TERMINATION OF THE EMPLOYMENT CONTRACT BY THE EMPLOYER

Employer always expects from employee to serve to satisfactory level for work and employment contract consists of constant relation between the employer and the employee. Termination of the employment contract would be very significant when point comes to employee and employer relationship issues. One of the parties wishes to terminate the employment contract is based on a number of grounds. Particularly, employer aims showing that reasons as right in order to get rid of from the liabilities.

Undoubtedly, the employer expects employee to focus his job constantly and get the most efficient way from his work. Although these expectations may be true, sometimes cannot be covered by the employee. In these kinds of cases, employers are turning to the inevitable termination of the contract.

Employer may terminate the contract in two ways with respect to the Turkish Labor Law.

1- Termination with a valid reason (Article 18)

The termination of the employment contract for an undetermined term by the employer is subject to existence of valid or just reason.

The employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service. In here, point to be considered for termination should be based on valid reason. For example, valid reason would be the economic crisis, the closure of the establishment, business interruption due to the shortage of raw materials, as a result going downsize due to sales go smaller, a significant reduction in the worker's performance, such as the restructuring in the work place are not limited to be considered according to the this issue.
One of the most significant valid reasons for termination of the employment contract is incapacity of the employee. The incapacity of the employee would be professional incompetence or physical incapacity. For example, a physical incapacity or inability of the employee to work with respect to requirements of job could be accepted as a professional incapacity.

Notice periods shall be considered in case of valid termination and the employee shall be paid severance pay.

Termination must be based on valid and justifiable reasons, and should be consistent within itself which means consistent grounds of termination shall be harmonized with documents. In Turkish labor law, principle evidence rule is usually in favor of employee. The burden of proof is on the employer. If there is no sufficient written evidence in the hands of the employer to terminate to the contract, it may lead to outcome of unjustified termination.

There are considerations for notice of termination;

a. The notice of termination shall be given by the employer in written from involving the reason for termination. At the same time should be signed by the employee, if there is no opportunity to sign the notification, shall be sent by notary.

b. That must be specified in clear and precise terms. Employee should know what the reason of termination of this contract is.

c. The employment of an employee engaged under a contract with an open-ended term shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made. As per this rule, the employer must get written defense statement from the employee under the specific circumstances.

2- The breaking of the employment contract by the initiative of the employer (Article 25):

In some cases, immediate termination of the contract is necessary. In such cases, the continuation of the employment contract or to wait until the end of a certain period
of time or by giving a notice period has no benefit for the other party who wants to terminate to contract. Otherwise, this situation could lead to the detriment of the party who wants to use the right of termination.

The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods with respect to the Article 25 of Turkish Labor Law. Under this article, employer has right to terminate the contract without waiting period of notice which is employee’s seniority time and also employer has no obligation to pay “severance pay”. If employer uses right of termination the contract with justifiable reason, there is no obligation to pay compensation to the other party due to the termination of the contract.

In Article 25 of Turkish Labor Law, the reasons for the termination by the employer were counted with details. For instances;

1. If the employee refuses, after being warned, to perform his duties;
2. If, without the employer’s permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;
3. If either willfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer’s property or not, and the damage cannot be offset by his thirty days’ pay.
4. If the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract or by giving false information or making false statements.

The employer has right to terminate the employment contract for serious misconduct or malicious or immoral behavior of the employee which is mentioned Article 25/2 of Turkish Labor Law Act. According to the Article 26 of Turkish Labor Law Act; The right to break the employment contract for the immoral, dishonorable or malicious behavior of the other party may not be exercised after six working days of knowing the facts, and in any event after one year following the commission of the act, has elapsed. The “one year” statutory limitation shall not be applicable, however, if the employee has extracted material gains from
the act concerned. Under this article employer has prescription periods that one of them is mentioned above six working days and another one is one year. Employer should terminate the contract in two aforementioned times, otherwise employer forfeits right to terminate the contract.

**CONCLUSION**

In the recent 10 years in Turkey, the choice of the employees became very important more than used to be because of 4857 numbered of Turkish Labor Law Act. If employer does not satisfy with employee’s performance, termination may not be come up to that point easily. If there is no sufficient written evidence in the hands of the employer to terminate to the contract, it may lead to outcome of unjustified termination.

“The content of this article aims to provide general information about the subject which is explained above. Specialist suggestion should be taken for specific situations.”