NEWSLETTER

No : 2017/6
Subject **:** Compulsory Mediation in Labour Disputes in 10 Questions

Labor Court Act numbered 7036 which had a widespread media coverage, has been published in the official gazette on 25/10/2017. The most important novelty that the aforesaid act brought to us is the Compulsory Mediation System, which will apply from the date of 01/01/2018. This newsletter hereby provides the most frequently asked questions and the answers as to the related matter.

1. WHY THE COMPULSARY MEDIATION IS SO IMPORTANT?

With the new regulation, the mediation option which already existed in our law system but was exclusively at the discretion of the parties has now become compulsory for some labour disputes. Under the circumstances explicitly listed in the act, an action will be dismissed by the court due to procedural deficiency, as long as the action is brought without applying to mediation first. In other words, the mediation application has become a "mandatory requirement" for the case proceeding. Moreover, the report signed at the end of the mediation will have the effect of a "court decision".

2. WHAT IS THE SCOPE OF THE DISPUTES THAT ARE SUBJECTED TO THE COMPULSARY MEDIATION?

For the disputes with compensation and reemployment claims arises from the fields of Labour Law, Maritime Labour Law, Press Labour Law and individual or collective labour contracts, it is compulsory to apply to the mediator first. In other words, mediation should be the first step for the claims such as salary, overtime, annual leave, national and general holiday pay, bonuses, severance pay, notification compensation and etc.

In the area of labour law the obligation to apply for a mediation is limited with the matters stated above, whereas the disputes arises from work accidents or occupational diseases with the claims of material and moral damages and also the declaratory, objection and recourse actions in this regard can always be brought without having to apply to a mediator first.

3. IS THERE A TIME LIMITATION FOR MEDIATION APPLICATION?

It is possible to apply to the mediator within the legal time period for each and every claim, except for the claims regarding the reemployment. Employees who claim their reemployment are obliged to apply to the mediator within one month from the date of their notice of termination. If the parties fail to reach to a settlement by the end of the proceeding, they are entitled to bring a lawsuit before the Labour Courts within two weeks beginning from the date of issuance of the last report.

4. WHICH MEDIATOR SHALL BE APPLIED?

Application shall be submitted to the mediation office at the opposing party's place of residence, in case there are more than one opposing party, at the place of residence of one of them or at the place of work. For locations where there are no mediation offices, application shall be submitted to the special offices assigned for this purpose. The mediator may be assigned by the office, as well as he can be assigned from a list by the parties due to their mutual agreement.

5. IS IT POSSIBLE TO FILE AN OPPOSITION AGAINST THE LOCAL COMPETENCE OF THE MEDIATION OFFICE? HOW THE PROCEDURE WORK IN SUCH CASE?

The mediator is not entitled to take the local competence of the Mediation Office which made the assignment into account on its own motive. Opposite party is however entitled to file an opposition against the local competence of the mediation office at the latest during the first meeting by presenting the documents as to the place of residence and as to the place of work.
In this case, the mediator shall deliver the file to the mediation office to be sent to the relevant civil court. Court shall hereby determine the authorised Office definitively on the basis of the results of a desk review without entailing any fees and shall return the file back to the office. The decision of the court shall be served to the parties by the office. In this context, if the court rejects the opposition against the local competence, same mediator shall be assigned once again. However, if the court accepts the opposition against the local competence, than an application to the competent mediation office may be submitted within one week beginning from the notification of the aforesaid court decision. In this case, application date to the incompetent Office shall be accepted as the application date to the competent Office.

6. HOW DOES THE MEDIATION PROCEDURE PROCEED AFTER THE APPLICATION TO A MEDIATOR?

After the application, the mediator begins with informing the parties about the assignment and invites them to the first meeting. He documents the information he provided and his invitation accordingly. In case the mediator fails to reach the parties, or if the meeting cannot be held due to the absence of the parties or if the parties fail to reach to a settlement in result of the meetings, the mediator shall terminate the mediation and issue his final report to notify the matter to the mediation office.

7. WHAT IS THE DURATION OF THE MEDIATION PROCEDURE?

The mediator shall conclude the application within three weeks beginning from the date of assignment. This period may be extended by the mediator for maximum for one week under extreme circumstances.

8. WHAT HAPPENS IF ONE OF THE PARTIES DOES NOT ATTEND TO THE MEETING DESPITE THE MEDIATORS INVITATION?

If a party fails to attend to the first meeting without a valid excuse and the mediation procedure is terminated due to the absence of this party, the absent party shall be indicated within the last report and this party shall be held entirely responsible for all the expenses caused by the proceedings, even if the party is partially or completely justified at the end. Moreover, no counsel's fee will be awarded in his favour. In case the mediation process is terminated due to the absence of both parties during the first meeting, each party shall be liable for their own court expenses which they will make in order to bring a lawsuit before the court after the mediation process.

9. HOW WILL BE THE MEDIATION FEE AND CHARGES PAID?

In case the parties reach to a settlement in result of the mediation process, mediation fee shall be afforded equally by both parties in accordance with the Mediation Subsistence Wage Fare, unless otherwise agreed. At this stage, the fee cannot be less then two-hour fee amount which is determined within the fare.

In case of the parties reach to a settlement at the end of the meetings held due to a reemployment claim, the mediation fee will be determined by means of a fare based percentage calculation among the sum of the total of allowance in case the employee is be reemployed, the indemnification for the period that the employee has not been employed and the employee's other rights.

In case the parties turn out to be inaccessible by the end of the mediation, if the meeting cannot be held , due to parties failure to participate, or in case the parties comes to the conclusion that they will not be able to come to a settlement within a meeting which lasted in less than 2 hours, two-hour fee shall be afforded by the budget of the Ministry of Justice. If the parties come to the conclusion that they will not be able to come to a settlement at the end of a meeting which lasted more than two hours, fees for the exceeding part of two hours will be afforded by the parties equally according to the fare, unless otherwise agreed. The mediation fee paid by Ministry of Justice budget and afforded by the parties is counted as a litigation expense. If the parties reach to a settlement essential expenses made by the mediation office shall be afforded by the parties in accordance with their settlement. If the parties fail to reach a settlement at the end of the mediation; essential expenses made by the office shall be afforded by the Ministry of Justice, on condition that the amount shall be collected by the unsuccessful party.

10. WHAT WILL BE THE SITUATION IN CASE OF THE EMPLOYER AND SUB-EMPLOYER RELATIONSHIP EXISTS?

When the reemployment application is made to the mediator; in event of the employer and sub-employer relationship, it is required that employers should attend the mediation debates together and their wills should be coherent. The condition of joint attendance is valid only for the reemployment demands and it is not applied on other claim demands.

Sincerely,

TILEGAL LAW FIRM