

## MEMORANDUM

**DATE:** July 9, 2012

**SUBJECT:** Overview of the New Occupational Health and Safety Law

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The new Occupational Health and Safety Law numbered 6331 and dated June 20, 2012 (the “**Law**”) has very recently been published in the Official Gazette in Turkey. The Law is unprecedented in Turkey as the health and safety legislation was mainly based on the Turkish Labor Code (numbered 4857 and dated May 22, 2003) and the related secondary health and safety regulations. Accordingly, the Law gathers and covers all the health and safety provisions under Turkish law, provides a detailed legislation and anticipates a strict and severe administrative fine mechanism in case of breach.

This memorandum aims to provide a general overview of the very law with a specific focus on the administrative fines in case of the breach of the provisions of the new Law.

### **1. EMPLOYER’S LIABILITY**

The Law describes the general liability of the employer with regards to the measures to be taken on the occupational health and safety in the workplace as well as anticipating specific provisions on specific measures.

Article 4 of the Law states that the employer should take every measure necessary to prevent the risks in the site, to provide trainings for the employees, to assess the compatibility and capability of the employee for the work and supervise the implementation of the taken measures. The same article cites that the presence of a health and safety expert in the working site as well as any fault or liability of the employee does not hold the employer harmless of any liabilities regarding those stated above.

Furthermore, the Law provides for specific provisions on certain measures.

- Article 6 and Article 8 set forth that the employer shall establish a department for health and safety within the worksite and also shall employ a medical doctor in the site.
- The employer is obliged to make a risk assessment for the workplace as per Article 10.

- Article 14 establishes that the employer is under the obligation of notification to the local authorities as well as the social security institution in case of occurrence of an occupational accident in the workplace.
- The employer shall also request from the employees and supervise that the medical check-ups of the employees are duly carried out and a report is provided to this end before the commencement of the work.
- Article 16 further envisages that the employees shall be trained and are well-informed on health and safety measures before the commencement of the work.

## 2. NEW PROVISIONS

The Law establishes a new structure with regards to the governmental bodies for the supervisory and regulatory duties concerning the health and safety measures in the working places. It also sets forth new and unprecedented provisions.

Article 21 and Article 22 structures the entities responsible for the implementation of the Law and the relevant secondary regulations to be prepared. Accordingly, in workplaces with more than 50 employees, it is obligatory for the employer to establish a board in charge of supervision and implementation of health and safety measures in the workplace. Such board may be established with subcontractors in case the employer assigns part of the works in the workplace. Furthermore, a National Council is anticipated to be established by Article 21 of the Law on supervision of all boards; equipped with supervision authority over the employers.

Article 9, which has entered into force on June 30, 2012, foresees that the Ministry of Work and Social Security (“**Ministry**”) shall establish a commission to determine the level of danger in each workplace. Such determination will affect the liability of the employer (*i.e.* the number and nature of health and safety personnel responsible in a working place will vary accordingly, or the working hours may be reduced accordingly with the respective regulations to be issued in line with the Law) as well as the date of entry into force of the provisions of the Law.

Article 19 provides for the responsibility of the employee in terms of health and safety measures and their implementation in the workplace. However, as cited under the first section, it should be fair to note that such responsibility of the employee does not relieve the employer from its own liability.

Article 24 and Article 25 also indicate that the Ministry is entitled to carry out random investigations at working places for the supervision of the implementation of the health and safety measures and relevant secondary legislations. Moreover, the Ministry is also entitled to suspend or even terminate the works at a specific workplace in case of determination of any breaches of health and safety measures.

### 3. ADMINISTRATIVE FINES FOR BREACH OF LIABILITY

Article 26 of the Law sets forth the administrative fines corresponding to each specific obligation and liability of the employer. Please refer to the tabulated scheme below for ease of convenience.

<b>Breached Provision of the Law</b>	<b>Subject of Breach</b>	<b>Administrative Fine Amount (TRY)</b>
<b>4(a)</b>	Prevention of risks, training the employees	2,000.00-
<b>4(b)</b>	Supervision of implementation of measures	2,000.00-
<b>6/1</b>	Employment of any health and safety expert or medical doctor	5,000.00- per each non-employment monthly
<b>6/1</b>	Employment of any health and safety personnel	2,500.00- per each non-employment monthly
<b>6/1(b), (c), (d)</b>	Provision of necessary equipment for health and safety personnel Provision of coordination between health and safety personnel Provision of necessary information to health and safety personnel	1,500.00- per each obligation
<b>6/1 (ç)</b>	Implementation of written instructions of health and safety personnel	1,000.00- per each non-implemented instruction
<b>8/1-6</b>	Conditions for health and safety personnel (medical doctors and experts)	1,500.00- per each obligation
<b>10/1</b>	Risk assessment report	3,000.00- and 4,500.00- monthly
<b>10/4</b>	Provision of access to any risk assessment investigation and analysis within the workplace	1,500.00-
<b>11</b>	Emergency plan	1,000.00- monthly
<b>12</b>	Evacuation of workplace in case of	1,000.00- monthly

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	determination of danger	
<b>14/1</b>	Preparation of report on any occupational accident occurred in workplace	1,500.00-
<b>14/2</b>	Notification of any occupational accident to the social security institution	1,500.00-
<b>15/1</b>	Medical checkup of the employees prior to commencement of works	1,000.00- per employee
<b>15/2</b>	Commencement of works by employee without medical report	1,000.00- per employee
<b>16</b>	Provision of information to the employee with regards to risks and nature of works	1,000.00- per non-informed employee
<b>17/1-7</b>	Training of the employees with regards to health and safety measures	1,000.00- per employee
<b>18</b>	Consultation with the employees on risks of works and health and safety measures	1,000.00-
<b>20/1</b>	Appointing a representative for employees	1,000.00-
<b>20/3</b>	Granting the right to the employee's representative(s) to request elimination of risks	1,500.00
<b>20/4</b>	Providing the employees' representative(s) with required means and powers for purposes of executing their duties	1,000.00-
<b>22</b>	Establishment of a board of health and safety	2,000.00-
<b>24</b>	Allowing and cooperating with investigations by the Ministry	5,000.00-
<b>25</b>	Complying with measures taken by the Ministry (suspension or termination of works)	10,000.00- monthly

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<b>29/1</b>	Preparation of report on prevention policies for occupational accidents	50,000.00-
<b>29/2</b>	Commencement of works following approval of the report on prevention policies for occupational accidents by the Ministry	80,000.00-

## 4. ENTRY INTO FORCE

The Law enters into force six months after its publication in the Official Gazette, namely December 30, 2012 bearing certain exceptions to that.

Article 6 on occupational health and safety services to be rendered by the employer, Article 7 on support of the Ministry in terms of occupational health and safety services and Article 8 on medical doctors and health and safety experts to be recruited in the working place enters into force;

- a) two years after publication of the Law in the Official Gazette, namely June 30, 2014, for public enterprises and working places having less than 50 employees and qualified among less dangerous workplaces;
- b) one year after publication of the Law in the Official Gazette, namely June 30, 2013, for working places having less than 50 employees and qualified among dangerous or very dangerous workplaces; and,
- c) six months after publication of the Law in the Official Gazette, namely December 30, 2012 for other workplaces.

Articles regarding secondary legislation to be prepared by the Ministry, licensing and appointment of personnel by the Ministry, interpretation of certain terms and provisions of the Law, amendment of certain other legislation enter into force on the date of publication of the Law in the Official Gazette, namely June 30, 2012.