

Monthly Updates

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Taboğlu

THE REGULATION ON REMOTE WORKING

The Regulation on Remote Working has been published in the Official Gazette dated 10 March 2021 and numbered 31419 and entered into force on the same day (the “**Regulation**”). While the concept of the remote working has been introduced with Article 14 of the Labor Law numbered 4857 (the “**Labor Law**”), with the Regulation, the procedures and the principles of remote working have been regulated. This Monthly Updates aims to provide a brief explanation on the Regulation and highlight the essential novelties introduced therein.

Scope of the Regulation

As per the Regulation, remote working is defined as an employment relationship, which is established in writing, based on the principle that the employee performs the work at home or outside of the workplace with technological communication tools within the scope of the business organization setup by the employer. Accordingly, the remote workers, which are employees that performs all or part of their works by remote working (the “**Remote Worker**”) and their employers (the “**Employer**”) shall be subject to the Regulation. However, the Regulation does not allow remote working in jobs that involve working with hazardous chemicals and radioactive substances; processing such chemicals and substances; and working with the wastes of such chemicals and substances; or working processes that have a risk of exposure to biological factors.

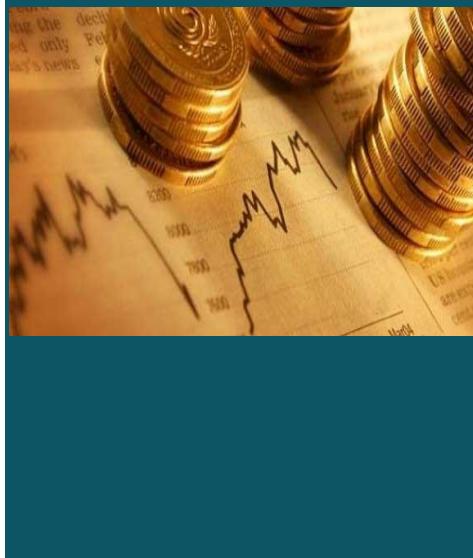
Transition to Remote Working

As per the Regulation, the employment relationship can be established directly with a remote employment agreement (the “**Remote Working Agreement**”) or the existing employment agreement can also be converted into a Remote Working Agreement, with the mutual agreement of the Remote Worker and the Employer. However, in the event that remote working is implemented in whole or part of the workplace for compelling reasons specified in the legislation, the employee’s request or consent shall not be sought for the transition to remote working.

Additionally, the employee shall be entitled to make a written request to the Employer to transition to remote working. Such request shall be evaluated by the Employer in accordance with the procedure determined in the workplace. Accordingly, when evaluating such request, the Employer shall consider whether the qualifications of the job and the employee are suitable for remote working. Moreover, the Employer shall be obliged to notify the employee in writing with regards to such request within 30 days from the date of the request. If the request is accepted by the Employer, the Remote Working Agreement shall be executed by and between the Employer and the Remote Worker. Any time after such transition, the Remote Worker shall be entitled to make a request to the Employer to return to work at the workplace subject to the same procedure.

The Form and the Content of the Remote Working Agreement

According to the Regulation, the Remote Working Agreement shall be made in writing. Moreover, (i) the method of performing the work; (ii) the duration and the place of the work; (iii) the salary and its payment; (iv) working tools and equipment provided by the Employer and the obligations of the Remote Worker regarding the protection of such; (v) matters regarding the communication to be established between the Remote Worker and the Employer; (vi) provisions with regards to general and special working conditions for remote working; (vii) the payment of the necessary expenses which are directly related to the performance of the work; and (viii) the scope of the data to be protected must be included in the Remote Working Agreement.



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Additionally, the following matters can be mutually determined by the Remote Worker and the Employer:

- (i) the method of covering the expenses arising from arrangements with regards to the remote working place; and
- (ii) the working hours during remote working within the framework of the limitations stipulated in the Labor Law. Moreover, in case of the written request of the Employer and the consent of the Remote Worker, overtime work to be performed by the Remote Worker during the remote working shall be carried out in accordance with the Labor Law.

In addition, arrangements regarding the remote working place shall be completed before the commencement of the work.

Obligations of the Employer

In line with the Regulation, following obligations have been imposed on the Employer in case of transition to remote working:

(i) The Procurement of the Working Tools and Equipment and the Determination Regarding the Usage of Such

According to the Regulation, unless otherwise stated in the Remote Working Agreement, the Employer is obliged to provide the Remote Worker with the necessary working tools and equipment to produce goods or procure services. Moreover, the Employer is also obliged to inform the Remote Worker clearly and understandably with regards to the principles of the usage, maintenance and repair conditions of such working tools and equipment. Additionally, in the event that the working tools and equipment are procured by the Employer, the Employer is obliged to (i) provide a list of working tools and equipment, indicating their price on the date of delivery, to the Remote Worker in writing; and (ii) keep a copy of such list signed by the Remote Worker in the Remote Worker's personal file. However, if such list is specified within the Remote Working Agreement, such obligations shall be deemed to be fulfilled.

(ii) Taking Measures Regarding Data Protection

As per the Regulation, the Employer shall be obliged to (i) inform the Remote Worker with regards to the business rules and the relevant legislation regarding the protection and transfer of the data related to the workplace and the work; and (ii) take the necessary measures for the protection of such data. Nonetheless, the Remote Worker shall be also obliged to comply with the business rules determined by the Employer in order to protect such data.

(iii) Taking Measures Regarding Occupational Health and Safety

In line with the Regulation, the Employer shall be obliged to (i) inform the Remote Worker with regards to occupational health and safety measures; (ii) provide the Remote Worker with the necessary trainings on such matter; (iii) procure the health surveillance for the Remote Worker; and (iv) take necessary occupational safety measures regarding the equipment provided to the Remote Worker, taking into account the nature of the work.

Conclusion

In the current Covid-19 pandemic period, where remote working is frequently applied, the Regulation aims to regulate the principles and procedures with regards to remote working. In this regard, the Regulation stipulates (i) the persons subjected to the Regulation and the jobs that cannot be done with remote working; (ii) the form and the content of the Remote Working Agreement; (iii) the transition to remote working; and (iv) the obligations of the employer with regards to procurement working tools and equipment, data protection and occupational health and safety. However, further matters regarding the application of the Regulation shall be formed with practice.

The aim of this Monthly Updates is to give an executive summary on certain legal matters. This has been prepared for information purposes only and does not constitute any legal advice. Thus, one should not rely on it for specific advice. For further information or advice please contact Taboglu Attorneys at Law, a full-service law firm based in Istanbul.