

**NEW LAW ON LABOR COURTS ENACTED AND
SUBSTANTIALLY CHANGES TURKISH LABOR LAW PRACTICE**

The new Law on Labor Courts ("**Law No.7036**") was enacted on 25 October 2017, replacing the former one issued in 1950. As a matter of fact, Law No.7036 substantially changed the Turkish labor law practice by introducing mandatory mediation for all types of labor disputes, except for the ones relating to occupational accidents and professional diseases. Therefore, the mandatory mediation is applicable for the most common labor claims namely; labor receivables, damages and reinstatement. Accordingly, as of 1 January 2018, for the above mentioned types of labor disputes, the parties cannot initiate a lawsuit before applying to the now mandatory mediation first. As per the law's preamble, the main objective behind this mandatory mediation regulation is to ensure that the disputes are resolved in a shorter time and with lower costs. Consequently with Law No.7036, the mediation concept which is substantially based on the parties' freedom of will is made mandatory for labor disputes in contradiction with mediation's nature. Even so, time will show if mandatory mediation will serve to its intended purpose.

Another major change introduced with Law No.7036 concerns the statute of limitations concerning the damages and other remedy claims arising out of labor disputes. The former term of ten years has now been revised down to five years. As summarized below, most of the changes introduced with the Law No. 7036 aim to ensure a higher level of procedural efficiency concerning the labor disputes and therefore concern changes to the applicable terms set under the former legislation. Below is the summary of some of the material changes introduced with the new legislation.

A. Mandatory Mediation before Litigation

Type of disputes subject to mandatory mediation

- The new legislation makes it mandatory to apply to mediation before initiating any lawsuit concerning a labor dispute except for the claims concerning occupational accidents and professional diseases.
- Accordingly, claims concerning employee's or employer's receivable and damages as well as reinstatement cannot be brought up to the court level unless the mandatory mediation process has been consumed and no solution has been reached among the parties. It is not explicitly indicated in Law No.7036 whether mediators can be appointed for and resolve a set of disputes arising from the same incident. Time will show how mandatory mediation will be implemented.
- The provisions of the new legislation concerning the mandatory mediation procedure will enter into force as of 1 January 2018. Accordingly, no lawsuit can be filed for those claims listed above without first triggering the mediation process even if the events leading to the claim took place prior to 1 January 2018.

Procedure

- Applications for mediation will be filed to the mediation offices established in the courthouses and the parties will be free to select a mediator among the ones registered with the mediation registry. In the event the parties cannot agree on a name, the mediation office will appoint the mediator. Law No.7036 does not explicitly indicate if parties may appoint more than one mediator, however regulates that the appointment procedure of the mediator will be stipulated under a secondary regulation to be adopted by the Ministry of Justice.
- The term of mediation procedures is limited to three weeks and can be extended for another week only in compulsory situations. These compulsory situations are not explicitly defined in Law No.7036, however deliberated to be the unforeseeable cases which cause mediation process to be extended or postponed. These are also expected to be regulated under a secondary regulation to be adopted.
- Unless otherwise is agreed among the parties, costs of mediation should be born equally by the parties. However, if there is no agreement at the end of the mediation and the issue is brought up to the court level, the party losing the lawsuit will also be required to cover the mediation costs.
- The parties can represent themselves or appoint a representative who can be an attorney but this is not a requirement.
- The parties can apply to the court to get an enforceability annotation on the agreement concluded as a result of the mediation process. In such case, the court is only entitled to review whether the subject matter of the dispute can be resolved through mediation and be subject to compulsory enforcement. The new law also provides that the agreement concluded as a result of the mediation process can be enforced without a court annotation if it is signed by both parties and the mediator.
- For the matters not resolved through mediation, the parties will still have the right to apply to a court. It should be noted that the new law introduces a specific time limitation for the reinstatement lawsuits and provide that the relevant lawsuit should be filed within two weeks as of the execution of the final mediation minute.

B. Regulations Regarding Reinstatement Lawsuits

- The Law No.7036 has introduced another new regulation for the sake of procedural efficiency and has now eliminated the need for the employees to initiate a second lawsuit for determination of the exact amount of compensation in the event their reinstatement claim is upheld by the court. In the previous regime, the courts dealing with the reinstatement claims only set a range for the amount of compensation that the employees would be entitled as a result of their reinstatement claim but did not provide the exact amount. Under the new regime, the court deciding on the reinstatement claim will also set the exact amount of compensation that the employee will be entitled to if not re-employed.

C. Changes in Statute of Limitations for Labor Damages

- Prior to the enactment of Law No.7036, there was no special provision in Turkish labor legislation regulating statute of limitations for claims concerning severance payment, notice payment, bad faith damages and unequal treatment damages, triggering the application of the general statute of limitations on those claims as ten years. Law No. 7036 now touches upon the subject and limits the statute of limitations for the above mentioned labor damages to five years as of the date of maturity of the relevant claims.
- It should be noted that this new statute of limitations period concerns the claims that will arise out of the employment terminations occurring after the enactment date of the Law No. 7036 - i.e. 25 October 2017. The new law however notes that even for the claims arising out of already existing terminations, in the event the remaining statute of limitations is longer than five years, the relevant party will only be limited to five years to bring up his/her claim.

D. Regulations Regarding Legal Remedies for Labor Disputes

- Under the previous legislation, the parties had only eight days to appeal the decision of the labor court of first instance. This period, which was shorter than what has been set under the Code of Civil Procedure, has now been increased to two weeks as in Code of Civil Procedure.
- The new law also introduced the concept of some non-appealable court decisions. As a result, certain decisions of labor courts including those concerning reinstatement lawsuits can no longer be appealed before the Court of Appeals and will be deemed to be final. The list of non-appealable court decisions also concern some of the claims arising in connection with the Law of Unions and Collective Bargaining Agreements and Civil Service Unions and Collective Bargaining Agreements.

For further information please contact:

Bigge YÜCEL byucel@herguner.av.tr
Simge ESENDAL sesendal@herguner.av.tr

Büyükdere Caddesi 199, Levent 34394 ISTANBUL
Telephone: (90) 212 310 18 00 Fax: (90) 212 310 18 99

<http://www.herguner.av.tr>

- © 2017 Hergüner Bilgen Özeke Attorney Partnership

-Hergüner Bilgen Özeke is a full-service Turkish law firm with major international clientele. This bulletin is to inform the recipients concerning certain recent legal developments in Turkey. It does not constitute legal advice or legal opinion on any specific facts or circumstances, and the contents are intended to be general information purposes only. The advice of legal counsel should be obtained for specific questions and concerns.