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THE GROWING
PROBLEM in
**REMOTE and
HYBRID WORK:**
OVERTIME!

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THE GROWING PROBLEM in REMOTE and HYBRID WORK: OVERTIME!

Remote work which is also known as work from home (WFH) is a type of flexible working arrangement that allows an employee to work from remote location outside of corporate offices. The concept of remote work entered the Turkish legal system in 2016 and although some companies applied it as a few days a week until recently, the practice of "remote work" has become a common working model in recent years especially after Covid-19 epidemic. The comprehensive regulation specific to this working model is the Remote Working Regulation, which came into force after the pandemic and includes the needs in practice.

Despite the regulations, the importance of employment contracts which should be containing provisions governing overtime working conditions, and legal assessment requirements, especially in terms of managing dispute processes related to overtime has increased.



Since the employee is not under the supervision of the employer in remote working, the employer's exercise of the right to inspection is severely limited, so it becomes difficult to control and determine whether the employee adheres to working hours in the remote working model. Therefore, the concern of whether the overtime is actually done or the problem of proof of overtime continues to be encountered frequently.

Remote work is the fulfilment of the employee's obligation to work via working at home or outside the workplace with technological communication tools. Accordingly, in the employment contract, the definition of the work should more importantly include and properly regulate and describe how the work is done, the time and place, the overtime conditions, the wage information, the reports expected from the employee, the determination of the days to come to the workplace in case of hybrid work, the equipment provided by the employer and the obligations of the employee regarding their protection, the conditions for the employer to communicate with the employee, the way the occupational health and safety measures are arranged in the employment contract have gained more importance. It should be noted that although remote work is a working model in which working hours can be flexibly determined by the parties, the overtime must be done upon the written request of the employer and with the acceptance of the employee by law.



In remote work models, where working hours are certain and work is required and expected to be done during ordinary working hours, it is relatively easy to follow and document the suitability for working hours and overtime can also be determined. However, it is still necessary and important to monitor and document remote work, and all these to be done with legally protected methods.

This is exactly where the problem is in practice! Especially for the type of works such as software development and design in different fields is the subject or work based on project delivery is concerned, workers usually do not have specific working hours, but work flexibly and usually working hours may depend on the completion of a certain job, stages, or project.

In this type of fields, a certain range of working hours are generally not regulated in the employment contracts. Although a working hour interval is generally determined for this type of flexible works with the general type of contract usage habit, it is not applied in practise. Even if in practice it does not comply with the nature of the work and actual agreements between the parties, the fact that working hours are regulated in the employment contract can be used against the parties in case of conflict.

Although it is limitedly possible for the employer to follow the working hours and overtime with technological developments, here, it is essential for both parties to act according to the rules of mutual goodwill based on self-reporting. However, arranging and requiring the regular reporting by using tracking methods by the employee is the most effective practice here.

Within the scope of regular reporting and monitoring application, the employer may use of instant screen monitoring, task management or time tracking software. However, organizing all these in detail in the employment contract and also obtaining approvals, if necessary, in terms of data protection and taking security measures are among the important obligations of the employer. It should be emphasized that it is important to observe the balance between the employer's right of management and the protection of private life in such monitoring practices.

Therefore, it is important to make balanced and applicable reporting and tracking arrangements in contracts regulating remote work and to utilize technological tools in practise.

In addition, it may be requested from the employee to report the stages of development of the project or design and the current point including with scheduling and authentication. It may provide great convenience in terms of proof of overtime work by using a secure way that is available to verify the identity of the parties, with tools that allow agreement on working hours.



As a result, it is important for the employer to determine in detail the way of communicating and reporting with employee, and to arrange all these in the contract in a way that includes general and special conditions. Only in this way, in case of remote work, employers can clearly determine working hours, breaks and meal breaks and follow-up working hours in accordance with the law.

While technology makes working remotely common, it also requires the use of technological tools that allow employers exercise of their right to inspection and control employees under legally possible conditions.

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