

**THE REMOTE WORKING REGULATION AND SUGGESTIONS FOR
THE REMOTE WORKING**

The Remote Working Regulation (“Regulation”) has been published in the Official Gazette dated 10 March 2021 and numbered 31419 and entered into force on its date of publication. The Regulation determines; *the works that cannot be done remotely, the application of business rules concerning the protection and sharing of the data, the procedures and principles of the remote working* in accordance with the Law numbered 6715 and article 14 of the Labor Law.

The article 14 of the Labor Law states:

“Remote working, is a written employment relationship in which the employee performs his/her service at home or out of office via telecommunication devices, within the work organization created by the employer.

In accordance with the paragraph 4, the employment agreement regarding the remote working should include; the description, the nature, the duration and the location of the work, the wage and its payment matters, the work tools and equipment provided by the employer and the obligations for their protection, the employer’s communication with the employee, the general and special working conditions. Unless there is a substantial reason; the employees working remotely cannot be treated differently than other workers due to the nature of the agreement.

The employer is obliged to inform the employee who works remotely about occupational health and safety measures, provide necessary training and health monitoring and take necessary occupational safety measures for the provided equipment, considering the nature of the work.

The procedures and principles of remote working, the works that cannot be done remotely considering the nature of the work, the business rules concerning the protection and sharing of the data and other matters shall be determined with the Regulation issued by the Turkish Ministry of Labor and Social Security.”

Pursuant to article 14 of the Labor Law mentioned above, the Regulation can be considered as a repetition of such provision. In some expected circumstances, although it does not contain comprehensive regulations such as; *the overtime practices in remote working, the*

occupational health and safety and the work tools inspection, it can be said that it has an adequate context which allows to be interpreted by the general principles of labor law and established case-law.

The procedures and principles, expectations and some of our suggestions of remote working which will be planned or renewed within the scope of the Regulation are just below:

In terms of the contract:

- 1- Remote working requires a written agreement which is made between the employee and employer. In that case, for the employment relationship starting with the remote working, the employment agreement can be directly made as remote working agreement. If there is an ongoing employment relationship to be converted to remote working; the principles of remote working can be determined with an additional agreement to the current employment agreement or a new remote working agreement may be executed between the parties.
- 2- The remote working agreement, should include; the description, the nature, the duration and the location of the work, the wage and its payment, the work tools and the equipment provided by the employer and the obligations for their protection, the employer's communication with the employee, the general and special working conditions.

Arrangement of the working environment:

- 3- The environments, where the remote working will take place in, (this could be the employee's home or another physical location outside the workplace) should be adequate to the remote work and must be arranged before the initiation of the work, if required. It will be healthy for employers to initially organize, inspect and control remote working areas regarding the obligations to monitor the worker and ensure occupational health and safety for the employee proceeding in the remote working model. In cases where the remote working will be performed from the employee's home, all the actions to be taken in the sense of arrangement and control must comply with the fundamental rights of a person's right to privacy and family life.

Supply and use of the equipment and work tools:

- 4- According to the regulation, necessary equipment to produce goods and services must be supplied by the employer to the employee engaged in remote working, unless otherwise agreed in the agreement.
- 5- The regulation also requires that if the work tools are provided by the employer, a list of the work tools including their cost on the date of their delivery to the employee, should be handed over to the employee in writing. Also, it is expected that a copy signed by the employee should be kept in the employee's personal file. A list of the work tools can be written in the employment agreement, an addition can be made to the employment agreement or it can be regulated as a separate list of the work tools.
- 6- The principles of use of the work equipment and tools, as well as the conditions of their maintenance and repair, should be clearly noticed to the employee who will work remotely.

Work duration:

- 7- Article 9 of the Regulation indicates a general provision that the time interval and duration of the remote working shall be specified in the employment agreement. The said article also states that the parties can determine the working hours by adhering to the conditions envisaged in law. As a result, it is necessary to plan the work in respect of both weekly working hours and overtime periods as well as work on weekends and national holidays, general holidays in accordance with the mandatory provisions of the Labor Law and the secondary legislation. In the context of this issue, it will be important to make healthy and mutual regulations from the beginning, considering *the right of the employee to be inaccessible*, which we think may be one of the most sensitive and most frequent issues of conflict between the employer and employee in the remote working,

Communication:

- 8- The Regulation states that; the method/methods and the time interval of the communication between the parties in the remote working are determined by the

employee engaged in remote working and the employer. Accordingly, it will be important that the agreements or the workplace practices attached to such agreements contain transparent and clear information.

Protection of Personal Data:

9- As a result of the remote working, the employers are obliged to inform their employees who are working remotely regarding the business rules and the related legislation concerning the protection and sharing of the data about the workplace and its work and to take the necessary measures to protect such data. An employee who works remotely must also comply with the business rules established by the employer in order to protect the data. In this context, the employee who will work remotely must be notified about the rules on the protection and security of personal data, secure communication and cyber security rules that are in practice in the workplaces, in a reasonable period of time before starting to remote working. It would be useful to provide this set of rules in writing as an annex to the agreements. In any case, it will be necessary to determine the definition of the data that must be protected within the agreements and its extent.

Occupational Health and Safety:

10- The employer is obliged to inform the employee about occupational health and safety measures, provide necessary training and health monitoring and take necessary occupational safety measures for the provided equipment, considering the nature of the work. In the case when the employer does not have the opportunity to constantly monitor and control the remote work environment and to make immediate intervention, it will be crucial for agreements or the workplace practices attached to such agreements to contain clear information from the beginning.

Works That Can Not Be Done Remotely:

11- The regulation prohibits the remote working in works involving with the following:

- Hazardous chemicals and radioactive substances,
- Processing these materials or working with the wastes of substances,
- Work operations at risk of exposure to biological factors.

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Transition to remote working:

12- As mentioned above, the Regulation indicates that, the employment relationship can be established directly with a remote working agreement or current employment agreement can be converted to remote working agreement if both employer and employee agree so.

13- If the demand comes from the employee:

- ✓ The demand must be made in a written form.
- ✓ The demand will be evaluated by the employer with respect to the procedure established in the workplace regarding the convenience of the employee to work remotely in accordance with the nature of the work.
- ✓ The result of the evaluation of the demand will be notified to the employee within thirty (30) days in written form.

14- The Regulation does not include explicit provisions regarding the rejection of the employee's demand to work remotely or in which circumstances the demand can be rejected by the employer. In our opinion, the objective conditions should be determined in the workplace as much as possible and the principle of equality should be respected when accepting demands which meet these conditions. On the other hand, in case of the rejection of the demands which do not comply with these conditions, the reasons thereof should be clearly served to the employee.

15- According to the Regulation, if the remote working is applied in all or part of the workplace caused by the force majeure specified in the legislation, the request or approval of the employee will not be required for the transition to remote working.

As it is clear that, the covid-19 pandemic in our country after its announcement on March 16, 2020 has caused the vast majority of the employees', especially in the office environment, transition to remote working. However, due to the availability of modern technological capabilities, many employers are taking steps to permanently adapt the remote working model to their workplaces / appropriate positions, regardless of the developments related to the pandemic.

Remote working models, both in practice during the outbreak and planned in the future, must necessarily be evaluated in accordance with Article 14 of the Labor Code and the regulation from now on. Not just the employment agreements, but it may be also necessary to review the policies and procedures and the regulations being practiced in the workplaces within the scope of the personal data protection.

As mentioned in the ILO recommendations, it would be useful to identify all the elements that may be needed in the remote working and to provide them to the employer as much as possible. Providing equipment and materials such as; an ergonomic office chair, computer, screen protector, as well as covering some of the internet and electricity subscriptions by the employer can be given as examples.

Considering some of the risks that the remote working model carries and the issues that need to be examined carefully, especially when planning the remote working or after the transition to the remote working;

- ✓ Safety of Business Vehicles and Cyber Security,
- ✓ Access To and Transfer of Personal Data, Including Specially Qualified Ones
- ✓ Cyber bullying

titles should be carefully evaluated and necessary/ most current measures and practices must be adopted.

Kind 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.