

MEASURES AND RECOMMENDATIONS FOR WORKPLACES AND WORK ENVIRONMENT IN RELATION TO CORONAVIRUS PANDEMIC

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A. INTRODUCTION

Coronavirus, which has been detected in Wuhan China in December 2019 and spread very rapidly since then, and that was recently identified as a global epidemic (pandemic) by the World Health Organization, threatens human health and life in a crucial manner.

The usual flow of our daily, family, social, educational and business life has changed with the initial measures taken in public against Coronavirus. It is likely that these measures will continue to be taken incrementally.

In this respect, our critical memorandum was published on March 13, 2020 where Coronavirus may be evaluated as force majeure for the performance and obligations of the commercial relations and contracts to which companies are a party to depending the merits of each case.

In this memorandum, the practices, measures and recommendations to that aim have been compiled under various titles regarding the employees, workplaces and the work organization by considering the relevant regulations¹.

B. A PRO-ACTIVE AND EFFICIENT MANAGEMENT APPROACH

- It is important that the company management convenes immediately and **forms a working group (to be called the Emergency Action Group)** consisting of at least one senior manager (board member), unit managers, an occupational health and safety expert, an occupational physician and a lawyer. The Emergency Action Group should manage this period pro-actively and by following it closely, making a risk assessment, creating action plans, meeting periodically within a set schedule and in case of emergency, assembling as soon as possible (shall be regarded healthier meeting remotely by using technological means whenever possible) and record every action and meeting.
- In addition, **the Occupational Health and Safety Board shall also meet immediately** and carry out activities covering all workplaces within the company in coordination with the Emergency Action Group.
- Risks should be detected rapidly. **Risk groups and areas should be identified.** Persons who have recently traveled abroad, who suffer from chronic diseases such as shortness of breath or blood pressure, who have a history of cancer disease, who have lung problems besides food production lines and its employees are such risk groups.

¹ Code of Obligations, Labor Law, Occupational Health and Safety Law, Personal Data Protection Law

Measures should be taken rapidly and by giving priority to the afore mentioned risk groups.

- **Employees shall be informed as such.** Notifications about the Coronavirus, including measures that can be taken both in daily life and in workplaces, shall be made by taking the opinion of a doctor and a specialist, information notes shall be prepared for this purpose and be delivered to employees through physical or electronic means, announcements and brochures shall be posted in workplaces.

C. WORKPLACES AND WORK ENVIRONMENTS COMPATIBLE WITH OCCUPATIONAL HEALTH AND SAFETY AND WITH REDUCED RISKS

Employers are obliged to apply the occupational health and safety measures in workplaces and preserve the occupational health and safety of their employees. An incidence occurring in the workplace could be considered as an occupational accident. (With the decision dated 15.4.2019, the 21. Civil Chamber of the Supreme Court considered the death of an employee as occupational accident as a result of the H1N1 virus where the employee has been infected abroad).

Nonetheless, in accordance with the Turkish Code of Obligations; the employer is obliged to take all necessary measures to ensure occupational health and safety in the workplace, keep all the necessary tools and equipment; and in return employees are obliged to comply with all kinds of precautions regarding occupational health and safety.

- Since the Coronavirus is a pandemic and spreads by physical contact, **companies, by taking the initiative, can consider the temporarily closing of certain sections, lines and units in their workplaces if applicable**, to contribute to slowing the spread of the pandemic.
- **Maximum hygiene measures shall be put into operation in workplaces, especially in production units, parts and lines.** In this regard;
 - **Hand disinfectants shall be placed** at the main and floor entrances of the workplaces and the lift heads, the entrance of crowded and multi-purpose places such as meeting rooms, dining halls, libraries, and open offices, and if possible, pocket size disinfectants should be distributed to each employee.
 - **Especially the common dining halls, toilets, sinks, changing rooms and showers shall be cleaned and disinfected.** Adequacy of cleaning materials (such as soap, toilet paper) shall be checked frequently. Employees who

will receive such services shall be provided with an informative training in the company from occupational health and safety experts and occupational physicians.

- **With the physician's advice and with a demonstrative first time application, protective materials** such as gloves, mouth and nose covering masks **shall be used** in the workplace, especially in the production lines, and by the visitors of such lines.
- **Known symptoms of COVID-19 shall be observed on employees and visitors**, and those who are observed to have such symptoms shall be referred to the healthcare institution accompanied by the occupational physician. During entering the workplace or also when someone has symptoms, questions regarding the symptoms of COVID-19 may be asked and the fever degree may be detected **(provided that the appropriate privacy notice has been provided and the explicit consent has been received as required by the Personal Data Protection Law provided in the section below).**
- The measures to be taken and the rules to be followed about Coronavirus both in daily life and in the workplace shall be announced in workplace boards and workplace entrance counters.
- **Occupational physicians and/or health personnel shall be present at workplaces, and their number shall be increased depending on the conditions.**

D. CANCELLATION OF TRAVELS AND PHYSICAL MEETINGS, THE TRANSITION TO DIGITAL METHODS

- **Planned international business trips of employees shall be canceled.**
- Overseas business travel shall not be rescheduled for an amount of period to be determined later (it is reasonable to determine initially at least a three months period).
- In the meantime, if there are employees located abroad, precautions shall be taken so that they do not enter the workplace for 14 (fourteen) days from the date of their return.
- It is recommended to cancel planned domestic business trips of the employees and not to plan new business trips within the period to be determined.
- **Employees shall be strongly advised to cancel their private travels, especially abroad.** In case the employee finally **decides to travel** (based on the

notion of travel freedom), he/she should be given advice and warnings through the examination of the cases and measures at the destination point, besides the manager and the human resources unit to which he/she works with shall be informed. **The employee shall be warned for not returning to the workplace for 14 (fourteen) days starting from the date of his/her return and he/she shall be advised to take necessary measures. The employee may be asked to work from home or take an annual paid leave if applicable (in such case, the employee shall not work)**

- Events to be held in the external environments including workplaces, hotels, cultural centers, all kinds of (physical) meetings, training, seminars, etc. shall be rescheduled for some time as far as possible (it shall be deemed reasonable to set a period of at least three months) or shall be canceled completely in cases where possible. It may be appropriate and useful to determine the maximum number of participants for workplace meetings (physical), whose participation is mandatory or necessary within the scope of the usual workflow.
- Meetings, interviews, recruitments and trainings during this period may be held digitally, through making use of technological opportunities and with the participation of the maximum number of employees and third parties. The options that companies may use for this purpose are plenty in today's digital age. The Information Technologies department of companies may rapidly identify suitable models.

E. PLANNING OF THE WORK METHOD AND ORGANIZATION AT THE WORKPLACE, THE IMPLICATIONS OF THE MEASURES TAKEN WITHIN THE SCOPE OF THE LAW AND EMPLOYMENT CONTRACTS

It is inevitable that all the measures employing companies may take in this period, regardless of whether they are listed above or not, would have a reflection in the working conditions, the relations and the working organization thereon. Before the employers implement such mandatory or necessary or beneficial measures, and also throughout the implementation process, it is expected from them to consider the human aspect of the employee-employer relationship and the fact that each party depend on the other. The minimum and compulsory provisions of the applicable labor legislation, employment contracts and workplace practices shall be preserved.

Additionally, even though there has not yet been an official announcement for the private sector, it would be appropriate for the private sector employers to employ analogous measures determined for the public sector by the Presidency.

- **The “Remote Working” model may be utilized for all applicable staff.** Remote working is legally possible under the amended Article 14 of the Labor Law.

However, since the transition to remote working will also constitute a fundamental amendment to the employment contract, it shall be necessary and appropriate to execute an additional protocol to the employment contract to that aim. The additional protocol to be drafted within this context shall include the definition of the job, how it is done, its duration, the equipment to be provided by the employer and the special regulations regarding the communication between the parties and the obligations regarding the protection of such equipment by the employee. **Remote working may also be applied rotationally in the workplaces, in accordance with the working days of the week, thus the days the employee shall be physically present at the workplace and continue working from home may be determined.**

- **In principle, remote working shall be perceived as working from home. Employees shall not be referred to shared working spaces and open offices unless it is necessary.**
- **As the employees who cannot work remotely due to the nature of their assignments or who work in the production lines shall have to continue working in the workplace by taking the aforementioned measures,** it shall be necessary and appropriate in terms of the occupational health and safety obligations of the employers to issue warnings regarding their commute to work and to take all necessary measures.
- **Due to the pandemic, taking measures to improve the economic durability of the business may be inevitable, but among these, the “termination of the employment contract on operational grounds” shall not be one of the first measures to be considered. The following measures shall be applied primarily in order to maintain employment relations, in consideration with the principle of “termination as a last resort”:**
 - To declare “short time working”² in the workplace,
 - To offer part-time working to the employees,
 - Temporarily discontinuing practices such as bonuses and premiums,
 - To temporarily reduce the wages (with the commitment that the wages will be raised, at minimum to the same

² It has conditions determined by law, requires approval from İş-Kur and it is for a maximum of three months. Due to short work, employees who meet the conditions are given short work allowance.

level, when the conditions are improved and that refunds will be made in certain periods),

- To offer annual paid leave for employees (however, it shall not be forgotten that the employee will be “on leave” and shall not be employed in any kind. Remote working shall also not be deducted from annual paid leave.),
- Using mass leave in the workplace,
- To remove overtime,
- To plan compensatory work,
- To offer unpaid leave.

Since most of these practices shall be regarded as substantial amendments to the employment contract and require the fulfillment of certain conditions, they shall be preceded through mutual offers and acceptance.

- **In the event the employers are required to temporarily shut down the workplaces (by a definitive public decree), Article 40 of the Labor Law may become applicable.** Article 40 is regulated as follows; *The employee, who cannot work or cannot be employed due to the compelling reasons shown in the paragraphs (III) of Articles 24 and 25 of the Labor Law, shall be paid half for each day for up to one week in this waiting period.*
- **In case the compelling reason outlined in the above article lasts longer than a week, the 3rd paragraphs of the Articles 24 and 25 of the Labor Law** may become applicable and the parties may have the right to terminate their employment contracts on valid grounds based on the procedures and principles in the related articles.

F. REQUIREMENTS WITHIN THE SCOPE OF THE PROTECTION OF PERSONAL DATA

Articles 5 and 6 of the Law Numbered 6698 on the Protection of Personal Data ("KVKK") set the conditions for processing personal data. Similarly, according to Article 10 of the KVKK, relevant persons must be informed before their personal data is processed. Even though it is possible, and even a necessity, to take certain occupational health and safety measures in the workplace for the employees and visitors due to the Coronavirus pandemic, companies shall bear in mind that they are also data controllers as per KVKK. In this context, the following measures shall be taken:

- **Informing employees and workplace visitors:** It shall be appropriate to place privacy notices (short, clear and understandable for this processing purpose) to workplace entrances as a precaution for the Coronavirus.
- **Subsequently, collecting personal data “relating to and limited with the purpose”** through the forms and records and questions asked before and during the entry to the workplace.
- **Unless the personal data being collected are of special nature**, such as identity and communication data, or information about the person to be contacted for emergencies, **we believe that the legal grounds of processing shall be the following article of KVKK “it is mandatory for the legitimate interests of the controller, provided that this processing shall not violate the fundamental rights and freedoms of the relevant person” (Article 5/2 (f) of KVKK).** In such case, it shall be deemed sufficient to inform the relevant person; explicit consent shall not be required.
- **When personal data of special nature are collected amongst the others, e.g./ information on chronic diseases or fever measurement, Article 6 of KVKK shall be taken into account.** In such case and where the occupational physicist (the real person who has an obligation of confidentiality, an exemption of article 6/3 of KVKK) is not the only one processing the health data, it shall be necessary to obtain **the explicit consent** of the relevant person as a legal ground for data processing accordance with Article 6/2 of KVKK.

Turkish Personal Data Protection Authority has not published a decision on this yet, but it shall be monitored whether the processing of personal health data in terms of compulsory measures in the context of the pandemic may be regarded as an exception in terms of public health, as long as the processing is carried out in relation and limited with the purpose.

Kindest Regards,

Koyuncuoğlu & Köksal Law Firm

* As the explanations given in our newsletter are prepared pursuant to the legislation in effect in the Republic of Turkey and the disclosures made to the public by the relevant official authorities, in case of uncertainty, we advise you to seek advice and support from us before the final transactions are carried out. Otherwise, our Law Firm cannot be held responsible for the actions to be taken on the basis of the explanations contained herein and the consequences of such actions.