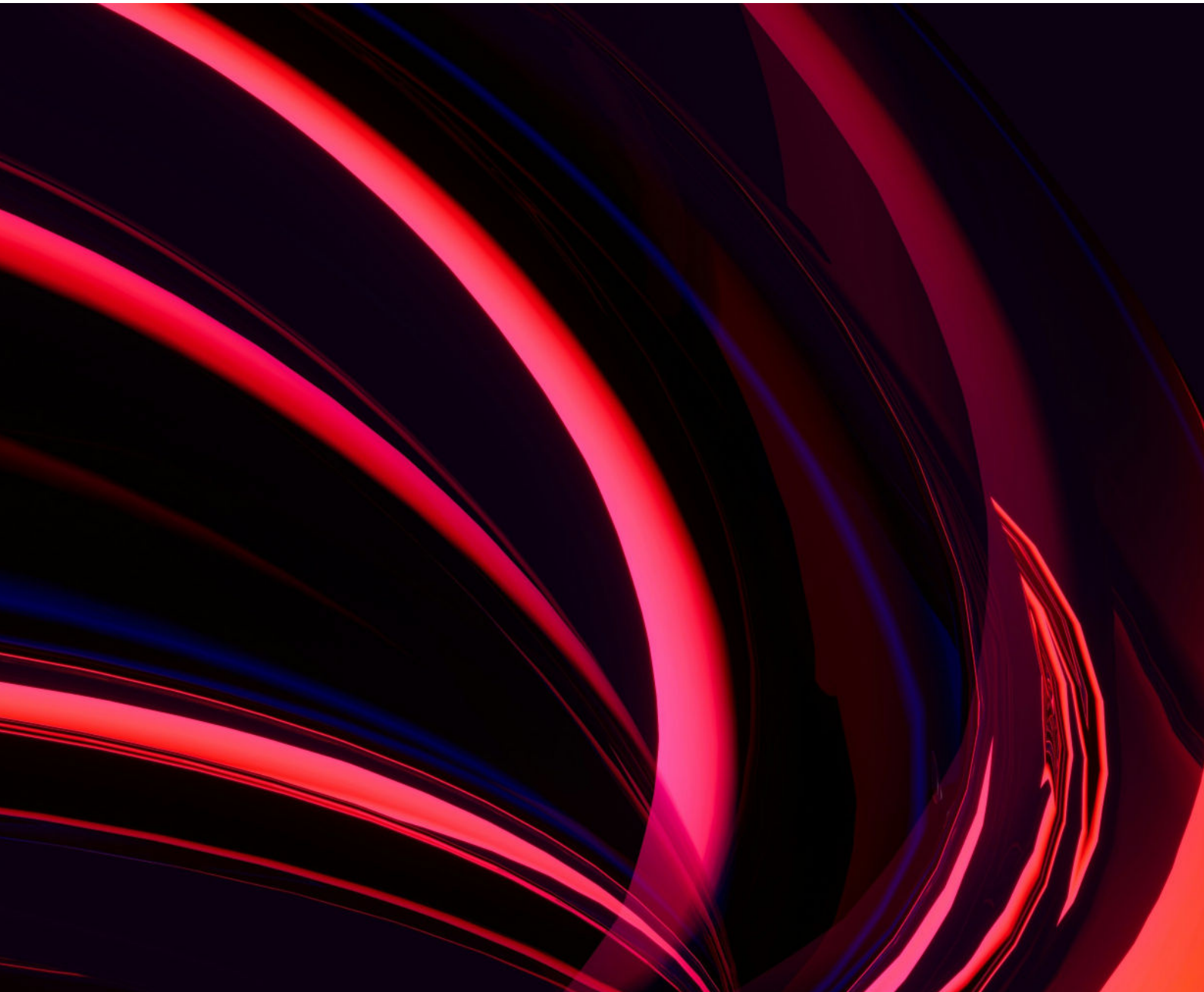


GENTEMIZER

Notifications under Turkish Labour Law

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Article 109 of the Labour Code No. 4857 was amended just under one (1) year ago. This amendment confirmed, in particular, that certain documents may be sent to employees via registered email (KEP).

During this period, a legal uncertainty has arisen regarding the notification of documents under the Labour Code and the provisions governing the acceptance of such documents.

To elaborate, KEP is, in fact, a method of notification. Therefore, provided the other conditions set out in Article 109 of the Labour Code are met, a notification via KEP must constitute valid notification. In practical terms, this means that the notification of a document not subject to the employee's acceptance via KEP is sufficient for the document to take effect. For example, the notification of an internal code of conduct policy in this manner renders the policy binding on the employee.

On the other hand, the same rule should not apply to a document subject to the employee's acceptance. In other words, sending a document whose validity depends on the employee's acceptance via KEP merely means that the document has been *notified* to the employee, not that its terms have been *accepted*.

We have observed that this distinction leads to misunderstandings in practice when payslips containing provisions on overtime are notified to the employee via KEP.

The issue of payslips is significant for the following reason: in accordance with the

precedent of the Turkish Supreme Court, if a payslip containing details of overtime is accepted by the employee, the employee is then required to provide additional written evidence to prove that they worked even more hours. In other words, the acceptance of a duly prepared payslip does indeed benefit the employer (particularly in the event of a labour law dispute).

However, the issue in question here is the employee's *acceptance* of the payslip's content. Nevertheless, we observe that the notion has emerged that sending a payslip via KEP implies acceptance of the provisions regarding overtime work contained therein. Various courts have also rendered decisions accepting this reasoning.

Nevertheless, we are of the opinion that court rulings to this effect are not in accordance with the law and that a precedent to this effect should not be established.

We therefore consider that, even if employers rely on such decisions to send payslips via KEP or obtain approval for payslips through their own electronic systems, this may not constitute sufficient evidence on the employers' behalf in the event of a dispute.

Therefore, we recommend that employers wishing to obtain a declaration of acceptance for payslips either require a wet signature or establish a system whereby the employee can send a declaration of acceptance to them via KEP.

GenTemizer is a Turkish law firm based in Istanbul, Türkiye. We advise various businesses in relation to their investments, M&A, competition law/antitrust, project financing and construction projects as well as on operational and dispute resolution matters in the context of the Turkish regulatory framework. We have also advised investors in relation to government sponsored privatisation projects.

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