
ÇELEN LAW FIRM

Transfer of Employment Contracts

The Turkish Labour Code numbered 4857 which entered into force on 10.06.2003 does not have a specific provision regarding the transfer of employees. However, the draft law sent to the Parliament Commission did include an article 7 titled “transfer of employment contracts” in between article 6 “transfer of the work place”, and article 8 “secondment”. The said draft article regarding the transfer of employment contracts was removed from the Code with the Parliament Commission’s decision dated 12.3.2003.

The removed draft article 7 regarding the transfer of employment contracts stipulated that an employer may transfer an employment contract to another employer permanently with the explicit consent of the employee. The second paragraph stipulated that the Transferee Employer must consider the initial date of employment with the Transferor employer in all relevant rights. In other words, the draft article also required the consent of the employee for the transfer.

In the absence of an explicit provision in the Labour Code, the provisions of the Code of Obligations are applied. Article 320 of the Code of Obligations stipulates that the employee cannot transfer the obligation to perform personally unless otherwise agreed, and that the same is relevant for the transfer of the employer’s obligations. In other words, the employment contract transfer can be realized through mutual consent. The same understanding is reflected under article 429, “transfer of contract” of the new Code of Obligations which will enter into force on July 1, 2012.

The transfer of employees has been the subject of litigation in the past and the Turkish Court of Appeals has numerous rulings providing the conditions for the valid transfer of employment contracts and explanations of the procedure and the rights and obligations of the three concerned parties.

Difference between “Transfer of Work Place” and “Transfer of Employment Contract”:

The permanent transfer of the employment contract changes the Employer. The Transferee Employer replaces the Transferor Employer by assuming all rights and obligations of the Transferee Employer. Whereas the transfer of the work place does not take place in the transfer of the employment contract.

“Transfer of the work place” is relevant in mergers and acquisitions, transfer of assets, which involve the transfer of the work place. Such transfer of the work place must be based on a legal transaction for the article to apply. For example, this would apply when a factory is sold and the employees’ consent is not required for the transfer of their employment contracts to the new owner of the factory.

In the present case the employees will be transferred from the work place of the Transferor Employer to the work place of the Transferee Employer, but it is the transfer of the employees and not the work place.

Protection of transferred employees:

The transfer of the employees through the transfer of the employment contracts needs to be realized with the mutual consent of all three parties involved. Undoubtedly, the written consent of the Employee is the primary condition for the realization of the transfer of the employment contract.

The rights of the transferred Employee are protected by Turkish law as follows:

- the Transferee Employer is obliged to apply the initial date of employment Transferor Employer for all employment rights which are linked to seniority (i.e. vacation days, notice and severance compensations)
- All rights and obligations arising from the employment contract with the Transferor Employer including any practice in the work place of the Transferor Employer are also transferred to the Transferee Employer, (the Transferee Employer can only change such rights and obligations with the written consent of the employee) without a duration limitation.

Following the entry into force of the new Code of Obligations in July 12, 2012, the above principles set out by precedent court decisions will also be clearly reflected in the law.

In practice the Transferor may provide enhanced protection in order to facilitate the consent of the employees. The agreement between the three parties needs to be drafted cautiously in line with Turkish law.

The information contained herein constitutes only the general framework regarding the referenced subject. Please contact legal counsel for advice regarding specific matters.