



# **WORKING CONDITIONS FOR WOMEN IN TURKISH LABOR LAW**

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**I. The Republic of Turkey is a social state governed by the rule of law**  
(The Turkish Constitution of 1982, Article 2). **The objective of a social state is to provide specific legal protection for individuals and groups that are weak in social and economic relations.**

- When women employees' gender-based characteristics, family responsibilities and liabilities with regard to child care and education are considered together; some special conditions were required to be created in favour of women employees in their working lives.
- As in international rules of law, the working conditions of women workers have been specially regulated in the Turkish Labour Act.
- Either while making a labor contract or in the continuation phase and expiration phase of the contract; a set of important regulations were included in the Labor Legislation that is aimed at the protection of women workers.



## **II. LEGAL BASIS FOR THE PROTECTION OF WOMEN WORKERS**

### **1. The Constitution**

- One of the most fundamental principles of Constitution of the Turkish Republic is the principle of equality before the law. According to Article 10 of the Constitution, All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect or any such considerations. Every kind of unjust discrimination among employees is forbidden. With this fundamental principle; as a result of the referendum held on 12 September 2010, the law regarding the constitutional amendment allowing for positive discrimination in favour of women was enacted.
- In accordance with the current constitution, it has been clearly decreed that special measures be taken to enable women workers to conduct their duties such as family liabilities, child care and education without any failure, regarding the gender-related properties of women workers. Women and men shall have equal rights. The State has the duty to ensure that this equality is put into practice. The measures to be taken with this purpose shall not be interpreted in defiance of the principle of equality.



The section entitled 'Social and Economic Rights and Duties' of the Constitution, includes provisions with regard to Labor. According to Article 50 of the Constitution regulating working conditions and right to rest; "No one shall be required to perform work unsuited to his/her age, sex and capacity. Minors, women and persons with physical and mental disabilities shall enjoy special protection with regard to working conditions."



## **2. Laws and Regulations**

- The Turkish Labor Legislation aimed at women generally sets forth the prohibition of gender discrimination against women workers in employment relations and special provisions protecting women workers in cases of pregnancy, childbirth and maternity, in organization of work (working conditions); and in case of termination of labour contracts.
- The most comprehensive regulations for women workers take place in the Labor Law no. 4857 and the Regulations issued basing upon this law.
- The provisions concerning labor contracts of the Law of Obligations apply to women workers for whom the provisions of Labor Law are not implemented due to being employed in works (for example household services) mentioned in Article 4 of the Labour Act, and to the ones engaged in work for an indefinite period and in subjects not regulated in the Labour Act. In addition to these; some provisions in favour of women journalists are taken place in the Press Labour Act no. 5953.

### **III. PROTECTIVE MEASURES FORESEEN FOR WOMEN WORKERS IN EMPLOYMENT RELATIONS**

#### **1. Protection of Women Workers with Regard to Labor System (Organization of Work)**

##### **A) Employment of Women in Arduous and Dangerous Work**

Employment of women workers is prohibited in some works taking place in the Regulation of Arduous and Dangerous Work. Yet; women who have been graduated from schools providing expertise and vocational education and acquired this profession may be employed on arduous and dangerous works in conformity with their fields of expertise and professions.







## **B) Restrictions on Underground and Underwater Work**


Women must not be employed on underground or underwater work like in mines, cable-laying and the construction of sewers and tunnels (Labor Act, Art.72).

## C) Restrictions on Night Work



- The employment of women on night work is not prohibited within the Law. Yet; according to the Labor Act, children and young employees under the age of eighteen must not be employed on industrial work during the night. The principles and methods for employing women who have completed the age of eighteen on night shifts shall be indicated in the 'Working Conditions for Women Workers in Night Shifts' Regulation to be prepared by the Ministry of Labor and Social Security upon receiving the opinion of the Ministry of Health (Labor Act, Article 73).
- It is forbidden to employ women workers at night shift more than 7,5 hours under any circumstances.
- For employing women workers on night shift, their medical reports must be received prior to the starting date of employment. These workers must undergo repeat medical examinations once in every 6 months (By-law, Article 7).



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- Employers in all types of workplaces outside the municipal boundaries and employers in workplaces within the municipal boundaries where shuttling by usual vehicles is compulsory within the hours of shift change shall be held liable for transferring women workers to be employed on night shift from the centre nearest to her residence to the work place by appropriate vehicles (By-law, Article 6).
  - If the husband of a women worker is employed in the same workplace or in a separate workplace where the work is conducted by shifts, upon the women worker's request, the night shift shall be scheduled in such a way that it does not coincide with the night shift of the husband. The request of a husband and wife employed in the same work place to work in the same night shift is to be satisfied within the bounds of possibility by the employer (By-law, Article 8).


## **D) Violation of the Provisions on Organization of Work**

- In the provisions with regard to organization of work of the Labor Act no. 4857, women workers are provided with the opportunity of positive discrimination, and it is envisaged that the employer or his representative offending against these provisions shall be liable to an administrative fine. According to article 104 of the Labor Act, the employer or his representative shall be liable to a fine of 1.113,00 Turkish Liras if he acts contrary to the provisions regarding organization of work.
- It should be specified that, if the women worker has been employed on underground or underwater work despite of being contrary to the legal provisions, the labor contract shall be deemed invalid. However; the labor contract is not declared null and void from the beginning but it is deemed invalid for future times.

## **2. Protection of Pregnant Workers and Workers Who Have Recently Given Birth**

In principle women employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement. In case of multiple pregnancy, an extra two week period shall be added to eight weeks before confinement during which women workers must not work. However a women employee whose health condition is suitable as approved by a physician's certificate may work at the establishment if so she wishes up until the three weeks before delivery.







In this case the time during which she has worked shall be added to the time period allowed to her after confinement.


The time periods mentioned above may be increased before and after confinement if deemed necessary in view of the women employee's health and the nature of her work. The increased time increments shall be indicated in the physician's report (Article 74 of the Labor Act, Article 11/2 of the Regulation on Working Conditions for Pregnant and Nursing Workers)



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- Labor contracts of women workers are suspended during the period they are not engaged to work. No wages are to be paid for the period during which the employee fails to report to work (Labor Act, Article 25/1-b).
  - In case of maternity of the women insurance holder, she shall be provided with benefit for temporary incapacity by the Social Security Institution for each day of not working (Art. 16/2, 18/1-c of the Social Insurance Law no. 5510).



On the contrary, according to the Press Labor Law no. 5953 “in case of pregnancy, the women journalist shall be granted leave of absence starting from the seventh month of her pregnancy to the end of the second month of delivery. During this period, the establishment shall pay half of the last wage received by the journalist. If the birth fails or the baby is born dead, then the women journalist is paid this wage for one month after the occurrence of the incident. Journalist’s other sources of income such as income from insurance or other institutions do not affect this payment” (Art.16/7).

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- If deemed necessary in the physician's report, the pregnant employee may be assigned to lighter duties that are suitable for her physical condition. In this case no reduction shall be made in her wage.
  - Besides, the women employee shall be granted leave with pay for periodic examinations during her pregnancy.
  - If the women employee so wishes, she shall be granted an unpaid leave of up to six months after the expiry of the six weeks, or in the case multiple pregnancy, after the expiry of the eighteen weeks. This period shall not be considered in determining the employee's one year of service for entitlement to annual leave with pay.
  - A women worker, starting from the determination of her pregnancy by a physician's report until delivery, and nursing workers for the period of six months beginning from the date of birth, shall not be obliged to perform night work. For breastfeeding workers, this period may be extended to one year if the worker presents a medical certificate stating that it is necessary for her health or her child's.



- A worker who is deemed unsuitable to be employed in arduous and dangerous work in a physician' report received after having been examined shall not be engaged in these works for the first six months during confinement period
- Workers who have recently given birth and nursing workers can not be engaged in work more than seven-half hours per day
- Women employees shall be allowed a total of one and a half hour nursing leave in order to enable them to feed their children below the age of one. The employee shall decide herself at what times and in how many installments she will use this leave. The length of the nursing leave shall be treated as part of the daily working time. Nursing leave continues until the baby reaches the age of one.



According to Regulation, regardless of age and marital status, workplaces employing 100 and 150 women workers are to establish separate nursing rooms which are not further than 250 m from the workplace for breastfeeding and day care of the children under age of 1.

Again regardless of age and marital status, workplaces employing more than 150 women workers have to establish a nursery that is separate and near to the workplace for day care and breastfeeding of children between 0-6 years of age. Employers under the legal obligation of establishing day nurseries should also establish pre-school classes. The employer is obliged to provide transport if the nursery is located farther than 250 m away from the workplace (Art.15).



### **3. Protection of Women Workers against Gender-Based Discrimination**

#### **A) Employer's Liability of Equal Treatment (Prohibition of Discrimination)**

- As is the Constitution of the Republic of Turkey, the principle of equality and equal treatment is adopted in the Labor Act No. 4857. According to the Act; No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons is permissible in the employment relationship (Art.5/1). In this regard, unless there are just or objective reasons, the employer must not make any discrimination arbitrarily against employees with equal characteristics.
- Actually, gender discrimination is one the most frequently encountered types of discrimination in employment relationships. The prohibition of gender discrimination is generally considered as the discrimination against women employees. Regulations especially made against women employees with regard to the periods of pregnancy, confinement and maternity and in order to remove inequalities are not deemed contrary to the principle of equality.

## Prohibition of Discrimination

- According to the Labor Act, except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the execution of his (her) employment contract due to the employee's sex or maternity.
- Differential remuneration for similar jobs or for work of equal value is not permissible.

Application of special protective provisions due to the employee's sex shall not justify paying him (her) a lower wage (Art.5).



## **B) Sanctions for the Violation of Discrimination Ban**

- If the employer violates the liability of equal treatment in the execution or termination of the employment relationship, the women employee may demand compensation up her four months' wages plus other claims of which she has been deprived (Labor Act, Art.5/6).
- Moreover, the employer or his representative who acts in violation of the principle of equal treatment foreseen in Article 5 of the act shall be liable to a fine of 108 TL. for each employee in this category (Art.99/1).
- The burden of proof in regard to the violation of equal treatment liability by the employer rests on the employee. However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer (Art.5/7).



## **IV. PROTECTION OF WOMEN WORKERS IN TERMINATION OF LABOR CONTRACTS**


### **1. Protection Of Women Workers Against Termination**

#### **A) In Case Of Termination With Valid Reasons (Through a Term of Notice)**

- The system of employment protection was accepted within the context of the Labor Law No. 4857. For terminating the contract for indefinite period of the employee, the alleged termination must depend on a valid reason. According to Article 18 of the Act, the employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service.

Especially the following, inter alia, shall not constitute a valid reason for termination with regard to women employees:

- Sex, marital status, family responsibilities, pregnancy, delivery and similar reasons.
- Absence from work during periods when women workers must not be engaged in work, as foreseen in Article 74 of the Law.
- Temporary absence from work during the waiting period due to illness or accident foreseen in Article 25 of the Labor Act, subsection I (b)



On the other hand, except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the termination of his (her) employment contract due to the employee's sex or maternity (Art.5/3).

Nevertheless, because of the stated reasons, the women employee who falls in the scope of employment protection, who alleges that no reason was given for the termination of her employment contract or who considers that the reasons shown were not valid to justify the termination shall be entitled to lodge an appeal against that termination with the labor court within one month of receiving the notice of termination (Art.20).

If the court concludes that the termination is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage her in work within one month, compensation to be not less than the employee's four months' wages and not more than her eight months' wages shall be paid to him by the employer (Art.21). The women employee is also entitled to demand her other legal rights if the conditions are available.

## **B) Just Cause Termination (non pre-notified)**

- According to the good faith rule, if the continuation of the labor contract becomes obnoxious for one of the parties, the party who is entitled to the right of termination may immediately terminate the labor contract.
- Absence of the women employee from work even though a certain time period has passed after confinement, is accepted as a just reason providing the employer with the right of non pre-notified termination.
- According to article 74/1 of the Labor act, Women employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement. The labor contract of the women employee is suspended during these leaves. The employer can not terminate the employee's labor contract depending on this reason. For acquiring entitlement to the right of termination with a just cause in favor of the employer, after the sixteen weeks stated in Article 74 of the Labor Act, notification periods (2-8 weeks) to which the employee will be liable in accordance with article 17/2 of the Labor Act depending on his/ her seniority and a period of six weeks shall be added to this period.
- For example, before terminating an employment contract made for an indefinite period of an employee who has been working in the workplace for one year, the employee must receive a notice of termination 4 weeks before the termination of the contract. The employer may terminate the employment contract at the end of six week period to be added to the notice period of four weeks, starting from the expiration of maternity leave of eight weeks on the ground that the women employee has not started to work after confinement.

**The women employee is entitled to break the employment contract for justifiable reasons if she encounters situations violating the rules of morality and good will and similar cases.**

For instance; she is entitled to terminate the employment contract for justifiable reasons if the employer is guilty of any speech or action constituting an offence against the honor or reputation of the employee or a member of the employee's family, or if he harasses the employee sexually; or if in cases where the employee was harassed sexually by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct (Art.24/2- (b) and (d) of the Labor Act).





## **2. Right to Terminate Labor Contracts of Women Employees Who Have Married**

In order to be entitled to severance payment, the employee should have minimum one year of seniority and the labor contract must have been terminated by reason of a circumstance foreseen in Law. If the labor contract is terminated through a term of notice by the employee, the employee shall not be entitled to severance payment as a rule.


One exception of this rule is that a women employee who has at least one year seniority and quitted employment of her own accord within one year starting from the date of marriage, may be legally entitled to severance payment . This one-year period is a lapse of time. After this period has passed, the women employee may not claim severance payment even if she has unilaterally broken the labor contract by reason of marriage



### **3. Legal Consequences of Unjust Termination**


If the right to terminate is used against the objective good-will rules, the woman employee in the scope of employment protection shall be entitled to reinstatement by adjudication decision. If legal conditions have realized, the employee who falls outside the scope of employment protection or who is in the scope of employment protection but has not been reemployed despite the court's decision of reinstatement, and who has been exposed to invalid or unjust termination shall be entitled to claim for severance payment, notice compensation and other labor receivables.





Moreover, in cases where employment contracts of employees who fall outside the application scope of employment protection have been ended by the abuse exercise of the right to terminate, the employee shall be paid bad faith compensation amounting to three times the wages for the term of notice (Labor Act, Art.17/6). An employee in the scope of employment protection shall not have such right to claim.

If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, then the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer (Article 21/1 of the Labor Act) This compensation mentioned as 'compensation for employment protection' in practice and in doctrine, is calculated depending on the seniority of the employee and the nature and reasons of the termination



The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer (Art.20/2 of the Labor Act).

## **V. CONCLUSION**

The Republic of Turkey who applied for membership to the European Union, with the purpose of harmonizing with the European Union Legislation, has made important regulations in its domestic legislation within the last ten years. In parallel with the contracts and directives of the European Union, substantial amendments and new regulations have been launched firstly in the Labor Act No. 4857 and in the Labor Legislation. Turkey has taken considerable steps towards positive discrimination intended for women by giving place to special protective regulations for women employees in Turkish Constitution, in some acts and regulations, especially with regard to equality of women and men and gender discrimination.

Of course, it is possible to encounter some inadequacies and inconveniences in the application of the legislation provisions. However, it is also possible to say that an important progress has been made with regard to women employees in the current situation. The exact application of positive legal regulations in business relations is directly proportional to social and economic conditions in the country. Nonetheless, women employees are supposed to be aware of the rights provided and stand for these rights.



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- Thank you for listening