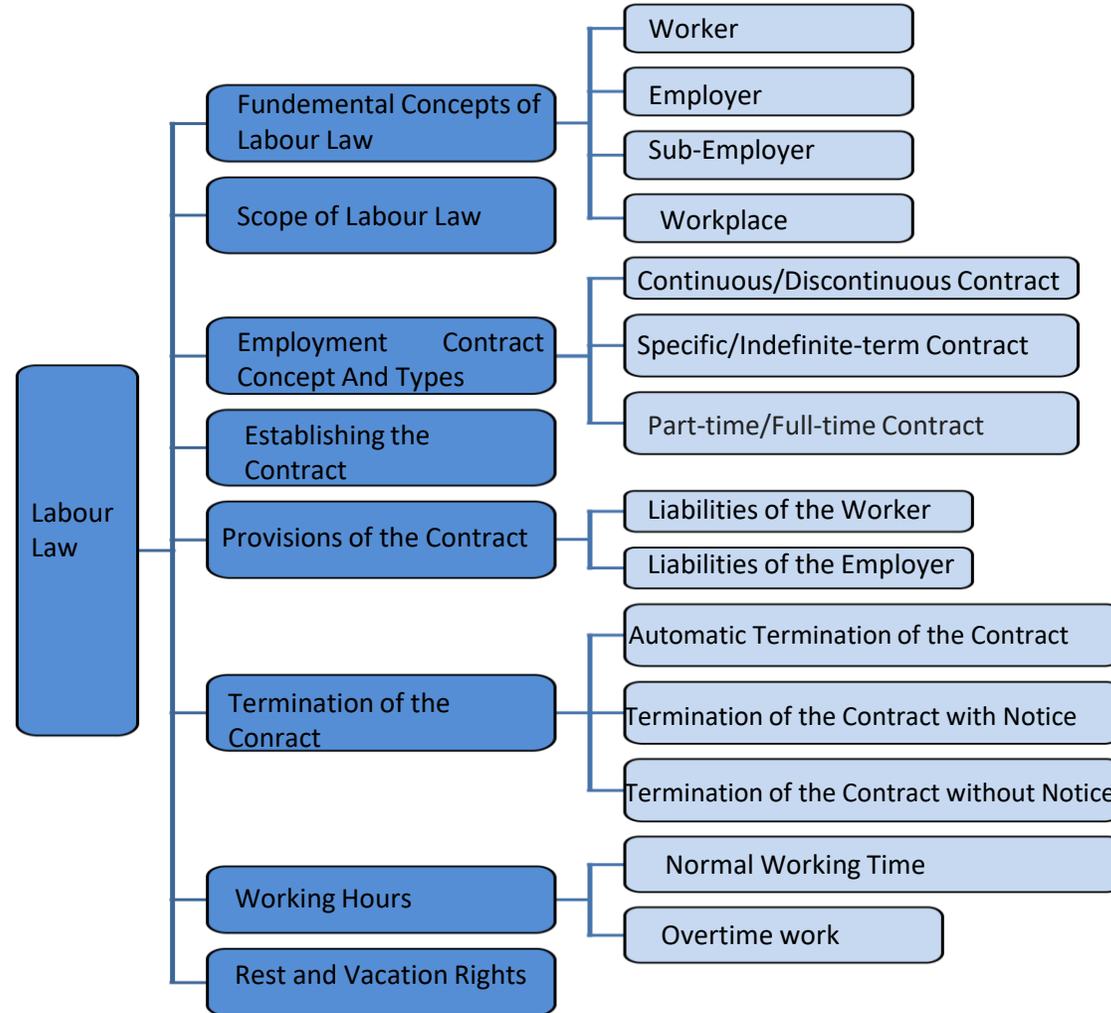


EHS 101 OCCUPATIONAL HEALTH AND SAFETY

Unit 2

Yavuz Cabbar

Labour Law



Worker

The most important of the basic concepts of Labor Law is the worker. A worker is a natural person working on an employment contract. Therefore, based on this definition, legal entities cannot be accepted as workers.

In order for us to speak *of* the worker, the worker has to work for a salary. Although according to our Labor Law, the employee must work for a wage, in the Supreme Court decisions, it is emphasized that it is possible to work for in-kind remuneration. In other words, those who work for housing or for food can also be accepted as workers.

Apprentice

The aim of the apprenticeship establishment is to learn a profession or art and to meet the need for a skilled and trained workforce. Apprentices are not workers. For this reason, they work within the scope of the Vocational Education Law, not the Labor Law.

According to the Vocational Education Law, a person who develops the knowledge, skills and work habits required by the profession in a profession is called an apprentice

Intern

An intern is a person who works with the employer to learn about the work done in a workplace and to improve their knowledge by following the application. Interns are neither workers nor apprentices. The main difference between apprentice and trainee is that the apprentice is the person who learns by doing, while the trainee develops his existing knowledge from a practical point of view.

Employer

An employer is a real or corporate person or a noncorporate institution or organisation employing employees based on an employment contract, (Labor Law art.2). While legal persons cannot be employees, they can become employer.

Sub-Employer

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 workplace of the main employer (the principal employer) and who engages employees recruited for this purpose exclusively in the workplace of the main employer is called “the principal employer subcontractor relationship”.

The employer's representative

The employer's representative is the person acting on behalf of the employer and charged with the direction of work, the workplace and enterprise.

Workplace

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 workplace. 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 workplace 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 workplace.

Scope of the Labor Law

The Labor Law applies to all workplaces, except for the exceptions in article 4 of this law, employers, employer representatives and workers of these workplaces, regardless of the field of activity.

According to Article 4 of the Labor Law, Jobs and persons outside the scope of the law are as follows:

- Transportation of people, animals and goods in seas, lakes and rivers,
- Agricultural and forestry works employing less than fifty workers (including fifty),
- All kinds of construction works related to agriculture within the boundaries of the family economy,
- Handicraft work done in homes,
- Home services,
- Apprentices,
- Sportsmen,
- Rehabilitated persons,
- In accordance with the definition in the Tradesmen and Small Craftsmen Law, workplaces employing up to three people are out of the scope of the labor law.

Employment Contract Concept and Types

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.

Employment Contract Types

Continuous and Discontinuous Employment Contracts

Employment contracts made for jobs lasting more than 30 working days due to their nature are called permanent employment contracts, and employment contracts made for jobs lasting less than 30 working days due to their nature are called non-permanent employment contracts.

A definite (fixed) Term and an Indefinite (open-ended) Term Employment Contracts

In a contract, if the parties have agreed on a fixed-term job, or if it is known or need to know how long the work will last, it calls a definite (fixed-term) employment contract, if a period is not stipulated, It callas an indefinite-term (open-ended) employment contract.

Trial Term Employment Contract

Trial-term employment contracts actually arise when a trial period is imposed on fixed or indefinite-term employment contracts. The purpose of the trial period in these contracts is to ensure that the employer has information about whether the employee is suitable for work and that the worker knows the working conditions. As a rule, the trial period cannot exceed two months. However, the parties can extend this period up to four months with a provision they will put in the collective labor agreement. During the trial period, the parties can terminate the contract without notice and compensation.

Working On Call

On-call work is a special type of part-time work and it is the contracts that the worker starts to work upon the employer's call when needed by the employer. For example, if the employer receives a large order, it calls the workers with whom they have previously contracted according to the on-call work procedure to fulfill this order. These workers will work during the order period and they will leave the workplace when the pre-agreed time is completed.

If the parties do not determine how long the worker will work in a time frame such as a week, month or year, the weekly working time is deemed to be 20 hours. The employer has to work the worker at least four hours a day at each call. Again, unless otherwise agreed by the contract, the employer has to make the call at least four days in advance.

ESTABLISHING THE EMPLOYMENT CONTRACT

In order for the employment contract to occur, it is sufficient for the employee and employer to express their free will to each other on this matter. Again, the employer is free to conclude an employment contract with any employee and employee is the same. However, there are some exceptions to this freedom of contract. In other words, while the employer is obliged to make an employment contract with some employee groups, it is prohibited from making employment contracts with some employee groups. The persons who are prohibited from making employment contracts are as follows;

- Employment of children under the age of 15 is prohibited. However, it is possible for children over the age of 14 to be employed in light jobs that will not harm their health and development, school, vocational education and vocational orientation programs, or their ability to benefit from education.
- Workers under the age of 18 cannot be employed in work to be carried out underground or underwater such as mining, cable laying, sewage and tunnel construction, and for night work in industry. Women of all ages are prohibited from working under ground and underwater.
- Work permits are required for foreign workers to be employed.
- Workers whose health condition hinders their work should not be employed.

PROVISIONS OF THE EMPLOYMENT CONTRACT

Since the employment contract is a contract that imposes obligations on both sides, the workers and employers have mutual obligations and responsibilities.

Worker's Obligations

Worker's Personal Performance (Fulfillment) Obligations

According to the Turkish Code of Obligations, the worker does the work himself, unless there is a contrary regulation. For this reason, the service contract ends with the death of the worker.

Since the employee's personal performance obligation is regulated as a rule, a contract can be made on the contrary.

Worker's Obligation to Comply with Working Conditions

The employee is obliged to comply with the mandatory rules of labor law, the provisions of the labor contract and the instructions in accordance with the legislation given by the employer while fulfilling his duty to work.

Worker's Loyalty Obligation

Loyalty obligation includes the obligations to protect the interests of the employer and the workplace and to avoid any behavior that may harm the employer in economic, commercial and professional terms by the employee

Loyalty obligation also includes the obligation of secrecy. The worker cannot use the information such as production and job secrets that he / she has learned while fulfilling his duty to work for his / her benefit or disclose to others.

Worker's Non-Competition Obligation

The worker and the employer may make a provision in the employment contracts they have signed between them or in the collective bargaining agreement with the unions, stating that the worker will not compete with the employer after the end of the contract.

The worker who violates the non-competition agreement is obliged to compensate the losses of the employer incurred due to the breach of this obligation.

Employer's Obligations

Employer's Wage Payment Obligation

The most basic obligation of the employer arising from the employment contract is the wage payment obligation against the employee's obligation to work. Wage is a monetary amount paid by the employer or third parties for a work done by the worker.

There are more than one type of wage. These are time based salary, piece rate, lump-sum wage, percentage fee, commission fee, profit share, premium and bonuses.

According to Article 32 of the Labor Law, as a rule, wages of workers will be paid in Turkish currency at the workplace or to the bank account of the employee opened specially. According to the Labor Law, the wage must be paid once a month at the latest after the work is done by the worker. However, this period can be reduced to one week with employment contract or collective agreement. Statutory limitation on wage claims is five years.

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 and the employer cannot terminate the employee's employment contract due to the employee's non-working. Again, the employee's employment contract whose wage is not paid on time, can also be terminated with just cause.

The fundamental rights and obligations of the worker and employer regarding occupational health and safety are regulated in the Occupational Health and Safety Law No. 6331, adopted in 2012. According to the Occupational Health and Safety Law, every employer is obliged to protect the health of the workers working in the workplace, to ensure their occupational safety, to take the necessary precautions, to provide the necessary trainings regarding the work they will perform, to inspect them, and to have the necessary tools and equipment. Again, the employer is obliged to protect and respect the personality of the employee in the business relationship and to ensure an order in accordance with the principles of honesty in the workplace, and to take the necessary measures to prevent the workers from being psychologically and sexually harassed and those who have been subjected to such harassment from further harm.

Equal Treatment Obligation

The employer cannot discriminate based on language, race, color, gender, disability, political opinion, philosophical belief, religion and sect or similar reasons in the business relationship. This situation is also regulated in Article 10 of our Constitution.

The employer cannot differently treat the part-time worker against the full-time worker and the worker working for a certain period against the indefinite-term worker, unless there are substantial reasons.

The employer cannot discriminate directly or indirectly against a worker in concluding, establishing, applying and terminating the employment contact, because of gender or pregnancy, unless biological or reasons related to the nature of the work require it. Again, the employer cannot pay lower wages for a job of the same or equal value due to gender.

TERMINATION OF THE EMPLOYMENT CONTRACT

Termination of Employment Contract Without Notification

In practice, although the employment contracts generally end with termination, there are also reasons that break the employment contracts without termination.

The parties to the employment contract can always break the employment contract between them. This state of breaking employment contract without termination is also called İKALE

If the employee dies while the employment contract continues, the employment contract will automatically terminate. In other words, the heirs of the worker cannot be a party to the employment contract. For this reason, death is one of the cases of termination without notification.

Employment contracts made for a certain period will expire with the end of the period. However, the parties can agree and extend the employment contract.

Termination of the Employment Contract with Notification

Employment contracts can always be terminated by the employee or employer with a unilateral declaration of will. Here, termination with this unilateral declaration of will is called termination with notification. Termination takes effect after the notification of termination to the other party.

The termination notification passes after the other party is received and the parties wait the required periods are regulated in the Labor Law. So the parties wait for these times and termination takes effect at the end of these periods.

- 6 months- 2 weeks
- 6 months-1.5 years between-4 weeks
- between1.5 years and 3 years- 6 weeks
- Over 3 years-8 weeks

Termination of Employment Contract With Indefinite Termination Notice (Justification of termination with a valid reason)

If there are reasons that make the business relationship between the parties intolerable and which cannot be expected to continue due to the rule of integrity, the contract can be terminated immediately without complying with the notice periods. This situation is called the termination of the employment contract for justified valid reasons.

WORKING TIMES

Normal Working Times

Working time is the time the worker is employed, spent at work. Normal working time per week is up to 45 hours and daily working time is 11 hours at most. The parties may distribute the 45-hour weekly working time equally to the working days or may distribute them differently, but it does not exceed 11 hours per day.

There are exceptions to normal working hours of 45 hours per week and 11 hours per day.

- For jobs regulated by the Regulation on Jobs Required to Work 7.5 Hours or Less per day, the maximum daily working time is 7.5 hours. Night work cannot exceed 7.5 hours a day.
- Workers who are pregnant and who have just given birth and breastfeeding cannot be employed more than 7.5 hours a day.

Overtime Work

Overtime work is work which, exceeds forty-five hours a week. Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.

if a working period of less than 45 hours per week is specified in the contract, extra work refers to the work done between this specified period and 45 hours. Each extra hour shall be remunerated at one and a quarter times the normal hourly rate.

For example; Assume parties agreed on a maximum of 35 hours of work will be done per week, and if the employee worked for 48 hours in a week, the work from 35 hours to 45 hours is called extra work, and the work from 45 hours to 48 hours is called overtime work.

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.

Rest, Holiday and Vacation Rights

Rest breaks:

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 .
- 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.

Weekly Rest Day:

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

Remuneration for holidays:

Employees in workplaces 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.

Annual Leave With Pay and Leave Periods:

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. 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.

Annual leave with pay may not be divided by the employer. This leave must be granted without interruption in conformity with the days. However leave periods 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.

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.

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.

Summary of Unit 2

A worker is a natural person working on the basis of an employment contract, according to the Labor Law.

An employer is a natural or legal person or institutions and organizations that do not have a legal personality who employs workers for wages in any job based on an employment contract.

The Labor Law applies to all workplaces, except for the exceptions in article 4 of this law, employers, employer representatives and workers of these workplaces, regardless of the field of activity.

Employment contract: A contract consisting of one party undertaking to work as a dependent and the other party to pay wages.

There are multiple types of employment contracts: Permanent, non-permanent employment contracts; definite, indefinite employment contracts, full-term part-term employment contracts; trial term employment contracts and on-call work.

In order for the employment contract to occur, it is sufficient for the employee and employer to express their free will to each other on this matter. Again, the employer is free to conclude an employment contract with any employee and employee is the same. However, there are some exceptions to this freedom of contract. In other words, while the employer is obliged to make an employment contract with some employee groups, it is prohibited from making employment contracts with some employee groups.

Workers have some obligation in the workplace as;

Worker's Personal Performance (Fulfillment) Obligations

- Obligation to Comply with Working Conditions
- Loyalty Obligation
- Non-Competition Obligation

The employer has also some obligations arising from the employment contract. These:

- Wage payment obligation
- to take care of the worker
- and to perform equal treatment.

Working times are the time that the worker has spent at the workplace. Working time is the time the worker is employed and spends at work.

Normal working time per week is up to 45 hours and daily working time is at most 11 hours. Overtime work is work which, exceeds forty-five hours a week.

if a working period of less than 45 hours per week is specified in the contract, extra work refers to the work done between this specified period and 45 hours.

Rest Breaks are the compulsory leaves to meet the daily needs of the worker such as eating, drinking and resting between daily working periods.

Weekly rest day or weekend is the leave given to the worker to rest and must last 24 hours without interruption.

Annual leave with pay is a leave of at least 14 days, depending on the employee's seniority, in return for one year's work. As a rule, the employee must use his earned Annual leave with pay without dividing. However, with the agreement of the parties, the duration of the leave can be divided, but it cannot be less than 10 days.

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.