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### THE EFFECT OF PANDEMIC ON LABOUR LAW

**Özgür OGUZ**, Faculty of Law, Anadolu University, Yunusemre Campus, Eskisehir, Turkey, [ooguz1@anadolu.edu.tr](mailto:ooguz1@anadolu.edu.tr) (*corresponding author*)  
**Dalia PERKUMIENĖ**, Department of Business and Rural Development Management, Faculty of Bioeconomy Development, Vytautas Magnus University, K. Donelaičio g. 58, LT-44248 Kaunas, Lithuania, [dalia.perkumiene@vdu.lt](mailto:dalia.perkumiene@vdu.lt)

Due to the structure of labor law and developing technology and economic interests, flexible working models have become widespread. In many workplaces, the presence of workers in person is no longer compulsory. As a result of the Covid-19 epidemic that threatens our health these days, the need for flexible working models has increased and remote working methods have become mandatory in many areas. In this study, the regulations made with the remote working system and the Covid-19 epidemic were included, the obligations of the employer on occupational health and safety and the changes in the Remote Work Regulation were evaluated. Covid 19 has affected business and labour relations. Different opinions and different legal consequences are put forward regarding the effect of the suspension of the employment contract on the annual leave, severance pay, and notice pay, which are the rights of the worker depending on the length of service. The aim of the research is to identify the effect of virus on labour market. The main research methods: analysis of scientific literature sources; content analysis and other methods.

*Keywords: pandemic, virus, labor law, remote work.*

#### INTRODUCTION

In the developing and changing world, the adoption of remote working systems has increased due to the increase in technological developments, the employer's main debt in the employment contract, the need for the employee to carry out the work in a healthy way, the employer's economic activities and the employee protection debt. Remote working, one of the flexible working models that has long been needed in many business areas, is one of the ways of working in which the work can be carried out regardless of the workplace (Civan et al., 2010).

In Article 14 of the Labour Law No. 4857, teleworking is defined as a written business relationship based on the principle that the employee performs work within the scope of the work organization established by the employer at home or outside the workplace with technological communication tools (Akyigit et al., 2018.).

In cases where the remote working method is adopted, the issue of occupational health and safety should be specifically addressed for both employers and workers.

The object of research– the influence of pandemic to the labour law.

The aim of research– to identify the effect of virus on labour market.

The main research methods: analysis of scientific literature sources; content analysis and other methods.

#### RESEARCH FINDINGS

##### Covid 19 in General

The Covid-19 pandemic has affected the whole world and has had a significant impact on the legal world.

Countries were caught unprepared in terms of legislation. Legal arrangements and changes were made in many countries, including our country.

Rapid enactment has brought legal debates with it.

In our country, many legal changes have been made to reduce the impact of Covid-19 on working life and to protect workers and employers. One of the most talked about legal institutions due to the impact of Covid-19 on business life has been Short Work (Alp et al., 2011).

The legislator also tried to protect businesses and workers by amending the law on Short Working.

In our opinion, short working hours should be included in the seniority basis to protect the worker. Again, extended short working periods should be included in the seniority basis.

Because, by including the employee in short work, the employer gets rid of both the wage burden, the SSI premium burden, and the material and moral obligation of the employee in the workplace. The only benefit that the workers can provide against the employer in this regard is the addition of the suspension periods from the service period based on the severance pay and the service period based on the notice indemnity (Doğan et al., 2007).

In our opinion, all short working periods should be added to seniority, since the severance pay is a constitutional right and the arrangements based on severance pay are related to public order. With the spreading effect of the Covid-19 epidemic, new working methods in workplaces in our country as well as in other countries. In particular, the risk of social contact created by employees coming to the workplace has led employers to work with fewer personnel, to work shorter hours, and even to resort to teleworking/remote methods without coming to the workplace (Iron, 2019.).

Covid 19 has affected business relations. Different opinions and different legal consequences are put forward regarding the effect of the suspension of the employment contract on the annual leave, severance pay, and notice pay, which are the rights of the worker depending on the length of service. In our opinion, the employee who cannot fulfil his obligation to work due to impossibility of perfect temporary performance and who is deprived of his right to wage as a rule, whose obligation continues in terms of debts other than employment debt due to the legal existence of the employment contract during the suspension period, and whose contract can be terminated by the employer for a just cause in this framework, shall not be entitled to severance during the suspension period. deprivation of the right to compensation will not be compatible with the purpose of suspending the employment contract to protect the worker and to provide job security (Çelikbaş et al., 2021).

Again, since the fact of working is not clearly stated in the legislation, in the regulation regarding the six-month seniority condition in Article 18 of the Labour Law, whose purpose is to directly provide job security, it should not be interpreted against the worker. The periods during which the employment contract is suspended, as well as short working periods, must be included in the six-month waiting period, which is a necessary condition for being covered by job security (Gulmez et al., 2019).

In our legislation, the effect of suspension periods on seniority based on annual leave is specified in Article 55 of the Labour Code. Not only the days worked, but also the number of days worked for the one-year period required to be entitled to annual leave. The suspension periods specified in this article are added to the seniority period based on the annual leave, considering the days counted as having worked as limited in Article 55 (Kaplan et al., 2019).

## **I. REMOTE WORKING SYSTEM IN GENERAL**

With the effect of the structure of labour law and developing technology, the understanding of flexible working is gaining increasing importance within the scope of economic benefits. In many workplaces and lines of business, the obligation of workers to be present in the workplace is eliminated because of technological developments. In addition, if the employers want to get rid of the burden of determining a workplace and paying the mandatory expenses of the workplace, and if some, if not all, of the workers can work outside the workplace, there is the opportunity to get rid of various costs. However, since these changes went beyond the basic concepts of business law, some new regulations were needed (Kilic, 2020).

One of the employer's obligations is the duty of observing the worker. Workplace refers to the application area of the work in terms of labour law (Kilkis, 2018). The legislator accepts that apart from the unit in which the workplace is organized with tangible and intangible elements only for the purpose of producing goods or services, add-ons and tools are also within the scope of the work organization. If the employer deems it appropriate for the worker to work at home or in a place other than the workplace, that place is considered within the scope of the work organization (Kuban, 1997).

According to the definition made in the law, teleworking is a business relationship established in writing, based on the principle that the employee performs the act of working within the scope of the work organization created by the employer, at home or outside the workplace with technological communication tools (Kurt, 2021).

After the decision to work remotely, the time interval and duration of the work should be specified in the employment contract. Within the scope of the employer's right to manage, it is also possible to change the working hours and durations by notifying the employee in writing, but it is argued that the record regarding this issue should be included in the contract (Özdemir, 2016).

The definition of the job, the way the job is performed, the wage and payment method, the equipment to be provided by the employer and the conditions for the protection of the equipment should also be included in the teleworking contract. There have been many workplaces that have switched to working from home system during the Covid-19 process. In this context, the effort of the employer and the worker is important for the continuation of the employment contract. Workers who can work remotely should continue to be paid (Ozer, 2018.)

Remote working is a working system that can be applied continuously, when necessary, as well as in a certain period. Employees working at the workplace may be offered to work remotely to protect themselves from epidemics (Özdemir, 2020).

It is stated that the proposal of a remote working system with the aim of protecting general health due to the epidemic will cause a change in working conditions, and that it should be accepted in writing within six working days by the worker.

## **II. OCCUPATIONAL HEALTH AND SAFETY OBLIGATIONS OF THE EMPLOYER IN THE REMOTE WORKING SYSTEM**

Occupational Health and Safety Law No. 6331 has been regulated and various obligations have been imposed on the employer. While determining the limit of the employer's obligation to provide occupational health and safety within the scope of occupational health and safety, the criterion of doing everything necessary is taken as a basis. In this context, in terms of our subject, the obligations of the employer in the remote working system will be examined (Özkaraca et al., 2020).

Measures taken within the scope of occupational health and safety aim to eliminate work accidents and occupational diseases, and to reduce them as much as possible in cases where they cannot be eliminated (Reisoğlu, 1976). The concept of workplace, which is important in terms of work accident, is also important in terms of the place where remote work is done. An accident that occurs during the execution of the work is accepted as a work accident, rather than whether the place where the work is carried out is considered a workplace or not (Senyen, 2019).

Remote work will not be possible in cases where hazardous chemicals and radioactive materials are in question, processing these materials, working with material wastes, and exposure to biological factors (Serozan, 1975). Again, pursuant to article 13 of the Regulation, the public institution responsible for or receiving the service, in which of the units, projects, facilities or services that are of strategic importance in terms of national security and the units, projects, facilities or services that are performed by public institutions and organizations by means of service procurement in accordance with the relevant legislation are not allowed. and organizations determined by (Soyer, 2005).

Due to the rapidly spreading and life-threatening Covid-19 virus in the world and in our country, business areas have also come under various threats. Due to the measures taken in this context, the remote working system has become inevitable (Sulhi, 1985). The application of the remote working system has become almost mandatory, especially in the branches of work that are not directly dependent on the production of goods and the presence of the worker in the workplace due to the nature of the work. In the teleworking system, the employment contract should include the definition of the job, the way it is done, the duration and place, the wage, the equipment to be provided by the employer and the protection of these equipment, the communication of the employer with the worker and other working conditions (Sümer, 2020). In the teleworking system, workers cannot be treated separately from other workers unless there is a fundamental reason. The employer should take occupational health and safety measures, inform the employee about this issue, and take health surveillance and necessary security measures, considering the work carried out by the employee who is in a remote working relationship (Süzek, 2007).

Another obligation of the employer within the scope of Law No. 6331 is to supervise whether the occupational health and safety measures taken in the workplace are applied (Süzek, 1989). As in the main workplace, the necessary supervision must be made by the employer in places where remote work is carried out (Süzek, 2018). However, various issues may prevent the actual realization of the inspection here. For example, in the case of working at home, the violation of the immunity of the residence is the first thing that comes before us. In this case, the employer can only fulfil the supervisory obligation with the permission of the employee. In the case of telework, the Telework Agreement includes its own specific control regulations (Tandogan, 1961). According to the agreement, employers and authorized persons may conduct inspections at the place where teleworking takes place, within the limits set by the legislation, to ensure the correct implementation of occupational health and safety regulations (Taşkent, 2006).

If the worker is doing telework at home, then the employer's prior notification and the worker's consent will be sought. Another obstacle to the control other than the inviolability of the residence is the privacy of the worker's private life and interference with his private life (Taşkent, 2010) Accordingly, the employer must protect and respect the employee's personality and private life and act in accordance with the principle of honesty (Tunçomağ, 2015). In the case of telework, the employer has the right to inspect whether the worker's work-specific devices such as telephones and computers are used in accordance with the purpose of the work (Uyanık et al., 2020).

## **CONCLUSIONS AND RECOMMENDATIONS**

1. In the developing and changing world, various alternative working methods have been needed because of technological developments, economic benefits, and the need for employers to reduce costs and the need to carry out the business in a healthy way.

Remote working system is one of these alternative methods. In the Labour Law No. 4857, the definition of remote work is included, and it is emphasized that the work can be carried out outside the workplace.

In cases where remote working methods are adopted, the issue of occupational health and safety has a great place in terms of both workers and employers.

In the Labour Law No. 4857, the employer has obligations to inform the worker about the occupational health and safety of the employer, to provide the necessary training, to provide health surveillance, and to take the necessary precautions regarding the equipment provided.

2. In these days when we are struggling with the pandemic, remote working systems have become much more common and inevitable. The Covid-19 pandemic has made teleworking systems mandatory in some business lines, and remote working is essentially an atypical work style.

The remote working system, the basic regulation of which is included in the Labour Law, can be implemented in various ways. The Remote Working Regulation was published on March 10, 2021, aiming to prevent the problems that arise in the applicability of remote working systems, which have become especially widespread during the Covid-19 period.

In this Regulation, the general framework of the procedures and principles of remote working has been established.

3. In these days when the understanding of flexible working has increased with the effect of changing conditions and developing technology, especially the Covid-19 epidemic has increased the importance of working remotely.

In many workplaces and lines of business, it is not compulsory for workers to be present at the workplace. Again, employers' desire to avoid various costs has made working remotely preferable.

Teleworking can also be done in ways called homework or teleworking. For example, face-to-face education, which has been suspended due to the epidemic, continues in the form of working at home.

4. Preferring the remote working system does not remove the employer's obligations arising from occupational health and safety. It is taken as a measure that the employer does everything necessary in terms of occupational health and safety. The aim is to eliminate work accidents and occupational diseases completely, and when it is not possible to eliminate them, possible risks should be minimized.

The concept of workplace, which is also important in terms of work accident, is also valid for the place where remote work is done. An accident that occurs during the execution of the work is considered as an occupational accident.

The situations in which remote working cannot be done are also determined in the Regulation and it is stated that remote working cannot be done especially in work areas where hazardous chemicals and radioactive substances are used, if these substances are to be processed, or if it is necessary to work with material wastes or if there is a risk of exposure to biological factors.

5. During the Covid-19 epidemic, remote working has been a saviour, especially in business lines where it is not mandatory for the employee to be at the workplace due to the nature of the work. Because workers working with the remote working system cannot be treated differently from other workers due to the principle of equality. At the same time, it affects the reduction of the transmission rate of the epidemic.

During the epidemic process, there is no obstacle in the implementation of remote work with the contract to be made between the employee and the employer, as well as temporarily. As a rule, the remote working system is subject to the agreement of the parties.

However, in case of compelling reasons, it can be argued that the employee's approval or consent is not obligatory for the transition to the remote working system. The point to be considered here is that within the scope of occupational health and safety, the obligation to monitor the health of the worker remains within the limits of liability, the temporary applicable nature of remote work and the fact that it does not aggravate the working conditions of the worker.

6. The rapid spread of the Covid-19 virus in the world and in our country has made it necessary to take additional measures. As a result of these measures, the remote working system has become a solution.

Within the scope of occupational health and safety, the employer should also make a risk assessment in the teleworking system and inspect whether the measures taken for occupational health and safety are applied. In the field of supervision, we may encounter problems arising from the fact that remote work is usually done from home.

At the beginning of these problems is whether the immunity of the residence can be violated. In this case, the employer's control may be subject to the employee's permission. Because the right to respect for private life also requires it. On the other hand, it is possible to carry out inspections in the place where telework is carried out, provided that the limits determined by the law are not violated. Another obstacle to control is interference with private life. The supervision of the employer should be carried out within the limits of respect for private life and within the framework of the principle of honesty.

7. The effects of the remote working system today are very important. Especially in these days when the course of the epidemic is progressing, the existence of an alternative method for the employees in the risk group also serves to protect the public health.

Again, although the issue of whether an accident that occurs during remote work can be considered a work accident is controversial, we believe that accidents that occur during the execution of the work should be considered as work accidents even if they occurred at home.

Because the working environment is changing, and the home is now becoming a working environment. It is important to note whether the causal link is broken or not. Therefore, even if the working environment is not a workplace, it is extremely important for the employer to fulfil its obligations to eliminate or minimize all kinds of risks that may endanger the health and safety of the worker.

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