

# Engaging employees in the UK and Türkiye

## Key considerations when drafting Employment Terms

This is the first of three articles in a mini-series co-authored by Fieldfisher LLP and Sinem Çetinkaya. The series will explore the fundamentals of Turkish and UK employment law which are necessary for compliance with local requirements.

This article is intended to assist an employer proposing to hire employees in either or both of the UK and Türkiye. It provides a brief overview of the main employment law considerations when drafting employment terms in each of these jurisdictions.

Whilst many rights for UK employees are governed by legislation, the terms of the contract of employment are important. They will form the underlying basis for the employment relationship. Template terms and conditions should be reviewed regularly to ensure protection of the employer's business interests and compliance with local law.

### Legal Consideration

### English Law

### Turkish Law

#### Employment status

Individuals in the UK can be classified as i.) self-employed/independent contractors, ii.) (agency) workers or iii.) employees. Employment rights and contractual terms vary depending on the individual's [employment status](#), which should be assessed at the outset. This will be done in accordance with relevant legal tests (such as mutuality of obligation, personal service, control, the level of risk and business integration). It should be documented accurately and reflected in the contract. Notably, when an

Under Turkish employment law, employment status of individuals can be classified as: employees, self-employed, or public employees. This classification is based on the social security system to which they are subject and is distinct from the substance of their employment contract.

For employees, in cases where the employer is not in the public sector, it is crucial that each employer conducts its primary activities using its own workforce consisting of direct hires/ its own employees. In other words, it is prohibited for

## Engaging employees in the UK and Türkiye - Key considerations when drafting Employment Terms *continued*

Legal Consideration	English Law	Turkish Law
<b>Minimum information requirements</b>	<p>employment tribunal examines the employment relationship, it will look behind any labelling attached in a contract and examine the substance of the true relationship between parties.</p> <p>UK employees and workers have the right to receive a written statement of particulars of employment, which must contain certain information, as required by Section 1 of the Employment Rights Act 1996. Key information must be provided by 'no later than the beginning of employment', although some information may be provided in instalments within the first two months of employment. Mandatory information includes but is not limited to: the names of the employer and employee and the date on which employment began. Information also needs to be provided on points such as job title, place of work, pay, holiday entitlement, sickness absence, pensions and hours of work. In practice this information is usually provided by way of an employment contract also including non-mandatory provisions designed to protect the employer. If the contract does not include all of the required information, then the employee may be able to claim between two and four weeks' (capped) pay (in the event that they bring a successful substantive tribunal claim).</p>	<p>an employer to employ workers through intermediaries, agencies, and similar entities for its main activities.</p> <p>On the other hand, for tasks ancillary to primary operations and those demanding technological expertise, employers may employ workers through sub-employers. In a sub-employer relationship, the primary employer is jointly and severally liable with the sub-employer for all legal entitlements of the sub-employer's employees, although these employees only enter into employment contracts with the sub-employer.</p> <p>Employment contracts with a duration of one year or more are required to be executed in writing, as stipulated by Turkish Employment Law. In practice, it is advisable to have contracts in writing, even if they are less than one year, as employers are required to provide evidence in the event of potential disputes.</p> <p>The mandatory information required for a valid contract includes the employer's title and address, the employee's name-surname-address, the employee's task, the type of wage (net/gross), the amount of wage, the date of payment and the location of the work. Unique provisions can also be incorporated into the contracts that safeguard the parties. Nevertheless, contract provisions that are in violation of the Turkish Employment Law will be deemed invalid.</p> <p>In addition, it is very important for the employee to sign each page of the employment contract if it more than one page. Otherwise, the employee may claim that the unfavourable provisions on the page without his signature are not binding.</p> <p>Turkish Employment Law explicitly regulates fundamental matters such as annual leave durations, notice periods, and the calculation of overtime wages. Even in the absence of specific clauses in the contract, the regulations outlined in the legislation would be applicable.</p>
<b>Type of Contract</b>	<p>The type of UK employment contract will vary depending on the seniority and role of the employee. For example, statutory directors will be offered a service agreement which will include terms specific to the responsibility of a director in line with statutory requirements. Terms for junior and senior employees will also vary, for example notice periods and restrictive covenants should be tailored according to the employee's role and industry.</p>	<p>Under Turkish law, employment contracts are mainly classified according to their duration. Although the main principle is to establish employment contracts for an indefinite term, employers can hire employees on fixed-term contracts in limited cases. In addition, it is possible to offer a full-time contract to those who work for more than two thirds of the weekly working hours, and a part-time contract to those who work for less than 2/3 of the weekly working hours. Seasonal</p>

## Engaging employees in the UK and Türkiye - Key considerations when drafting Employment Terms *continued*

### Legal Consideration

#### English Law

Employment contracts can be for indefinite or fixed-term periods and employee work patterns can be agreed on a full-time or part-time basis. These options should be considered at the point of making a job offer and the employment contract should be tailored as appropriate.

#### Turkish Law

contracts may also be used by employers if there are substantial reasons arising from the work conditions.

As mentioned above, the main principle is that the contracts must be made for an indefinite duration. In the event of a dispute regarding the duration of the contract, the court of competent jurisdiction would examine whether the objective conditions required by the law to warrant a fixed-term or seasonal contract are met. If the court concludes that the objective conditions are not met, it will rule that the employment contract was made for an indefinite period from the outset.

Although there is no such distinction in the law, in practice there are also other types of employment contracts such as white collar-blue collar contracts, senior management contracts, etc., depending on the nature of the work performed by the employee.

### Immigration

An employer will be liable to a civil penalty if it negligently employs someone who is not entitled to work in the UK and it is a criminal offence to knowingly employ such a person. Any necessary visas should therefore be obtained before employment commences. Employers must also carry out '[right to work](#)' checks on all prospective employees before employment commences. This will require obtaining and checking the original versions of certain documents and making and retaining a copy of them. This is to ensure the employee has the right to live and work in the UK and is not in breach of conditions of stay by working for you. The offer of employment, employment contract and continuing employment relationship should be conditional upon those checks being satisfied and the employee maintaining the right to work in the UK. The employment contract should include an employee warranty that they have the right to work in the UK and allow for a termination of contract if the employee no longer has that right and/or does not inform the employer if they no longer have that right.

The employment of a foreign national in Türkiye is contingent upon obtaining a work permit. The employer who employs a foreign national without a work permit, the foreign national who works as an employee without a work permit, and the individual who works independently without a work permit are all subject to specific penalties. Therefore, it is essential to carefully oversee the work permit papers and diligently monitor the duration of the visa, particularly if it is temporary. Additionally, it is imperative to apply for a new visa prior to its expiration if you wish to maintain the employment relationship.

In addition to these requirements, employers must fulfil other conditions to employ foreign nationals. These include employing at least five Turkish citizens in the workplace, ensuring the company's paid capital is above a certain threshold, and providing a salary to the foreign employee that is commensurate with his/her duties and qualifications.

### Data Protection

Employers (as data controllers) are required to process their employee data 'fairly, lawfully and transparently' in accordance with the UK GDPR. This means not processing the data unless there is a lawful basis for doing so. Employers must provide their employees

According to Law No. 6698 on the Protection of Personal Data; Employers (as data controllers) are required to process employee data lawfully, and in good faith, provided that the data processing is for specific, explicit, and legitimate purposes, and is limited to these purposes. Employers are required to destroy

## Engaging employees in the UK and Türkiye - Key considerations when drafting Employment Terms *continued*

### Legal Consideration

### English Law

with certain information, including but not limited to, how their data will be processed and the lawful basis for doing so in a workplace privacy notice. Special rules also apply to transferring data (for example on an HR database to the USA) outside of the European Economic Area. As data controllers, employers need to register with the Information Commissioner's Office [here](#). It is recommended to signpost employees to the necessary required information in the employment contract and to provide that employees must comply with the employer's data protection policy and any other related policies.

### Turkish Law

employee data when the reasons for data processing no longer exist. Transfers of employee data within Türkiye and outside of Türkiye are subject to different special rules. Employees must be informed about the purposes for which their data is processed, the persons/institutions to whom their data may be transferred, how their data is processed, and the rights they have regarding their data. The information must be provided in a written form in a clear, explicit manner. It is recommended that disclosure notices be signed by the employee and presented to them as a separate document, independent from the employment contract, when establishing employment relationships.

***This overview includes a generic summary of the law and practice in force at the time of writing. It has not been tailored to individual circumstances and should not substitute legal advice.***

## Contacts



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