

Labor piracy and its legal consequences

Dr. Umut Kolcuoglu
Managing Partner
ukolcuoglu@kolcuoglu.av.tr

Duygu Derelioglu
Trainee Associate
dderelioglu@kolcuoglu.av.tr
Kolcuoglu Demirkan
Kocakli Attorneys at Law

LABOR and business-based digital platforms have grown, diversified and became prevalent in the recent years. The evident consequence of this is that employees change jobs more frequently due to being exposed to various opportunities online. In general, employees' main motivation for changing jobs is to maximize employee benefits. Once an employee receives a job offer that he/she considers more appealing, he/she is quick to quit the existing job and move to another one, which may give rise to a "labor piracy" related dispute. Turkish law does not exhaustively list the situations that can be considered as labor piracy. Thus, each incident must be evaluated separately.

Labor law scholars define labor piracy as an act of solicitation intended to convince an employee to terminate their employment contract and to enter into a new one. The concept of labor piracy is provided under Turkish Labor Law ("TLL"). The relevant provisions of TLL not only impose on the employee a number of duties when terminating the employment contract but also holds the new employer liable if the employee fails to fulfill those duties.

Under TLL, an employee who quits his/her job without complying with the legal notice period is required to make a notice payment to the employer as compensation. Under certain conditions, the new employer and the employee may be

jointly and severally liable for this payment. Furthermore, if an employee exercises their right of termination without just cause, they may have to pay the employer a wrongful termination compensation. If the new employer's actions "caused" the termination of the employee's contract, the new employer may have to bear these consequences (e.g., notice payment and wrongful termination compensation) together with the employee. According to Turkish scholars, being the "cause" of unlawful termination of an employment contract may appear in various forms other than the acts of solicitation, as it has a wider meaning that goes beyond the concept of solicitation. The courts, therefore, review and decide on this issue on a case-by-case basis. The courts may also hold the new employer liable if the new employer was aware of the unlawful termination when it hired the employee or it continued to employ the employee even after discovering that the employee unlawfully terminated its former employment contract.

Moreover, in instances where an employee terminates their existing contract and enters into a new one with a competitor, this may trigger unfair competition-related provisions under the Turkish Commercial Code (the "TCC"). The former employer may bring a claim against the new employer based on "unfair competition" and request compensation of

the damages it incurred due to having its employee solicited. It must be noted that the Cassation Court does not consider it to be unfair competition for the second employer if the relevant employee simply left one workplace and started working for another. The scholars and the Cassation Court require the act of solicitation to be of deceptive nature or in violation of the good faith principle for it to constitute unfair competition (i.e., the solicitor should aim to reduce or eliminate the competitiveness of its competitor).

Another nuance of which the new employer must be aware is whether or not the employee has a contractual obligation to not compete with the former employer. Employment contracts, very often, include penalty clauses for the breach of such obligation. In certain circumstances, the new employer may also be held liable for this penalty, especially if there are acts of labor piracy.

All in all, from both labor law and commercial law perspectives, labor piracy may have significant consequences. Both the employee and the new employer can be held liable for breach of the TLL, the TCC's unfair competition-related provisions as well as the employee's contractual obligations arising from his/her former employment contract, all of which must be carefully considered by the new employer when hiring.

The opinions expressed in this page are the author's own and do not reflect the views of the firm and the publication or any other individual attorney.