

Terminating Labor Contracts in Turkey: Process and Factors to Consider

22 May 2003

The relationship between employers and employees is regulated in Turkey by the Labor Law numbered 4857 and dated May 22, 2003 ("Labor Law"). This article explains the circumstances under which an employer may terminate an employee's contract, as well as the relevant procedures and considerations.

Under the Labor Law employers may terminate an employee's labor contract immediately where certain justified grounds exist. Alternatively, the Labor Law says employers can terminate an employee's labor contract with notice where other valid grounds are present. Where valid grounds for termination exist, the length of notice required will depend on the employee's length of service. However, the employer may choose to pay the employee a notice payment instead of having the employee work the notice period. In some circumstances the employer may have to pay the employee a severance payment.

1. Immediate Termination - No notice period required but termination must be based on certain justified grounds

An employer may terminate a labor contract with immediate effect, provided that such termination is based on "justified grounds".¹ The employer is not obliged to pay a severance payment or give the employee notice of the termination. The employee can challenge the existence of justified grounds by initiating a lawsuit against the employer.

The circumstances outlined below constitute justified grounds for instant termination under Turkish law:

- The employee misses work for three straight days or a total of five days in a month due to contracting a disease or suffering an injury by their own deliberate act, loose lifestyle or alcohol abuse.
- A hospital Health Committee determines that the employee's sickness is incurable and incompatible with the performance of their employment duties.
- When the contract was entered the employee misled the employer by:
 - Falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or
 - Giving false information or making false statements.
- The employee does or says something which causes offense against the honor or dignity of the employer or a member of their family.
- The employee makes groundless accusations against the employer regarding matters which affect the employer's honor or dignity.
- The employee sexually harasses another employee.
- The employee assaults or threatens the employer, a member of the employer's family or a fellow employee.
- The employee arrives at the work place drunk/on drugs or drinks alcohol/uses drugs in the work place.
- The employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of trade secrets.
- The employee commits an offense in the work place that is punishable by seven days imprisonment (or more) without probation.²

- Without the employer's permission or a good reason the employee is absent from work:
 - For two consecutive days, or
 - For three working days in any month, or
 - Twice in one month on the working day following a rest day.
- The employee refuses to perform his or her duties after being warned.
- Either willfully or through gross negligence, the employee risks or damages machinery, equipment or other articles or materials in his or her care, whether this property belongs to the employer or not, and the damage cannot be offset by 30 days' of pay.
- The employee is under arrest and his or her absence exceeds the notice periods in this article.
- Other compelling reasons that prevent the employee from performing his or her duties for more than one week.

Please note that if employer terminates the labor contract on this basis it is not necessary for the employer to obtain a statement of defense from the employee

2. Termination with Valid Reason - *Must be based on valid grounds and a notice period given*

An employer may terminate a labor contract based on valid grounds provided the employer gives the employee a notice period.³ If the employee wishes to challenge this ground, they may initiate a lawsuit against the employer. A valid ground can occur in respect to a condition arising from either the employer or the employee.

Conditions related to the employee: The employee's performance or behavior may become the basis of termination on valid grounds. If termination is based on the employee's performance or behavior the employee must be warned in writing and granted at least two chances to correct this prior to termination. The employer should obtain a written statement of defense from the employee.

Conditions related to the employer: A valid ground for termination may arise due to the necessities of the business, the work place or the role. If the reason arises from the employer in this way, terminating the employee's labor contract must be the employer's last option. Conditions relating to the employer include:

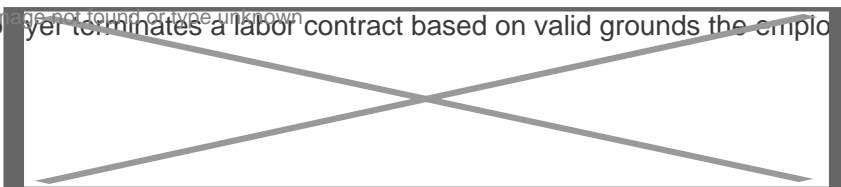
- Poor financial performance of the company
- Organizational changes, such as a merger or restructure
- The work place is being closed

Conditions that are not valid grounds for terminating a labor contract include:

- Race, color, sex, marital status, family obligations, pregnancy, birth, religion, political opinion or similar reasons
- The employee's membership of a trade union or participation in union activities outside of work hours (or within work hours with the employer's consent)
- The employee being the trade union representative for the business
- Absence from work during maternity leave⁴
- Temporary absence from work during the recovery period from illness or accident.

If an employer terminates a labor contract based on valid grounds the employer must apply the following notice

periods:



During the notice period, the employer must grant the employee permission to seek new employment within working hours. The employee must be allowed at least two hours per day for this task and the employer may not deduct wages from the employee for this time.

The employee may choose to accumulate these "job-seeking" hours and use them all at one time. However, if the employee wishes to do this they must inform the employer in advance and the accumulated time must be taken on the days immediately preceding the day their employment ends.

If the employer wishes to terminate the labor contract on the basis of a valid ground but does not wish to continue to employ the employee for the duration of the notice period, the employer may choose to pay the employee a notice payment and end the employment earlier. The employee is not entitled to demand that the employer pay them a notice payment. Notice payment entitlements are based on the employee's length of service. Notice payments are calculated using the same structure outlined above for determining the length of notice period the employee would have received.

The Labor Law does not state any specific time limit for claims from employees regarding notice payment requests. However, in accordance with the Code of Obligations, terminated employees should raise these claims within 10 years of the termination date.

3. Mutual Termination - *Agreed between the employer and employee*

Mutual termination is not regulated by the Labor Law but is commonly used in practice.

Mutual termination of labor contracts reflects the parties' freedom of contract, whereby parties may enter, amend and terminate any contract or agreement via a mutual agreement of intentions. Thus, the employer and employee can choose to terminate the labor contract with mutual agreement and on mutually agreed terms. This may involve the parties agreeing to severance-type payments and notice periods, but not necessarily.

4. Employee Resignation

An employee may choose to terminate their own labor contract by resigning. In these circumstances, the employer is not required to pay any severance or notice payments to the resigning employee.

The law does not require the employee's resignation to be in writing. However, it is in the employer's best interests to receive the resignation in writing in case the details of this later come into dispute.

The employee must give the employer notice of their resignation. The length of this notice period depends on how long the employee has worked. The resignation notice periods are the same as outlined in section 2 above for when an employer terminates a labor contract based on valid grounds.

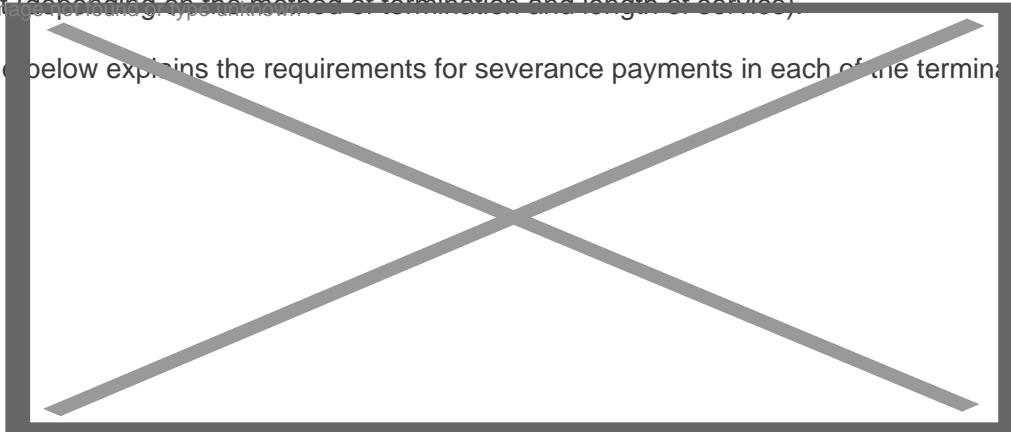
5. Force Majeure

According to the general principles of the Law of Obligation, all contracts may be terminated in cases of force majeure events, provided that certain requirements are met. Therefore, these conditions will also apply in the labor context for terminating employment contracts. These circumstances may include natural disasters, war or riots, among others.

6. Severance Payments

Depending on the method of termination, employees may be entitled to a severance payment after one year of employment. Prior to this time employees are not entitled to any severance payments, but may qualify for a notice payment (depending on the method of termination and length of service).

The table below explains the requirements for severance payments in each of the termination circumstances outlined



above.

Severance payments are regulated on the grounds of public order. Thus, the terms of severance payment cannot be changed by the parties even if the change would be in the employee's favor.

Severance payments are calculated by multiplying 30 days of the employee's salary by the number of years the employee has worked for the company. The employee's salary cannot exceed a certain cap, currently TL 3,218.76 (July 1, 2013 to December 31, 2013). This cap is reviewed by the Council of Ministers every six months to take inflation into account. Partial years that the employee has worked are taken into account as a proportional rate.

Severance payments that are within the statutory cap do not raise any tax obligations. However, if a severance payment exceeds the legal cap the portion that exceeds the cap will no longer be considered to be a severance payment. The employer must declare this portion differently to the tax authorities and there may be further tax consequences.

The Labor Law does not state any specific time limit for claims from employees regarding severance payment requests. However, in accordance with the Code of Obligations, terminated employees should raise these claims within 10 years of the termination date.

7. Re-employment Lawsuits

Where a terminated employee has worked for more than six months and the employer has more than 30 employees, the employee may choose to initiate a re-employment lawsuit. The employee must initiate the lawsuit within one month of being notified that their labor contract is terminated.

A re-employment lawsuit may be based on a claim that either:

- The employer terminated the labor contract without valid reason, or
- The employer did not identify a reason for the termination.

The burden of proof is on the employer to prove that the termination was based on a valid ground. However, this evidentiary onus shifts to the employee if he or she claims the termination was based on a reason that is different from the one presented by the employer.

If the court decides in favor of the employee, the employer's termination of the labor contract will be considered invalid and the employer must pay the employee four months salary (as compensation for the time which has passed

during the trial). The employer must either re-employ the employee or pay further compensation to the employee. This compensation ranges from four to eight months of the employee's salary, by way of labor security indemnification. The court's judgment will outline how many months worth of labor security indemnification will be owed to the employee if the employer chooses not to re-employee.

Certain employees are barred from initiating a re-employment lawsuit. This restriction applies to general managers as well as branch managers who have the power to hire and dismiss other employees.

Determining whether an employee has worked for more than six months must include periods the employee has spent in all of the employer's workplaces and in all positions held.

The number of employees must be calculated by taking into consideration all employees in all workplaces belonging to that employer, both in Turkey and overseas.

8. Other Factors to Consider

a) *Directors and Senior Employees*

There are no specific provisions or requirements regarding the process for terminating labor contracts of directors or other senior employees. However, in accordance with commercial law principles, companies will often be required to meet the conditions set forth in the company's articles of association.

b) *Restriction of Future Activities - Non-competition Agreements*

Employers can use non-competition agreements to restrict a terminated employee from conducting certain activities in future. To be valid, such agreements must include the location, subject and duration of the non-competition agreement.

It is recommended that employers enter such agreements with employees at the beginning of the labor contracts. In practice, employees are likely to refuse to make such an agreement during the termination of their labor contract.

c) *The Employee's Age*

A labor contract may not be terminated by reason of the employee's age. If the employee is entitled to retire, the employee may.

- [1] Article 25 of the Labor Law
- [2] The employee does not have to be convicted of this offense by a court
- [3] Article 18 of the Labor Law
- [4] Article 74 of the Labor Law

Related Practices

- [Employment Disputes](#)
- [Consulting, Services and Outsourcing Agreements](#)

Related Attorneys

- [BENAN ARSEVEN](#)