



## PROCESS FOR EMPLOYERS' TERMINATION OF EMPLOYMENT AGREEMENTS

In most legal systems, the main purpose of labor legislation is to protect employees against their employers. Likewise, in Turkey, the Labor Law provides certain conditions and requirements for the termination of employment agreements. Minor omissions may cause major problems. Unless an employer acts in compliance with the requirements of the Labor Law, an unlawful termination may trigger labor claims and re-employment lawsuits.

An employment agreement is generally executed for an indefinite term. However, under the Labor Law, in the presence of certain conditions, employers and employees may execute employment agreements for a definite term. An indefinite-term employment agreement can either be terminated (i) by sending prior notice to the employee in compliance with the notice periods stipulated under the Labor Law; or (ii) immediately, in the presence of a just cause, as prescribed under the Labor Law. However, definite-term employment agreements can only be terminated before its expiry, only if there is a just cause. If there is no just cause to terminate a definite-term employment agreement, that termination will be unlawful and the employer will be required to pay the amount that would have been paid to the employee had the agreement not been terminated. However, under Article 408 of the Code of Obligations, the expenses, which the employee no longer has to bear due to termination, and the benefits, which the employee earns by working in another job or which the employee purposely avoids to earn, will be deducted from the compensation amount.

Article 25 of the Labor Law provides a list of examples of just causes, which grants the employer the right to terminate employment agreements without prior notice. Moreover, an employee does not have the right to receive severance pay if his/her employment agreement was terminated based on just cause. On the contrary, in the absence of a just cause, if employment agreement was terminated by serving prior notice, the employee would be entitled to severance pay if he/she had been working for at least one year.

For sake of avoiding any challenges, in the presence of a just cause, an employer must exercise the termination right within six working days following having been informed of the event (forming the just cause) and within one year following the occurrence of such event. Employers cannot terminate an employment agreement due to just cause after six working days following having been informed of the event or if it is evident that the employers are not bothered by the event (e.g. if they promote the employee although they have been informed of an event forming the just cause). Having said that, if an investigation is initiated, this investigation will stop the six working day period. Furthermore, if the employee benefits from his/her action(s), the time limit will not apply.

Generally, the principle of freedom of termination applies and employment agreements may be freely terminated with prior notice. However, under the Labor Law, employment agreements of employees, who fall within the scope of job security provisions, may only be terminated with prior notice, if there is a valid reason for termination. Job security provisions

apply where (i) the number of employees employed in the work place is equal to or over 30; (ii) the employee has been employed for at least six months; (iii) the employment agreement is for an indefinite term and (iv) the employee is not one of the employer's representatives.<sup>1</sup>

In order for a termination to be valid, the employee must be served a written termination notice and this notice must clearly indicate the reason for termination. Moreover, the termination notice should be served through a notary public or at least handed over to the employee after obtaining his/her signature. If the employee refuses to sign the termination notice, this must be recorded in writing.

Termination by serving prior notice must be made in accordance with the notice periods prescribed under the Labor Law. In this form of termination, the employee continues working during the notice period and the employment agreement is terminated at the end of this notice period. If an employer does not want the employee to continue working during the notice period, he/she must make an advance payment of wages for the notice period (i.e. notice period compensation), at the time of the termination. The notice period is determined based on employment duration. The statutory notice periods under the Labor Law are as follows:

Term of Employment	Notice Period
Less than 6 months	2 weeks
6 months - 1.5 years	4 weeks
1.5 years - 3 years	6 weeks
More than 3 years	8 weeks

### **Most Common Reasons of Termination by Employers and Their Legal Grounds**

#### ***(a) Employee's Poor Performance***

In practice, one of the most common reasons for termination is an employee's poor performance. This is a valid reason for termination. An employer must first serve a prior notice to the employee, in accordance with the notice periods under the Labor Law. An employee can be considered performing poorly if he/she cannot perform his/her duties efficiently and well, as compared to an average employee who works in a similar position.

In order to determine and assert that an employee has poor performance, an employer must make a fair evaluation, based on objective criteria by following the method established in common legal practice. Accordingly, an employer should determine these objective evaluation criteria and general expectations from the employees, as well as circulate them with the employees, preferably in writing. In addition, in order to reach a fair decision, while evaluating an employee's efficiency, an employer should consider the employee's professional skills, working conditions, as well as physical and psychological conditions. If an employee, in the absence of any problem or obstacle, lacks the qualities expected from him/her such as taking initiative and making quick decisions, which result in them being an inefficient and poor performing employee, these conditions will create legal grounds for termination.

Another important point that employers should consider is whether or not the employee's lack of productivity and poor performance affects others working in the same place, and also

<sup>1</sup> The employer's representatives and vice representatives, who control the whole business and who control both the whole work place and have the authority to hire and dismiss employees, cannot benefit from the job security provisions.

if it is no longer possible for the employer to tolerate such performance. In order to terminate an employee's employment agreement on the ground of poor performance, an employer should follow the following steps:

- (i) The employee's poor performance must be observed for a reasonable period of time, in order for the poor performance's continuity to be determined properly.
- (ii) In order to determine whether or not an employee's poor performance is reasonable, the employer must first warn the employee and request his/her written defense.
- (iii) If the employee's performance does not improve after the warning, the employer will then have a right to terminate the employment agreement. The termination must be notified in the form of a notice letter which the employer must sign.
- (iv) If an employer does not want an employee to work during the notice period, he/she must pay (a) the notice period compensation.
- (v) At the end of the notice period, the employer must calculate and pay severance pay, remaining fees and other receivables.

***(b) Negative Behavior***

One of the reasons for terminating an employee's agreement is the employee's negative behavior. Negative behavior can be considered as anything from arriving late to work frequently, to negatively affecting colleagues or provoking other employees against the employer. Negative behavior can be considered either as a just cause or a valid reason for termination, depending on its effect on the employer and the workplace. If a negative behavior, which would not be considered severe enough to constitute a just cause, makes the continuance of the employment relationship impossible for the employer, or adversely affects the workplace's or the work's functioning, these negative behaviors constitute a valid reason for termination with notice period.

An employee's behavior that can be defined as a slight fault would not result in the right to termination. For instance, an employee's occasional arrival late to work would not constitute a valid reason for termination unless it becomes a habit. If an employer's actions indicate that he/she is not bothered by the behavior, for example if the employer promotes the employee or gives the employee a raise or bonus, then the employer cannot terminate the employment agreement based on this behavior later on.

When an employment agreement is terminated based on one of these behaviors that constitute a valid reason, an employer should follow the following steps:

- (i) A written warning must be served on the employee.
- (ii) If the employee continues with the behavior one more time after the warning, his/her written defense must be obtained and if the employee refuses to provide a defense, this situation must be recorded in writing.
- (iii) If the employee arrives late for work or exhibits other negative behavior, this must be recorded in the presence of witnesses.

- (iv) If the employee continues the negative behavior despite the warnings, the employment agreement must be terminated in writing and the employee's signature must be obtained regarding the fact that termination notice is being given to him/her.
- (v) If an employer does not want an employee to work during the notice period, it must pay (a) notice period compensation; (b) severance pay, if the employee has worked for more than a year; and (c) remaining salaries and receivables.
- (vi) At the end of the notice period, the employer must calculate and pay severance pay, remaining fees and other receivables.<sup>2</sup>

**(c) Absence**

An employee's (i) absence for two consecutive days or (ii) two days of absence within one month after holidays or (iii) absence for three days within one month, constitute just cause for the employer to terminate the employment agreement, if these absences are unjustified or the employee has no reason to not attend the work. However, the employer should record such absences in written minutes, signed by at least two witnesses.

The above explanations provide only an overview of the termination process under the Labor Law. In order to prevent a dispute, termination of employment agreements should be assessed very carefully beforehand, with the assistance of a qualified lawyer.

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<sup>2</sup> If the negative behavior constitutes just cause for termination, employees are not entitled to severance pay.