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## How Does the New Social Insurance and Universal Health Insurance Act Effect Women?

*Yeni Sosyal Güvenlik Yasası ve Genel Sağlık Sigortası Hareketi Kadınları Nasıl Etkilemektedir?*

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## How Does the New Social Insurance and Universal Health Insurance Act Effect Women?

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#### **Özet:**

*Türk sosyal güvenlik sistemi için yakın geçmişte değiştirilen yasal mevzuatla reform yapılmıştır. 5502 sayılı Sosyal Sigortalar Kurumu Kanunu ve 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu reformun yasal yapı taşlarını oluşturmaktadır. 5510 sayılı Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu Anayasa Mahkemesi tarafından iptal edilen maddelerinin değiştirilmesinin ardından Ekim 2008 tarihinde meri hale gelmiştir. Bahsi geçen reform süreci aktif ve pasif sigortalı olarak sosyal sigorta ilişkisi içinde bulunan her kesimi doğrudan etkilemiştir. Kadınlar da aynı şekilde çalışan aktif sigortalı olarak ya da kız çocuk, eş ve ana olarak pasif sigortalı durumunda bu süreçten etkilenmiştir. Bu çalışmamızda kısa ve uzun vadeli sigorta dalları baz alınarak kadınların 5510 sayılı Kanundan ne şekilde etkilendikleri başlıca noktaları dikkate alınarak açıklanmaya çalışılmıştır.*

**Anahtar Kelimeler:** *Sosyal Sigortalar Hukuku, Sigortalı Kadın, Bağlı Sigortalı Kadın, 506 Sayılı Kanun, 5510 Sayılı Kanun, Genel Sağlık Sigortası.*

#### **Abstract:**

*Recently a reform has been made in the Turkish social security system by changing the legal framework. After some articles of the Law Nr. 5502 on Social Security Institution and the Law Nr. 5510 on Social Securities and General Health Security have been changed upon interference of the Constitutional Court, the reform has come into force from October 2008 onwards. The reform has affected all the segments involved in social security being both actively and passively insured people. Women have also been affected directly by the process, as actively insured employee, daughter, wife or mother. In this study, departing from the short and long-term insurance branches, the way women are affected by the Law Nr. 5510 is analysed along the main changes.*

**Keywords:** *Social Insurance Law, insured woman, attached insured woman, the act numbered 506, the act numbered 5510, General Health Insurance.*

## I-Introduction

Turkey's social security reform, which is a product of Social Security Institution Law No. 5502 and Social Insurance and Universal Health Insurance Law No. 5510, has gone into effect following a lengthy legislative process. Nevertheless, criticism and discussions still continue. A brand new period in social security has begun in the country, to which no stakeholder group can remain indifferent. Women are also a component of this change. The law influences them either as active or dependent (spouse, mother, daughter) beneficiaries, according to their social status.

Even though Law No. 5510 appears cohesive in its coverage of all workers under all social insurance agencies, it is inherently discriminatory toward workers based on their status. Naturally, the same holds true in the case of women. In the treatment of insurance branches under coverage, benefits to which women will be entitled as principals based on their position as state employee, laborer, or self-employed, or as dependents of insured men, represents an instance of discrimination from a legal perspective.

Our study is based on the treatment of the beneficiary status of women who work solely on the basis of service agreements as principals, or as dependents, moving from the discrimination the law brings within its own systematics.

We will attempt to explain on the basis of insurance branches the positive and negative impacts of the new provisions on the insured as women who work according to a service agreement and as women who are dependents of working men.

## II-The Turkish Social Security System and the Reform Process

In Turkey, social security is protected by the Constitution. The Constitution of 1982 emphasizes social security as a fundamental right. Based on the provision in article 60, "Everyone is entitled to the right of social security. The state takes the necessary measu-

res and establishes the organization to provide this security."

Two systems of the contributory social security scheme and the noncontributory social security scheme coexisted to ensure social security in Turkey prior to the reform. While the contributory scheme was the primary practice, provisions existed for offering social services and assistances gratuitously under the noncontributory system (UŞAN, 2009; p. 41).

A regime subjecting employees and employers operating under the contributory scheme to different procedures according to their institutional status was applied.

- For employees working under a service agreement, Social Insurance Institution (SSK)–Social Insurance Law No. 506
- For employees working in the public sector, Pension Fund for Civil Servants of the Turkish Republic–Pension Fund Law No. 5434
- For the self-employed, Social Insurance Organization for the Self-Employed (Bag-Kur)–Bag-Kur Law No. 1479

As for the noncontributory system, provisions and agencies were established to provide social aid and services to the needy, in conformance with the requirements of the social state principle.

- Law on Putting on Salary Needy, Disabled, and Destitute Turkish Citizens who Have Completed the Age of 65–Law No. 2022 on Age 65
- Fund for Social Assistance and Cooperation
- Institution for Social Services and Child Protection
- Green Card

There was consensus that the country's social security system had serious problems and that a reform was needed. At the core of these problems is the lack of a comprehensive and effective official social insurance policy. Secondary problems include reluc-

tance of social entities to embrace the system and the status of social security institutions as agencies of the state, rather than agencies of the workers (SÖZER, 2004; p.59). Use of the income of non-autonomous social insurance institutions for politically oriented preferences and practices that defied social insurance principles caused rapid dissipation of funds (GÜZEL, 2005;68). Our social security system reached an impasse.

Besides the foregoing, the rapid increase in unreported employment naturally led to serious loss of income on the part of social insurance institutions. That this, coupled with the high unemployment rate, led to bottlenecks in our social insurance system, is easily understandable (GÜZEL, 2005;8). Another significant outcome of the reasons stated above is the loss of the active-passive balance of the insured. Compared to an active-passive balance of social insurance organizations at over 4 in 1980, the rate fell to 2.24 in 1999 and 2.03 in 2003 (GÜZEL, 2005;8). Currently it stands around 1.89 (UŞAN, 2009;42).

Social Insurance Institution Law No. 5502 and Social Insurance and Universal Health Insurance Law No. 5510 are the most important outputs of the reform process undertaken by the ruling political party, based on the principle of "A sustainable, acceptable, and practicable system today for the future" (AKP Social Insurance Report 2008; 1). Although the Social Services and Aid Law was drafted for the noncontributory system in the reform's framework, it has yet to be enacted.

Social Insurance Institution Law<sup>1</sup> No. 5502, dated 16/5/2006 went into effect on 20/5/2006. As of the date of enactment of the law, the titular person status of SSK, Bağ-Kur, and the Pension Fund was terminated, and their entire assets, personnel, and existing contracts, as well as their tasks and duties, were transferred to the Social Insurance Organization without further procedural requirements (GÜZEL, et al., 2009;85). With

Law 5502, the existing social insurance agencies were joined under the single roof of the Social Insurance Organization.

Date of enactment of Social Insurance and Universal Health Insurance Law No. 5510 is 31/5/2006. The initial date of enactment had been specified in the law as 1/1/2007. However, many articles of the draft law were found to be in conflict with the Constitution and were annulled by the Constitutional Court. The date of enactment for the law was postponed a total of four times, as a result of the process involving the annulment, preparation of the new draft, and legislative procedures, with the law finally going into effect at the beginning of the month of October (verbatim expression used in the law). The law collated different procedures of different social security institutions into one single set of regulations. However, it should be stated that the law's main characteristic is its adoption of Social Security Institutions Law No. 506 as its basis (CANIKLIOĞLU, 2006; 47).

### **III–Innovations Related to Women in LN 5510**

#### *A–Maternity Insurance*

Maternity is addressed among short-term insurance branches of the law. While monetary benefits are defined in the maternity insurance section, health benefits are left to Universal Health Insurance. The new provision includes two significant changes in terms of maternity insurance.

#### *1– Nursing Benefit*

The first version of LN 5510, just as it was the case in LN 506, provided for monthly payments of nursing benefit at a rate of one-tenth of the minimum wage valid at the time of childbirth for six months, to the insured woman, or to the insured man whose uninsured wife (dependent) had given birth to a child, on condition that the child lived. In LN 506 the allowance period was one year, and

<sup>1</sup> OG dated 20/5/2006, No. 26173.

the final rate stood at TL50/month.

In the revised version of LN 5510 following annulment by the Constitutional Court, and upon the failure of the government and the social sides to reach consensus, the decision of setting the amount of nursing benefit was left to the Social Insurance Organization Board of Directors (TEZEL, 2009;1).

With the new arrangement, nursing benefit will be paid once only to the insured woman, or the insured man whose uninsured wife has delivered a baby, provided that a short-term insurance branches premium has been reported for at least 120 days during the year preceding childbirth.

The nursing benefit has been set at TL70.00 for 2009 by the Organization's Board of Directors (CIRCULAR 2009/11).

Given that even a cutback of the nursing benefit from one year to 6 months had received censure, reduction of the nursing benefit to a single payment contingent upon premium reporting for 120 days, was justifiably met with criticisms of doctrine.

## 2-Maternity Indebtness

The provision allowing only women workers to borrow in case of maternity is arranged under article 41/1-a of LN 5510. Based on this, "Women covered under unpaid childbirth or maternity leave and item (a), clause 1 of article 4 may borrow leave time not to exceed twice during the two-year period following childbirth, provided that they do not work under a service contract and that the child is alive."

In order to benefit from borrowing maternity leave time, a woman worker must fulfill the following conditions:

- Be an insured worker employed under a service contract;
- Have a live birth and a baby who is still living
- Not work under a limited service contract

She can benefit from borrowed maternity

leave time for a maximum of two child-births.

In order for qualifying insured women to have their borrowed leave time processed under their insurance coverage, the women must file a request and pay their premiums, which are to be calculated on the basis of 32% of their self-reported daily earnings, within one month of filing their requests (a.41/2).

In case of borrowing for periods prior to the beginning of insurance coverage determined by LN 5510, the initiation of insurance is retrograded by as many days as borrowed. In case of entitlement to salary through insurance borrowing, payment of salary is initiated as of the first of the month following the month when the premium payment debt is paid by the insured.

The particulars of borrowing arrangements are addressed in article 70 of Social Insurance Procedures Guidelines. Requests related to service borrowing are made to the Institution according to a sample service borrowing document prepared by the Institution or through an application requesting borrowing. In cases where the insured is debited for periods prior to the beginning of insurance, the initiation date of insurance is retrograded by the number of days borrowed.

Although this right has been given to insured women who work based on a service contract, the provision found considerable interest in the media because it accords women a chance to retire up to four years earlier than their assigned time and because, when the law is considered as a whole, it stands out as an opportunity. In fact, in many printed media organs, ways have been suggested for women who work as civil servants or are self-employed to take advantage of this right. It would be more appropriate to make this entitlement, which is currently limited to women workers, accessible to all insured women instead.

### *B– Old - Age Insurance*

For old-age insurance, arranged by article 28 of LN 5510, the conditions of having completed 58 years of age and having 7,200 days of disability, old age, and death premiums reported are considered sufficient. The provision regarding age remains fixed until 2036, with incremental increases thereafter. The increase will be graduated between 2036 and 2048, following which, it will be set at 65 years for all (ERGIN, 2008; p.187). The new arrangement was intended for those who will meet the number of premium days requirement in the interval of 2036-2048 to be affected by the increase in the retirement age, rather than for those who will be retired in those years.

Besides the increase in the retirement age, the rate of updates to be applied to pensions has been reduced. Thus, there will be an inevitable decrease in the calculations of pension as of the date of enactment (ERGIN, 2008; p.188).

An innovation to exemptions brought by the old age insurance, and what we can term "facilitated retirement," is also one that interests us most, namely the early retirement opportunity for women who have children with disabilities. According to the clause added to the relevant article, "In cases where women with disabled children requiring continuous care by another person, apply for retirement or pension allocation, one-quarter of the number of premium payment days during the time elapsed following enactment of the law will be added to the total number of their premium due days, and these added periods will be deducted from their retirement age limit."

Thus, an insured woman who has a child with a disability requiring care will be considered to have worked for 25 years when in fact she has completed 20 years of work. The opportunity for this woman to retire five years earlier will thus have been provided (KURT, 2008;1).

This provision may be interpreted as a positive development for insured women.

However, it is believed that this benefit provided expressly for the care of a disabled child appears extremely restrictive. We are of the opinion that it would have been appropriate to extend the same benefit to an insured woman who has a spouse or a parent dependent on her care within the family union.

### *C–Survival Insurance*

The most important differences of survivors insurance from the other long term insurance branches are as follows;

- The majority of women who benefit from this branch of insurance is superior to the majority of men.
- Women (wife) are insurance holders of survivors insurance.

Hence, in the notion of spouse which benefit from the execution of survivors insurance will be evaluated only in the way of women. If the insured man is alive his wife is described as the dependent of insured man. But if the insured man is death his wife becomes a insurance holder.

In LN. 5510 has brought important disadvantages against to the wife and daughters who are insurance holders of survivors insurance. 5 years and 900 days of premium payments were necessary to put wife and daughters on salary in the prior arrangement and it allowed becoming indebted to complete that. But the new arrangement abolished the right of indebtedness for insurance holders of insured man worked with service contract. (GÜZEL, et al., 2009;554)

The other loss of right is about salary paid to working widow. In the arrangement in LN. 506, whether the wife worked or not was not considered to put her on salary because of death of her husband. And the ratio of salary was %75. In the new arrangement it also does not matter that wife takes income, works as insured person or not to put on salary. But the ratio of salary decreased to % 50 (CANIKLIOĞLU, 2006; 180).

### *D-Universal Health Insurance (UHI)*

In terms of content, LN 5510 was intended as a separate branch of insurance, arranging universal health insurance to cover not only those who work under a service contract, but every stratum of the society, and organizing the health benefits that are spread across existing laws and the conditions of entitlement to these (SARAÇ, 2008;121). Health services are thus first among the fields where the principle of expanding social insurance is realized (GÜZEL, et al, 2009;393).

UHI exhibits a more autonomous structure than other branches of insurance, in terms of both its content and benefits. Just as in other insurance branches, arrangements exist in UHI that can be construed as gains for women as well as those that will lead to loss of rights compared to the past.

Leading among the arrangements that can be qualified as positive is the inclusion of infertility treatment in reimbursable health services (GÜZEL, et al., 2009;732).

This benefit, introduced besides healthcare benefits to be offered in case of maternity, gives couples who cannot conceive through normal means an opportunity to have children. The conditions for qualifying for reimbursement are defined in item (e), article 63 of LN5510 as follows:

- To be legally married
- To have been insured as a principal or dependent under UHI for at least five years
- To have at least 900 days of UHI premium days
- To receive services from a healthcare facility under contract to the Institution.

The following conditions apply to the woman who will receive infertility treatment:

- The woman's inability to conceive through natural means and the possibility of conception with adjunctive methods must be medically established by healthcare providers and councils authorized

by the Institution.

- The woman should be no younger than 23 and no older than 39 years of age.
- Failure of other treatment methods to resolve the problem must be documented by the health councils of authorized healthcare facilities.

The insured's dependent daughters are subject to loss of rights under the law, as follows: An unmarried, unemployed daughter of an insured parent was entitled to healthcare benefits under the previous arrangement. However, the new law has put a stop to this. Accordingly, unmarried daughters who are not attending school are entitled to healthcare benefits until the age of 18; until the age of 20 if they are in secondary education, and until the age of 25 if they are in higher education (LN 5510 A.3/10). Thus, the condition of being unmarried has been introduced for the children for the first time in addition to age limits (UŞAN,2009;271). However, for this condition to apply, a change in the daughter's status is necessary; that is, those who are currently over the age of 18 and are benefiting from healthcare services as a result of parental insurance will maintain their entitlement to this right (AKP Social Insurance Report, 2008;2).

When daughters marry, if they are not considered dependents of their insured spouse, they will not be eligible for UHI benefits. Daughters have been included in UHI coverage as recipients of income and monthly allowance for two years following the date of loss of their monthly allowance or divorce through a guidelines(UHIRG a6/5), (SÖZER, 2009-1;171).

Another loss of entitlement caused by UHI concerns the grace period applied to enjoying healthcare benefits following termination of insured status. Under the old law (LN 506 a.40/1), if certain conditions were met at the time of termination of insurance, the insured's spouse and children were able to receive benefits for the following 6 months and 10 days (190 days). In LN 5510, this interval has been decreased to 90 + 10

days, with a total coverage of 100 days. The new arrangement cuts the benefit relationship by half (SÖZER, 2009-1; 169).

### Conclusion

Criticism that began in the preparation process of the new arrangements continues unabated in relation to loopholes, ambiguity, and incertitude of the sub-arrangements and institutional structure. What seems certain is that these discussions and criticisms will stay with us for some time. One main conclusion of the process is that women are the group that received the greatest impact.

Although the law includes provisions that may be interpreted as innovations and benefits for women, women's loss seems to be greater. Even though the old law appeared to be positively discriminatory to women, one look at the social and cultural structure in the country is enough to convince us otherwise.

Women, who can be said to hardly attain equal opportunity in many aspects of life beginning with education, also make up the majority of unpaid family workers, domestic services, and unpaid homemakers in the country, who are excluded from social security in work life. The low proportion of active insured women is evident from statistical data. Women are first to be terminated by employers who want to downsize. Women also make up the majority of part-time labor.

With the new provisions it has brought, our new law appears to have contributed to the plight of women. While it attempts to encourage women to become actively insured in the active-passive balance on one hand, it almost tries to create challenges on the other.

It is universally desirable for women to maintain productive, active, and economically independent lives. However, for all this to be accomplished, we believe that all opportunities, beginning with education and including social security, need to be offered as a prerequisite of a social state.

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