

INFORMATION NOTE REGARDING THE RIGHTS AND OBLIGATIONS OF EMPLOYERS AND EMPLOYEES DUE TO COVID-19 OUTBREAK

I- Actions that could be taken by the employer and the employees with respect to Labor Law;

a. Requesting the employees to use their unused paid leave days:

Based on its management rights, the employer may request the employees to use their unused paid leave days.

According to Article 10 of the Regulation on Annual Leave, the employer has the right to apply bulk/collective leave implementation within the period between the beginning of April and end of October. Such implementation may be applied for the all or some of the employees.

In such a case, annual leave forms are announced, in which the employees who will take leave and the periods (to be given considering the mandatory/contractual paid leave) by showing the end of the leave are stipulated.

Such a collective leave implementation may also be applied for the employees who have not yet become entitled to annual leave due to their seniority.

The sufficient number of employees could be excluded from this implementation for the compulsory situations such as protection of workplace and/or preparation, maintenance, security, cleaning of workplace equipment and machines.

Please note that the employees who are off due to paid leave implementations should not be charged with any duties.

b. Requesting the employees to take unpaid leave:

Unpaid leave cannot be implemented without the consent of the employee. Since this would be considered as a material change the employee's prior written consent should be obtained.

Unilateral implementation of unpaid leave would be deemed termination of employment agreement without cause by the employer.

Please note that there is a certain procedure to be followed for obtaining prior written consent. We would be happy to provide details upon request.

c. Part-time employment:

Part-time employment cannot be implemented without the consent of the employee. Since this would be considered as a material change the employee's prior written consent should be obtained.

Unilateral implementation of unpaid leave would be deemed termination of employment agreement without cause by the employer.

Please note that there is a certain procedure to be followed for obtaining prior written consent. We would be happy to provide details upon request.

d. Remote working

WFH (remote working) is stipulated under article 14 of Labor Law.

According to this article, remote working is a work relationship based on the principle of fulfilling the obligation of work at home or out of the workplace with technological communication tools within the scope of the work organization created by the employer.

Remote working is established in a written agreement including the following:

- the definition of the work,
- the way of doing the work,
- the duration and place of the work,
- the wage related issues,
- the equipment provided by the employer, the obligations related to equipment protection,
- the employer's communication with the employees and the general and special provisions on working conditions

Please note that, since the COVID-19 outbreak is expected to be a temporary, instead of executing of a new employment agreement, we advise that a protocol stipulating the requirements of such new working method considering the nature of the employees' duties is signed with the employees and enclosed to their employment agreements.

In addition to above, the employer is obliged to inform employees about occupational health and safety, to provide the necessary trainings and health supervision, to take the necessary occupational safety measures regarding the supplied work equipment, considering nature of the remote working. It is crucial that the employer prepares policies and/or memorandums in this regard and provides them to the employees.

In fact, during the COVID-19 outbreak, providing for remote working could be a requirement for the employer, who is responsible for the health and safety of the employees. Therefore, unless there are other measurements (such as salary reduction) accompanying remote working, the employer does not have to obtain prior written consent of the employees before going on remote working.

e. Short-Time Working :

This is an implementation, which support the employees and the employers by way becoming entitled for the short time work payment to be paid by the unemployment insurance fund, instead of termination of employment agreements due to compelling reasons.

(i) Conditions for requesting short-term working:

In the event that the weekly working hours in the workplace are;

- significantly reduced (at least one-third) temporarily or
- the operation is stopped completely or partially (for at least four weeks without seeking continuity)

due to the general economic, sectoral or regional crisis and compelling reasons (such as the COVID-19 outbreak), short-term working can be implemented in the workplace up to three months. Such period can be extended up to 6 months by the President of Republic of Turkey.

(ii) Notification obligation:

The employer should make a justified notification to Turkish Employment Agency (“TEA”) in writing with a form by;

- a) justifying the effects of compelling reasons on the workplace and what the compelling reason is,
- b) stating the tradename, address, workplace TEA number and SSI (Social Security Institution) workplace registration number,
- c) delivering a list containing information on the employees to work short-term, in electronic and written environment.

(iii) Administrative Investigation:

Application of the employer is evaluated by the TEA procedurally and based on its justification. Eligibility of the application is assessed by the inspectors of Ministry of Labor. Result of the investigation is reported to the employer.

(iv) Information Obligation:

In case the application is accepted, the employer announces the result in the workplace in a manner that can be seen by the employees. In case of failure of announcement to employees, a written notification is made to the employees subject to the short employment (implementation is not subject to consent of the employees).

(v) Payment obligation of the employer:

Half of the daily salary is paid up to one week to the employees who cannot perform his/her duties due to the compelling reasons.

(vi) Payment to be made to employees:

Short-time working allowance is paid by the Unemployment Insurance Fund.

Daily short-time working allowance is 60% of daily gross average earning calculated by taking into consideration the earnings of the insurant for the last twelve months subject to premium, not exceeding 150% of the gross amount of monthly minimum wage for those older than 16 years of age.

(In order for the employee to be entitled to short-time work allowance, he/she must fulfil the conditions for entitlement to unemployment insurance, excluding the termination of the employment contract.)

The payment commences upon expiration of one week mentioned under (v) above.

f. Termination of employment agreement based on just cause.

According to Labor Law, in case the work is suspended due to a compelling reason for a period of more than one week, the employees may terminate their employment agreement based on just cause by being entitled to severance payment.

g. Health and Safety Implementations:

According to Health and Safety Regulations, the employers are obliged to provide for the health and safety of their employees by making risk analyses, giving necessary information, taking necessary precautions.

Please note that, if an employee is infected with COVID-19 during his/her work/travels, this could be considered as occupational accident.

Therefore, we advise employers:

- to provide the employees necessary instructions and advice regarding protection from COVID-19,
- to hold training sessions about COVID-19,
- to give instructions for tightening travel restrictions,
- to encourage employees for remote working.