

## Employment & Labour - Turkey

### New Legislation on Subcontracting Relationships Introduced

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[Employer-Subcontractor Relationship](#)  
[Notification Liability](#)  
[Content of Subcontracting Contracts](#)  
[Determination of Simulation](#)  
[Penalties](#)

On May 15 2008 Law 5763 amending the Labour Law and various other laws was promulgated. This law introduced new obligations in respect of the use of subcontracted labour as regulated under the Labour Law. Accordingly, the Regulation on Subcontracting Relations recently entered into force. The provisions introduced by Law 5763 and the regulation intend to tackle the problems that arise in subcontracting by emphasizing and clarifying the restraints imposed by the Labour Law on the use of subcontracted labour and the regulatory obligations of employers and subcontractors.

#### Employer-Subcontractor Relationship

According to the Labour Law, an employer may assign a specified section of its main activity to a subcontractor for:

- operational requirements;
- reasons of technological expertise; or
- auxiliary tasks related to the production of goods and services in the workplace.

The employer that subcontracts the work is the principal employer and thus is jointly liable with the subcontractor for any obligations arising from the labour and social security laws or the employment contracts of the subcontractors' employees. This joint liability cannot be contractually revoked, altered or transferred. Nevertheless, any limits on the liability of the principal employer within the scope of the subcontracting contract are binding between the parties to the contract. It is further required that the principal employer's employees are not employed at the same time in the same section of the main activity that has been assigned to a subcontractor.

#### Notification Liability

Since employers are frequently inclined to outsource or subcontract certain sections of their main activity, the Regulation on Subcontracting Relations stipulates that a subcontracting contract must be executed in writing between the principal employer and the subcontractor, and that technical conditions that justify the use of subcontracted labour in a section of the main activity must be explicitly stated therein. In addition, subcontractors are required to notify the regional labour directorate within one month of the principal employer-subcontractor relationship being established and to submit the written subcontracting contract and other necessary documents for registration of the newly established workplace. Upon application to the regional labour directorate, the subcontractor's workplace will be registered and a registration number will be provided. Thus, any kind of subcontracting relationship within a workplace is deemed an establishment of a new workplace.

#### Content of Subcontracting Contracts

The regulation stipulates that subcontracting contracts must include the following information:

- the business names and addresses of the workplaces of the principal employer and the subcontractor;
- the name, surname and address of the subcontractor or principal employer as a

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- legal entity or employer representative;
- details of the work assigned to the subcontractor;
- details of the main activity performed at the workplace;
- in the event that a section of a main activity is assigned to a subcontractor, technical explanations regarding the conditions of the operational requirements and technological expertise requirements;
- if determined by the parties, the start and end dates of the work;
- a statement that the principal employer will be jointly liable with the subcontractor for any obligations arising from the labour and social security laws or the employment contracts of the subcontractor's employees;
- details of the section of the workplace where the subcontractor will perform its activities;
- a statement that the rights of the employees who were previously employed by the principal employer before the subcontracting contract will not be restricted in the event that they are recruited by the subcontractor;
- rules of performance for the work assigned to the subcontractor; and
- signatures of the subcontractor and the principal employer or their representatives.

In the event that work is assigned to a subcontractor for reasons of technological expertise and operational requirements, documentation regarding the work within the scope of the subcontracting contract which comprises a list of the work equipment, a certificate of completion and certificates for the operators and technical staff must be annexed to the subcontracting contract in order to certify the subcontractor's expertise.

### Determination of Simulation

According to the newly enacted regulation, the following cases are non-exhaustively considered to constitute simulated subcontracting:

- where part of the work relating to the production of goods and services which does not require proficiency (expertise) is assigned to a subcontractor;
- where a subcontracting relationship is established with an employee (as a subcontractor) who previously worked in the workplace;
- where employees of the principal employer are recruited as employees of the subcontractor with restricted rights; and
- where an agreement is executed by the employer for the purpose of disguising its actual intention (eg, avoiding public liabilities or restricting or eliminating employees' rights arising from their employment contracts, collective labour agreements or labour legislation).

Labour inspectors are authorized to examine the documents of workplaces registered with regional labour directorates in order to determine the existence of simulated subcontracting relationships.

### Penalties

If a subcontractor fails to comply with the obligation of notification of a workplace, a fine of TL112 will be solely imposed on the subcontractor. If the work performed in the subcontractor's workplace is hazardous, the fine is TL1,120 for each employee. However, in the event that a simulated subcontracting relationship is determined, a fine of TL11,200 will be severally imposed on the principal employer and the subcontractor or their representatives.

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