



## Bullying at Work: Mobbing

"Mobbing" has become one of the hot topics in employment related disputes in the recent years. The number of compensation claims filed by employees who have been subject to their employers' or superiors' intimidating actions, has conspicuously increased. This is so particularly after publication

of the Prime Ministry's Circular on Prevention of Psychological Harassment (Mobbing) in Workplaces<sup>1</sup> (the "**Circular**") in 2011. The Circular defines mobbing as *"a systematic emotional assault and continuing disrespectful and harmful act carried out in a workplace, against a specific employee or a group of employees, such as innuendo, rumor, public discrediting, casting out and intimidation"*.

Although it is directly related to employment relationships, "mobbing" is not specifically defined or governed under the Labor Law<sup>2</sup>, which is the primary legislation that governs contractual relationships between employers and employees. Where the Labor Law remains silent, the provisions of the Turkish Code of Obligations<sup>3</sup> (the "**TCO**") apply to employment related matters. Article 417 of the TCO provides that an employer is obliged to (i) respect and preserve its employees' personality; (ii) keep a reliable and fair order within the workplace; (iii) preserve the employees from psychological and sexual harassments; and (iv) take any necessary precautions to preserve employees, who have been subject to harassment, from further damages. Article 417 further provides that, if (i) an employee dies; (ii) his/her personality rights are violated; or (iii) his/her physical or mental integrity is harmed, due to the employer's failure in fulfillment of these obligations, the employer will be obliged to compensate the employee's (or his/her family's) pecuniary and non-pecuniary damages. The Court of Appeals has ruled that mobbing is amongst the just causes based on which an employee can terminate his/her employment contract with immediate effect and become entitled to severance pay.

The first known court decision on mobbing was rendered by the 8<sup>th</sup> Labor Court of Ankara, in December 2006. According to the 8<sup>th</sup> Labor Court of Ankara, if an employee submits a medical report which indicates that he/she is suffering from crying jags and mental diseases (such as anxiety disorder) due to his/her employer's frequent groundless warning letters or humiliating shouts, yelling or speeches in front of others, such report constitutes a clear proof of the employer's mobbing. Seven years later, in 2013, the 22<sup>nd</sup> Chamber of the Court of Appeals ruled as follows:<sup>4</sup>

- An employee does not have to provide concrete evidence to prove his/her mobbing allegations;
- Evidence that casts the judge's doubt on existence of mobbing are adequate; and

<sup>1</sup> Published in the Official Gazette dated 19 March 2011 and numbered 27879.

<sup>2</sup> Published in the Official Gazette dated 22 May 2003 and numbered 25134.

<sup>3</sup> Published in the Official Gazette dated 11 January 2011 and numbered 27836.

<sup>4</sup> Decision of the 22<sup>nd</sup> Chamber of the Court of Appeals dated 27 December 2013 numbered K. 2013/30811.

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- Given that mobbing is an abstract concept, proving it with substantive evidence is not easy and, thus, in case of any doubt, the courts must favor the employees.

It became clearer with the above-mentioned decision of the 22<sup>nd</sup> Chamber of the Court of Appeals that, if an employee asserts in a lawsuit that he/she has been subject to mobbing in the workplace, the employee may have a considerable advantage in the lawsuit. In this regard, in order to avoid (or at least, minimize) mobbing claims, the employers' executives should be aware of which actions and attitudes constitute mobbing. If and when an employer becomes aware of one of the employees' mobbing towards another in the workplace, the employer should immediately take any necessary precaution, including (i) hearing the victim's complaints and the offender's defenses separately; (ii) serving a warning letter on the offender employee (or terminate his/her contract, if the level of his/her mobbing is sufficient for termination); (iii) changing the department or workplace of the victim, at his/her request; and (iv) follow-up the matter closely and carry out all of these in strict confidence.

If an employer (or an employer's representative) comes across an unexpected mobbing allegation asserted by an employee through a lawsuit, the employer must be able to prove that:

- the company has taken necessary precautions to prevent mobbing in the workplace;
- the employee who has allegedly been subject to mobbing has never informed the company of a possible mobbing behavior;
- if the plaintiff employee has notified the company of his/her mobbing allegations before, the company has ensured that the offender's mobbing stopped immediately; and
- the company has provided support to the employee in order to help him/her cure the physical and mental effects of mobbing.

It is highly recommendable for an employer to (i) implement internal rules and policies that provide guidance on how to avoid and react mobbing in workplaces and (ii) procure a comprehensive legal assessment on the merits of each mobbing allegation, in order to determine the best strategy to follow before the court.

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