

International Labor Code

International Labor Code (the “Code”), entered into force upon its publication in the Official Gazette on August 13, 2016. The Code No. 4817 dated 2003 on Work Permits of Foreigners was repealed by the entry of the International Labor Code. However until all required supplementary regulations come into force; articles of the Code No. 4817 which are compatible with the Code shall be applied in order to avoid problems which may occur in the future. It is aimed to prevent illegal employment and attract qualified workforce into Turkey, since the Code No. 4817 is not adequate to regulate dynamic and ever-changing migration, employment of personnel of foreign nationality and workforce migration management, as mentioned in the preamble of the Code. At this stage, even if there are certain regulations concerning foreign employment; we believe that by-laws should be waited for a better understanding since the articles give a general frame on the matter. Essential points concerning the Code are explained in Q&A below:

1- Which Foreigners Are Within The Scope Of The Code?

Foreigners who are currently working or filed an application in order to work in Turkey; foreign vocational trainees or foreigners who applied to be vocational trainees; foreign interns and foreigners who applied to do internship in Turkey; foreigners who are serving temporarily as cross-border service providers; natural and legal persons who currently employ foreigners or who filed an application to employ foreign employees are within the scope of the Code.

2- What Is A Turquoise Card? Who Are Able To Obtain It?

One of the principal amendments concerning Labor Law is Turquoise Card. However articles on its conditions and beneficiaries are not clearly regulated.

Turquoise Card is a document which provides Permanent Work Permit for an indefinite period to foreigners and Resident Permit to their spouses and dependent children pursuant to competent regulations. In accordance with international labor policy; Turquoise Card can be obtained by foreigners whose application is evaluated and approved regarding their level of education, professional experience, contribution to science and technology, effect on economy and employment through their investments and activities in Turkey; Council of International Labor Policy’s proposals and Ministry’s procedures and principals. Turquoise Card holders have the rights of a Permanent Work Permit.

Under the Code, qualified foreigners are specified as academics that have internationally recognized studies; those who came to the force in the fields of science, technology, industry and fields deemed strategic for Turkey; those who contribute in national economy through employment and investment or who are expected to contribute in such fields.

3- What Are The Types Of Work Permit?

Work Permit of Definite Duration: Maximum 1 year of Work Permit can be obtained by foreigners on the first application. Foreign employee should be working in a specific workplace belonging to natural or legal persons or public bodies and agencies or in a specific position in other workplaces of such

entities operating in the same sectors. At the end of this duration maximum 2 years of permit can be given to foreigners. At the end of those 2 years, foreign employee can obtain 3 years of permit.

Permanent Work Permit: Foreigners who have long-term residence permit or minimum 8 years of Work Permit can file an application for Permanent Work Permit. However, meeting all requirements for application does not mean that the foreigner has absolute right for obtention.

Foreign employee who has Permanent Work Permit can benefit from all rights provided by long-term residence permit. Permanent Work Permit holders can benefit from all rights that Turkish citizens have, except the regulations of private laws. Their vested social security rights are reserved and they are subject to competent laws on utilizing their social security rights. Besides Permanent Work Permit beneficiaries do not have right to vote, to stand for elections, to take charge in public service and they are not obliged to fulfill military service.

Independent Work Permit: This permit is given for a definite duration in accordance with foreigner's level of education, professional experience, contribution to science and technology, effect on economy and employment through his investments and activities in Turkey, company capital –in case foreigner is partner of a company- and Council of International Labor Policy's proposals.

4- Should A Managing Partner In Limited Liability Companies And Board Member Partners Of Joint Stock Companies Obtain Work Permit?

Pursuant to Article 10 of the Code, active manager partners of limited companies divided into shares should obtain Work Permit as well.

Exceptionally, nonresident board members of joint stock companies and partners without manager title of other type of companies and cross-border service providers whose activities do not surpass 90 days in 180 days do not have to obtain Work Permit. Definition and conditions of cross-border service providers shall be explained in detail under by-laws.

5- Is A Pre-Authorization Necessary In Order To Work In Turkey?

Foreigners that wish to work in the fields of health and education should obtain a pre-authorization, since such fields need professional competence. Ministry of Health and Ministry of National Education are entitled to give pre-authorizations. Professions requiring pre-authorization are determined by Ministry of Labor and Social Security through the opinion of abovementioned ministries.

6- How To Apply For A Work Permit?

Applications can be filed directly to the Ministry of Labor and Social Security in Turkey. If application is filed abroad, it should be presented to Turkish embassies or consulates in the countries where foreigner is a citizen or a legal resident. Turkish embassies and consulates transmit the applications to the Ministry.

One of the principal amendments came into force by the Code is that foreigners can apply for Work Permit through intermediaries. Under the Code No. 4817, there is no such regulation concerning

intermediaries. Procedures and principles regarding characteristics of intermediaries, their scope of task and authorization shall be regulated under by-laws.

Another principal amendment is made concerning renewal period of Work Permit. Under the Code No. 4817, it was 15 days before the expiration of the permit. In accordance with the new Code, foreigners should apply within 60-day period before the expiration of their permits. The application should be filed before the expiration date.

Applications should be terminated within 30 days, unless there is a deficiency. In case of any deficiency, this period is adjourned until all application requirements are fulfilled.

In case the application is made abroad, foreign employee should come to Turkey within 6 months following the validation date of his Work Permit. If foreigner fails to enter in Turkey within 6 months, his permit shall be revoked.

7- Is A Residence Permit Necessary After The Obtention Of Work Permit?

Work Permit holders do not need to obtain residence permit since it subrogates residence permit as well.

8- Does An EU Citizen Have Privileges On Obtention Of Work Permit?

Under the Code there are no explicit regulations regarding EU citizens and citizens of Turkish Republic of Northern Cyprus, however it is stated that exceptions can be applied regarding Articles 7, 9 and 10 on behalf of EU and TRNC citizens. Exceptions shall be regulated by by-laws.

9- Should Spouses Of Turkish Citizens Obtain Work Permit?

Under the Code, it is accepted that foreigners who are married to Turkish citizens, residing in Turkey can benefit from exceptions like EU citizens, however Work Permit is necessary for the spouses of Turkish citizens.

10- Should A Foreign Student In Turkey Obtain Work Permit In Order To Work?

Foreign students registered into formal education program in a higher education institution can work by obtaining a Work Permit.

Foreign students who have completed their first year in pre-license and license programs can apply for Work Permit and they can work part-time pursuant to the Labor Code No. 4857. Foreign master students who are registered in formal education programs are not limited by such regulations.

11- Can A Work Permit Applicant Object To Rejection Of His Application?

In case of rejection, applicant can object to the Ministry within 30 days. If this objection is also rejected, applicant can resort to the administrative jurisdiction.

12- Shall Present Work Permits Be Affected By The Recent Regulations?

Existing Work Permits given by the Ministry or competent public bodies and agencies pursuant to previous regulations are valid during their defined period of time.

13- What Are The Consequences Of Illegal Employment?

In case of nonfulfillment of obligation to notify;

- Foreigner who has independent or permanent work permit should pay 400 Turkish Liras,
- Employer should pay 400 Turkish Liras for each foreign employee,

In case of nonexistence of Work Permit;

- Foreigner working dependent on an employee should pay 2.400 Turkish Liras,
- Self-employed foreigner should pay 4.800 Turkish Liras,
- Employer or representative of the employer should pay 6.000 Turkish Liras of administrative fine.

Repetition of such breaches shall double the original fine.

As a summary, the Code does not regulate explicitly essential matters such as evaluating criteria on work permit applications, types of work permits, exceptions. The Code entered into force on August 13, 2016, however as mentioned in this bulletin many subjects shall be regulated under by-laws.

Regards,

Baspinar & Partners Law Firm