and the service schedules of the insurance holders, and after the contradictions between the notifications made about the insurance holders are resolved, if a decision should or shouldn't be made in such a way that the execution will be possible... (Supreme Court Assembly Of Civil Chambers Date: 15.04.2021 File/Decision Number: 10-2712 /500)

Creating a healthy and safe working environment is one of the most important obligations of the employer. According to Article 77 of the Turkish Labor Law, employers are obliged to take all necessary measures to ensure occupational health and safety in their workplaces, to keep tools and equipment in full, and employees are obliged to comply with all measures taken regarding occupational health and safety. Considering the characteristics of an office, a mining enterprise, an automobile factory, an iron and steel factory, it is clear that very different measures should be taken according to the characteristics of each workplace. In this case, employers will first investigate what the health and safety conditions in their workplaces should be. In the second stage, they will provide the necessary tools - equipment and organization to get rid of the risk factors they have identified. Thirdly, by training their employees, they will teach and try to adopt the workplace rules on occupational health and safety. In the fourth and final stage, they will conduct audits to ensure compliance with the rules and, if necessary, fire those who do not comply with the rules. Employers shall notify the relevant regional directorate in writing, within two working days at the latest, of the occupational accident occurring in the workplace and the occupational disease to be detected.

Issues related to the obligation of taking occupational health and safety measures are covered and processed within the scope of Occupational Health and Work Security course. The lawsuit filed with the request for recourse collection of the

paid compensation is not an annulment action or a lawsuit arising from an administrative contract, the said lawsuit does not have the characteristics of a "full remedy action" within the meaning of the same Law provision, full remedy actions can only be brought directly to the personal right due to any administrative action and transaction. If it is probable and that personal right can be opened by its owners; Therefore, in order for any case to be qualified as a full remedy action, there must first be an administrative action or action, and this action or action must be taken into account. It is also necessary that a personal right has been violated due to... (Supreme Court Assembly Of Civil Chambers Date: 18.04.2007 File/Decision Number: 4-223/223)

For a job to be done, the employer should select suitable employees for this job in the distribution of duties, and pay attention to whether the employees are accustomed to this job or not. As it will be remembered in this regard, there are already some legal limitations. Women and children cannot be employed in heavy and dangerous works. Children in the 14-18 age group should be checked by a doctor while being recruited and every six months. Even without legal restrictions, employers should always consider factors such as age, gender, seniority, education, occupational, physical and mental health. A very important issue, which is not taken into account or taken very little in our country, is the need for employees to undergo psychological tests while being recruited.

Compensating The Tools, Vehicles And Animals That Are Damaged Due To The Work And Belonging To The Employee

Under normal conditions, the employer provides the tools, materials, vehicles and animals necessary for the work, which is the subject of the employment contract. However, in some exceptional cases, the employee can work with his own tools and equipment. For example, when one of the employee comes with his own harness animals to plow a small field owned by the employer. In this case, the employer has to compensate the employee's tools that are damaged or injured due to work. However, if the damage occurred due to the employee's own fault, negligence or fault, the employer is not obliged to compensate the damage.

Accepting that the Ankara Chamber of Commerce Presidency is the principal employer among the defendants, it is appropriate that the subcontractor company and the defendant Ankara Chamber of Commerce Presidency were held jointly and severally liable for the moral damage of the claimant insured employee. (Supreme Court Assembly Of Civil Chambers Date: 02.02.2011 File/Decision Number: 21-739/5)

The Obligation Of Equal Treatment

It is very important and necessary that the employer treats the employees equally in terms of ensuring the peace and tranquility of the workplace. What is meant here is that there is no difference between employees in the same situation. Undoubtedly, there will be some differences in terms of working conditions, including wages, between employees who do different jobs and have different responsibilities in the same workplace.

The employer cannot distinguish between full-time employees and part-time employees, fixed-term employees and indefinite-term employees, unless there are substantial reasons. Unless biological reasons and reasons related to the nature of the job make it compulsory, employees cannot be treated differently in terms of concluding an employment contract, determining working conditions, applying and terminating it for reasons such as gender and pregnancy. Work of the same or equal value cannot be paid lower or higher just because of gender differences. According to Article 31 of the Trade Unions Law, the employer cannot distinguish between unionized and non-union employees. Otherwise, the employee will have to pay an indemnity not less than one year's wage.

If the employer does not treat the employees equally, contrary to the provisions of Article 5 of the Turkish Labor Law, except for union reasons, the employees may demand the rights they have been deprived of, in addition to an appropriate compensation in the amount of their wages up to 4 months (Article 5).

The Obligation To Pay The Employee For His Inventions

In some parts of the workplaces, technical work and research can be done. Employees working in such an environment can sometimes make a new invention. This invention can be an invention that accelerates production, saves materials, reduces product costs, increases product quality, and enables better evaluation of by-products. The employer is obliged to make a payment in accordance with the economic and commercial importance and value of the invention (The Article 336 of The Turkish Code of Obligations).

The details explained above have been supported by the relevant decisions of the Supreme Court Assembly Of Civil Chambers and it's relevant civil departments' decisions.

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Yilmaz Hüseyin,

Student ID- 7263220

Law faculty 4th Grade Studen

H.S. Skovoroda Kharkiv National Pedagogical University

mm.huseyinyilmaz@gmail.com

(Graduate advisor: Doctor of Laws,

professor, acting Head of the Department of Civil Law Disciplines and Labor

Law named after Professor O.I. Protsevsky Olena Kovalenko)

SOCIAL CHANGE IN TURKEY ON LABOR RELATIONS EFFECTS

Labor relations in Turkey began in 1838 Trade Agreement with United Kingdom. By means of this Agreement West capital entered Ottoman Empire. However, there is no capital accumulation on the country which creates industrialization we can say that social change was not realized in this period. In 1923 after establishment of Republic, applied economy policy by which had been wanted to