

## COVID-19's Impacts on Employment

1. What are the measures to be taken by the employer at the workplace during the COVID-19 outbreak?

Under the duty to protect the employee, the employer is obliged to take occupational health and safety measures and to protect the employee's health, physical and mental integrity. Also as per the Occupational Health and Safety Act, the employer is obliged to ensure the occupational health and safety of the employees.

In this scope, it is advised that the employer (if exists, by gathering the Occupational Health and Safety Council at the workplace) determines the action plan and measures to be taken during the outbreak, announces them to the employees, ensures that the employees comply with the measures taken and carries out compliance check regularly.

The Guideline titled "Guideline on Measures to Combat against New Coronavirus (COVID-19) Outbreak at Workplaces" published by the Ministry of Family, Labour, and Social Services on 20 March 2020, mentioned risk assessment and emergency planning, cleaning and hygiene rules, personal protective equipment, and advices on travels and meetings.

In the Guideline on "Measures to be Taken by Occupational Health and Safety Professionals at the Workplaces in Scope of the New Coronavirus Outbreak", published by the General Directorate of Occupational Health and Safety five days later on 25 March 2020, the minimum requirements regarding the use of personnel vehicles, travels, entrance and leave of the workplace, working environment, meetings and educations, and cafeterias and recreational areas have been set forth. In the Guideline, it is stated that the employers must follow the announcements of governmental authorities and take additional appropriate measures that accord with the field of activity being carried out at the workplace, number of employees, working environment and the methods used.

On 26 May 2020, the Scientific Advisory Board issued a comprehensive study named Guidance on Outbreak Management and Working Principles ("the



Guidance"). The Guidance differs from the previous guidelines, as it specifically stipulates measures on sectoral basis, rather than providing general principles to be embraced at the workplaces. The Guidance promotes, among the others, abiding by social distancing principles, proper use of medical masks and complying with hygiene rules with a view to minimize the transmission risk of COVID-19.

2. Can the employer conduct temperature check on the employees when entering the workplace, or request the employees to provide information as to whether they have COVID-19 symptoms?

As long as the workplace doctor performs such checks, the employer may conduct a temperature check or obtain information as to the symptoms. However, if these personal data cannot be obtained or sustained continuously by the workplace doctor, considering the requirements of the Data Protection Act, it is advised that the employees are provided with an information letter regarding the taking of the relevant data and requested to give explicit consent for processing of their health data.

As a matter of fact, the Guideline titled "Guideline on Measures to Combat against New Coronavirus (COVID-19) Outbreak at Workplaces" published by the Ministry of Family, Labour, and Social Services suggests that the employers should take the temperatures of their employees with contact-free thermometers before starting working, and direct those who have a high fever to the workplace doctor.

On the other hand, the Turkish Data Protection Authority published a public announcement on useful information in scope of the Act on Protection of Personal Data during the battle with COVID-19. The said announcement states that employers may have just cause to request information from their employees as to whether they show any symptoms of the disease caused by the virus or not. However, it further emphasises that the information request must have a strong justification based on risk assessment and be in compliance with necessity and proportionality principles.

3. Is an employee having COVID-19 symptoms obliged to report this to the employer?



As per the employees' duty of loyalty and obligation to not endanger other employees' health and safety, they are expected to share the symptoms they show with the employer.

It is advised that the employers to implement policies to encourage the employees to that effect and inform the employees regarding COVID-19.

4. Can the employer request the employees to use annual leave during COVID-19?

Under ordinary circumstances, the request to take annual leave should come from the employees and the employer cannot force them to take their annual leave. Considering the extraordinary nature of the current situation due to COVID-19, several scholars opine that the requirement for employees' request should not apply and the employer may decide to put the employees on annual leave.

5. Can the employer implement collective leave mechanism during this period?

According to the Regulation on Annual Leaves, from the beginning of April up to the end of October, the employer may decide to put all or some of its employees on collective paid leave. In such a case, the employer may opt to exclude an adequate number of employees from the collective leave, for mandatory situations such as protection of the workplace, maintenance of the tools and equipment at the workplace, or housekeeping and security purposes.

6. Can the employer request the employees to use unpaid leave during this period?

In principle, unpaid leave can only apply if the employee and employer mutually agrees upon it. It is possible for the employer to present such offer to the employees; however, the employees cannot be enforced to accept this offer and take unpaid leaves. If the employer insists on putting the employee on unpaid leave, this may be construed as de facto termination of the employment agreement and this would constitute an invalid termination, which would require the employer to pay notice and severance compensation to the employee. Besides, the employee may file a reinstatement case due to the invalid termination.



However, the Law No. 7244 on Minimising the Impacts of the New Coronavirus (COVID-19) Outbreak on Economic and Social Life and the Amendment of Certain Laws published in the Official Gazette (31102) on 17 April 2020 introduced a termination ban for three months as of 17 April 2020, and stipulated that employers can impose unpaid leave without the employees' consent, partially or in full, during the ban. Employees cannot terminate the employment contract based on just cause due to the implementation of unilateral unpaid leave.

Later, with the Presidential Decree No. 2707 published in the Official Gazette (31171) dated 30 June 2020, the terms of termination ban and unilateral unpaid leave, which were to expire by 17 July 2020, had been extended for one month until 17 August 2020.

The Law No. 7252 on the Establishment of Digital Platforms Commission and Amendment of Certain Laws ("Law") in the Official Gazette (31199) dated 28 July 2020 authorized the president to extend the terms of termination ban and the unilateral unpaid leave until 30 June 2021, for no longer than three months per extension. With the same Law, certain exceptions to the termination ban have been introduced as follows:

- expiry of the term in fixed-term employment or service agreements,
- closure of the workplace for any reason and termination of the workplace's activities,
- termination of the work in service procurements and construction works conducted in accordance with the relevant legislation.

Shortly after, the Presidential Decree No. 2811 published in the Official Gazette (31202) on 31 July 2020 had extended the terms of termination ban and unilateral unpaid leave for one month until 17 September 2020.

Lastly, with Presidential Decree No. 2930 published in the Official Gazette No. 31234 on 4 September 2020, the terms regarding the termination ban and the unilateral unpaid leave have been extended for further 2 months as of 17 September 2020. In light of the above, the termination ban will end on 17



November 2020 for now, and the employers will be able to impose unpaid leave without the employee's consent until that date.

7. Can the employer terminate the employment contracts under the current circumstances?

As per the Law No. 7244, the termination of employment contracts by employers has been prohibited for three months as of 17 April 2020, except for those that are based on just cause due to cases which are incompatible with moral, good will and similar circumstances.

As mentioned above, the said ban has been extended until 17 November 2020 with the Presidential Decree No. 2930 published in the Official Gazette (31234) on 4 September 2020. The President is entitled to extend the term of termination ban until 30 June 2021, for no longer than three months per extension.

If employers breach the termination ban, they will be subject to an administrative fine at the amount of monthly gross minimum wage for each employee terminated.

8. What does governmental monetary support mean?

Up until the end of the termination ban period, TL39.24 will be provided from the Unemployment Insurance Fund for each of the unemployed days or days that are spent on unpaid leave, provided that the employees are:

- on unpaid leave within the scope of the termination ban and unable to benefit from the short-time working allowance;
- dismissed after 15 March 2020 on grounds that are set out under Article
  51 of the Unemployment Insurance Act and are unable to benefit from unemployment allowance; and
- not benefiting from an old age pension.

If employers have the employees who are put on unpaid leave worked, they will be subject to an administrative fine at the amount of the monthly gross minimum wage per employee and per month that the breach continued. In



such case, the monetary support will be collected back from the employer with the legal interest to be accrued as of the payment date.

9. What are the requirements for applying to short-time working?

If the working hours are temporarily reduced by least one-third or the activity at the workplace temporarily stops in full or partially for at least four weeks, the employer may apply for short-time working before the Turkish Employment Agency.

With the Law numbered 7226 for Amendment of Certain Laws, which entered into force on 26 March 2020, more flexible conditions have been provided for benefitting from short-time working allowance, in scope of short-time working applications filed on grounds of compelling reasons arising from the new coronavirus (COVID-19). In this respect, the employee benefiting from short-time allowance must have been working for the last 60 days prior to the beginning of short-time working, and unemployment insurance premium for at least 450 days must have been paid for the employee within the last three years.

However, the employer must not terminate the employment of any employees during short-time working, in order to benefit from short-time working. The only exception to this is termination of employment based on just cause due to cases which are incompatible with moral, good will and similar circumstances.

In principle, Turkish Employment Agency pays a daily short-time working allowance to the employees for a maximum of three months upon the employer's request. However, with the Presidential Decree (2706) published in the Official Gazette (31171) on 30 June 2020, the short-time working allowance has been extended for one month, with no need for eligibility check or filing a new application. In regard to the workplaces that exhausted the term of three months for benefitting from short-time working allowance before 30 June 2020, the extended one month started running as of 1 July 2020. If the workplace was still benefitting from the short-time working allowance by 30 June 2020, the extension of one further month started as of the date on which the first three-months' short-time working period ended.



The Presidential Decree No. 2810, published in the Official Gazette (31202) on 31 July 2020 extended the term of the short-time working allowance for one month.

Lastly, the Presidential Decree No. 31230 published in the official Gazette dated 31 August 2020 extended this term for further two months.

10. Can the employer request the employees to perform compensatory work?

In the event that the business stops due to compelling reasons or the working hours fall significantly below the ordinary line for similar reasons; the business is suspended entirely; or the employee is provided with a leave other than the contractual or legal leaves upon request; the employer may request the employees to perform compensatory work within the following four-month' period. Compensatory work cannot be more than three hours with a maximum limit of 11 hours per day. As compensatory work is not regarded as overtime work, the employees are not paid extra for the compensatory work they have performed.

The four-month' period foreseen for the compensatory work can be increased up to two times by the President.