

## TYPES OF EMPLOYMENT CONTRACTS

### Introduction

The employment contract, under Turkish law, is defined as a contract whereby the employee undertakes to perform a work under supervision of the employer, and, in return, the employer undertakes to pay a wage.

Foreign-managed firms owning a business in Türkiye as well as prospective expatriates wishing to get a job in Türkiye should be aware of, among other things, the statutory requirements with regards to formal structure of employment contract when they negotiate with a domestic employer or employee.

This article intends to outline the types of employment contracts and formal necessities pursuant to legal regulations.

*“... employment contracts to be made for a specified period of one year or more must be concluded in written form.”*

### Form of Contract

In principle, an employment contract is not subject to a specific form, unless otherwise regulated by law. Therefore, an employment relationship based on a verbal agreement or even implicit, non-verbal mutual understanding is permissible.

Nevertheless, employment contracts to be made for a specified period of one year or more must be concluded in written form. Written contract documents though, are exempt from stamp duty and any kind of dues and charges.

In cases where there has been no written contract concluded between parties, the employer is obliged to give employee a written document bearing;

- a) general and specific working conditions,
- b) daily or weekly work periods,
- c) amount of wage and additional payments (if any),
- d) time of payment,
- e) duration of contract (if specified), and
- f) conditions for termination.

Such document should be given within two months following the commencement of work, save where there is a contract concluded for a period of one month or less.

## **Language of Contract**

According to the law regarding compulsory use of Turkish language in commercial enterprises, a contract must be executed in Turkish in the event that a Türkiye-based commercial entity is a party to it, and it is implemented in Türkiye.

Hence, employment contracts should be drawn up in Turkish language where such contracts are made by and between commercial companies incorporated in Türkiye, and employees, be it Turkish citizens or foreign nationals.

## **Duration of Contract**

An employment contract does not necessarily have to stipulate the length of employment, validity period, or the date of expiry.

Where the contract is not made for a certain period of time, it is considered to be concluded for an open-ended period.

Fixed-term contracts, on the other hand, are made for a specified period, or a specific event, the duration of which can be objectively determinable even though not expressly set out in the contract. An employment contract between a contractor company and a building foreman made for the duration of a completion of certain construction project can be given as an example to fixed-term contracts. It is important to note that fixed-term contracts should be made in written as required by law.

A fixed-term contract cannot be extended or renewed in a sequential manner, unless there are solid grounds to do so. Otherwise, such contracts are deemed to be open-ended from the outset. Similarly, a fixed-term contract is automatically transformed into an open-ended contract if parties implicitly continue the employment relationship after expiry of the contract term.

It is worth pointing out that open-ended contracts grant broader rights to employees compared to fixed-term contracts. The below table show the significant differences between the two:

OPEN-ENDED	FIXED-TERM
No automatic expiration	Automatically expires at the end of term
A termination notice should be sent by terminating party	No need for termination notice
Employee may be entitled to "notice pay" upon termination	No notice pay upon expiry
Employee may be entitled to "severance pay" upon termination	No severance pay upon expiry

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## Common Types of Employment

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Parties have liberty to arrange working periods in accordance with their needs and nature of the work, unless restricted by law. Accordingly, contracts may stipulate full-time or part-time work, trial period, or other methods and kinds.

This article aims to tackle the basic characteristics of the most common types of employment.

### Full-time Employment

In principle, the duration of work may be a maximum of 45 hours a week in full-time employment. Unless otherwise agreed, working hours are equally distributed between the workdays of the week. If parties so agree, the normal working hours may be distributed unevenly over workdays, provided that daily working hours do not exceed 11 hours on any one workday.

In addition, employees may work overtime based on grounds of national benefit, nature of work, or increasing productivity. Overtime work is defined as the work exceeding 45 hours a

week. Overtime pay per hour to be given to an employee shall be at least 50% higher than the normal hourly pay.

In cases where the duration of work is set less than 45 hours in the contract, say 40 hours a week, the work performed over 40 hours but less than 45 hours is also deemed to be overtime. In such case, the overtime pay per hour is 25% higher than the normal hourly pay.

In order to have employees do overtime work, their consent must be taken by the employer. Overtime work may not exceed 270 hours in a year.

## Part-time Employment

The employment contract shall be considered as part-time contract where the normal weekly working time of the employee has been fixed considerably shorter compared to an equivalent employee working full-time.

Part-time work period cannot be prescribed more than two-thirds of full-time work. Thus, considering the fact that weekly working hours of full-time employees can be 45 hours maximum, part-time employees may be employed for 30 hours a week at the utmost.

A part-time employee cannot be subjected to any different treatment in comparison to a full-time equivalent employee merely on the grounds that his/her work is based on a part-time employment contract, unless there is a justifying ground.

Divisible benefits of the part-time employee pertaining to wage and other monetary benefits shall be paid in proportion to the length of his working time compared to a full-time equivalent employee.

## On-call Employment

Employers' needs vary considerably depending on the nature of the business. Organizations usually employ on-call workers during special events, peak hours or intermittently when business needs require additional support.

On-call employment contracts must be made in written form. In case the length of work time in a time frame such as per week, month or year, has not been determined by parties, the work time is deemed to have been fixed as 20 hours per week.

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The employee is entitled to wages irrespective of whether or not he is actually engaged in work during the time determined for work on call. Unless agreed otherwise, the employer who has the right to request the employee to perform his obligation to work upon call must make the said call at least 4 days in advance.

If the daily work time has not been fixed in the contract, the employer must maintain the employee at work for a minimum of 4 consecutive hours at each call.

## Contracts with Trial Period

Trial period clauses in employment contracts help parties get to know each other and foresee whether they are willing or unwilling to sustain their business relationship. Turkish law allows trial period clauses to be set forth in any and all types of employment contracts.

In cases where parties prescribe a trial period in an employment contract, the duration of this period cannot exceed 2 months. Such period, however, may be extended up to 4 months in collective labour agreements. Trial periods prescribed for more than aforesaid periods shall be null and void.

Within the trial period, each party has the right to terminate the employment contract without notice and compensation. However, the employee's right to receive wage for the term of his/her actual work as well as other rights arisen therefrom are reserved.

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