



MEASURES TAKEN IN TURKEY AND THE EFFECTS ON CONTRACTS

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Foreword

The whole world is fighting against the virus named "Corona", which has now turned into a pandemic. This pandemic affects every area of our lives negatively. Especially, the economic results will be felt for many years. All governments are taking measures to make sure that the pandemic is overcome with minimal damage and leaves a minimal trace, and that the economy can recover rapidly again. In addition to the measures in the economic field, measures to protect people's health are also not avoided.

In this information note, we are going to evaluate the measures related to in particular the results in the economic field.

Presidential Measures Package

President Erdogan announced the first package of measures immediately after it became clear that the virus would be effecting Turkey negatively. Accordingly, the following measures will be taken and implemented with priority:

- 1) The April, May and June payments of the concise and VAT withholdings and SSI premiums have been postponed for 6 months for Retail, Shopping-malls, Iron-Steel, Automotive, Logistics-Transportation, Cinema-Theater, Accommodation, Food-Beverage, Textile-Garment and Event-Organization sectors.
- 2) The accommodation tax will not be applied until November.
- 3) The easement rights and revenue share payments related to hotel leases have been postponed for 6 months for April, May and June.
- 4) VAT rate has been reduced to 1 percent for 3 months in domestic air transport.

5) The loan principal and interest payments of the companies whose cash flows are disrupted will be postponed for a minimum of 3 months and additional financial support will be provided if necessary.

6) Inventory financing support will be given to the exporter.

7) April, May and June's principal and interest payments to Halkbank will be postponed for 3 months and without interest of the loan payments for tradesmen and craftsmen.

8) Credit guarantee fund rates will be increased and small and medium-sized enterprises will be supported.

9) Credit packages will be facilitated under favorable and advantageous conditions for consumers.

Presidential Measures Package

10) The credit amount will increase to 90 percent for the houses worth under 500 thousand Turkish lira.

11) The credit registry of the firms that default in April, May and June will have a “force majeure” score.

12) The periods of concluding statements containing withholding payments will be delayed for 3 months.

13) Support for the minimum wage will continue.

14) Flexible and remote working models in our legislation will be activated.

15) Short-time Work will be activated.

16) The lowest retirement pension will be 1,500 TL.

17) Retirement bonus of retirees will be paid at the beginning of April.

18) An additional 2 billion Turkish lira resource has been allocated for cash assistance to families in need. (Each family in need will be paid 1,000 TL.)

19) To ensure continuity in employment, the 2-month compensatory working period was increased to 4 months.

20) Periodic follow-up program, consisting of social and home health services, has been launched for the elderly over 80 years old.

Finally, a travel ban has been introduced. We will limit our explanations in this note to the travel ban and the effect of the pandemic on contracts and employment contracts in general.

I. Travel Ban

People over the age of 65 are prohibited from leaving the home, even for work and shopping. Shopping and other needs outside are aided with by the police, gendarmerie, other charities, or neighbours.

International flights to all destinations are stopped. Domestic flights can only be made to certain major cities.

Operating public transportation routes between provinces has been made subject to permission. People who are not forbidden to leave their house completely need the permission of the relevant Governorship to travel between provinces. The exception to this ban permits operation of the vehicles that carry workers between provinces and people that are required to travel between provinces for their work.

Traveling between provinces by private vehicle is permitted. However, hitchhiking is not.

In urban public transportation vehicles, regulations make it necessary to maintain a distance of at least 1.5 between travellers.

Outdoor sports, running, picnicking, fishing and going for a walk outside is prohibited for all age groups.



II. Effect on Contracts

The pandemic and the resulting circumstances have been recognized as force majeure by Law. This in particular has consequences for the termination and non-performance of contracts.

Force majeure prevents non-performance to have legal consequences. In the Law Numbered 7226 dated 26/03/2020, an example of the law is particularly clearly regulated: Failure to pay the rental fees between 01/03/2020 and 30/06/2020 will not constitute a valid reason for the termination of the contract. Since the pandemic has been declared a force majeure under this Law, other contracts too can be terminated when terms become unattainable. Thus, there will be no compensation payments due to the early termination of the contract. In this scope, it is also possible for the by the pandemic effected party to request that the contract be adapted to the new conditions instead of terminating the contract as a whole.



III. Employment Contracts and Options

In principle, force majeure also applies to employment contracts. In Labour Law, several alternatives are offered to the employer before the termination of the employment contract; the aim is to keep as many employed as possible.

1. Compelling Reasons

According to the Article 24/III provision of the Turkish Labor Law, if compelling reasons arise that require a halt in the workplace for more than one week, this situation allows the worker to terminate the employment contract for good reason.

According to Article 25/III, if the employer is unable to fulfil the labor performance of the worker for more than one week due to a compelling reason for a reason arising from the worker, they can terminate the contract for good reason.

In the emergence of this situation, the Turkish Labor Law obliged both the worker and the employer to endure this situation for a week and leave the termination of the contract to after.

In the case of a common pandemic, the worker has the right to stay at home to protect his health. In the case of such a force majeure, the employer cannot terminate the employment contract for the reason that the employee is not going to the place of work.

2. Half-Wage

The second tool in Labour Law for overcoming potential crises is provided in Article 40 of the Labor Law: in case of compelling reasons listed in Articles 24/III and 25/III, the worker will be paid half the wage which would be paid in a week under normal circumstances.

According to Article 40 of the Labor Law, the decision about whether to pay half or full wages is left to the employer. However, there must be some kind of payment. Here we see an example of a restriction to the force majeure effecting termination of contracts, explicitly set by law.

III. Employment Contracts and Options

3. Short-Time Work

Short-time work application has been re-activated due to the Corona virus epidemic. With this decision, the government wants to protect employees and keep their workplaces active. Following conditions must be met to take advantage of the short-time-work framework:

- a) There should be a compelling reason spread across the country or there should be a widespread economic crisis across the country. The presence of this condition currently is determined explicitly positive by Law.
- b) Before the application for short work, half-wage work must have been done in accordance with the Article 40 of the Labor Law. Despite the Article 40's provision, employers will be able to pay full wages within the first week.
- c) The operations of the business has to be either fully terminated or significantly reduced. Working for only one week in a workplace that operates 4 weeks a month is an example of where the activity has been significantly reduced. Because of the

Corona Pandemic, the relevant authorities (İşkur), accept a 30% decline in Working capacity a significant reduction.

d) A short-time working application is filed by the employer. The worker has no right to demand short-time work. The application must be accompanied by a list of workers who will be subjected to short-time work and reasoning for the full or substantial termination of the business. Petitions are concluded within 60 days.

e) Employees do not have the right to object to the short-time application.

f) A short-time working salary can be applied only for payments until 30/06/2020 for now. It is not clear whether this period will be extended or not.

g) Employees must have paid at least 450 days of social security premiums in the past 3 years to receive short-time work benefits.

h) The amount of short-time work benefit is based on the income for the previous year for which social security premiums were paid. The employee

III. Employment Contracts and Options

receives 60% of the premium-based income of the last year as short-time work allowance. This remuneration may not be higher than 1.5 times the statutory minimum wage.

i) The employer may complete the remaining 40% of the wages. In principle, this would not disturb short-time work. However it is advised to contact the Workers Union and request information once from the Employment Bureau as there is no uniform practice and no obvious regulation in this regard.

j) During the short-time work, the employment contract is suspended. Neither the employee nor the employer may terminate the contract. The introduction of short-time working does not create a right for the employee to terminate the employment contract for a legitimate reason. During short-time work, the employment contract can only be terminated for reasons of honour or in the event of a violation of common decency and good customs.

k) The employer may not employ workers for whom he has applied for short-time work in any other capacity, not even in another company belonging to him.

l) Neither paid nor unpaid leave can be ordered during short-time work.

m) When it comes to payroll during short-time work, make sure that only general health insurance premiums are paid during short-time work. The short-time work allowance is entered as a salary but “zero” should be entered as the working time.

The disadvantage of the short-time work is that remuneration will be deducted from the unemployment benefit earned or to be earned in the future. In other words, if a worker who receives a short-time work salary becomes unemployed at the end of the short-term work, he may not be able to benefit from unemployment benefits later.

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