



Prospective Developments on the Severance Pay Fund

Severance pay is one of the most important consequences that an employer encounters while terminating an employee's contract. As such, establishment of the "severance pay fund" has long been debated and, with the enactment of Labor Law numbered 4857¹ (the "**Labor Law**") in 2003, the fund was first referred to in a law. Provisional Article 6 of the Labor Law stipulates the establishment of the fund and provides that until the law on the fund's establishment is enacted, employees may claim severance pay in accordance with Article 14 of the former Labor Law numbered 1475² (the "**Former Labor Law**").

The Labor Law abolished the former Labor Law, except its Article 14, which governs severance pay. The prominent condition for entitlement to severance pay is the continuance of the employment relationship for at least one year. Article 14 of the Former Labor Law states that an employer will be obligated to pay severance pay, if and when an employee:

- resigns due to compulsory military service, retirement or early retirement;
- terminates his/her contract based on a just cause;
- passes away;³ or
- is dismissed by the employer, in the absence of a just cause arising from his/her immoral, dishonorable or malicious conduct.

In addition, a female employee becomes entitled to severance pay, if she resigns within the first year of her marriage.

While calculating the amount of an employee's severance pay, (i) the length of his/her employment; and (ii) his/her salary for 30 days⁴ are taken into consideration. Employees are entitled to receive a 30-day salary for each complete year of service to the employer. If, at the time of the termination, an employee has not completed the last working year, the severance pay for the period that he/she worked within the last year will be calculated on a *pro rata* basis.

While the long-standing legislative framework is as described above, in fact, back in 2002, even before the Labor Law's entry into force, an initial draft law on the severance pay fund (the "**Initial Draft**") was prepared by a scholars commission formed under the supervision of the Ministry of Labor and Social Security (the "**Ministry**"). This Initial Draft, consisting of

¹ Published in the Official Gazette dated 10 June 2003 numbered 25134.

² Published in the Official Gazette dated 1 September 1971 numbered 13943.

³ In such event, the severance pay will be paid to his/her heirs.

⁴ The Former Labor Law provides an upper limit for severance pay. Accordingly, the Council of Ministers determines a "cap", to apply in the calculation of severance pay to employees. Regardless of the employee's amount of salary determined under his/her employment agreement, the employer is only obligated to pay the severance pay to be calculated as per the upper limit. For the first half of the year 2015, the mandatory upper limit is TRY 3,541.37.

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five chapters and 22 articles, was criticized by the majority of the public, labor unions and scholars. As there has been no public consensus on the establishment of the fund, the Initial Draft has never been brought to the table as a “draft law”.

The Initial Draft states that the scope of the severance pay fund is planned to cover all employees working under the rules of (i) the Labor Law; (ii) the Maritime Labor Law; and (iii) the Press Labor Law. According to the Initial Draft, the fund is to be an administratively and financially independent, private budgeted public institution affiliated with the Ministry, with legal personality and subject to private law. The Initial Draft further states that the fund will be audited both by the State Auditing Board and certified public accountants. According to the Initial Draft, certified public accountants will audit the fund every three months and issue a report, which will then be published in the Official Gazette.

Article 7 of the Initial Draft provides that an employee will be entitled to severance pay upon (i) his/her retirement; (ii) his/her request, if the social security premiums for the employee have been paid for at least ten years; or (iii) his/her decease (in such event, the severance pay will be paid to his/her heirs). This article has been criticized for being against the employees’ benefits, as it forfeits the employees’ right to receive severance pay, if they (i) resign due to compulsory military service or marriage; (ii) terminate their employment with just cause; and (iii) are dismissed by employers without just cause.

There is no “draft law” on the severance pay fund at the moment. The Minister of Labor and Social Security, Mr. Faruk Çelik, recently expressed that he has concerns about the current legislative framework, because many employees cannot receive their severance pay when their employers terminate their contracts, due to the strict conditions for entitlement to severance pay. According to Mr. Çelik, they are planning to designate a system that allows every employee to become entitled to receive severance pay upon ordinary termination, even those whose employment lasted only one month.

The statements of the Prime Minister and the Minister of Labor and Social Security suggest that the severance pay fund issue will likely be brought to the table before the general elections in June 2015. However, for the time being, it is uncertain whether the Initial Draft will transform into a “draft law” and be brought to the Grand General Assembly of Turkey or if the Ministry will form a new scholars’ commission, in order for a whole new draft law to be prepared. It is arguable that, instead of preparing a new draft law, the sharp edges of the designated framework of the severance pay fund may be softened by taking the labor unions’ and scholars’ critics into account.

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