



## Home Work Contract

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### Keywords

Home work,  
Turkish  
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### Abstract

One of the important regulations brought alongside the law no. 6098 Turkish Code of Obligations effectuated on 01.07.2012 is "Home Work Contract". Service Contract is regulated in the sixth part of the second section where private liability relations are regulated in the Turkish Code of Obligations. In the first section of this part, "General Service Contract (TCO. 393-447), in the second part "Marketing Contract (TCO 448-460), and in the third part "Home work Contract" regulations are found. General provisions to be applied to the service contracts were described under the title of "General Service Contract"; and special provisions have been introduced regarding "Marketing Contract" and "Home work Contract" as subtypes of service contract.

Home work contract is defined in article 461 of Turkish Code of Obligations as: "Home work contract is a contract where the employee agrees to carry out the duties as defined by the employer in the employee's own home or somewhere else specified by himself/herself or with family members in return for a fee.". This description is in parallel with the description specified in the C177 Home Work Convention of International Labour Organisation. Home work, in other words, conventionally working from one's home employed by but without the supervision of the employer, emerged with the Industrial Revolution in the 18th century and spreading widely into modern times.

The concept of working from home does not mean undertaking the routine domestic chores in one's house such as cleaning, cooking or looking after children and the elderly. In order to determine whether a job carried out at home qualifies as subject to Home Work Contract; the employer must set the work, the employee must deliver and the employee must need equipment and tools in order to deliver the obligations. Also, the worker must deliver the end-result and the employer must be able to use the end-product in own productions or directly on the market. Production of industrial and trade goods made by hand or using a machine, work that involves the processing and improvement of produced goods, financial and technical studies, journalism and scientific studies, and artistic works can be subject to home work contract. In today's world, textile and food sectors involve a substantial amount of home work.

In our study, we evaluate the requirement to protect the workers and the legal regulations regarding the matter within the Code of Obligations "Home Work Contract".

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## 1. Introduction

One of the important regulations brought alongside the law no. 6098 Turkish Code of Obligations effectuated on 01.07.2012 is "Home Work Contract". Service Contract is regulated in the sixth part of the second section where private liability relations are regulated in the Turkish Code of Obligations. In the first section of this part, "General Service Contract (TCO. 393-447), in the second part "Marketing Contract (TCO 448-460), and in the third part "Home work Contract" regulations are found. General provisions to be applied to the service contracts were described under the title of "General Service Contract"; and special provisions have been introduced regarding "Marketing Contract" and "Home work Contract" as subtypes of service contract.

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## 2. Home Work Contract Concept On The Whole

The recent rise in trade, technological and economic needs have required amendments to the classic employment models. As a results of these amendments, work relations have become more flexible and new work forms have emerged. In the eye of these matters, Turkish Code of Obligations (no. 6098) regulated home work contract as a subtype of service contract (Eren, 567; Zevkliler/Gökyayla,451; Karakışlak, 219 ).

Home work contract is a contract where the employee agrees to carry out the duties as defined by the employer in the employee's own home or somewhere else specified by himself/herself or with family members in return for a fee (TCO art.461). The articles warrants that the worker agrees to, alone or with family

members, i.e. sew dowry, bedspreads, clothes, gives them to a shop and package the goods delivered. In other words, the article regulated the home work in the traditional sense.

Home work contract is an atypical service contract. Atypical service contract is a service contract that is subject to special rules in terms of essence and form, and is differentiated with techniques such as either limiting the period of the service contract or the job duration, or flexible employment (Mollamahmutoglu/Astarlı,420;Karaca,372). Home work contract which used to cover home-based jobs like weaving, packaging, decoration, now covers a wide range of jobs with the effect of labour economics. Today in many countries transactions take place at home without having to go to a workplace. It is widely used in jobs that require specialism such as architecture, engineering, translation, tax consultancy, and editing (Dulay,9). The biggest separating factor between home work contract and general service contract is that the worker provides the service in their own home or a location of their own choice, not at the workplace of the employer. Even though the worker is bound by the instructions of the employer and economically dependent, the legal dependence has either completely vanished or significantly diminished (Eren, 567). Since the employer can not supervise the undertaking of the job, the worker is free to assign their own working hours. However, the job being carried out without the supervision of the employer does not mean that the employer has no control in the home work contract. The employer audits during the deliverance of the obligations, not during the undertaking. The subject of general service contracts constitutes the transaction. The worker has no responsibilities whatsoever from the end-result of the job. Poor transaction does not affect the worker's qualification to payment, however the worker is required to compensate for any losses. Whereas in home work, the worker is responsible from the end result, too. Moreover, in home work contract, the payment is usually set per piece (Gülver,104;Kandemir,157).

Another important difference is that it is not the worker himself/herself who has to undertake the job. The employer party of the contract can be a person or a corporate body, however the worker party must be a person due to the nature of the job subject to contract. The worker can receive help from family members based on legal reasons (Yavuz,432;Zevkliler/Gökyayla,451;Eren,568). Since the traditional home work contract is preferred in order to provide contribution to family budget, it is usually preferred by children, females, the elderly and the disabled. There are no limitations to age, gender or health conditions specified by the law. However, in order to prevent exploitation, the protective clauses of the Labour Law on age, health condition and gender should be applied to home workers, too (Dulay,132).

There is no special regulation for this kind of employment model in the Labour Law (4857). The fact that home work contract is regulated within TCO with special provisions does not hinder workers benefit from the protective mechanisms of the Labour Law (Süzek,286;Gülver,121; Y.9HD, 19.10.2015,E.2015/22587,K.2015/28954). Law setter brought different regulations due to the specific characteristics of this atypical work. Home work is defined in "Home Work Convention" 1996, (No.177) of ILO as "...one working in

one's own home, other than the workplace or another industrial location operated by the employer, producing goods or carrying out a study assigned by an employer in return for payment". According to this, those who have the autonomy and freedom required in places chosen by them, with an exception of their own house or workplace are not covered in the contract scope; the contract only covers home workers who work within an obligatory relation. Republic of Turkey has not yet confirmed the convention number 177.

### **3. The Subject Of Home Work Contract**

In the home work contract, which is an atypical service contract, the primary obligation of the worker is delivering the obligations. In justification of TCO/461, some jobs that may be subject to home work contract have been specified; such as the worker sewing dowry, bedspreads or clothes or packaging goods for a shop at worker's own home alone or with family members. However, not all jobs that are carried out in worker's own home or another location specified by the worker will be subject to home work contract. In determining the subject of the home work contract, factors such as the worker needing materials and equipment in order for the employer to assign work to the worker, and the employer using the end-product in production or direct trade should be taken into consideration (Gülver,106; Kandemir,154, Dulay,143). For this reason, jobs like housekeeping, cleaning, childminding, gardening, cooking, caretaking are not subject to home work contract. Because these jobs take place in a house that belongs to the employer, not in the worker's home or somewhere specified by the worker. Also it does not include the factor of delivering the end-result of a job to the employer (Kandemir,155; Gülver,106; Dulay,142). Jobs that require specialism such as production of industrial or trade goods by hand or using machinery, processing and modification of produced goods, embroidery made on fabric using hand machinery, weaving products, assembling parts, scientific studies, artistic works, translation, bookkeeping, architectural projects, and journalism may be subject to home work contract (Rehbinder/Stöckli, Art.351 Rn.4; Gülver,106; Dulay,143; Karaca,376) . In today's modern working world, home work is common in many sectors. In textile sector, the embroidery on the produced fabric, sawing the buttons and zips on coats, combining the pieces of sweaters, aligning the collars, weaving runners and rugs using the equipment provided by the employer, packaging and decorating jobs; in the food sector, making stuffed meatballs, noodles and ravioli for a restaurant that serves home-made meals, shelling and peeling raw foods and jarring can be subject to home work contracts. Another example would be the shelling of nuts that will be used in production of cakes, or sorting a sack of sugar or flour into 1 kg packets in a bakery. However, independent jobs despite being carried out in a home environment do not necessarily qualify for home work contract. For instance, if a wedding dress maker closes down his/her shop and continues to operate from their home, this would not be classified as subject to home work contract. However, if the dressmaker makes a deal with an employer to sew pearls on veils or making bride's jewellery bags, that would be subject to home work contract (Gülver,107; Dulay,144; Tunçomağ/Centel,41; Okur,10;Kandemir,155).

#### **4. Declaration Of Working Conditions**

According to the contract freedom principle and Labour Code /9, parties can make the home work contract within the provisional limits of the code (Eren II,225; Akıncı,77; Oğuzman/Öz, 119). As the home work contract is flexible and atypical, the parties should take into consideration the specific conditions of the contract. Especially regulating and customising matters such as varying working times, protection of personal life and data, maintaining health and safety in the workplace, confidentiality, scope of expenses and responsibilities will enable the continuity of the contract (Centel,18; Dulay,129). The legislation does not dictate an obligatory form in terms of the contract being made between the parties. The contract can be made with explicit declaration of intent as well as implicitly, directly or indirectly and verbally or in writing (Yavuz, Hizmet,98; Centel, 18; Kandemir, 157; Ergin, 215; Gülver,109). Article 462 of Turkish Code of Obligations proposes that the employer is to inform the worker of the working conditions in advance. According to this, “the employer informs the worker of the specific characteristics of each new job and of any detail that is not included in the usual working conditions; and hands a written confirmation of the equipment that will be used for that job, how much payment will be made to the worker to obtain this equipment and the payment that will be made for that job if necessary.” (cl.1); provided the payment for equipment and the job is not specified in written form before the job is carried out, the common payment is to be made. (cl.end) According to the first clause provision, the employer must inform the worker of any out-of-the-ordinary working conditions and the specifics of the job while assigning the job. Employer is also required to, if necessary, give the worker written notice of the equipment required to complete the job, the payment that will be made to acquire that equipment and to complete the job. In the second clause; it is stated that unless a written statement is made for the equipment and job completion, worker will be paid the regular fees for the specific job. Even though home work contract is not legally required to be carried out in written form, the worker must be informed of the specifics of the required job in written form. The written form brought with this regulation is not a dictating form of validation (Centel,17;Kandemir,157; Dulay,130). In cases where the employer does not make the written statement, and the worker undertakes the job regardless, the worker is to be paid the regular fees for that type of job.

As much as the article text is to be deemed, the safety rules and user guides of the technical devices that will be used to carry out the work is also one of the requirements of the working conditions declaration. This information serves in maintaining safety in the location where the work will be taking place and therefore fulfilling the obligation to protect the worker. (Rehbinder, Berner Kommentar, Art. 351a, Rn.12; Gülver,109 ).

#### **5. Obligations Of The Parties Pertaining To The Home Work Contract**

In cases where there are no provisions regarding the home work contract, the general provisions of the contract are applied (TCO/469). Law also separately regulated the special obligations of the employer and the worker regarding the work that constitutes the subject of the contract.

## **5.1. Special Obligations of The Worker**

### **5.1.1. Obligations of the Worker Regarding the Completion of the Job**

The worker is obliged to start the work on time, finish it at the time agreed upon and deliver the finished work to the employer. If the work is deemed defective due to the worker's fault, he is obliged to correct the faults that are correctible covering the expenses himself (TCO/469). The obligated worker is liable for paying compensation if he has delivered the work late or done it in a way that is irreversible (Keller, 462; Yavuz, 433; Eren, 569; Zevkliler / Gökyayla, 452). In order for the worker to meet these obligations, he has to start the work on time. Even if he has not started the work on time, he can still deliver it by increasing the amount of time he works since, according to the home work contract, he is able make his schedule. However, if he has not started the work at the time agreed on to finish the work on time and thus there is no way for him to deliver it on time due to his lack of skills, the employer has a right to annul the contract (Basler Kommentar, Art. 352, Rn.1; Gülver,111). In this case, the employer is obliged to cover the damage that arose from the faults he caused that are irreversible as well as other damages (losses that arouse from late delivery and extra material acquisition, additional transport expenses, so on) (Gülver, 112; Ergin, 216; Dulay, 156). Examples of the work being deemed defective due to the worker's fault can include: despite his obligation to use high-quality material, his using low-quality material, his using the material given to him improperly. In determining the scope of the worker's obligations, the general provisions regarding the service contract must be taken into account. While the worker is obliged to cover all the losses that he causes, whether the work is dangerous or requires expertise and the skills and qualifications of the worker that have to be known by the employer must be taken into consideration in determining these obligations (TCO/400). This provision plays a determining role in designating the worker's duty of care. The domestic worker shall not be forced to do any work that is outside of his expertise, education and qualifications that the employer either knows or has to know about (Soyer, 122; Dulay, 159).

The supreme court states that the worker cannot be held liable for the damage if the work given to him is outside of his expertise and that his contract cannot be annulled without compensation (Y.9 HD.,06.100.1992,3068/10904). The worker is obliged to deliver the finished work to the employer as well as starting the work on time and finishing it at the time agreed upon (TCO.m.463/1). In accordance with the provision of article, the worker is obliged to deliver the finished work. However, there is not a clear provision as to whether the worker is obliged to meet this obligation in his dominance or that of the employer. Just as the worker takes the final product to the employer, the worker is deemed to have met the obligations when the employer goes to where the job was done to acquire it. It is better to agree that the employer goes to where the job was done to acquire it, not the other way around so that the worker is able to eliminate the risk of damaging the finished work during transport ( Gülver,112;Dulay,161; Karaca,385;Kandemir,259)

### **5.1.2. The Worker's Obligations Regarding Materials and Tools**

The employer is obliged to provide the worker working under service contract with the materials and tools that are needed to do the job unless there is an agreement that states otherwise. The worker is obliged to use the materials and tools provided to him properly and account for them. Besides, he must hand in the materials and tools that have not been used. If the worker finds out that the materials and tools given to him are defective, he has to inform the employer and wait for instructions before carrying on with the work. The fact that the worker must to inform the employer about the defects of the materials and tools signifies his duty of loyalty and creates the obligation for him to examine them (TCO / 464 - 1,2; Eren, 569; Geiser, 793; Yavuz, 433; Zevkliler / Gökyayla, 452). It is agreed that in a case where the worker has rendered the materials or tools unusable by his own mistake, he has to pay the employer the current market value of that item (TCO /464-3). The worker is only responsible for the damage he has caused due to his own mistake. He only must pay the current market value of the material or the tool he has lost or damaged to the extent he has rendered them unusable. In this case, the employer cannot oblige the worker to cover the loss of earnings as well. (Rehbinder, Art.352a; Dulay,153;Eren,569).

## **5.2. Special Obligations of the Employer**

### **5.2.1. Obligations of the Employer Regarding the Acceptance of the Product**

In the domestic service contract as well, in the general meaning, obligations of the employer that stem from the service contract are implemented. Law has established some special obligations for the employer regarding the home work contract owing to some supervision problems such as occupational health and safety, time of completion and its supervision and the work being done outside the workplace of the employer and without his direct supervision. The employer is obliged to examine the finished work done and delivered by the worker and inform the defects he finds to the worker within a week starting from the delivery. If the employer does not inform the defects within this period, it means he has accepted the product as it is (TCO /465). This obligation is considered an onus and if it is not met by the employer, it means he has accepted the defective product and lost his rights that arise from the defect. Period of notice of defect is foreclosure. In the case where the defect is reported after the designated time, the obligations for the correction of the defect and compensation are discharged. However, defects maliciously hidden that cannot be detected by examination are excluded (Eren,569; Gülver,115; **Stahelin**, Art.353). The provision as to the informing of the defect is relative compulsory and while the extension of the period can be possible, its curtailment is not (Gülver,115).

### **5.2.2. Obligation of the Worker For the Payment**

An essential component of the home work contract is the charge. While the worker is able to do the job in the employee's house or someplace else and by himself or with his family members, the payment shall be made only to the person to whom the job was given by the employer (Centel,17;Karaca,381). The payment shall be made every fifteen days if the worker is hired full time by the employer, or every month with the consent of the employee. If the worker is hired part time by the

employer, then the payment shall be made at each delivery of the finished work (TCO/466-1). The worker shall be given an abstract account by the employer at each payment. The reasons for and the amount of deduction, if any, are shown in the abstract account. (TCO/466-2). No explanation as to the quality of the wage has been found in the law where only the payment time is stated.

Service contracts based on piece work are predicated upon the number of pieces of the product manufactured, not the working time. Payment based on working time is a model of employment in which the work is done under the supervision of the employer at the workplace owned by the employer and start and end time is determined by the employer. The model of pay by piece work is implemented when the supervision of the work is difficult as it is based on the piece produced, not the working time (Uşan,57). As agreed upon in the doctrine, duty of paying wages is a duty that is determined by the number of pieces produced, not working time since the subject of home work contract is often a piece work (Uşan,61;Dulay 195; Karaca,381; Gülver,116, Kandemir, 161).

One of the special obligations of the employer regarding the home work contract is to pay the worker in the event of default or his inhibiting the worker from working due to the personality of the worker even when he has no fault as stated by the provisions of inhibition of work. In other cases the employer is not obliged to pay wages (TCO/467). As it is understood from the provision of article, the employer who employs the worker full time is obliged to pay him in two cases, the first of which is where he does not want to accept the finished work although the work has been done and delivered in compliance with the contract. This provision is in fact a special implementation of the general regulation for the employer's law default regarding the home work contract. The other situation stated in this provision is the worker's being inhibited by the employer due to reasons that stem from the worker's personality. The examples of these situations are given in the provision as his being arrested despite being innocent and as his being ill. The employer's obligation to pay is limited to these situations that involve full time work. In home work contracts that involve part time work, the consequences of being inhibited from working shall be suffered by the worker even when he has no fault. (Dulay,197; Gülver 117; Karaca,390, Kandemir,162; Eren,570; Yavuz,434;Zevkliler/Gökyayla,453).

## **6. Termination Of The Home Work Contract**

The legal relationship between the parties in the home work contract ends when the contract duration is over, when the parties come to an agreement and in the events of death and annulment. Since there are no provisions in the law as to the termination of the home work contract, the situations that end the general service contract shall be implemented (TCO/469). Turkish code of obligations stipulates a special regulation as to the termination of the home work contract. According to this regulation, when the worker is given a tentative job, the contract is considered to have been made for a trial period unless the parties agreed otherwise. When the employer hires the worker full time, the contract is considered to have been made indefinitely unless the parties agreed otherwise. In other cases, it is considered to have been made fixed-term. In other words, A job given to the worker is considered fixed-term, and when the job has been completed, the service



relationship ends automatically and there is no need for the notice of termination unless otherwise agreed upon (Eren,570; Dulay,247; Zevkliler/Gökyayla,453; Yavuz,434; Dulay,247). After the trial period, the parties are able to draw up the home work contract indefinitely or fixed-term. An indefinite contract is for an indefinite period and a fixed-term one is for a fixed period of time. If the contract is for a fixed period of time, it ends when the period is over and if it is for an indefinite time, it ends with the notice of termination (Eren,570).

An execution area must be found in the doctrine so that Labor law and Turkish code of obligations could be implemented together within judicial opinion and when there is a loophole in Labor Law, obligations of the Turkish code of obligations must be applied. Accordingly, if the periods of notice of domestic workers are determined according to the Labor Law, the conditions of domestic workers and those working at a workplace could be equalized (Süzek,286;Dulay,247).

## **7. Conclusion**

Changes and developments that have been happening in the information and communication technologies have changed the manufacturing technologies as well, causing businesses to enter into a competitive environment and the rules that regulate work life have been affected by these changes and developments. New work types that have moved away from typical work models have weakened the relationships of commitment, blurring the line between employer, worker and workplace (Tuncay,59). The home work contract is a new regulation introduced by the Turkish code of obligations affected by these changes. The home work contract is an atypical legal agreement that require both parties to have obligations in which the worker undertakes a task given by the employer and is able to do it in his own house or a place of his choice and by himself or with his family members for a fee.

The employer side of the contract may be a natural person or a legal entity. However, the subject of the contract must be a natural person in accordance with the nature of the business. Although the worker is bound with the instructions of the employer and depends on him economically, his legal commitment has been completely discharged or weakened. Since there is no way for the employer to inspect whether or not the job is being done, the worker is able to arrange his working hours. Nevertheless, the fact that the job is done without the supervision of the employer does not mean that the employer has no control over the job being done. The worker is also responsible for the outcome of the job as in the contract of work. Besides, in the home work contract the wage is often determined by the number of pieces manufactured. In the home work contract the parties are also liable for the obligations brought by the special laws as well as the ones legislated by the general service contract. The special obligations of the worker that arise from the home work contract are to start the work on time, deliver the finished work to the employer and use the materials and tools properly if they are provided by the employer. As for the special obligations of the employer that stem from the home work contract are to accept the finished work and duty of paying wages. The home work contract ends when the agreed period is over and in the events of death and the termination of the contract. In cases where there are no provisions

as to the home work contract, the provisions of the general service contract are implemented. However, new provisions must be made due to the problems that arise from the nature of the home work contract such as the job being done without the supervision of the employer, occupational health and safety precautions having to be taken, working and resting hours, private life of the employer, his duty of loyalty and the protection of operating data so that the efficiency and longevity of the contract and its productivity in business life can be improved.

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