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Directive Regarding Inventions of Employees Entered Into Force

Highlights of this issue

Council of State Issued a Stay of Execution
for Regulation Regarding Personal Health Data

DIRECTIVE REGARDING INVENTIONS OF EMPLOYEES ENTERED INTO FORCE

Directive Regarding Inventions of Employees, Inventions Made in the Higher Education Institutions and Inventions Arise From the Public-Supported Projects (**Directive**) entered into force on 29 September 2017 by being published in the Official Gazette. Directive aims to regulate the arbitration process in case a dispute arises in relation to the employees' inventions and some other inventions which were regulated in the Intellectual Property Law that entered into force on January 2017 and some other subjects as well.

The concept of "inventions" shall be defined briefly in accordance with the regulations, before giving further information about Directive. Accordingly, an **employment invention** represents the employees' invention made for the sake of the operation in the business s/he is responsible for or the invention made by him/her in the course of the employment relation based upon the experience and labor. Unengaged invention represents inventions excluding employment inventions and inventions made in the higher education institutions. **Inventions made in the higher education institutions** are made, in consequence of scientific studies and research conducted using the higher education institutes' tools and equipment or made based upon the experience gained from studies in these institutions. Within the scope of regulations, provisions regarding the employees' inventions will be applicable to the employees' inventions in higher education institutions.



According to Directive, the employee shall notify the employer in writing without any delay when s/he makes an invention. The employer can claim a full or partial right for the employment invention within 4 months after this notification. In case the employer claims a full right, rights on the invention shall be fully conveyed to the employer. In this case, the employee can claim compensation from the employer in exchange for benefiting from the invention and an encouragement award will be given to the employees except employees working at the state institutions and organizations. In case the employer claims a partial right, the invention will become and have the characteristics of an unengaged invention. Then, the employer can use the invention depending only upon this partial right. Once again, inventions made in consequence of scientific studies and research in higher education institutes should be reported in writing to the institute. In case the institute claims a full right, rights on the invention shall be conveyed to the institute.

While determining the amount of compensation to be paid to the employee, mostly the economic value of the employment invention, duty of the employee in the enterprise and the enterprise's contribution in making the employment invention shall be taken into consideration; and the amount shall be determined in accordance with the contract provisions signed between the employer and the employee. The amount of compensation is calculated by using the procedures and methods indicated in the Directive, based upon different parameters to be determined according to invention's profitability. Additionally, the amount of compensation to be paid to the employees in state institutions and organizations shall not be less than one-third of the income earned from the invention. The period of time taken into consideration for determining the amount, ends by expiration of patent right excluding exceptional cases.

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Lastly, Directive also regulates the arbitration process in case a dispute arises between the employee and the employer and also between employees.

COUNCIL OF STATE ISSUED A STAY OF EXECUTION FOR REGULATION REGARDING PERSONAL HEALTH DATA

What Does Regulation Regulates?

Regulation was published in the Official Gazette on October 2016 and it regulates the registry and delivery of the personal health data by health service providers and state institutions and organizations handling personal health data within the scope of the regulation and natural and legal persons in private law in accordance with the principles determined by the Personal Data Protection Authority (**Board**) and the Ministry of Health.

Also Regulation regulates the general principles of personal data processing; protection, processing, transfer and deletion of personal data and central health data and personal health registration system. In accordance with Regulation, Regulation and Law on the Protection of Personal Data (**Law**) set out the limits in regard to processing of personal health data.

The following principles shall be complied with in order to process personal data lawfully; being in conformity with the law and good faith, being accurate and if necessary, up to date, being processed for specified, explicit and legitimate purposes, being relevant, limited and proportionate to the purpose for which data are collected. Regulation is prepared on the basis of Law.

Reasons for Stay of Execution

Board was established on 30/01/2017 and Regulation was published in October 2016. Despite being defined as one of the duties and obligations of Board in the Law, in the course of the review of Regulation, Board was not able to obtain an opinion because it had not been established yet.

Again, in parallel with the provisions of Law, necessary precautions needed for personal data that has special qualifications shall be determined by Board. Nevertheless, Board did not determine precautions regarding personal health data in particular. In addition, Board has the general **authority to control and inspect** the enacted regulations regarding the protection of personal data. For the reasons given above, regarding the dispute which the applicant parties are Turkish Dermatology Association and Turkish Psychiatric Associations, 15th Chamber of Council of State issued a stay of execution for Regulation on the grounds that Regulation does not comply with the legislation and the Law.

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Answers. Not theories.

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