

BRIEF ON TURKISH LABOUR LAW and POSSIBLE CONSEQUENCES of the TERMINATION of an EMPLOYMENT CONTRACT

I. A Brief Look into Turkish Labour Law System

Employee – employer relations in Republic of Turkey are regulated under Labour Law (“Law”) numbered 4857 which has been promulgated on the Official Gazette dated 10.06.2003 and numbered 25134. There is also an extensive body of secondary regulations along with the Law. The Law and the secondary regulations are mostly in line with EU Directives.

The Law frames the boundaries of the subjects such as terms and conditions of employment contracts, overtime, when and how an employment contract can be terminated and so forth.

II. Termination Types Under the Law

The Law foresees two methods of termination: **(i)** termination on valid ground and **(ii)** rightful termination. The said termination methods are regulated under articles 18 and 25 respectively. Their trigger mechanisms and consequences are different from each other, thus we will examine them under separate titles.

a) Termination on valid ground

This termination method is foreseen under article 18 of the Law. An employer may terminate the employment contract of an employee due to valid ground stemming from **(i)** the performance or behaviour of the employee or **(ii)** the necessities of the job, workplace or business. Technologic developments, downsizing, economic recession can be given as examples for “the necessities of the job, workplace or business”.

However, there are several prerequisites in order to implement the abovementioned method. The said prerequisites are as follow: **(i)** the employee whose contract will be terminated must have at least 6 months length of service, **(ii)** there must be at least 30 or more employees working in the workplace and **(iii)** the employee must be working under an indefinite-term contract.

It must be noted that the 9th and 21st Circuits of Court of Appeals have a strict and uncompromising attitude towards terminations on valid ground. The decisions of the High Court states that in order to terminate an employee’s contract on valid ground, there must be no other

BRIEF ON TURKISH LABOUR LAW and POSSIBLE CONSEQUENCES of the TERMINATION of an EMPLOYMENT CONTRACT

solution left to employer. This is called the *ultima ratio* principle where an employer must do everything in his power to prevent the termination of an employment contract.

The Law and High Court stresses that if the contract is to be terminated due to the performance or behaviour of the employee, the employer must take a defence letter from the employee to explain the reasons of his bad performance or behaviour. Furthermore, the High Court demands from an employer to prove that he gave additional training to employee, offered him another job or demotion in order to prevent the termination.

It should be noted that the employee whose contract has been terminated can file a lawsuit for reinstatement. If the severance and notice pays or other obligatory payments (e.g. overtime) are not paid, the employee can also file another lawsuit to claim such alleged receivables.

On the other hand, if the termination is to be made in accordance with the necessities of the job, workplace or business, the High Court applies a different evaluation method. Please kindly find below a decision rendered by the 9th Circuits of Court of Appeals dated 04.10.2010 and numbered 2010/33069 E., 2010/27474 K. which can give an insight on how the High Court assess and evaluates the matters. The decision is about layoff of redundant employees based on business decision.

*“All the causes which the business itself has no effect in their occurrence are considered as off-business causes. Decline in orders, difficulties in marketing, decline in sales and demand, lack of raw materials, difficulties in energy supply, cut of subsidies by government, meteorological events can be given as examples to off-business causes. Off-business causes matters only if the same causes a redundancy in the work-force and thus leads a layoff based on the necessities of business. **The employer must prove in a tangible manner that off-business causes led to layoff of the employees. In other words, the employer must put forth the actual and detailed facts which should be eligible to be assessed by the court and should be further eligible to be contended by the employees.**”*

Furthermore, the High Court again demands from an employer to prove that he gave additional training to employee, offered him another job or demotion in order to prevent the termination. Otherwise, there is a high risk for the employer.

BRIEF ON TURKISH LABOUR LAW and POSSIBLE CONSEQUENCES of the TERMINATION of an EMPLOYMENT CONTRACT

i. Different status of senior level (general manager / similar position) employees

In case of a senior level employee whose status is equal to a general manager or similar position, such person cannot be able to enjoy the same level of protection that regular employees benefit. Pursuant to art. 18/5 of the Law, an employee who has executive authorities covering every aspect of the business, neither file a reinstatement lawsuit nor claim overtime payment. Additionally, the employer is not obliged to provide valid ground for the termination. Moreover, the employer is not under any obligation to prove that he gave additional training to employee, offered him another job or demotion in order to prevent the termination.

However, it is for the best interest of a company to execute a detailed labour contract which lays down the terms and conditions (especially the ones pertaining to performance) in a crystal-clear way.

b) Rightful termination

In this method, an employer can terminate the contract of an employee without giving a notice and without paying his legal rights (e.g. notice and severance pay, overtime etc.). However, such termination can occur only in circumstances foreseen under art. 25 of the Law. Lying about qualifications, sexual harassment and theft can be given examples for rightful termination. Please kindly be advised that the employee can still file a lawsuit and claim that the reasons for the termination does not cause a rightful termination.

III. Notice Periods

The notice periods are determined under article 17 of the Law. Please kindly find them below in a table. If the employee or employer wishes to terminate the contract without waiting the notice periods, then they can pay the related amount (e.g. if the notice period is 2 weeks, then the salary of 2 weeks should be paid) and terminate the contract immediately.

Seniority	Notice Period
Up to 6 months	2 weeks
6 months – 1,5 years	4 weeks

**BRIEF ON TURKISH LABOUR LAW and POSSIBLE CONSEQUENCES of the TERMINATION of an
EMPLOYMENT CONTRACT**

1,5 years – 3 years	6 weeks
3 years or more	8 weeks

The information given in this memorandum cannot be evaluated as legal advice, guarantee or commitment. Considering the frequently changing nature of the regulations, you can contact us either by phone (+90 212 288 04 04) or from aydinorhan@aydinorhan.av.tr or omerselamoglu@aydinorhan.av.tr in order to get more detailed information.