



Ankara University
SCHOOL OF MEDICINE

The First Medical School In The Republic of Turkey (1945)

Turkey's legal OSH regulation

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Turkey:

Turkish Occupational Health and Safety Regime

- Turkey's worksite health and safety regimen has drawn significant attention recently in light of the **Soma mine disaster** (On 13 May 2014) in which inadequate safety standards and risk mitigation are regarded as partially to blame for the tragic loss of human life. *(301 victims!)*
- However, prior to the catastrophe, efforts had been initiated to improve perceived deficiencies in Turkey and **to meet international health and safety standards**. These standards, in particular, the **EU Workplace Health and Safety Directive**, served as a framework for Turkish health and safety legislation.

Turkish Occupational Health and Safety Regime

- An obligation placed upon employers is the **OHS Law**'s new requirement that employers provide **medical examination**s for their employees on a routine basis mandated by the Ministry of Labor, as well as after certain events including *return to work after a workplace accident or illness*, or upon an employee's request.
- Such examinations will be provided at the expense of the employer (but tax deductible). Similarly, employers are barred from recruiting individuals who are **medically disqualified** from hazardous work. Associated with this is the additional requirement that past employers share medical information of their workers with other prospective employers.

Turkish Occupational Health and Safety Regime

- The **OHS Law** represents the most significant legislation aimed at improving *workplace health and safety* ever enacted in Turkey. It expands the rights and privileges afforded to employees while greatly expanding the responsibilities and obligations of employers to provide for a *safer and more representative work environment*.
- While seen as necessary and progressive legislation, the statutory requirements place significant responsibilities on employers which will likely translate into higher operating costs.
- While the Ministry of Labor is empowered to ensure implementation of the OHS Law, full implementation will likely take time to achieve.
- Similarly, greater clarification is needed regarding hazard classification, and employer *medical responsibilities*.

Act No. 6331 Occupational Health and Safety Law

Date of Enactment: 20/06/2012

- Part I - Object, Scope and Definitions
- Part II - Duties, Authority and Responsibilities of the Employer and Workers
- Part III - Council, Committee and Coordination
- Part IV - Inspection and Administrative Sanctions
- Part V - Miscellaneous and Transitional Provisions
- SECTION ONE Object, Scope and Definitions Object
- ARTICLE 1 – (1) Object of this law is to regulate duties, authority, responsibility, rights and obligations of employers and workers in order to ***ensure occupational health and safety at workplaces*** and to ***improve existing health and safety conditions.***

Act No. 6331 Occupational Health and Safety Law

Date of Enactment: 20/06/2012

ARTICLE 3 –

- **Worker**: any natural person employed at public or private sector workplaces, regardless of their status in their relevant laws;
- **Workers' representative**: any worker authorised to represent workers in matters such as participating in occupational health and safety related activities, monitoring these activities, requesting measures, making propositions and the like;
- **Young worker**: any worker who is of at least 15 years of age but less than 18 years of age;
- **Occupational accident**: Any occurrence taking place at the workplace or due to the performance of work which leads to death or physical or mental impairment to the physical integrity of the victim;

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ARTICLE 3 –

- **Occupational physician**: Any physician who is authorised by the Ministry to work in the field of occupational health and safety and who has occupational medicine certificate;
- **Workplace health and safety unit**: Any unit established to provide *occupational health and safety services* at the workplace with required equipment and personnel;
- **Occupational disease**: Any illness caused by exposure to occupational risks;
- **Prevention**: all the measures planned or taken in order to eliminate or reduce occupational health and safety risks at all stages of work undertaken at the workplace;

Act No. 6331 Occupational Health and Safety Law

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ARTICLE 8, **Occupational physicians and occupational safety specialists**

- Rights and authorities of **occupational physicians** and **occupational safety specialists** might not be restricted in the execution of their duties. Occupational physicians and safety specialists shall seek and maintain *professional independence* and observe the **rules of ethics** in the execution of their functions.
- **Occupational physicians** and **occupational safety specialists** shall inform the employer in writing of the main **occupational health and safety measures** required to be taken in the undertaking or enterprise. In case the employer fails to implement any of these measures against **life-threatening hazards**, the occupational physician shall notify the Ministry of this situation.

Act No. 6331 Occupational Health and Safety Law

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ARTICLE 8, *Occupational physicians and occupational safety specialists*

- **Occupational physicians** and occupational safety specialists as well as external services consulted shall be accountable to the employer for neglect of duty in the execution of their offices.
- Where an **occupational physician or occupational safety specialist** is found to be in neglect of his/her duties resulting in an **occupational accident or occupational disease** which causes disruption in the integrity of the body such as death or disability, his/her certificate of authorization shall be suspended. *(up to 6 months)*

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Date of Enactment: 20/06/2012

Risk assessment, control, measurement and research

ARTICLE 10 – (1)The employer shall conduct an assessment of risks to **health and safety of workers** or get one carried out, taking account the following points:

- a) The situation of workers who might be affected by certain risks.
- b) Choice of work equipment, the chemical substances or preparations used.
- c) Workplace organization and housekeeping.
- d) The situation of *female workers* and other workers such as *young workers, older workers, disabled, pregnant or breastfeeding workers* who need specific policies.

Act No. 6331 Occupational Health and Safety Law

Date of Enactment: 20/06/2012

Risk assessment, control, measurement and research (Art. 10)

(2) The employer shall identify the **occupational health and safety measures** to be taken as well as the protective gear or equipment to be used as a consequence of the **risk assessment**.

(3) Measures to be taken for the **safety and health protection of workers** and the working and production methods implemented by the employer must assure an improvement in the level of protection afforded to workers with regard to **safety and health** and be practicable at all hierarchical level within the undertaking and/or enterprise.

(4) The employer shall ensure that controls, measurements, examinations and research are carried out to **identify the risks** which are linked to the working environment and to which the workers are exposed.

Act No. 6331 Occupational Health and Safety Law

Date of Enactment: 20/06/2012

Right to Abstain from Work ARTICLE 13 –

- (1) Workers exposed to **serious and imminent danger** shall file an application to the committee or the employer in the absence of such a committee requesting an identification of the present hazard and measures for **emergency intervention**. The committee shall convene without delay and the employer shall make a decision immediately and write this decision down. The decision shall be communicated to the worker and workers' representative in writing.
- (2) In the event that the committee or the employer takes a decision that is supportive of the request made by the worker, the **worker may abstain from work** until necessary measures are put into practice.

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OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY

- As ***industrial accidents*** became a current issue in the country, it is important to remind the duties of employer related to ***occupational health and safety***, because failing to carry out these duties might cause Employer being liable to serious ***administrative and criminal sanctions***.



<https://turkishlaborlaw.com/news/legal-news/318-occupational-safety-employers-liability> 25.2.19

OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY

- Regulations aimed at ensuring health and safety of workers and workplaces; duties, authority and responsibilities of employers and employees are laid down in **Occupational Health and Safety Law** No. 6331.
- Further the administrative fines and potential sanctions are stated in "Turkish Code of Obligations", and "**Criminal Cod**"
- **GENERAL DUTIES OF EMPLOYER**
- Occupational Health and Safety Law No. 6331, Article 4 under the title of General Duties of Employers clearly states the responsibilities of Employers.



OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY-1

- **General Duties of Employers (Law no 331)**
- Article 4 - (1) It shall be the duty of employer **to ensure the health and safety at work of all his employees**. In this respect, employer shall;
- (a) make and maintain arrangements; to prevent **occupational risks**, to take every necessary measures including the provision of information, instruction and training, as well as provision of tools and equipment, to update the **health and safety precautions** to the changed situation, to promote and develop the current situation,
(b) oversee and supervise whether the health and safety precautions in workplace are properly abided by, and eliminate any improperness,
(c) make **risk assessment** or have it made,

OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY-2

- Article 4 - (1) It shall be the duty of employer *to ensure the health and safety at work of all his employees*. In this respect, employer shall;
 - (d) while assigning a task, take into consideration the employee's suitability to it as regard to health and safety,
 - (e) take the necessary precautions to prevent unauthorized employees gain access to life-threatening and *special hazard areas*.
- (2) Having external service from specialists or specialized agencies shall not render employers free of their responsibilities related to health and safety.
- (3) Obligations of employees related to health and safety shall not affect the Employers' responsibilities.
- (4) Employers shall not reflect any cost arising from measures on **health and safety** at work to employees.

OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY-3

- **LIABILITY OF NEGLIGENT EMPLOYER**

- • ***Administrative Fines***

In case of non-compliance with said Law of No. 6331 and relevant Regulation *severe administrative fines* shall be applied in accordance with the degree of non-compliance.

- • ***Turkish Code of Obligations***

In case of **death** and bodily harm of employee, material compensation and damages for pain and suffering can be ruled by court.

- Some of these are; funeral expenses, and treatment costs, compensation for loss of support, compensation for incapacity to work and such like.

OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY-5

- **LIABILITY OF NEGLIGENT EMPLOYER**

- **Criminal Cod**

It should be noted that in case *of "negligence" or "intentional negligence"* negligent employer might face serious penalties by court decision.

Pursuant to Criminal Cod, Article 22, paragraph (2)

- *Negligence* is failure to take proper care or precaution during performance of an act without being aware of legal consequences of the crime defined in the laws;
(3) Where an act of person creates the legal consequence defined in the laws beyond his will, this is considered as intentional negligence.

OCCUPATIONAL SAFETY & EMPLOYER'S LIABILITY-6

- **LIABILITY OF NEGLIGENT EMPLOYER**

- **Criminal Cod**

In case of employee's death at work due to negligence of safety at workplace, this described as ***Negligent homicide*** in **Criminal Cod**.

- Article 85-(1) Any person who causes death of a person by negligent conduct is punished with imprisonment from three years to six years.
- Article 85-(2) If the act executed results with **death or injury** of more than one person, the offender is punished with imprisonment from three years to fifteen years.



Please never forget asking

***What is your
occupation??***



***Labor is the
supreme
value.
Respect to
labor is the
chief
condition of
being human.***

***This presentation is recommended to
work with **Health Law** slides.***