



## Awareness on The Legal Rights of Employees in the Tourism Sector: A Research on the Accommodation Business Employee

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### Abstract

The tourism industry is a labour-intensive industry and has some difficulties, such as long working hours, lack of job security, lack of union rights, lack of social security rights, violation of off-hours or free working hours, and recruitment of low-wage foreign employees. This study is very important as it finds the knowledge and perception levels of tourism employees about labour rights. Therefore, the study offers action to be taken for non-governmental organizations, trade unions and tourism employers. These actions can lead to an improvement in the lives of tourism employees as human beings by defending human rights. In terms of employers, it is a fact that employees who have an improvement in their living standards can work more efficiently in their workplaces. For instance; According to the Collective Voice / Institutional Response Approach developed by Freeman and Medoff (1979) unions are an organization that tries to increase productivity and respond to the interests of employees with different interests. According to Freeman and Medoff (1979) with unions, the rate of turnover decreases, businesses adopt better production methods, communication between the employee and the employer is strengthened, and the enterprise is provided with the right decision. As a result, work efficiency increases by increasing the motivation of employees who are aware of the employees' rights.

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## INTRODUCTION

The field of occupational health and safety became a science after the industrialization movements that developed rapidly, especially in the UK and later in other countries. Industrialization has led to an increase the number of occupational accidents and diseases. Development of workers ' rights within the historical processes has reached the stage of the past and present with struggles that will not be easy. Serious breakthroughs have been made in the field of occupational health and safety and law, especially with the pressure of social groups such as workers' organizations.

Especially French Revolution in 1789 and the rapid changes in other societies, advancement of technology and modernisation of tools used in industry caused importance of workers ' rights to be increased in all contemporary countries. As the level of education in societies increases, countries' perspectives on the subject are changing even more. The approach of the international organizations such as the International Labor Organization (ILO), World Health Organization (WHO) and European Union (EU), the decisions that they have taken and agreements they approved have affected countries, occupational health and safety and the development of legal awareness.

In tourism industry, many accommodation establishments operate 24/7 throughout in a year, especially due to the structural features of the tourism industry and the seasonal conditions. Tourism enterprises are open 7 days a week and reach high occupancy rate in certain times of the year. This situation makes it difficult for the accommodation sector employees to rest and focus on their work again on weekly leave or official vacation leave. (Kızılırmak, 2009; Örucü & Esenkal, 2005, p. 50-51; Tınaz, 2005, p. 35).

In fact, when complaints and notices complaint to the Ministry of Labor and Social Security (MoLSS) were examined, it was found that employees were employed for periods exceeding 16 hours per day. 16 hours of work per day and the continuity of this situation exceeds the biological and psychological capacity that a person can bear. In the inspections carried out by the MoLSS in 2011 in Antalya, in the tourism sector, it was determined that 50% of the employees were working over the weekly working time (45 hours per week according to the Labor Law No. 4857) (MoLSS, 2011).

When the employment contracts applied in tourism sector are analyzed, it is observed that fixed term employment contracts or seasonal employment contracts are applied intensely. There is the misconception that the business contract will be arranged for a certain period of time due to the seasonal nature of the tourism sector and the job is seasonal (Demir, 2009, p. 57-59). In the inspections carried out in Antalya in 2011. According to fixed-term employment contract, the proportion of employees is more than 22%, and in 22 of the 44 collective labor agreement in force, regulated in the Labor Law No. 4857<sup>1</sup> flexible working forms such as equalization, on-call work and seasonal workers are observed (MoLSS, 2011).

Seasonal work is observed intensively in hospitality businesses, and fewer social security contributions are paid within a year on behalf of industry employees. For this reason, employees find it very difficult to meet the conditions

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<sup>1</sup> In accordance with Article 63 of the Labor Law No. 4857, the equalization is the distribution of the weekly normal working period, which can be up to forty-five hours, to the days of the week in workplaces provided that the parties do not exceed the eleven hours of the day and this is In the meantime, the average weekly working time of the worker cannot exceed the normal weekly working time, which can be up to forty-five hours in a period of two months. Equalization period can be increased up to four months with collective agreements. The mentioned two or four month equalization periods should be understood as two or four months after the same day from the first day of the balancing application. Even if the parties decide a longer equalization period in violation of the mandatory regulation, their agreements on this matter will be deemed invalid.

for disability, old age and death insurance in terms of social security in terms of the number of premium payment days. In addition, approximately 98% of insured workers working in the sector are entitled to collective bargaining<sup>2</sup> cannot benefit (Yorgun, 2013, p. 67-68). This situation leads to increased informality and strain on the natural boundaries of flexibility. The increase in informality and application of flexibility practices against illegally working, eliminates workers' rights, causing unfair competition, especially between unionized workplaces and non-union workplaces (Yorgun, 2013).

The most important reason for the preparation of the Occupational Health and Safety Law No. 6331 is that the number of fatal work accidents in Turkey is higher when it compared to other countries. The most common work accidents occurring in hotel businesses are the accidents caused by slipping, falling, cuts, burns, manual handling, lifting injuries due to the use of hand tools and exposure to dangerous substances. Therefore regulations on occupational health and safety, improvement of current health and safety conditions, fulfillment of duties, authorities, responsibilities, rights and obligations of employers and employees on Occupational Health and Safety Law No. 6331<sup>3</sup>.

Flexibility in labor markets expressed as adaptation to the change in technology and the structure of production. Under the assumption that problems such as increasing unemployment and the inability of the economy to create employment are due to the rigid structure of the labour market, the spread of flexible production and flexible forms of work increases informal employment (Öztepe, 2013, p. 13; KEİG, 2013). In article 4.3 of the 2014-2018 Strategic Plan of the MoLSS, flexibility has been defined in a way that does not lead to loss of rights of the workers and lead to precarious work, namely safe flexibility. However, considering that working hours exceed 50 hours a week on average, even the rights of full-time employees are narrowed and retirement is getting harder, it is not known how flexible working forms will be implemented in a way that will not lead to loss of rights. In this case, assured flexibility cannot turn into a feasible policy (KEİG, 2014).

In addition to the high rate of informal employment in tourism sector, which is one of the sectors with high female employment, women are employed at lower wages than men (Toksöz, 2007; KEİG, 2013; Karadeniz, 2011, p. 90-96). Low wages have become widespread as one of the main problems of women's employment. Many applications

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<sup>2</sup> Legislation on Collective Labor Agreement was regulated by the Trade Unions Law No. 6356 and Collective Labor Agreement. Collective Labor Agreements;

- The general rights and obligations of the union, employer and worker about the workplace occupational change conditions of the worker.
- The structure, authority, objectives, functions of the workplace boards to be established by the laws, regulations and TIS provisions at the workplace with the participation of employers and workers.
- Making and concluding service contracts
- Working hours; (normal working hours, overworks, shift work, night work etc.), holidays, general, week and contract holidays
- Wage payment forms, wage systems, wage increase time and forms and wage levels, Labor premiums
- Arrangement of monetary (bonuses, etc.) and changes in business and social workplace (meals, birth, transportation, etc.)
- Determination of workplace working conditions; occupational health and safety, visit procedures, establishment and operation of nursing rooms and nurseries
- Identification and resolution of disputes
- Determining the conditions for workers to provide vocational training or attend courses
- Workplace union representatives' rights, obligations, powers and methods and methods of meeting with the employer, representative training permits
- They cover many issues such as the conditions and forms of utilization of the social facilities of the workplace or business.

<sup>3</sup> The Occupational Health and Safety Law No. 6331 regulates the powers and responsibilities, rights and duties for employers and employees to ensure occupational safety and health at work and to improve existing conditions. The Occupational Health and Safety Law applies to anyone working in any field, with any title or form. A situation such as public and private sector separation does not apply to Law No. 6331. The duties of all workers and employers in the workplace related to occupational health and safety are specified in this law.

such as uninsured employment, overtime without paying overtime, not having annual leave, not improving working conditions such as service-meal, not providing services such as nursery and breastfeeding room are also considered within the scope of low wage policies. For example, it is known that some of the women are not insured by employers on the grounds that their spouses have social security, and that those who are insured are notified over the minimum wage rather than the wages they receive. It is generally accepted by employers that female employees cannot be “permanently employed” in the workplace for reasons such as birth and marriage.

Therefore, the speed of women entering and leaving jobs is high. This situation affects the working conditions of women negatively and prevents their employment in the same job for a long time. However, union organizing processes of women are made difficult by both their families and employers. For this reason it can be said that it is more difficult for women employees to organize in unions than men (Toksöz, 2013; KEİG, 2013) Seasonal concentrations in tourism movements and tourism demand are a universal phenomenon and the sector is concentrated at certain periods of the year (Getz et al., 2004, p. 85). Therefore, employment contracts are generally arranged as fixed-term employment contracts or seasonal employment contracts. When the Labor Law No. 4857 is evaluated in terms of the rights and contracts of the employees in the tourism sector; It is observed that there are no special regulations regarding the rights of the employees and transactions are made within the scope of general provisions (Demir, 2009, p. 57-58).

This study aims to determine the awareness of the employees employed in the accommodation sector regarding the Labor Law applications numbered 4857, Social Insurance and General Health Insurance Law applications numbered 5510, Occupational Health and Safety Law applications numbered 6331 and Trade Unions and Collective Agreement Law applications numbered 6356.

### **Properties of Work Law No. 4857 and Regulations on Worker Rights**

The Labor Law No. 4857<sup>4</sup> on the general justification<sup>5</sup> as explained, the most important regulation areas of the law are; it can be said to be wage, flexible working styles, job security (Suzek, 2012, p. 14). General rights of workers within the scope of Labor Law No. 4857; the right to wage, annual paid leave, the right to open a re-employment lawsuit under the scope of job security, the right to overtime pay, the national holiday general holiday fee, the right to the week holiday, the right to severance pay and the right to notice pay. In order to claim these rights from the employer, the type of employment contract, working conditions and termination form of the employment contract are very important.

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<sup>4</sup> Published in the Official Gazette dated 10.06.2003-25134. The Labor Law numbered 4857, which repealed all articles except the 14th article of the old Labor Law numbered 1475, which regulates the severance pay, has changed 18 times to date.

<sup>5</sup> In the general justification of the Labor Law, due to new technologies, part-time or on-the-job work, which are considered as new types of work in work life, borrowed business relationships, job sharing models, fixed term contracts and subcontractors. It has been stated that their practices should become widespread and private employment offices should be regulated by law and new functions and these changes required a new labor law in the country. economic, social and political conditions of work that closely affect their lives, in this context, approved by international our country meet the requirements of the labor contract to bring their efforts, the European social norms that should adapt the European Union on Business Law of the Republic of Turkey and where obligation to comply with the norms of the International Labor Organization and the existing Business It was also emphasized that it is imperative to prepare a new Labor Law instead of making some changes in the Law (TİSK, 2009, p. 71-74).

Business arrangement<sup>6</sup> is defined in Article 8 of the Labor Law No. 4857 as the contract between the worker who commits to work dependently and the employer who undertakes to pay wages. When the employment contracts of the employees in the tourism sector are evaluated; fixed term employment contract according to<sup>7</sup> , it is observed that the employees are around 22% in the workplaces inspected by the Labor Inspectors. Due to the fact that the job is seasonal, it is common practice to sign a fixed-term employment contract in the tourism sector as it is thought that the job contracts will be arranged for a certain period of time (ÇSGB, 2011).

Seasonal employment contracts can be made for a definite or indefinite period in accordance with Article 11 of the Labor Law No. 4857. According to this article, it is a general rule to make an indefinite-term employment contract, but to go beyond the aforementioned rule and to establish a fixed-term employment contract is subject to the condition that there is an objective reason that justifies the binding of the contract (Başterzi, 2013, p. 424). Seasonal employment contract<sup>8</sup> worker working with; If he works with an indefinite-term employment contract, his seniority in the workplace is more than 6 months, if he is not an employer representative and if 30 or more workers work at the workplace, he will benefit from the provisions of the Labor Law (the process of filing a job return).

The wage is the amount paid to a person by the employer or third parties in exchange for a job, in accordance with Article 32 of the Law No. 4857. In addition, premiums, bonuses and all kinds of appropriations such as basic wages are also considered as wages (Narmanlıoğlu, 2012, p. 214).

Accommodation their business, their customers reckoning with service provision or any other name by employer % by adding or with the money received in different ways left to the employer by the customer at his own request or is obliged to be paid in full to the workers' employers money collected together under his control (Demir, 2009, p. 136).

According to the Labor Law No. 4857, the seasonal worker does not have the right to use annual paid leave and the worker cannot claim that he will receive wages based on this (Eyrenci, 2010, p. 36). However, only the full-time workers in seasonal jobs in summer and winter facilities belonging to the same employer will be entitled to annual paid leave (Eyrenci, 2010, p. 66). Again, on days when workers cannot work due to compelling reasons (Labour Law Article .24 / III, 25 / III), week holidays (Labour Law Article. 46), national holidays and general holidays (Labour Law Article.47), annual paid leave fee is also paid.

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<sup>6</sup> According to Article 9 of the Labour Code, in general, employment contracts are divided into fixed term and indefinite term, and these contracts can be made full term or partial term or probationary term or other type (such as on-call work) in terms of their way of working.

<sup>7</sup> Fixed-term employment contracts may be used to prevent the worker from receiving legal rights without requiring compensation, especially severance pay, as they expire spontaneously at the end of the contract period. Indefinite term employment contracts are more favourable to the worker in terms of legal consequences and opportunities to benefit from the provisions of the Employment Security. The provisions that provide workers with job security against termination do not apply to fixed-term employment contracts (Süzek, 2012, p. 252).

<sup>8</sup> The employer shall not terminate the employment contract of the seasonal worker without a valid reason, whether it is the actual working period or the suspended period in which the worker is not working (Yıldız, 2010, p.41-58). However, a fixed-term employment contract for a single season ends spontaneously at the end of the season, in which case the worker is not entitled to notice and severance pay (Süzek, 2012, p. 274). If the employee has worked in seasonal work, the severance pay must be paid according to the periods of seasonal work.

## **Regulations on the properties and insurance rights of social insurances and general health insurance law no 5510**

Social Insurance and General Health Insurance Law No. 5510<sup>9</sup> three stages<sup>10</sup> is the first phase of the planned social security reform plan. With the Law No. 5510, the conditions for the insured to benefit from disability, old age and death insurances have become difficult (Tuncay & Ekmekçi, 2012, p. 320-361). In addition, when the insured received health services from private or public health institutions, a certain proportion of contribution and participation fee fees were started to be requested from them for the doctor's examination and the drug price (Tuncay & Ekmekçi, 2012, p. 620-621). With the Law No. 5510, general health insurance and practices have come into force for the first time in our country as of 01.10.2008. In this context, everyone in our country is covered by general health insurance, with some exceptions<sup>11</sup>. With the Law No. 5510, premiums based on premiums have been rearranged, and some of the earnings that have not been subject to premiums have been converted into premiums earnings, either completely or partially. In this case, employers' insured labor costs increased<sup>12</sup>. This situation made it difficult for the employees to complete the number of premium payment days, which is one of the conditions for benefiting from long-term insurance branches (disability, old age and death), especially because of seasonal work in tourism businesses.

## **Regulations on occupational health and safety law no 6331 and employer obligations and employee rights**

Occupational Health and Safety Law No. 6331<sup>13</sup> the most important reason for the preparation is the fatal work accidents that occur consecutively and attract the attention of the public<sup>14</sup> are occupational diseases that cannot be detected and treated.

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<sup>9</sup> It was published in the Official Gazette dated 16.06.2006-26200. Subsequently, many articles of the law, which has been amended 29 times, including amendments made twice by annulment decisions of the Constitutional Court, have come into force as of 01.10.2008. In the general rationale of the law, the reasons for making social security reforms include the failure to take measures against the acceleration of aging in the population, the inability of the current system to provide an effective and comprehensive protection against poverty, the financial deficits of the social security institutions and the negative impact of the economy as a result of growing deficits, the)

<sup>10</sup> The second phase of the three-stage planned reform is the Union of norms and standards by combining the provisions of social insurance and general health insurance with a single law. In this context, Law No. 5510 Social Insurance (Law No. 506, No. 1479, No. 5434, No. 2925-2926) and the coverage of the insured with the social insurance laws (gals SSK, bağ-Kur, see if the pension fund of its participants gathered in a single act. (Akin, 2006, p. 26). Law No. 5510, an occupational accident, occupational disease, sickness and maternity insurance short-term insurance branches, under the name of invalidity, old age and death insurance long term insurance branches also gathered his arms under the name of the insured and benefiting from the rights of the insured arising from a material change to the terms of brought about.

<sup>11</sup> In addition, according to Article 60/a-1 of Law No. 5510, insured persons are obliged to take income test in the cases listed in the law. As a result of the income test, the general health insurance premium for those whose per capita income in the family is less than 1/3 of the gross minimum wage is covered by the state (Ekin, 2012).

<sup>12</sup> Accordingly, a portion of the food, child and family increases paid by the employer on behalf of the insured and the monetary amounts paid to the private pension system and private health insurance started to be cut from the GK premium (Güzel et al., 2012, p. 295-296). In addition, the premium costs of retired employees increased with the law No. 5510 (Caniklioğlu, 2008, p.164).

<sup>13</sup> It was published in the Official Gazette dated 30.06.2012-28339 and has been amended four times. The Law No. 6331 was enacted in order to regulate the duties, powers, responsibilities, rights and obligations of employers and employees in order to ensure occupational health and safety at workplaces and to improve the existing health and safety conditions. In this context, it can be said that the purpose in the preparation of the Occupational Health and safety law is to make workplaces safer.

<sup>14</sup> In this context, the field of Occupational Health and safety has become necessary to reorganize and comprehensively. In addition, shortcomings in the international platform in the field of Occupational Health and safety and in particular the International Labour Organisation (ILO), the European Union and international trade union organisations on this issue pressures also has been an important influence in the passage of the Occupational Health and Safety Act (Ucum, 2012, p. 10- 13).

Although the number of occupational accidents and occupational diseases in our country is lower than the industry sector, the high level of psycho-social and ergonomic risks, working conditions, the structure of the workforce and increasing employment, a rapidly growing new center of occupational health and safety studies in this country. makes it. The industry often has long working hours and heavy working conditions that require physical strength. 98% of occupational accidents occurring in hotel operations occur due to unsafe behaviors of individuals, especially inexperienced personnel, which increase the likelihood of an accident, and their physical and psychological characteristics. Occupational diseases are mostly caused by musculoskeletal diseases (Çilkaya, 2014, p. 20).

Hotel, restaurant and catering sector employees, with many psycho social risks and many physical risk factors<sup>15</sup> due to insufficient work-life balance, non-standard and uncertain working hours, lack of control over work, heavy workloads and time pressure increasing stress meet (EASHW, 2014). Law No. 6331 in workplaces; an obligation has been made to employ occupational safety specialists, workplace physicians and other health personnel, and this requirement has been regulated to cover all public and private workplaces employing at least one insured since 01.07.2016 (Kılıkış et al., 2014, p. 69). Law No. 6331 also located one employee representative of the new actors is another of the support element.

In addition, the Occupational Health and Safety Board was reorganized<sup>16</sup> with the law No. 6331. According to Article 28 of Law No. 6331, some powers and duties have been given to the employer regarding the prohibition of using addictive<sup>17</sup> substances. With the Law No. 6331, the most important regulations especially regarding the rights of employees; the right of employees to refrain from working<sup>18</sup>, informing employees<sup>19</sup>, training obligation of employees<sup>20</sup>, getting the opinions of the employees<sup>21</sup> and ensuring their participation (Öztürk, 2015, p 28-35).

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<sup>15</sup>These long-term survival and to carry the heavy loads, high noise level and exposure, very high and very low temperatures work, with hazardous materials such as cleaning materials to work. Working in these conditions leads to novelistic and skeletal system diseases, skin diseases and respiratory system problems (EASHW, 2014). Furthermore, as 90% of the institutions operating in the hotel, restaurant and catering sector are very small businesses (up to 10 workers), employers are unable to apply the relevant legislation on a firm basis as required due to lack of time and resources. An effective and preventative management system includes good risk assessment, participation of workers and training on successful implementation of the measures taken in order to identify and prevent problems before they arise (Elsler, 2008).

<sup>16</sup> In workplaces where there are 50 or more employees and continuous work lasting more than six months, the employer has to form the Occupational Health and Safety Board to carry out work related to occupational health and safety. The most important tasks of the board are to evaluate the hazards and measures related to occupational health and safety in the workplace, to determine the measures, to notify the employer or employer representative, to plan the trainings and to organize the work (Kılıkış, 2013, p. 26-2).

<sup>17</sup> First of all, it is forbidden to come to the workplace drunk or in possession of drugs and to use alcohol or drugs in the workplace. In addition, the employer has the authority to determine what conditions, at what time and under which conditions alcoholic drinks can be drunk in the parts considered as workplace add-ons.

<sup>18</sup> When the employee is faced with serious and imminent danger, he or she may contact the Occupational Health and Safety Board and, where the board is not present, the employer may request that the situation be determined and that the necessary measures be taken.

<sup>19</sup> In order to ensure and maintain Occupational Health and safety at work, the employer must inform the employees about the health and safety risks, protective and preventive measures, legal rights and responsibilities related to them, first aid, unusual situations, disasters and fire fighting and evacuation (Baloglu, 2013, p. 112).

<sup>20</sup> Accordingly, the employer ensures that employees receive occupational health and safety training before starting work, in the event of a change in work place or work, in the event of a change in work equipment, or in the event of new technology or in accordance with the new risks that arise (Yilmaz, 2014, p. 61-62).

<sup>21</sup> The employer must take the views of the employees on issues related to occupational health and safety, the implementation of new technologies, the work equipment to be selected, the working environment and the impact of conditions on the health and safety of the employees (Uçum, 2012, p. 43).

According to the Law No. 6331, the most important obligation of the employees is not to endanger the health and safety of themselves and other employees who are affected by their actions or the work they do in accordance with the training they receive and the instructions of the employer (Öztürk, 2015, p. 48-51).

Hotel enterprises are classified under the name “accommodation and Food Services activity” and in the “less dangerous” workplace group in the list of workplace hazard classes in the Annex to the communiqué on Occupational Health and Safety<sup>22</sup>. For this reason, the employer is responsible for fulfilling all obligations in the Law No. 6331, especially the obligation to employ a workplace doctor and occupational safety specialist in hotels and accommodation facilities with more than fifty employees.

### **Regulations on The Union of 6356 Unions and The Collective Work Agreement Law and The Rights of Unioned Workers**

Unions and Collective Bargaining Law No. 6356<sup>23</sup> one of the most important innovations it brought was to reduce the age of membership to 15. Again, according to the law No. 6356, the union membership of workers who leave the Social Security Institution by taking old age or disability pension or lump sum payment ends<sup>24</sup>. Another regulation made with the Law No. 6356 was to provide more secure legal guarantees for the workplace union representation and the union membership of the workers (Pirler, 2013, p. 900). In addition, according to article 39 of the Law No. 6356, the members of the trade union are benefiting from the collective bargaining agreement<sup>25</sup>.

Since the union organization rate is low in the tourism sector, the number of workers benefiting from the collective bargaining agreement is also low. According to the Communiqués of 2013, 2014 and 2015 on the Number of Workers in the Line of Businesses and Statistics on the Number of Members of Unions; In the accommodation and entertainment sector, 29,790 of 772,689 workers working in July 2013, 29,757 of 820,095 workers working in July 2014 and 31,988 of 899,202 workers working in July 2015 were unionized and as a result, the number of unionized workers increased. Approximately 13,000 employees enjoy the right to collective bargaining agreements. Based on these data, approximately 2% of insured workers enjoy the right to collective bargaining. It is clear that these rates

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<sup>22</sup> The communiqué was published in the Official Gazette dated 26.12.2012 and numbered 28509.

<sup>23</sup> It was published in the Official Gazette dated 07.11.2012-28460. The law No. 6356 has been amended three times. The purpose of the Law No. 6356 of the Confederation of employers 'and workers' unions in the establishment, management, operation, inspection, and operation procedures and principles of the organization with workers and employers to collective bargaining to determine the conditions of economic and social status mutually operating with the analysis of problems by peaceful means their disputes, strike and lockout is to regulate the procedures and principles to apply. The reasons for making a new legal arrangement on trade unions and collective bargaining in Turkey can be summarized as follows (Dereli, 2013, p. 42):

- Promote and strengthen unionism, which has lost power in the face of global competition and rising unemployment, as an inevitable element of pluralistic democracy,
- To amend the restrictive and internationally criticised regulations of September 12, 1980 period and to comply with the ILO Conventions 87 and 98 in particular,
- To provide solutions to some problems arising in the thirty-year application of the laws No. 2821 and 2822,
- To pave the way for collective bargaining processes which are blocked due to various reasons and mainly due to the impact of the work line dam

<sup>24</sup> However, the membership of those who continue to work and those who receive old age or disability pension or lump sum payments during their duties in the administrative, supervisory and disciplinary boards of the organization and its branches shall continue for the duration of their duties and as long as they are re-elected. The union membership of the one who changes the line of work ceases by itself (Astarlı, 2013, p. 141).

<sup>25</sup> The members of the Union party shall benefit from the collective bargaining agreement from the date of its entry into force, and those who are members after the date of signature shall benefit from the date on which their membership is notified to the employer by the Union Party party. Members whose employment contract expires between the signing date of the collective bargaining agreement and the effective date of the collective bargaining agreement benefit from the collective bargaining agreement until the date of the termination of their employment agreement (Şahlanan, 2013, p. 132-133).

will decrease even more when the uninsured employees are taken into consideration. For this reason, the trends in non-union workplaces and businesses shape the sector (Yorgun, 2013, p. 82).

### **Aim and importance of the research**

Due to the structural characteristics of the tourism sector and the seasonal conditions, many accommodation and food and beverage establishments can reach high occupancy rates only during certain periods of the year. For this reason, employees can be employed for longer periods than their legal working time. In the final report of the programmatic inspection of improving working times in the tourism sector, organized as a result of audits conducted in 2011 taking into account the notices and complaints received from the MoLSS, it is recommended that every sector employee should be aware of their rights and that training should be provided by labour inspectors at This research aims to determine the awareness of the legal rights of workers in the accommodation sector.

### **The Research Method**

In the research, the awareness of employees working in accommodation establishments regarding legal practices was tried to be determined by using primary and secondary data. First of all, it is planned to collect data with the survey method in the study. But the survey in practice s in place during the work of the participants to fill out the survey of employers possibility of the survey or fill out timidly manager is quite high. Moreover, the filled questionnaires are likely to be filled in a wrong way. The fact that a worker who is currently working in a hotel fills a questionnaire about worker rights awareness raises the potential for scribing the employer's name. In this case, employers will not want to fill the questionnaire, or the filled questionnaires are likely to be filled in bias. In addition , the fear of being fired or exposed to various pressures makes the questionnaire difficult. For example; Çavuş and Kurar (2015) applied to businesses to fill out a questionnaire about the awareness of the rights of workers working in the hospitality and catering sector in İzmir, and none of the businesses approved this.

Using a qualitative method to overcome this situation it is considered as a more suitable method. Data was obtained by using a semi-structured interview method for the workers working in the hospitality industry. The data obtained were obtained in the form of snowball sampling. Interviews were conducted face-to-face with the people the researcher knows working in the hospitality industry. Other employees recommended by these people were contacted via telephone. Interviews took an average of 30 minutes.

The current literature was screened first to determine the interview questions (Süzek, 2012, p 549; Narmanlıoğlu, 2012, p.331-332; Çolak & Baydemir, 2007, p. 711; Mollamahmutoğlu, 2008, p. 837; Akyiğit, 2010, p. 633; Güzel, Okur & Caniklioğlu, 2012, p. 34). After the examinations, the trade unions of the tourism sector were contacted by phone and opinions of the workers working in the tourism sector were received. The tourism trade unions reached via phone: Disc Revolutionary Tourism Workers Union, Turkey Hotel Diner Resting Places Workers Union (TOLEYİS), Turkey Hotel, Restaurant and Fun Places Workers Union (OLEYİS), Tourism Hotel Sports Workers Union ( TÜM EMEK-SEN), Revolutionary Sports Workers Union (SPOR EMEK-SEN). An average of 45 minutes phone calls were made with the mentioned unions and the current situation and problems of the tourism workers were evaluated.

In order to understand the issue in a more structured way, 3 lawyers who are experts in the field of Labor Law were interviewed by telephone. To lawyers of their clients usually what types of workers' rights in his collusion or

questions about the lawsuit they are directed with the suggestions of the lawyers, the questions to be asked in the interview were categorized and the final version of the interview questions was prepared.

### **The Universe and sample of the research**

Operating in Eskişehir as the universe of the research; accommodation establishments are determined. According to data from Turkey Business Association (TBA) in 2018, 1,414 women in Eskişehir, a total of 1,735 men and 3,149 workers are employed not stay for the food industry. A report that fully separates the accommodation and food and beverage industry cannot be reached. As a sample, 27 workers working in various hotels were reached, but the data started to be repeated after the 18th participant, and finally the data of 20 participants were included in the research.

### **Findings of The Research**

#### **Level of Knowledge to the Unions and Collective Bargaining Agreement Law**

The purpose of this Law is to establish collective labor agreements in order to determine the economic and social conditions and working conditions of workers and employers, and to resolve disputes peacefully, with the procedures and principles regarding the establishment, management, operation, supervision, working and organization of workers and employers unions and confederations to regulate the procedures and principles for strike and lockout applications ( Trade Unions and Collective Bargaining Law article No: I ).

None of the 20 interviewees interviewed had any information about this law. Because there are already many unions in the tourism sector that will not exceed one hand. As a normal result, it was assumed that the interviewees did not know about union and trade union rights. However, it is surprising that employees do not have information even on the most general issues.

One of the interviewees is a graduate of Ayşe Tourism Management Department and continues her graduate education. During her undergraduate education, Ayşe reported that she took the Labor and Social Security Law course two hours a week. Unfortunately, Ayşe does not know any of her union rights. Ayşe has never heard of the concept of lockout, one of the most common concepts. For the strike he said, “If workers' wages are delayed 15 days, workers can go on strike”.

In Law No. 6356, which came into force in 2012 , the concepts of strike and lockout are clearly stated. According to the law, a strike is called for workers to quit the job by either agreeing to stop the activity in the workplace by not working collectively or by disrupting them accordingly to the nature of the work, or by following the decision of an organization not to work collectively for the same purpose. In the event of a conflict during the collective bargaining agreement , the strike made in accordance with the provisions of this Law in order to protect or correct the economic and social conditions of workers and working conditions is called a legal strike ( Unions and Collective Bargaining Law , No:25) .

Ramazan, one of the interviewees, he is the most interesting participant in the research. Ramazan is 62 years an old retired tourist employee from the State Railways. He states that he is doing dishwashing in various restaurants and hotels. Ramazan said, “I have debts, I have to work, and I do dishwashing in hotels and restaurants. Sometimes it does not work sometimes permanent job if intense guests are calling me the extra” Ramazan was a member of the railroad-labor union while working on State Railways. According to Ramazan, being unionized is a responsibility

imposed on the worker by the employer, not the employee. Ramazan said, "It was compulsory to register with the union when I started to work, or they would not hire them". Ramazan, one of the interviewees, was the only member of the union, but he does not even know why he is a member. According to him, being a member of the union is an imperative imposed to enter a job.

Ramazan is a participant who has not received any legal education and has abandoned secondary school education that provides a technical education. "Do you know that you can become a union member through the e-government system?" He said, "I know everything is done on the phone anyway. But when asked how to become a member of Ramadan, he could not answer. In other words, Ramazan has no information about union and union rights like other participants.

Yaşar Tourism Management Department, one of the interviewees, has just completed its undergraduate education. He stated that he took 2 hours of Business Law lessons per week. According to Yaşar, collective bargaining agreement is the agreement that workers come together and make with the employer. "I do not know the collective bargaining agreement, but as far as I can remember, employees at a workplace come together and make a contract with the boss," I know, this is the collective bargaining agreement"

In the remaining participants, they gave tragicomic answers to the interviewer in the questions such as Yaşar on the Union Collective Bargaining Law Practices.

### **Level of Knowledge to Workers' Rights**

The purpose of this Law is to regulate the rights and responsibilities of the employers and the working conditions and working environment of the workers employed on the basis of an employment contract. In this part of the study, the participants; questions were asked to understand how well they know about severance and notice pay, working hours, employment contracts, annual leaves, wages.

18 of the participants stated that the daily working time is 8 hours. Only 2 of them stated that there is a total of 45 hours of working time per day, 7.5 hours a week. Tülay graduated from Travel Management Department 3 years ago and stated that he took the Business Law course 2 hours a week. Tülay said, "In cases where my daily working time is 8 hours a week, 48 hours a week, 8 hours a day, the enterprise has to pay 1.5 times my daily work wage". When Tülay was asked how this extra fee was paid. She stated that, like the other 17 participants, he received cash in hand from accounting. The extra working fee of Meryem, who is only one of the participants, paid in the bank account together with the salary. Meryem completed her Gastronomy department 2 years ago and works in a famous chain hotel group in Antalya. Meryem stated that she did not take labor law, but only general law. But he is the only participant who knows the daily working hours and how and how the wages should be paid.

The most dramatic of the participants, Ramazan, stated that he usually works as extra staff (part time). He stated that he received daily wages, not salaries, and that the Ramazan paid in cash at the end of night. The question of how many hours worked, Ramazan answered the average 12 hours. Ramazan "Basically, I have to work 8 hours a day, but I work 12 hours (according to Law No. 6663, the partial working time cannot exceed 30 hours a week and 6 days) . I also know that I am doing overtime but everywhere is like this". It is one of the dramatic findings of the study that Ramazan stated that he worked in other restaurants and hotels as an extra, and that there were part-time employees in those businesses.

Tolga is a 26 years old graduate of banking and insurance. Tolga stated that he took Commercial Law 2 hours a week and stated that he did not take general law or business law courses. The most important feature that makes Tolga different from other participants is that he is the only person who sues because he was overworked and his overtime wages were not paid. Tolga states that he left the job approximately 1,5 years ago by filing a job and his case is still pending.

Another result in this section is that 19 participants did not read the employment contract. Only Meryem read the employment contract. Meryem was asked about the definition of her work and clearly answered this question. Meryem how the job description of Meryem were asked to answer clear this up “work when starting various documents with me, my employment contract signature le was ours and what work to do there was given to me t as it was defined” she used this expression. Mahmut stated that he works as a bellboy (luggage carrier) in a hotel. Mahmut is Tourism and Hotel Management department a senior student and stated that he takes the Labor and Social Security Law course 2 hours a week. When Mahmut was asked what exactly the bellboys did at the hotel, Mahmut said, “Bellboys help the guests and places them in their rooms. If the guest has a vehicle, he parks in the parking lot. Makes the cleaning of the reception. It helps them in line with the needs of the guests”. When asked about the needs of the guests, he said, "When there is no water in their rooms, we take their water, ask for cigarettes, we provide it, we help them with some technical issues such as the room lamp exploded, the television is not working". “Did these articles appear in your employment contract to Mahmut?" "No, it doesn't write this in any contract anyway” he said.

Participants do not have any information about compensation. Not all participants know any information about notice pay. When those who said that I have information about the indemnity compensation were asked what these rights were, it was understood that they mixed severance pay with the indemnity compensation.

On the other hand, 19 of the participants were able to explain their severance pay and they answered clearly in what cases they could get and how much. Although only one of the participants can calculate the severance pay, Hacer knows the time required to qualify for severance pay incorrectly. According to Hacer, working 6 months is enough to get severance pay. Hacer is a primary school graduate worker who works in housekeeping at the age of 40.

All of the employees know their annual leave rights clearly, but when asked for the annual leave period of a worker who has passed 5 years in the same workplace, they gave different answers. Considering that this is the tourism sector and the turnover rate is high, the fact that they do not know the annual leave periods over 5 years is considered as a normal result.

### **Level of Knowledge to Social Security Law**

The purpose of this Law is to secure people in terms of social and universal health insurance; to determine the persons who will benefit from these insurances and the rights to be provided, the conditions for benefiting from these rights and the methods of financing and meeting; to regulate the procedures and principles regarding the functioning of social insurances and general health insurance.

In this section, the participants; questions about which earnings were deducted from Social Security Institution (SSI) and rates, occupational accidents and occupational diseases, and how they lowered their rights when operated

without insurance were asked. Participants are knowledgeable about how they can get their rights only when they work without insurance.

Ali is a 40 years old technical high school graduate employee. He worked as a military personnel until this time and when he retired from the military, he worked as a technical personnel in the hotels. He has not received any legal education. Ali said, “When I work without insurance, I go to SSI and sue the business.” In all other participants, they used expressions similar to Ali's statements.

None of the participants know how much their gross wages are. Only 2 participants stated that their gross wages were around 2,500 lira. In fact, this figure represents the minimum gross wage of the previous year. Do you know how much of your premium contribution to the participants is from your gross salary? None of the participants answered the question. Similar to this result, none of the participants knows which contribution and participation shares of the gross wages, which were TL 2,943.00 as of 2020, fell to TL 2,324.70.

How much SSI health services can you use when you leave or dismiss the participants? 10 of the participants answered the question in the form of 1 month. In fact, if an employee has been paid an insurance premium for 90 days, SSI can benefit from health services until 100 days after leaving the job. However, half of the participants do not know this situation at all and half know it wrong.

### **Level of Knowledge to Occupational Health Law**

The purpose of this Law; It regulates the 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.

In this section, the participants; Questions were asked to measure the level of knowledge regarding the obligations related to occupational health and safety, the ban on using addictive substances, the right to refrain from work, the occupational health and safety board.

The most striking finding from this section is that 4 of the participants have not been checked by any Common Health and Safety Unit . However , according to the Occupational Health and Safety Law No. 6331, it is an imperative that workers' employment health reports and periodic health care are carried out by these institutions .

Tunç is a 32-year-old Anatolian high school graduate hotel employee. Tunç has 9 years of tourism industry experience. When asked why Tunç did not receive his health report, he said, “I am getting minimum wage anyway. Why would I give my money here in vain for a medical check, 80.00 lira. They had never wanted to work at the place I used to work for a full year, nobody asked anything. In my work, they ask me from time to time, Common Health and Safety Unit and the workplace contracts are spend our money”.

Again, in this section, as in other departments, not all employees are aware of the practices and rules about occupational health and safety. Considering the level of knowledge about other laws and practices, it is a normal situation to have such a result from this section.

### **Conclusion and Recommendations**

First of all, the workers must be registered first so that workers can claim rights. According to the data of Dev Turizm-İş, 2 million 560 thousand people work in the tourism sector in 2018. However, 860 thousand of these

workers are employed with insurance. 1 million 700 thousand workers are employed without insurance and informally. These workers must be registered as soon as possible. In this study, 1 person works informally. The most dramatic person, Ramadan, works part-time, informally, more than 12 hours a day. Ramadan stated that he received a daily fee of 70.00 TL for 12 hours of work. But since it should be 7.5 hours x 10.33 TL (hourly wage) = 77.5 and in addition, the remaining 4.5 hour wage should be paid as 4.5 times 4.5 \* 15.49 = 69 , 70 TL. In other words, while Ramadan should collect 147.20 TL, it cannot even get half of it.

10 of the participants emphasized the law or labor and social security law courses during their undergraduate studies. However, as it is understood from the interviews, whether or not having law education has almost the same level of legal knowledge. This results in the conclusion that these courses cannot be effectively transferred to students during their undergraduate or associate degree education. Half of the participants have passed their courses of law education 2 hours a week. This means that these students have sufficient competence in the field of law. However, during the transfer of theoretical knowledge into practice, employees act as if they do not know anything.

In this regard, 4 hours of law education in higher education institutions and theoretically and practically. It is recommended to give theoretical 2 hours a week in secondary education institutions. Because a worker who finishes a technical education secondary education institution and starts working, does not give any information about workers' rights.

The fact that the participants are not aware of union rights and collective bargaining agreements is due to the low number of unions in the tourism sector. Tourism unions should come together with tourism workers to explain the benefits of union rights to tourism workers.

When the level of knowledge of the participants is evaluated within the scope of social security legislation, it is seen that the awareness of the employees regarding the pension transactions and pension rights is quite low.

General economic conditions show the greatest impact on workers. Social structures, where the unemployment level is high and the workers are afraid of losing their jobs, direct them to avoid exercising their rights. In this case, the worker experiences the pressure of the employer to do what he wants and to be a harmonious worker so as not to lose his job. Because there are many unemployed people who can take their places outside and when they lose their job, they are unlikely to find a job.

Trade unions are the leading institutions that support workers' exercise of their rights. Many studies show that unions have been successful in applying rules at work. In addition, unions help workers to have information about their rights. Another institution with this function is the workplace boards. Workplace boards are mostly located in businesses in occupational health and safety issues and can help workers exercise their rights in these matters. These two institutions are effective on workers' rights. Supporting these institutions is important in the implementation of the labor legislation. However, the union organization and the effectiveness of the workplace boards are controversial in working forms that do not comply with even the most basic legal regulations such as employment in the sector.

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