

THE LEGAL EFFECTS OF CORONAVIRUS (COVID-19) FROM THE PERSPECTIVE OF EMPLOYMENT LAW

One of the areas that Coronavirus pandemic has impacted mostly is undoubtedly employment relationships. What are the issues that the parties of an employment relationship must be concerned about under Turkish law during the pandemic crisis?

A. METHODS TO MAINTAIN THE EMPLOYMENT RELATIONSHIP

1. Remote Working

In a decision granted on 15 April 2019 (2018/5018 E., 2019/2931 K.), the Turkish Court of Cassation ruled that the death of an employee as a result of a virus obtained during a business trip is an employment related accident, and held the employer liable for damages. This decision of the Turkish Court of Cassation is also relevant for infections through the Coronavirus if an employee is infected with Coronavirus in his workplace or during a business trip.

For this reason, employers are encouraged to allow their employees to work remotely if such employees do not have a direct physical contribution to the production activity carried out in the workplace.

Remote working is regulated in Article 14 of the Turkish Labour Code, and is defined as a working method in which employees fulfil their duties arising from the employment relationship from home or outside the workplace through technological communication tools.

Employers and employees must pay attention that the remote working relationship is based on a written contract. It is also important for employers to treat the employees equally, and inform the employees on occupational health and safety measures accordingly, observe the health conditions, and take the safety measures concerning the working tools provided to them. Employers are advised to obtain the written confirmation of their employees regarding the information provided about health and safety measures.

2. Annual Paid Leave

Pursuant to the Article 53 of the Turkish Labor Code, employees who work for at least one year (including trial period) are entitled to annual paid leave.

It is possible for employers to let their employees, who are entitled to annual paid leave, to use such leave. While the timing of the annual leave can be determined by the employer, the employer should use this right in good faith. It will be sufficient for employers to notify their employees in writing of the period in which annual leave shall be used. Employers are strongly encouraged to receive professional advice before letting their employees use their annual paid leave during the Corona epidemic.

3. Leave Without Pay

Under Turkish Law, unpaid leave is possible in exceptional situations, such as part of the maternity leave. However, apart from exceptional cases, it is also possible for the parties to mutually agree on the suspension of the employment contract through unpaid leave.

4. Short-Work Allowance

Another method to maintain the employment relationship can be through the application of the short-work allowance method. Short-work allowance can be applied by weekly working hours in the workplace temporarily being reduced by at least one third because of general economic, sectoral, regional crisis, or compelling other reasons, or by the work being stopped completely or partially for a period of at least four weeks. Employees who fulfil the conditions are entitled to an allowance for a period of up to 3 months upon application by the employer. Until 30 June 2020, an employee is considered to have fulfilled the conditions for short-work allowance if (s)he has been working for a minimum of 60 days without interruption prior to the start of the short work and has been paying social security payments for at least 450 days in the last three years.

B. TERMINATION OPTIONS

1. Termination of Employment Contracts Under Due Cause

In paragraph 3 of Article 25 of the Turkish Labor Code, it is regulated that, if a compelling reason (force majeure) prevents the employee from working for a period that is longer than a week, the employer can terminate the employment contract for due cause after one week. Important for the applicability of this provision is the occurrence of the compelling reason not being attributable to the workplace, but to the employee himself, or circumstances around him.

In this case, the employee is entitled to his/her severance pay if (s)he has fulfilled the conditions, and half of his salary for each day up to a week must be paid to the employee in such termination. It is not necessary to wait for the notice period or pay the employee his/her notification payment.

2. Termination under Due Cause Due to the Coronavirus Pandemic / Option of Mass Termination

As a last resort, and provided that their business is adversely affected, employers may consider termination under due cause.

Given that termination is a last resort measure, employers must first consider possible ways to maintain the employment relationship through the measures explained above. Only if such measures are not sufficient, employers are entitled to use the option of termination under due cause, provided that they can prove that the Coronavirus pandemic drastically affected their business activities. Employers are required to pay severance payment and notice payment if the respective conditions are fulfilled.

In case of mass termination, there are additional administrative requirements to fulfil.

Employers are strongly advised to consult with their legal advisors before taking the decision of termination under due cause / mass termination due to the Coronavirus pandemic. If they are not able to prove that the conditions for the termination under due cause are fulfilled, they risk having to pay salaries between 8-12 months. In the case of mass termination, non-compliance with administrative requirements may result in invalidity of the termination.

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