

## THE EFFECTS OF THE GLOBAL COVID-19 PANDEMIC ON THE EMPLOYER-EMPLOYEE RELATIONSHIP AND THE EVALUATION OF THE CURRENT LEGAL ARRANGEMENTS MADE IN THIS CONTEXT

### Introduction

Coronavirus disease is an infectious respiratory disease that affects humans; it was first seen in Wuhan, China, in December 2019. The World Health Organization (WHO) declared Covid-19 as a pandemic after the disease gained momentum and spread to many countries in a short time. In our country, the first Covid-19 case was detected on 11th of March.

As the global Covid-19 pandemic is contagious and has no cure yet, there is no doubt that it will cause many problems in our country and the world, particularly in economic, legal, and administrative areas.

The content of this article aims to provide information on possible questions and legal disputes that may arise in the employee-employer relationship due to the Covid-19 outbreak and the most common questions related to the measures taken in this context.

### 1. Does the employer have legal responsibility for the employee who fell ill or died because of Covid-19?

In the context of the Covid-19 pandemic, employers should take all necessary precautions and measures, taking into account the suggestions and opinions of the World Health Organization and the Ministry of Health of the Republic of Turkey. *(For example, the employer should inform the employees, provide hygiene in the areas where the employees are together and especially in the common areas such as cafeteria, canteen, toilet, etc., provide protective equipment such as hand sanitizer, medical mask, tissue paper, and postpone business trips abroad as much as possible...)* Employees are also responsible for taking all precautions to protect themselves and prevent the disease from spreading. *(Paying attention to personal hygiene, reporting in case of feeling sick ...)* The employer party shall notify the employee in writing of these measures regarding the health of the employee and this notification shall also be kept in the

employee's personal file in order to prove that the employer party has fulfilled its obligation.

In this context, if the employee dies or falls ill due to the inadequate safety measures, legal responsibility may be imposed on the employer according to the characteristics of the concrete case, and the employer may be asked to compensate for the pecuniary loss and intangible damages.

### 2. Does the employer continue to pay the wages to the employees if the workplace is closed as required by the administrative decision or temporarily closed on the employer's own initiative?

If the workplace stops operation for more than a week due to the compelling reason, the employee will always be able to terminate the contract with an indefinite termination notice. However, the employer has no obligation to pay wages for the period in which the employee does not terminate the contract and waits for the work to begin. According to the law, the employer has to pay half the wages for each day in a one-week waiting period starting from the suspension of work because of a compelling reason.

If it is not included in the Annexed Circular of the Ministry of Interior dated 16.03.2020, and the employer closes the workplace for precautionary reasons without any compelling reason, the legal obligation to pay the wages continues.

### 3. How to switch to remote working?

As switching to remote work is a significant change in working conditions, this situation must be notified to the employee in writing. The important thing here is to get the written consent of the employee regarding remote working and to prevent a future conflict that may arise in this way. In the case of remote working, the employer's obligation to pay full salaries continues.

#### 4. Can employers ask their employees to use their annual paid leaves? Or can the employees go on collective leave?

The employer shall approve the annual paid leave request of the employee, although the employer does not depend on the date of the annual leave requested by the employee. Since the employer has to use this right within the framework of good faith rules, he cannot force the employee to take an annual paid leave. **However, we believe that the employer can direct the employee to take their annual leave unilaterally in order to mitigate the losses that may arise due to the global pandemic, considering that it is also in the employee's interest.**

Again, in the 10th article of the Annual Paid Leave Regulation, it is stated that employers can apply collective leave covering all or part of the employees between the beginning of April and the end of October. Therefore, **if the global pandemic continues in these months, the employer can apply collective leave.**

#### 5. Can employers ask their employees to use unpaid leave? Can the employee, who has been forced to use unpaid leave, terminate the employment contract with a valid reason?

In order for the employer to apply unpaid leave due to the Covid-19 global pandemic, the employer should offer unpaid leave to the employee in writing and obtain written approval of such employee within six (6) business days. Unpaid leave can be used by the mutual agreement of the employee and employer.

The employer's giving unpaid leave to an employee contrary to his will constitute a ground for rightful termination by the employee. In this case, the employee will be entitled to severance pay.

#### 6. Can the employer call upon compensatory work in case of suspension of the workplace due to Covid-19 or where the working hours are significantly below the regular hours due to similar reasons or where the employee is given leave upon their own request?

Employers who have been adversely affected by the measures taken to prevent the spread of the Covid-19 outbreak and who have to reduce their regular working hours in the workplace or have to suspend work can apply compensatory work for the unworked days up to 4 months with the last regulation as coronavirus

pandemic is considered as a force majeure reason. As the employees receive their full pay during the suspension period, there is no additional pay for compensatory work.

#### 7. What is short-term employment and how is it implemented?

In order to ensure the continuity of the business relationship and to prevent loss of income to a certain extent, short-term employment can be applicable not for more than three months in the event that the weekly working hours in the workplace are significantly reduced temporarily or the activities stopped fully or partly temporarily due to the general economic, sectoral or regional crisis and compelling reasons.

The Employer should submit the Short-term Employment Request Form to the Turkish Employment Agency ensuring the written consent of each employee. Within this period, it is necessary to determine the situation in the commercial records of the employer that the performance of the sales of goods and services has been adversely affected. Subsequently, Turkish Employment Agency shall determine the eligibility of the short-term employment request by the employer party.

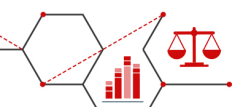
#### 8. Will any allowance be provided to the employee in case of short-term employment?

With the recent changes, those who are subject to labor contract in the last 60 days before the end of the labor contract will be entitled to a short-term employment allowance if they have been working as insured and have paid the unemployment premium for 450 days in the last three years.

The amount of daily short-term employment allowance is 60% of daily gross average earning calculated by taking into consideration the earnings of the insured for the last twelve months subject to premium. The amount of short-term employment allowance calculated in this way cannot exceed 150% of the amount of monthly minimum wage for those older than 16 years of age.

#### 9. In which cases will the short-term employment allowance be suspended?

If the receiver of the allowance is recruited, starts to get old-age pension, drafted to the army for any reason, leave the job for any duty arising from a law or



starts to receive temporary incapacity benefit, short-term employment allowance is suspended. However, it should be noted that a supplementary payment can be made by the employer to the short-term employment allowance. This does not prevent the application for or receiving the allowance of short-term employment.

10. How will the decision numbered 2279 dated 22.03.2020 regarding the suspension of enforcement and bankruptcy proceedings affect the wage garnishment?

In this context, the subject to be discussed is, whether the deduction to be made on  $\frac{1}{4}$  of the salary of the employee will continue until 30.04.2020 if there is a wage garnishment applied before 22.03.2020.

- Since the party and proceeding transactions were suspended under the decision numbered 2279 dated 22.03.2020 and there is no party and proceeding transaction regarding the deduction made due to wage garnishment,
- Again, regarding the implementation of the article dated 24.03.2020 published by the Ministry of Justice, it is stated that as the payments made to the enforcement offices can be accepted and paid to their creditors; the deduction will continue in terms of definite wage garnishments, which were sent before 22.03.2020, and have not been contested or have been accepted.

Furthermore, if the employee receives a short-term employment allowance, the deduction cannot be made because the employee receives an allowance, not a wage. In addition to the allowance to be paid by İSKUR, if the employer pays 40% of the salary of the employee, this will be counted as wage. In this case,  $\frac{1}{4}$  of 40% of the payment will have to be deducted by the employer and deposited to the enforcement office.

As a result, sustaining the businesses is of great importance to the business owners as well as to the employees, their relatives, and the whole society. Therefore, let us not forget that mutual self-sacrifice should be the key element in labor law, especially in this period.

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