

The State Subsidy In Occupational Health And Safety Services In Turkey

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Abstract

Employers avoid to serve occupational health and safety services at the workplaces because of many reasons, one of the most important reasons is the cost of the obligations. But the cost is not an acceptable excuse to avoid the obligations because they arise from public law and protect the health, and the life integrity of workers, and cost shall not be accepted as an excuse when the health of the workers is concerned. As a result of which state subsidies are regulated in the Occupational Health and Safety Act for the small workplaces. Thus, the workers of them will not be deprived of the occupational health and safety protection. The state subsidy shall be financed by the Social Security Institution.

Keywords: Occupational Health and Safety, Occupational Health and Safety Services, State Subsidy, Occupational Health and Safety Act, Employer, Worker

Introduction

The law of occupational health and safety has an increasing importance with becoming an independent branch from labour law and the changes of regulations in Turkey. The Occupational Health and Safety Act No. 6331 accepted on 20 June 2012 within the reason of the increasing number of work accidents and, the harmonization of Turkish Law to European Union Law has enabled a unity in the field of occupational health and safety. The purpose of this act is to regulate duties, responsibility, rights and obligations of employers and workers in order to ensure occupational health and safety at workplaces and to improve existing health and safety conditions. Although this act shall be applied both in public and private sectors and all types of workers such as public servants in public services and workers in private sectors regardless of their field of activity including apprentices and interns, it is not applicable to the certain activities and persons.

There are some measures protecting the life, health and physical integrity which are in the scope of employers' liability arising from employment contract. The obligations of employers are regulated in article 4 of the Act. Employers avoid these obligations because of many reasons, one of the most important reasons is the cost of the obligations. But the cost is not an acceptable excuse to avoid the obligations because they arise from public law and protect the health, and the life integrity of workers, and cost shall not be accepted as an excuse when the health of the workers is concerned. However, the cost of the occupational health and safety is a fiscal burden for the employers. It is of great importance how the employers can afford the expenses of occupational health and safety services. Hence, subsidies are needed for these expenses. As a result of which state subsidies are regulated in article 7 of the Occupational Health and Safety Act for the small workplaces. Thus, the workers of them will not be deprived of the occupational health and safety protection.

The purpose of this study is to examine the scope, conditions, finance and application of the state subsidies to occupational health and safety services. According to the article 7, the financial support may be provided to the workplaces employing fewer than ten workers except for public bodies and organizations provided that the workplace is classified as 'very hazardous' and 'hazardous'. The classification of the workplaces as "very hazardous" and "hazardous" is identified by the act and the regulations accepted in parallel with the act.

While the ministry of Labour and Social Security is authorized to guide the practice, to remove hesitations on how to implement the law and to resolve problems arising out of implementation, the Social Security Institution shall cover expenses by allocating resources out of premiums collected under the short term insurance program including occupational accidents and occupational diseases. Though the subsidies are given to the workplaces in the scope of the article 7, they will be inspected and controlled as per this act and the other relevant regulations. If the employer who has taken subsidies fails to enter their employees into social insurance registry, the Social Security Institution shall collect the outstanding debts together with the legal interest rate.

In the paper we argue that the state subsidies are regulated for private sector workplaces, but the public sector workplaces shall not enjoy these subsidies. The aim of the subsidies are to protect the workers who can enjoy the occupational health and safety conditions as per this act. As a reason of this, the small workplaces will have financial support for the occupational health and safety precautions. Moreover, they will be controlled and the workers have social insurance in the workplaces. The constitutional rights to have social insurance and to work in a safe and healthy workplace will be

provided for the workers. Furthermore it is expected that the number and the costs of the work accidents, the social payments paid by the Social Security Institute will decrease.

The Occupational Health and Safety

Studies that are carried out to provide the protection of employees' physical, emotional, and social health; prevention of hazards in the workplace; prediction and assessment of risks; and elimination or minimization of risks are included in the scope of occupational health and safety (Akı, 2013; 3 and Özdemir, 2014; 15 and Başbuğ, 2016; 26). Occupational health serves to protect employees' health and life and includes the health rules required for their living environment. Occupational safety, on the other hand, consists of technical rules required to eliminate threats to employees' life and physical integrity (Akı, 2013; 3 and Başbuğ, 2016; 26).

Based on the 2016 records of the Social Security Institution, there are 11 million workers and 3 million public employees in Turkey. These figures show only the registered employees. Both registered and unregistered employees have to be protected in terms of occupational health and safety; because all these are under the threat of occupational accidents and diseases. If occupational health and safety precautions are not taken, a potential of encountering occupational accidents and diseases arises for employees. Occupational accidents and occupational diseases result in incapacity to work and in declines in employee wages. In addition, expenses that arise from occupational accidents and occupational diseases also create expenses for employers and the state. The occupational health and safety precautions are also an economical necessity for employers (Başbuğ, 2016; 26).

The number of occupational accidents and occupational diseases is very high in Turkey and this number has increased considerably (Canıklıoğlu, 2012; 27). The number of insured workers by work accidents and vocational diseases is 221.00 in 2014 Statistics of the Social security Institute.

Direct and indirect losses that arise from occupational accidents and occupational diseases impose economic cost burdens on Turkey (Arıcı, 2013; 96 and Başbuğ, 2016; 26). Because of this, providing occupational health and safety services in the workplace and protecting employees from occupational risks is mandatory in terms of both employers' and the state's economic condition.

Occupational health and safety precautions are basic rights of employees. Providing employees a healthy and safe workplace free from dangers, protects their physical and emotional integrity (Başbuğ, 2016; 26). While the Constitution of 1982 does not explicitly regulate the right to occupational health and safety, the "social state principal", "right to life",

“right to health”, “the principal of not being employed in works unsuitable for one’s age, gender, and physical power”, “right to rest”, and “right to social security” form the constitutional ground of the right to occupational health and safety (Süzek, 2015; 889-891). We believe that Article 56 of our Constitution is one of the constitutional grounds for the right to occupational health and safety, because based on this provision; everyone has the right to live in a healthy and balanced environment. Employees should also work in a healthy and balanced environment.

The General Features of the Occupational Health and Safety Act No. 6331

Before The Occupational Health and Safety Act No. 6331 entered into force, provisions on occupational health and safety were regulated in an unorganized manner in different acts. The Occupational Health and Safety Act No. 6331, which is an independent and general act on occupational health and safety, was accepted in 20 June 2012. This act is a result of six years work (Akı, 2013; 5) and based on the EU Directive 89/931. This Directive is one of the basic directives of EU in occupational health and safety (Balkır, 2012; 68. See Alp, 2004; 30 and Baloğlu, 2014; 109 and Piyal, 2004; 49 for the regulations of the directive).

This act includes duties and responsibilities of the state, employers, and employees in the area of occupational health and safety (Akyiğit, 2013; 40), includes numerous workplaces and employers in its scope (Ertürk, 2012; 13 and Demir, 2013; 163), and its provisions are of mandatory nature (Çelik et al., 2015; 252). Essentially, the act is based on prevention and protection (Çelik et al, 2015; 252 and Caniklioğlu, 2015; 29). However, the act has provisions that are difficult to understand and its systematic is not well prepared. Its provisions need to be more understandable and simple (Arıcı, 2013; 97- 104). In addition, the work world is not ready in terms of the obligations in the act (Akın, 2014; 513). If experts needed to implement the act are not trained and the infrastructure is not created, it will not be possible to implement the act (Caniklioğlu, 2014; 533).

According to its first article, the purpose of the act is to regulate duties, authorities, responsibilities, rights and obligations of employers and employees in order to ensure occupational health and safety at workplaces and to improve existing health and safety conditions. The obligations of the employers in occupational health and safety are increased in this act (Arıcı, 2013; 100).

This act covers all works and workplaces in the private sector. In terms of concerned individuals, the act regulates employees without making any distinction between workers and public employees; apprentices and interns are also covered by the employee concept. The quality of the work,

the hazard class of the workplace and the number of employees in the workplace do not create difference in the implementation of the act's provisions (Akyiğit, 2013; 42). In the act, the subject of occupational health and safety has been handled as a subject which concerns all employees (Ertürk, 2012; 13 and Caniklioğlu, 2015; 27). However, the fact that independent employees are not included in the scope of the act is considered as a deficiency (Akin, 2014; 514).

According to the first paragraph of the second article of the act, an "employee" is a real person who is being employed in public or private sector workplaces regardless of his/her status in their private laws. 2. In the second paragraph of the article, works and workplaces that were excluded from the scope of the act are listed. The provisions of the act will not be applied for these works and workplaces. These works and workplaces are:

- Activities of the Turkish Armed Forces, the police and the Undersecretary of National Intelligence Organisation except for those employed in workplaces such as factories, maintenance centres, sewing workshops and the like
- Intervention activities of disaster and emergency units
- Domestic works
- Persons producing goods and services in their own name and on their own account without employing workers
- Prison workshop, training, security and vocational course activities within the framework of improvements carried out throughout the enforcement services for convicts and inmates

The Obligation of the Employers to Provide the Occupational Health and Safety of The Workers

Employers are obliged to take the necessary precautions to protect workers' life, health, and physical integrity in the workplace. Employers have to both fulfill the obligations that are regulated in the legislation and take the occupational health and safety precautions that are necessitated by scientific and technological developments (Süzek, 2015; p. 906-907).

The obligations of employers regarding occupational health and safety are regulated in the first paragraph of Article 4 of the act. According to the provision, employers are obliged to ensure the occupational health and safety of their employees. Preventing occupational risks, taking all kinds of precautions, including the providing of training and information, making the organization, providing the necessary equipment, making health and safety precautions become fit to changing conditions, works carried out to improve the existing situation are included in the scope of these obligations. These are the obligations of employers that are necessary to ensure occupational health and safety. Other employer obligations are also regulated in the provision.

These are; monitoring and inspecting whether occupational health and safety measures are followed in the workplace, eliminating non-conformances, and making risk assessments or getting them being made.

One of the most important novelties of the act is concerned with the occupational health and safety service. This is because, all employers that are within the scope of the act, were obliged to provide occupational health and safety services (Çelik et al., 2015; 260). As per Article 6 of the act, employers are obliged to prevent occupational risks and provide the occupational health and safety services necessary to protect their employers from these risks. Employers will charge an occupational safety specialist and an occupational physician among employees to provide these services in the workplace. In case the workplace is classified as ‘very hazardous’ and it has ten or more employees, other health personnel will be charged as well. If employers themselves have the necessary qualifications and official documents, they can provide these services as well. If personnel that can provide occupational health and safety services in the workplace and have the qualifications sought by the act is not available, employers can also receive a part of, or all the service from common health and safety units. However, receiving services in this way does not eliminate employers’ obligations (Article 4/2). Common health and safety unit is defined in the Act as *“any unit which is established by public institutions and organisations, organised industrial zones and companies operating under the Turkish Code of Commerce in order to provide occupational health and safety services to workplaces, with required equipment and personnel and which is authorised by the Ministry”*.

The measures that will be taken in order to provide the services that arise from these obligations, employing the personnel that will provide occupational health and safety services and receiving the service of occupational health and safety create an element of cost for employers. When occupational health and safety are concerned, costs cannot be accepted as an excuse (Arıcı, 2013; 101 and Süzek, 2015; 891). As per the act, employers cannot reflect the cost of occupational health and services to their employees (Article 4/4). Neither employers can take the return of expenses made during taking these precautions from employees in the form of copayment, nor contract terms which state that costs can be reflected to employees are valid (Süzek, 2015; 907).

State Subsidy in Occupational Health and Safety Services

Expenses made for occupational health and safety services are not significant quantities for large workplaces that are financially powerful. However, occupational health and safety services may cause a significant expense for small workplaces (Ertürk, 2012; 18 and Akyiğit, 2013; 43) and

these services may lead to financial difficulties for employers (Demir, 2013; 165). In order to avoid this expense and prevent a financial difficulty, employers may avoid taking occupational health and safety measures for employees. As a result, in order to prevent employees in small workplaces from becoming deprived of these services, providing financial support to these workplaces was regulated in Article 7 of the Act. Providing financial support to workplaces for occupational health and safety services also serves as an incentive for the reduction of occupational accidents, since newly regulated sanctions in the Act, concerning the prevention of occupational accidents are not enough to prevent these. Therefore, incentives are also important in preventing occupational accidents (Caniklioğlu, 2014; 540 and Bulut, 2016; 261).

Based on Article 7 of the Act regulating state subsidies, the “Regulation on Support for Occupational Health and Safety Services” that came to force in 01.01.2014 (Official Gazette, 24.12.2013, 28861) and the “Legal Notice on the Support for Occupational Health and Safety Services” (Official Gazette, 03.05.2014, 28989) which has the same date of coming to force, were issued by the Ministry of Labour and Social Security. The regulation and the legal notice, regulate details concerning the state subsidy.

Newly regulated sanctions in the Act, concerning the prevention of occupational accidents are not enough to prevent these. Because of this, some subsidies have been regulated for workplaces to prevent occupational accidents. Providing a subsidy to workplaces concerning occupational health and safety services serves as an incentive for the reduction of occupational accidents (Caniklioğlu, 2014; 540 and Bulut, 2016; 261).

This subsidy covers only occupational health and safety services. Employers’ obligations concerning occupational health and safety, the carrying out of risk assessments, control, and issues concerning training and informing have to be handled within the scope of the occupational health and safety service. The employment of the health personnel and occupational safety specialist who will provide these services, expenses concerning the measures-taken and the equipment, and expenses concerning training are included in the cost of occupational health and safety service (Akyiğit, 2013; 49). The amount that will be paid to the common health and safety unit has to be also handled within the scope of the occupational health and safety service.

However, supporting small workplaces only financially is not enough. In addition, mechanisms have to be created which will eliminate the lack of information and experience in these workplaces on the subject of occupational health and safety and counseling services have to be provided to these workplaces (Süzek, 2015; 901 and Özdemir, 2014; 133).

The Conditions to Enjoy the State Subsidy The Feature of The Workplace

As we have examined above, excluding some exceptions, all works and workplaces in the public and private sector are included in the scope of the act. The provisions of this act will not be applied to employees in workplaces that are excluded from the scope by Article 2 of the act. Therefore, no state subsidies will be provided for these works and workplaces.

As per the first paragraph of Article 7, which regulates the state subsidy, public bodies and organizations were excluded from the scope of the subsidy. Whatever may be the quality of public bodies and the work that is being carried out in these, public bodies cannot benefit from this subsidy. However, in case some workplaces are run by public and private sector partnerships or, in other words, they have an integrated structure, these workplaces can receive state subsidies in proportion to the share of the private sector. The best solution for such integrated workplaces is preparing a clear regulation on this subject in the act (Akyiğit, 2013; 45).

In the private sector, workplaces that have certain qualities can benefit from this subsidy. Among workplaces that are classified as “very hazardous” or “hazardous”, those that have less than ten employees can benefit from this subsidy. Workplaces that are classified as “very hazardous” or “hazardous” and have ten or more employees will not benefit from state subsidies.

Workplaces that are classified as “little hazardous” and have less than ten employees can benefit from this subsidy. However, the decision of the Council of Ministers is required for this. No subsidies are available for workplaces that have ten or more employees and are classified as “little hazardous”.

The hazard class of the workplace is determined based on the work that is carried out in the workplace. As per the first paragraph of Article 9 of the Act No. 6331, hazard classes of workplaces will be regulated, taking into account the short term insurance branches premium tariff in Article 83 of Act No. 5510. However, Article 83 of Act No. 5510 was cancelled with Article 10 of Act No. 6385 (Official Gazette, 19.01.2013, 28533) which was enacted on 1 September 2013.

As per provision 2/2 of Act No. 6331, the hazard class of a workplace will be determined based on the real work that is carried out in the workplace. The “Legal Notice on Workplace Occupational Health and Safety Related Hazard Classes” (Official Gazette, 26.12.2012, 28509) was issued by the Ministry of Labour and Social Security. As per this notice, the hazard classes of workplaces will be determined based on the real work that is carried out in these. If there are activities that apply to more than one

definitions of work in the workplace, the work which is has a high hazard class defines the hazard class of the workplace. The assessment concerning the hazard class of the workplace is made by the Ministry of Labour and Social Security. In the aforementioned legal notice, workplaces are classified as “little hazardous”, “hazardous”, and “very hazardous”. Hazard classes are also coded in the notice. In the European Community, these codes are called Statistical classification of economic activities - NACE (Akin, 2014; 514).

According to the act and the regulation, the determination process of workplaces which will benefit from the subsidy will be based on workplace records registered by the Social Security Institution. Therefore only workplaces that are registered to the Social Security Institution can benefit from state subsidies.

The Number of the Workers of the Workplace

All personnel that work in the public and private sector are covered by the employee concept in the act. Workers in the workplace, those who work with public employee and administrative employment contracts are deemed employees according to the act (Akyiğit, 2013; 47). With regard to benefiting from state subsidies, the “less than ten employees” criterion has been applied in the act. This criterion was not available in the labour legislation previously. The requirement of “at least 30 workers working in the workplace”, which is one of the requirements of job security in Act No. 4857, could be also applied for state subsidies. However, applying this criterion may increase the total amount of state subsidies provided in the whole country, and because of this, the “less than ten employees” requirement is more appropriate (Akyiğit, 2013; 46).

Social Security Institution’s records will be utilized in order to determine the number of employees in the workplace. Regarding who will be counted as an employee with respect to state subsidies, the regulation has a different perspective than that of the employee concept available in Article 3 of the act. According to the second paragraph of Article 4 of the act, the number of employees will be calculated based on workplaces across Turkey. Insured employees, who are listed below, will be also counted among the nine employees of a workplace:

- In case the employer has more than one workplace in Turkey that is officially registered to the Social Security Institution, insured employees who work under the scope of paragraph a) of Article 4 of Act No. 5510 at workplaces that are classified as “hazardous” or “very hazardous,
- Insured employees of the workplace who work under a sub-employer,
- Insured employees of the workplace who, because for various reasons, do not work or are not being paid,

- Insured employees who have entered or quit the work within the month,

However, while the number of employees is being calculated, the number of registered insured employees in cancelled monthly premium and service documents will be subtracted from the number of registered employees in monthly premium and service documents that are given to the Social Security Institution. In addition, apprentice candidates, students who receive apprenticeship and vocational education under the scope of the Vocational Training Law No. 3308, will not be included in the number of employees in the workplace. Moreover, according to the notice, part time occupational safety specialists, occupational physicians, and other health personnel who provide services outside the workplace are not included in the number of employees as well.

According to the act, representatives of the employer who take charge in the administration of the work and workplace will be deemed employers in terms of the act. However, since representatives of the employer are also workers who work with a labour contract, the number of these has to be also included in the number of workers who work in the workplace (Süzek, 2015; 900 and Özdemir, 2014; 131). In the implementation of the act's provisions that take notice of the number of employees, employer representatives have to be also counted in the number of employees (Özdemir, 2014; 132).

However, the criterion concerning the number of employees may also have drawbacks. Employers of small workplaces with a low number of employees may reduce the number of their employees in order to benefit from this subsidy (Akyığıt, 2013; 60) or may employ undeclared workers to reduce the number of registered employees and try to benefit from the subsidy. However, in case they employ undeclared workers, suspension of the subsidy may come into question, as is discussed below (Caniklioğlu, 2015; 51).

The Finance of The Subsidy

The subsidy that will be provided for occupational health and safety services will be covered by the Social Security Institution (Hereinafter, “the Institution” expresses the Social Security Institution). Expenses of the state subsidy, with respect to occupational accidents and occupational diseases, will be covered from the fund which is created by premiums collected for short term insurance branches. However, it is not appropriate to cover the subsidy that will be granted by the Institution for occupational health and safety services from the institution's budget, because the institution has a specific budget and a self-governing structure and the institution actuarial has to be balanced. The subsidy that will be provided to workplaces has to be

covered from the state budget. It is necessary to establish a state organization which operates in the area of occupational health and safety and which will be responsible of providing this subsidy and meeting the obligations (Süzek, 2015; 899 and Özdemir, 2014; 132). Covering the state subsidy concerning occupational health and safety services from the Social Security Institution's budget will deplete the Institution's resources. Therefore the matter of covering this subsidy from the Institution's budget has to be reconsidered and an additional allowance item has to be allocated to the institution for this subsidy or this subsidy has to be provided from the fund (Caniklioğlu, 2015; 52 and Akyiğit, 2013; 50- 52 and (Arıcı, 2013; 99). As described in the rationale of the act, the number of occupational accidents will decrease through state subsidies and thus the amount that the Institution will pay for occupational accidents will decrease as well. However, this reasoning is not correct. Reducing occupational accidents will not create any change with respect to the Institution's budget, because in occupational accidents and occupational diseases, payments made by the Social Security Institution revert to the employer (Caniklioğlu, 2012b; 48).

The Provider of Occupational Health and Safety Service

Workplaces that will benefit from this subsidy will receive occupational health and safety services from persons or institutions that provide these services. In the regulation, the service provider is defined as the person, institution or organization authorized by the General Directorate to provide occupational health and safety service. The contract concerning the delivery of occupational health and safety services, which is made between the service provider and the workplace that wants to benefit from the subsidy, has to be officially registered and approved by the General Directorate of Occupational Health and Safety. Employers can use the state subsidy when receiving services from persons and organizations qualified as service providers.

The employers themselves can deliver occupational health and safety services, provided that they meet the conditions described in the act. In this case, they will not be able to benefit from the subsidy, because they need to have made a contract with a service provider in order to benefit from the subsidy.

The Amount of the Subsidy

The method of calculation of the subsidy that will be given to workplaces is regulated in Article 5 of the regulation. As per the provision in question, the subsidy amount will be calculated separately for each workplace, by taking into account the hazard class of the workplace, the number of insured employees that were reported to the Social Security

Institution and the number of days insured employees have worked. In determining the subsidy, the daily amount of the lower limit of earning subject to premium will be considered for insured employees older than 16.

In workplaces where “very hazardous” works are being carried out, the amount of subsidy will be 1.6% of this amount and in workplaces where “hazardous” works are being carried out, the amount of subsidy will be 1.4% of this amount. As a result, workplaces that are classified as very hazardous will benefit to a greater extent from the state subsidy. The amount that is obtained by calculating the percentages will be multiplied with the number of premium payment days that were reported to the Institution. However, the amount obtained through this calculation is not sufficient for workplaces (Caniklioğlu, 2014; 541 and Özdemir, 2014; 134).

As of 2016, this amount is “26.352 liras” for “very hazardous” works and “23.032 liras” for “hazardous” works. These amounts will be multiplied with the reported number of premium payment days. The calculation of the subsidy that will be given to workplaces will be made per insured employees.

The Application and the Payment of the Subsidy

As per the sixth provision of the regulation, in order to determine workplaces that have made contract with a service provider and can benefit from the subsidy, the General Directorate of Occupational Health and Safety will give authorization to the Social Security Institution to access the records that are kept by the Directorate. The programme, named “İSG-KATİP” keeps the records of the occupational health and safety services, and related operations. The Directorate follows the data of the workplaces by this programme. The Social Security Institution will determine workplaces that can benefit from the subsidy, will calculate the amount of the subsidy, and will pay this to workplaces.

In case the employer has any premiums or any kind of debt related premiums unpaid to the Social Security Institution, the amount of the debt to the Institution will be subtracted from the amount of the subsidy.

An employer, who wants to benefit from the occupational health and safety subsidy, will apply to the Social Security Institution. Issues concerning the application process and the payment of the subsidy will be determined by the Social Security Institution.

During the evaluation of the application, it would be more appropriate if the workplace was examined as well and the application was finalized after this examination (Akyiğit, 2013; 51). However, such statement is not present in the regulation or the legal notice.

Upon rejection of the application, an administrative application can be made to the Ministry of Labour and Social Security. An action of

annulment can be filed in the administrative court against the decision made by the Ministry after the administrative application (Akyiğit, 2013; 52).

In order for employers to benefit and continue to benefit from the occupational health and safety subsidy, the monthly premium and service documents have to be submitted to the Social Security Institution within their legal period.

The Duration of the State Subsidy

The duration of the state subsidy, which is granted to employers who upon acceptance of their applications acquire the right to receive the subsidy, is regulated in the legislation. As a result, employers will continue to benefit from state subsidies as long as they meet the conditions described in the legislation (Akyiğit, 2013; 53).

The Discontinuation of the Subsidy

The Ministry of Labour and Social Security and the Social Security Institution have the authority to conduct inspections regarding the subsidy granted to workplaces. If employers meet the conditions described in the legislation, they can benefit from the subsidy concerning the occupational health and safety service (Akyiğit, 2013; 53).

If during the inspections made based on the Act No. 6331 and other legislation of labour law it is determined that employers who benefit from the subsidy have not reported the insurance status of their employees, the payments made until the date of determination, together with their legal interest, will be taken back by the Social Security Institution. The legal interest has to be calculated after the date of determination (Akyiğit, 2013; 56). Employers cannot benefit from state subsidies for 3 years starting from the date of non-compliance determination. The three year duration is final; this duration cannot be changed by the Ministry of Labour and Social Security or the Social Security Institution (Akyiğit, 2013; 57 and Özdemir, 2014; 135). The date of determination of non-compliance to Act No. 6331 and other legislation has to be taken as the beginning date of the three year period (Akyiğit, 2013; 48). In the regulation, on the other hand, it is regulated that the date of employment of an undeclared employee will be considered as the beginning date of the interest.

For the continuation of the subsidy granted to workplaces, these have to be inspected regularly. However, one of the most important problems of working life in our country is the lack of personnel who will make the inspections. With its provision that regulates state subsidies, the act has increased the need for inspection personnel and the load of public bodies which have authorization to make inspections (Akın, 2014; 525).

If any non-compliance with Act No. 6331 and other legislation is determined for employees whose subsidy application has been accepted but who have not yet received any subsidy payment, these employers should not benefit from the subsidy as well (Akyiğit, 2013; 57).

Although it is argued that the state subsidy has to be granted according to workplace characteristics (Akyiğit, 2013; 57), the regulation has taken into consideration the “employer concept” in the regulation of the state subsidy. As a result, in case it is determined in inspections that employers who benefit from the state subsidy concerning occupational health and safety have undeclared employees in other workplaces in Turkey, they have to pay back the received subsidy together with its legal interest. In this case, they will not be able to benefit from the subsidy for a period of three years. Regarding undeclared employment, this is a heavy sanction for employers that have more than one workplace (Özdemir, 2014; 136). The purpose of this regulation is to prevent undeclared employment (Ertürk, 2012; 18 and Caniklioğlu, 2012b; 49). However, the fate of the subsidy, in case undeclared employment is detected in the workplace of the sub-employer, is not regulated in the legislation.

The notice on the decision of the Social Security Institution concerning the suspension of the subsidy is served to employers. Employers can make administrative applications and according to the result of this application they can file a court case. The court case have to be filed in the administrative court (Akyiğit, 2013; 58).

If an employer closes the workplace, if the workplace becomes classified as “little hazardous”, the employer loses the state subsidy. Workplaces with work classified as “little hazardous” that benefit from the state subsidy by the decision of Council of Ministers will also lose the state subsidy in case this decision ceases to have effect. In case the number of employees in the workplace increases to ten or more, the workplace will not benefit from the subsidy. However, under such circumstances, the employer will not return the amount of previously received state subsidy (Akyiğit, 2013; 59).

In case the employer is replaced as a result of property transfer or legacy, the state subsidy should remain (Akyiğit, 2013; 59). Employers may also willingly renounce the state subsidy (Akyiğit, 2013; 60).

The Enforcement of The Article 7 of The Act

The articles of this act have different enforcement dates. The enforcement date of the article 7 which regulates the state subsidy is changed by the act No. 6495 (Official Gazette, 02.08.2013, 28726). As per the Act no. 6495, article 7 shall be applied for the workplaces which have less than 50 workers and are in the less hazardous class from 1 st July of 2016. The

mentioned article is being applied since 1 st January of 2014 for the workplaces which have less than 50 workers and are in the class of hazardous and more hazardous.

Conclusion

In this paper, we tried to examine the regulations, importance, and the necessity of the state subsidy. The occupational health and safety law has increased its importance, scope, and relations with social security law. Although the scope of the act is increased, the non insured works are not still in the scope of the protection of the Act.

The rules about the state subsidy shall be clarified. The finance of subsidy shall be financed by the government or the Ministry instead of the Social Security Institution. The duties of the Social Security Institution are increased and it has to work in a harmony with the General Occupational Health and Safety Directorate.

The article regulating the state subsidy aims to support the workplaces in occupational health and safety services, it also includes rules to prevent the undeclared work. But the enforcement, and the application of the rules regulating the occupational health and safety services are recently regulated by the acts named “Bill bag” which change rules of the different acts. This shall not be preferred in occupational health and safety law.

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