

# Job security of occupational physicians

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## Abstract

**Aim:** This article discusses the function of occupational physicians in relation to their preventive role in occupational health and the significance of maintaining their professional independence.

**Material and Methods:** The study examines Code no. 6331, the basis of Turkish occupational health and safety legislation and the Regulation on Occupational Physicians' and Other Healthcare Professionals' Duties, Powers, Liabilities and Training, which constitutes a regulatory framework for the occupational healthcare services. Amendments made to these texts will be evaluated in the context of the need for professional independence for occupational physicians.

**Results:** Amendments made in 2015 to occupational health and safety legislation benefit occupational physicians by subjecting employers to pay indemnity in case of termination of contract or causing a disadvantage for the physicians.

**Conclusion:** Amendments made in 2015 have been criticized in legal doctrine and by Turkish Medical Association for not providing full job security to occupational physicians. It is recommended that a special job security regulation similar to the one that trade union representatives have, be granted to occupational physicians. Another recommendation is, subjecting the termination of contracts of occupational physicians to the approval of administrative authorities such as labor inspectors.

**Keywords:** Occupational physician; occupational health and safety; occupational health and safety services

## INTRODUCTION

"Occupational Health and Safety ("OHS")" which refers to the protection of workers' health in the workplace, is a multidisciplinary field of study (1-3). Technical, medical and legal contexts and issues are entangled in this field. Legal texts, draw the frame of duties, tasks and liabilities of not only the employers, but also the professionals assigned by them.

In Turkey, with the Code no. 6331 (4) entering into force, a new era has begun in the field of OHS: It has a wide scope, comprising all kind of workers in private and public sectors, irrespective of their legal status is, including trainees and apprentices (Articles 2 and 3, b) . This new arrangement is compatible with European Union's ("EU") OHS legislation, on which the Turkish OHS legislation is based (5, 6), especially with Directive 89/391/EEC (Articles 2/1 and 3, a).

According to the Code no. 6331, employers are obliged to establish the "workplace organization for OHS services" under their duty of taking all necessary measures to protect the workers' health and safety (Article 4/1, a). Workplace organization consists of occupational safety experts, occupational physicians and other healthcare

professionals. All employers, both in private and public services, have to appoint an occupational safety expert and an occupational physician (Code no. 6331, Article 6/1, a) . Engagement of other healthcare professionals, on the other hand, is obligatory only if a minimum of ten workers are employed in a workplace ranked as "extremely hazardous".

The Code no. 6331 does not give a definition to occupational physicians but only cites them as physicians who have a warrant provided by the Ministry of Family, Labour and Social Services, particularly to work in the field of OHS. In the doctrine, however, occupational physician is defined as "an expert consultant who is responsible for taking measures to protect the health of the workers against the risks that may take place due to the working conditions in the workplace and against the risks of occupational diseases" (7).

## MATERIAL and METHODS

In this study, the effect and consequences of the preventive and, in relation to this, advisory role of occupational physicians and their status as being employees themselves in the workplace, will be assessed within the context of occupational physicians' need for a particular

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job security scheme. The main legal instruments to be considered on this subject are the Code no. 6331 and "The Regulation on Occupational Physicians' and Other Healthcare Professionals' Duties, Powers, Liabilities and Training" ("The Regulation") (8).

First of all, the Code no. 6331 proposes three options for the assignment of occupational physicians (Article 6/1, a): Employers may assign a physician from among their appropriately qualified staff, they may outsource provision of this service from a Joint Health and Safety Unit, or they may fulfill this duty by themselves as long as they have qualifications of occupational physicians. It is also possible for workplaces where there is minimal risk level and fewer than fifty workers, for the employers to perform this service without being a certified physician, provided that they have received a specific training offered by the Ministry of Family, Labour and Social Services.

As it is emphasized in the International Labour Organization ("ILO") Recommendation No. 171 (9), "the role of the occupational health services should be essentially preventive" (Article 3). Furthermore, ILO Convention No. 187 (10) -ratified by Turkey in 2014- also stipulates that member states "shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths" and ILO Convention No.161 (11) -ratified by Turkey in 2005- defines occupational health services as "services entrusted with essentially preventive functions and responsible for advising the employer, the workers and their representatives". Besides ILO, EU legislation also puts emphasis on the necessity for the OHS arrangements' preventive function.

Risk analysis and workplace organization play a significant role in the fulfilment of this preventive function. Indeed, in Turkish OHS legislation, occupational physicians' task is specified as "counselling and guiding employers on occupational health issues in the workplace" (Code no. 6331, Article 8/2). The Regulation deals with the issue in a more comprehensive manner, and approaches the subject of duties of occupational physicians under five main titles: Guidance, risk assesment, health surveillance, instruction of workers, cooperation with related units.

## RESULTS

According to the legislation, occupational physicians are to inform the employers about deficiencies and shortcomings of OHS in the workplace. They advise the employers as to the necessary measures and precautions to be taken to improve the conditions. Considering this "advisory" role of occupational physicians (12), they are defined as being "in a technically specified position" compared to any other physician (13). Moreover, since the Code no. 6331 dictates that it is the duty of occupational physicians to prepare the health reports stipulated in this legislation (Article 15/3), occupational physicians are also responsible for the health surveillance of workers. Finally, they have the obligation of alerting the public authorities and trade union representative or workers' representative, in case

they detect an imminent danger which may culminate in occupational diseases or occupational accidents.

Finally, occupational physicians have no power to force the employers nor the workers to take/respect the measures they have advised, and in such cases, if a serious and imminent danger occurs, they are obligated to alert the administrative authorities (The Code no. 6331, Article 8/2 and The Regulation, Article 11/3). Unless they fulfill this duty of notification, their warrant will be suspended (The Code no. 6331, Article 8/2).

## DISCUSSION

As explained above, occupational health services have a crucial role in the OHS organization of workplaces. The concept of "prevention" is of the greatest priority for it serves to protect workers' right to life and social parties and states' economic interests, all over the world (14). Thus, it becomes clear that the heavy load of duties and responsibilities assigned to occupational physicians make it essential for them to "enjoy full professional independence from employers, workers, and their representatives", as it is stated in both ILO Convention no. 161, Article 10 and Code no. 6331, Article 8/1. (15-17).

It is of utmost importance that the occupational physicians' professional independence is maintained in their relations not only with their employers but with workers and their representatives as well (18). Occupational physicians are not liable for the employers' failure to take the necessary healthcare measures in the workplace (19). In legal terms this means that, the occupational physician cannot be held accountable for injuries or illnesses that may have been caused by this failure on the employer's part. Consequently, in our opinion, this absence of liability in the legislation works in favour of the physicians' capacity to perform their task independently.

In cases they perform their duties as being "workers" themselves of the workplace of which they are responsible for occupational healthcare services, or as being "workers" of a Joint Health and Safety Unit, professional independence of occupational physicians may conflict with their legal status, since the nature of being employed with an employment contract entails "dependence on the employer" (20). This dependence originating from the nature of the employment contract should, in no way, be in conflict with the independence and the ethical principles medical profession requires (21).

Regarding this dependent nature of the employment relationship, the most effective safeguard to be provided for occupational physicians' professional independence would be a specifically designed job security besides the general job security provisions of the Code of Labour, no. 4857 (Articles 18-21) (22-27). In 2014, with Act no. 6645, a provision was added to Article 8/2 of the Code no. 6331 in order to provide occupational physicians with such a specific job security, and thus, professional independence. This clause stipulates that, employers can neither terminate the employment contract of

occupational physicians nor cause a disadvantage for them, for fulfilling their duty of notification. It is also stipulated that, employers who breach this provision will be condemned to pay an indemnity not less than the the physicians' annual salary.

Even though this additional clause is an amendment on occupational physicians' legal rights to enhance their professional independence, it is still inadequate in several respects. The observations put forward by the Turkish Medical Association are worth considering (28): The Association draws attention to the fact that the stipulation does not cover situations where the occupational health services are outsourced from a Joint Health and Safety Unit, and therefore physicians are not employees working under the employer of the workplace in question. Thus, a significant number of occupational physicians will not be able to benefit from the indemnity stipulated by the additional clause. Another drawback is that the added clause is limited only to the physicians' duty of notification.

## CONCLUSION

Protection of workers' health in the workplace has been a topic of debate since the Industrial Revolution (29, 30). Developments and advances in medicine have attributed a growing importance to the role of occupational health professionals and have placed greater responsibility on these professionals, in the workplace.

In Turkish OHS legislation, occupational physicians' preventive function involves not only advocacy and risk assessment but also health surveillance of workers and requires them to collaborate with administrative authorities. This extensive framework within which they have to perform their duties may, not infrequently, place them in conflict with the interests of the employer and have an adverse effect on their professional independence. To avoid this possible adverse effect, amendments were made in 2015. In spite of these amendments, however, occupational physicians are not yet fully empowered to perform their crucial preventive function in complete accordance with the discipline of medicine, As it is proposed in legal doctrine, this inadequacy of the OHS legislation can be overcome by stipulation of a special job security as the one granted to trade union representatives, by the Code no. 6356 (31, 32). Another means of ensuring occupational physicians' job security would be to subject the employer's right to termination to the approval of the labour inspector as stipulated in French OHS legislation (33). Finally, in order to prevent employers from restricting occupational physicians right to job security by using the outsourcing option, the stipulation in the added clause needs to be extended so as to include outsourced physicians as well as the physicians on the staff.

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## REFERENCES

1. Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (İş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019;14:1-18.
2. Özdemir E. İş sağlığı ve güvenliği hukuku. Vedat Kitapçılık, İstanbul, 2014;15.
3. Allender S, Colquhoun D, Kelly P. Competing discourses of workplace health. Health 2006;10:75-93.
4. Code of Health and Safety at Work, No. 6331, OG 20.6.2012/28339.
5. Özdemir E. İş sağlığı ve güvenliği hukuku. Vedat Kitapçılık, İstanbul, 2014;1-2.
6. Akın L. İş sağlığı ve güvenliği alanında sorunlar ve gelişmeler. In: İş Hukuku ve Sosyal Güvenlik Hukuku Akademik Forumu, Türkiye Toprak, Seramik, Çimento ve Cam Sanayii İşverenleri Sendikası, 15-18 October 2013, Antalya. Legal Yayıncılık, İstanbul, 2014;513-30.
7. Özdemir E. İş sağlığı ve güvenliği hukuku. Vedat Kitapçılık, İstanbul, 2014;181.
8. The Regulation on Occupational Physicians' and Other Healthcare Professionals' Duties, Powers, Liabilities and Training, OG 20.7.2013/28713
9. R171, Occupational Health Services Recommendation, 1985 (No. 171).
10. C187, Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
11. C161, Occupational Health Services Convention, 1985 (No. 161).
12. Allender S, Colquhoun D, Kelly P; Competing discourses of workplace health. Health 2006;10:75-93.
13. Hilgert J. Analyzing Exclusion in Global Worker Health Policy. Relations Industrielles/Industrial Relations 2016;71:690-712.
14. Yamakoğlu E. İşverenin işyeri hekimi ve iş güvenliği uzmanı çalıştırma yükümlülüğü. Seçkin Yayıncılık, Ankara, 2016;87.
15. See also, Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (İş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019;14:1-18.
16. Sümer HH. İş sağlığı ve güvenliği personellerinin iş güvencesi. İSGHD 2017;14:197-218.
17. Pulat P. İşyeri hekiminin hukuki statüsü. In: Prof. Dr. Sarper Süzek'e Armağan II. Beta Yayıncılık, İstanbul, 2011;2063-105.
18. Özyurt V. İşyeri hekimliğinde güncel gelişmeler. İÜHFEM 2014; 72: 317-366.
19. Sümer HH. İş sağlığı ve güvenliği personellerinin iş güvencesi. İSGHD 2017;14:197-218.
20. Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (İş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019; 14:1-18.
21. Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (İş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019;14:1-18.
22. Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (İş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019;14:1-18.
23. Sümer HH. İş sağlığı ve güvenliği personellerinin iş

- güvencesi. İSGHD 2017;14:197-218.
24. Akın L. İş sağlığı ve güvenliği alanında sorunlar ve gelişmeler. In: İş Hukuku ve Sosyal Güvenlik Hukuku Akademik Forumu, Türkiye Toprak, Seramik, Çimento ve Cam Sanayii İşverenleri Sendikası, 15-18 October 2013, Antalya. Legal Yayıncılık, İstanbul, 2014;513-30.
  25. Yamakoğlu E. İşverenin işyeri hekimi ve iş güvenliği uzmanı çalıştırma yükümlülüğü. Seçkin Yayıncılık, Ankara, 2016;237.
  26. For an opposing argument see: Özdemir E. İş sağlığı ve güvenliği hukuku. Vedat Kitapçılık, İstanbul, 2014;208-9.
  27. For an opposing argument see: Demircioğlu M, Kaplan HA. İş güvenliği uzmanları ve işyeri hekimlerine 6645 sayılı Kanunla sağlanan iş güvencesi. Sicil 2015;33:8-22.
  28. Türk Tabipleri Birliği. İş Sağlığı ve Güvenliği Kanunu ile Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun Tasarısının Türk Tabipleri Birliği tarafından ilk değerlendirilmesi (1/1006); 2015. 8 p.
  29. Allender S, Colquhoun D, Kelly P; Competing discourses of workplace health. Health 2006;10:75-93.
  30. Quinlan M. The toll from toil does matter: Occupational health and labour history. Labour History 1997;73:1-29.
  31. See also, Süzek S. İş güvenliği uzmanları ve işyeri hekimleri (iş sağlığı ve güvenliği profesyonelleri). Kamu-İş 2019;14:1-18.
  32. Sümer HH. İş sağlığı ve güvenliği personellerinin iş güvencesi. İSGHD 2017;14:197-218.
  33. Auzero G, Dockès E. Droit du travail. 29é édition. Dalloz, Paris, 2015;1252-3.