The General Aspects of Turkish Labor Law in Light of Supreme Court Precedents
FAQs

1. What is the definition of Employment Agreement?

An employment contract is a contract in which one party ("*employee*") undertakes to perform work dependently while other party ("*employer*") undertakes to pay salary in return of the works performed.

The Employment Agreement has stipulated in Labor Law numbered 4857 and Code of Obligations numbered 6098.

The main obligation of the employee is to perform work, while the main obligation of the employer is paying salary.

2. Are there any requirements as to form in terms of employment contracts?

As a rule the employment contracts can be executed in any form and they do not have to be in written form. However, in terms of the claims to be provable it is always suggested to execute the employment agreement in written.

Exception: Definite term employment contracts shall be in written form as per the Article 11/2 of the Labor Code.

3. Types of employment contracts

Trukish Labor Code article 11/1 defines the definite & indefinite-term contracts *"An employment contract is deemed to have been made for an indefinite period where the employment relationship is not based on a fixed term. An* ***employment contract for a definite period*** *is one that is concluded between the employer and the employee in written form, which has a specified term or which is based on the emergence of objective conditions like the completion of a certain work or the materialisation of a certain event."*

a. Definite Term Contracts

TLC article 11/2: *"An employment contract for a definite period must not be concluded more than once, except when there is an essential reason which may necessitate repeated (chain) contracts. Otherwise, the employment contract is deemed to have been made for an indefinite period from the very beginning."*
TLC 11/3: *"Chain contracts based on essential reasons shall maintain their status as contracts made for a definite period."*

- As it is clearly stated, the definite term employment contracts should be in written.
- **The objective conditions:** Objective conditions mean to engage the term of the contract with a type of work which will be completed in a certain time period due to its nature such as; completion of plastering work, completion of a project etc.
- The definite period can be either decided as a duration (like 1-year) or can be understood from the aim of the work decided to be fulfilled by the

employee under the contract. In this second situation, with the completion of the work (and when the aim has been reached) the contract is accepted to have ended.

- In accordance with the precedent of Court of Cassation, a definite-term employment contract concluded without the presence of an objective condition is accepted as indefinite-term and the employee cannot demand remaining duration receivables.

The definite term employment contracts finish automatically when the duration/term determined in the contract expired without needing a cancellation declaration/ termination notification by the parties.

As principle the employees cannot be entitled to severance pay if the contract has ended due to expiration of the contract term (exceptions will be stated below)

The pre-notification cannot be applied for definite-term contracts. As the pre-notification (termination notification) has not been made by the employer, the employee cannot benefit from the right to search a new job starting from the date of pre-notification until the date of termination, without any deduction being made from his wage.

The employee who work with definite-term contracts are not accepted within the scope of employment security which means they cannot file reemployment suit before the court. (This is the most disadvantageous feature of definite-term contract. That is why the idea of "the conclusion of such contracts with employees should be restricted in the systems where the employment security is applied" is supported. In the contract of International Labor organisation numbered 158 and named "The Termination of the Business Relationship by Employer" it is stated that the necessary protective measures shall be taken for conclusion of fixed-term employment contract which are usually preferred to abstain from the protective provisions of indefinite-term employment contracts (art. 2/3).)

i. Chain Contracts

Some employers who wants to avoid the termination notification and to pay the compensation for that period as well as avoiding to pay severance pay when the conditions are met, make short-term contracts and/or renewing those contracts.

Supreme Court finds concluding definite contracts to avoid such responsibilities by the employer as against good faith regulated under article 2 of Turkish Civil Code and abuse of right to contract.

In order to be able to talk about a definite-term contract, the contract must be explicitly or implicitly bound to a deadline, and objective reasons shall exist. In Article 338 of the Turkish Code of Obligations, there is a rule stating that "If the service contract is made for a certain period or if this period is understood by the purpose of such contract, the

contract shall be terminated when this period has ended without any termination notice unless it is decided under the contract." According to the said provision, although it is deemed sufficient that the will of the parties to conclude a definite-term employment contract is sufficient, in the application of Law Code no. 1475, in accordance with the decisions of the Court of Cassation, definite-term employment contracts are limited and it is accepted that the contract would become indefinite-term if more than two renewals take place. Article 430 of the Turkish Code of Obligations no. 6098 stipulates the existence of fundamental causes for renewals and acknowledges that no definite term contract can be concluded for more than ten years. With the entry into force of labor security provisions, the distinction between definite term and indefinite-term employment contracts has increased in importance. Article 11 of the Labor Law Code No. 4857 states that "If the employment relationship is not made for a period of time, the contract is deemed to be indefinite term. A definite-term employment contract is a written employment agreement between employer and employee in definite-term jobs or it is subject to objective conditions such as completion of a particular job or the emergence of a particular phenomenon." A definite-term employment contract cannot be executed more than once (chain) unless there is a substantial reason. Otherwise, the employment contract is accepted for an indefinite-term from the beginning. Chained business contracts based on substantive reason maintain their state of being fixed-term. Contrary to the regulations in the Code of Obligations, the main rule has been put forward by emphasizing that the contract will be deemed to be indefinite term in cases where the employment relationship is not made for a definite period.

On the other hand, Article 11 should be considered in conjunction with the Council Directive 1999/70 / EC of 18 March 1999. ***The principle of non-discrimination*** *is emphasized in Article 4 of the Framework Convention. Accordingly, in terms of work conditions, unless it is based on fundamental reasons, workers working under a definite term employment contract will not be more disadvantaged than payroll employers because of working with a definite-term employment contract and employment relationship.*

Article 5 of the Convention deals with the prevention of malicious intent. In the absence of consecutive definite term contracts or legal arrangements aimed to prevent abuse arising from the employment relationship; member states are obliged to take some of the following measures after consulting the social partners by taking into account the needs of certain sectors according to international law, collective agreements or practice:

1. (a) to establish objective reasons to justify the renewal of such contractual or employment relations;

1. (b) to determine the maximum total duration of recurring fixed-term contracts or employment relationships;

1. (c) to determine how many times this type of contract or employment relationship can be renewed;

1.2. After consultation with the social partners, Member States may, where appropriate, determine fixed-term employment contract or employment relationship,

1. (a) to be considered renewed,

2. (b) to establish conditions for employment contract or employment relationship to be considered as an indefinite term.

Both the ILO Convention No. 158 and the Council Directive No. 1699/70 aimed at achieving a balance, while encouraging flexible work while paying attention to safety. In other words, they emphasized that flexible working models should not be abused.

Pursuant to the aforementioned legal basis, the possibility of evaluating the contract for a definite or indefinite period according to the nature of the worker has been eliminated. On the other hand, the nature of the work is important for the conclusion of a definite-term contract. Depending on the objective conditions such as the completion of a particular job or the emergence of a particular phenomenon, a "definite term contract" may be concluded. The fact that objective reasons are not foreseen for the contracts to be concluded for the first time in Article 430 of the Turkish Code of Obligations no. 6098, this ***does not eliminate the requirement of existence of objective reasons in Article 11 of the previous special law (Law Code no. 4857).*** *In Article 11 of the Labor Law Code No. 4857, it is aimed to provide some protection by the rule that definite-term contracts cannot be concluded more than once (chained) unless there is a substantial reason. The* ***conclusion and renewal of a definite-term employment contract should not result in the worker being excluded from job security.*** *In definite-term employment contracts, trial period may be put, on condition that the period mentioned in Article 15 of the Law Code no. 4857 is not exceeded.*

In the present case, the applicant's employment contract was determined to be three years and could be terminated before the expiry date and expires automatically when the determined period ends. The plaintiff will work as a parking attendant. There is no objective reason for a definite term parking contract between the plaintiff and the respondent employer. Although the agreement between the parties has been concluded for a period of three years, it is an indefinite term service contract. Since indefinite-term contracts cannot be requested for the remaining time fee, the rejection of the request is required and the acceptance is incorrect and is a reason for the cancelation of decision." ***(Supreme Court 22th Civil Chamber, E. 2017/5729, K.2017/4978, Date: 09.03.2017)***

ii. Receivables Employee is entitled to in termination of definite term contracts:

The employee can demand the payment of the salary for the remaining period. The conditions fort his request is stipulated in Supreme Court Decisions (*Supreme Court, 9th Civil Chamber. 2007/16098 E., 2008/15750 K., 16.6.2008)*

According to the decision the conditions for an employee who works with a fixed-term contract to demand remaining duration receivables are:

- The employer must terminate the contract before its expiry.
- Termination of the employment contract should not be justified by a just cause given under Article 25 of the Labor Law No. 4857.
- Termination of the contract should not be based upon impossibility regulated under Article 117 of Turkish Code of Obligations.

- If notice pay had been made to the worker despite the existence of a definite term employment contract, this amount must be deducted from the deserved payment amount of remaining duration. (In the definite term contracts employer is not obliged to pay notice pay as there is no obligation to make a pre-notification to employee. However, in the situation explained in the above decision the employer made a notice pay to the employee because of early unjust termination. As this is a payment employee is not entitled to, it has been deemed suitable by court to deduct this amount from the remained duration payment.)
- If the employee worked in another workplace in return of a wage, this amount must be deducted from the deserved payment amount of remaining duration.
- The non-expendable expenses that the employee did not spend due to not working within the remaining period for the employer and unemployment insurance income should be discounted from the remaining duration payment.

Severance Pay: Although it is generally accepted that the employee is not entitled to severance pay under definite term contracts, there is no explicit information in the Labor Law Code that the employees working with a fixed-term contract cannot be entitled to receive severance pay. ***As per the precedent of Supreme Court General Assembly of Civil Chambers, the declaration of the employer in the way that the definite term employment contract will not be renewed at the end of the term, such consent of the employer is accepted as termination of the contract by employer and the worker is entitled to severance pay. (Supreme Court, General Assembly of Civil Chambers, 2013/22-1443 E., 2014/958 K., dated 26.11.2014)***

Notice Pay: Since definite term contracts are predetermined duration contracts, there is no pre-notification and notice pay. Even if any clause stating otherwise is included in the contract, it is invalid.

b. Indefinite Term Contracts

According to Article 11 of Turkish Labor Code (TLC) an employment contract is deemed to have been made for an indefinite period where the employment relationship is not based on a fixed term. An indefinite-term employment contract entails rights such as the ***reinstatement claim, assurance compensation, notice compensation and severance pay.***

Severance Pay: Severance pay is a type of compensation in which the employee is entitled to an average of ***thirty days gross wage for each years of seniority in the event of termination of employment without just cause or termination***.

As it is accepted, the worker who resigns voluntarily cannot be entitled to demand severance pay. However, if the worker resigned because of obligatory military duty, obtaining the right to retirement, documenting that health problems constitute a constant obstacle to the performance of the job, the employer's goodwill and ethics rules in case of termination by the employee due to termination (resignation), with the condition that the working period is at least 1 year, then this worker is entitled for severance compensation.

Notice Pay: According to the Article 17 of the Turkish Labor Code (TLC), the situation (termination) must be notified to the other party before terminating indefinite term employment contracts within the determined periods (2 weeks for employees less than 6 months / 4 weeks for employees from 6 months to 1,5 years / 6 weeks for employees from 1.5 to 3 years / 8 weeks

for employees over 3 years) These pre-determined durations may be extended by the employment contract.

The party not complying with the notification requirement shall pay compensation (which is called notice pay) for the notification period.

4. What is termination with just cause?

The termination with just cause is both stipulated for employee and employer. The reasons are as follow:

Employee's right to terminate the contract for just cause:

Article 24. The employee is entitled to terminate the contract, whether for a definite or an indefinite period, before its expiry or without having to observe the specified notice periods, in the following cases.

I. For reasons of health

a. If the performance of the work stipulated in the contract endangers the employee's health or life for a reason which it was impossible to foresee at the time the contract was concluded;

b. If the employer, his representative or another employee who is constantly near the employee and with whom he is in direct contact is suffering from an infecting disease or from a disease incompatible with the performance of his duties.

II. For immoral, dishonourable or malicious conduct or other similar behaviour . If, when the contract was concluded, the employer misled the employee by stating the conditions of work incorrectly or by giving him false information or by making false statements concerning any essential point of the contract;

a. If the employer is guilty of any speech or action constituting an offence against the honour or reputation of the employee or a member of the employee's family, or if he harasses the employee sexually;

b. If the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honour;

c. If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct;

d. If the employer fails to make out a wages account or to pay wages in conformity with the Labour Act and the terms of the contract;

e. If, in cases where wages have been fixed at a piece or task rate, the employer assigns the employee fewer pieces or a smaller task than was stipulated and fails to make good this deficit by assigning him extra work on another day, or if he fails to implement the conditions of employment.

III. Force majeure

Force majeure necessitating the suspension of work for more than one week in the establishment where the employee is working.

Employer's right to terminate the contract for just cause:

ARTICLE 25. *- The employer may terminate the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:*

I. For reasons of health

a) If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.

b) If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In cases of illness or accident which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in article 17. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the period stipulated in Article 74. No wages are to be paid for the period during which the employee fails to report to work due to the suspension of his (her) contract.

II. For immoral, dishonourable or malicious conduct or other similar behaviour

a) If, when 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;
b) If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;
c) If the employee sexually harasses another employee of the employer;
d) If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84;
e) If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets ;
f) If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;
g) If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;
h) If the employee refuses, after being warned, to perform his duties;

i) If either wilfully 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.

III. Force majeure:

Force majeure preventing the employee from performing his duties for more than one week.

***IV.** If due to the employee's being taken into custody or due to his arrest, his absence from work exceeds the notice period indicated in Article 17.*

The employee may file a lawsuit according to Articles 18,20 and 21 by claiming that the termination was not in conformity with the subsections cited above"

Please kindly be noted that the employee is entitled to receive severance pay even if the employment contract is terminated with just cause. ***The only situation in which the severance payment is not made is the termination as per the Article 25/II of the Labor Code.***

5. What is termination with "*valid reasons*"?

In order to prevent employers from terminating the employment contracts arbitrary termination the Labor Code stipulated obligation for termination with valid reasons. In this regard as per the Article 17 of the Labor code, it is stipulated that for the employees who cannot benefit from employment security as per Article 18 of the Labor Code, in case the employment contract is terminated with bad faith and constitutes abuse of termination right of the employer, then the employer is entitled to claim for bad faith compensation.

The importance of termination with valid reasons is to avoid from reemployment lawsuits.

In accordance with *Article 20 of the Turkish Labour Code No. 4857*, the employee who claims that the employment contract has been terminated without a valid reason shall be required to **file a lawsuit with the invalidity of the termination and the request for reemployment** within one month from the date of notification of the termination. Below mentioned terms should be taken into consideration for the reinstatement claim, if such reasons exist then the worker may file a lawsuit with the aim of reinstatement;

- at least 30 workers should be employed (without considering the sector if the employer is the same),
- the worker must have been in the same workplace for at least 6 months,
- the worker should **not** to be the employer's representative and his deputies who manage and control the workplace, and the employers' deputies who have the authority to hire and dismiss,
- the employer should not to provide a valid reason that constitutes a basis for termination of the indefinite employment contract.

Moreover, according to the decisions of Court of Cassation, there are 2 additional terms;

- The employer, who terminated the employment contract, should act with all due diligence and seek solutions, so that the termination is deemed as the latest and inevitable solution which means the trust between the parties has been lost and

- It is absolutely necessary to obtain the defence of the worker first preferably in written form if the employment contract is terminated for a reason related to the employee's behaviour or productivity.

Under those circumstances, the Court may accept the worker's request for reinstatement and decide to resume work, but the employer has the right to refrain from the decision by paying compensation.

6. Is there any requirements as to form for termination?

As per the Article 19 of the Labor Law, the termination notice must be in written form and the employer must indicate the reason of termination explicitly and clearly.

7. What is over time work and working at extra hours?

The working hours are stipulated in the Article 63 of the Labor Law. In this regard the working hours are regulated within scope of this article.

> ***Article 63- Working Time***
>
> In general terms, working time is forty-five hours maximum weekly. Unless the contrary has been decided, working time shall be divided equally by the days of the week worked at the establishment.
>
> Provided that the parties have so agreed, ***working time may be divided by the days of the week worked in different forms on condition that the daily working time must not exceed eleven hours.*** In this case, within a time period of two months, the average weekly working time of the employee shall not exceed normal weekly working time.
>
> This balancing (equalising) period may be increased up to four months by collective agreement.
>
> The application methods of working time in line with the principles mentioned above shall be indicated in a regulation to be issued by the Ministry of Labor and Social Security.
>
> The types of work where the daily working time must be seven and half hours maximum or less for health reasons shall be indicated in a regulation to be prepared jointly by the Ministry of Labor and Social Security and the Ministry of Health.

In this regard the rule is working time to be 45 hours per week. The working hours can be determined less than 45 hours per week however, cannot exceed 45 hours per week. As a rule the works exceeding 45 hours per week are described as overtime work. The parties are free to determine the daily working hours provided that the daily working hours do not exceed 11 hours.

As per the Article 63 the rule is dividing 45 hours per week equally to 6 working days, meaning that the daily working hours should be 7,5 hours. However, in general in order not to work on Saturdays, the working hours are divided to 5 days and the daily working hours are determined as 9 hours.

Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.

In cases where the weekly working time has been set by contract at less than forty-five hours, work that exceeds the average weekly working time done in conduction with the principles stated above and which may last only up to forty five hours weekly is deemed to be work at extra hours. In work at extra hours, each extra hour shall be remunerated at one and a quarter times the normal hourly rate.

The decision of **9th Civil Chamber of Supreme Court dated 12.11.2010 numbered 2008/44327 E. and 2010/33851 K.** it is stated that "*Article 4 of the labor contract executed between the parties states that "... This fee includes overtime fees" and it is accepted that the fee paid includes the overtime fee. According to the determined practice of our Chamber, such provisions in the employment contract are considered that the wage of overtime works to be up to 270 hours per year is paid. If it is proved that more work has been done over the specified period, the surcharge must be paid separately*."

The Supreme Court accepts provisions in the employment contracts stipulating that the over time work wage is included in the salary up to 270 hours per year. On the other hand working at extra hours do not subject to such limitation.

Additionally, free time can be given to the employee against the overtime. ***However, the important point in this application is that the employee should make such request.*** Meaning that the employer cannot force the employee to use free time instead of obtaining overtime work wage. The amount of free time to be provided to the employee will be calculated according to Article 41. For instance for 1 hour overtime working 1,5 hours free time should be given. However, for the working at extra hours for 1 hour working, 1 hour and 15 minutes free time should be given. The employee shall use the free time within 6 months as of the overtime work. If the employee does not use his/her free time in the given period then the overtime wage shall be paid to the employee.

In case the weekly working hours are determined as 45 hours in the employment contract but the employees are working less than 45 hours weekly as an application, in case there is no written regulation of the employee stating that the weekly hours are less than 45 than, the employees' works up to 45 hours weekly will not be deemed as working at extra hours.

Decision of Supreme Court 9th Civil Chamber, 2015/2011 E. and 2016/12040 K. dated 12.05.2016:

"*In the concrete dispute, there is a provision that overtime is included in the wage in the employment contract. It should be asked to the plaintiff to whether the signature under the contract belongs to him/her, if the signature belongs to the plaintiff, then it is wrong not to deduct 270 hours per year and 5.2 hours per week from the over time work calculation. It is stated in the employment contract that the weekly working time is 45 hours. As a matter of fact, since the normal weekly working time is 45 hours, even if the the actual practice in the workplace is 40 hours a week will not cause 40-45 hours work to be considered as working at extra hours. A written document confirming that the defendant accepts normal working time to be 40 hours per week is required. In the case that the actual working time in the workplace is 40 hours per week does not allow the calculation of 5 hours as working at extra hours between 40-45 hours and working calculation of 25% increased wage. Therefore, only over 45 hours of work per week should be accepted and calculated on a daily wage of 1.5. It is also wrong to*

consider that insurance premiums and unemployment premiums should not be deducted from the income tax and stamp tax in the calculation of the net amount of overtime pay."

8. Working at national holidays and holidays?

As per the Article 44 of Labor Law the issue of whether or not work will be done on the national day and public holidays will be decided by the collective agreement or by employment contracts. *The employee's consent is required if there is no provision in the collective agreement or in employment contracts.*

The wage of the employee shall be paid in full as if it is worked in the national or general holiday. If the employees work instead of observing the holiday, they shall be paid an additional full day's wages for each day worked.

It is beneficial to mention that the works done in weekend holiday, general holidays and official holidays are not considered as overtime work and giving permission instead of paying the wage for working in holidays are not accepted by the precedents of Supreme Court.

9. What is annual leave payment?

Employees who have completed a minimum of one year of service in the establishment since their recruitment, including the trial period, shall be allowed to take annual leave with pay. The right to annual leave with pay shall not be waived. The provisions of this Law on annual leave with pay are not applicable to employees engaged in seasonal or other occupations which, owing to their nature, last less than one year.

The length of the employee's annual leave with pay shall not be less than;

a. fourteen days if his length of service is between one and five years, (five included),

b. twenty days if it is more than five and less than fifteen years,

c. twenty-six days if it is fifteen years and more (fifteen included).

For employees below the age of eighteen and above the age of fifty, the length of annual leave with pay must not be less than twenty days.

The length of annual leave with pay may be increased by employment contracts and collective agreements.

The general rule of annual leave is to be used in the following working year. However, there is no provision in law stating that if the annual leave are not used in the following year then it will be erased.

However, regarding the employees who do not use annual leave in order to obtain a amount of annual leave pay due to termination of the employment contract the Supreme Court has precendents that it is against the ordinary flow of the life employees not using annual leave righ during his/her long working life.

Decision of Supreme Court 22rd Civil Chamber 2016/14166 E. and 2019/12478 K. dated 10.06.2019:

"*In the concrete case, in the expert report based on the provision; it was calculated that the plaintiff who worked as an employee in Agricultural Enterprises between 08/06/2006 and 30/04/2014, having 110 days of the right to leave, while having only 14 days off and 96 days of annual leave is calculated. It was decided by the court that the employee would receive an annual leave payment of 3427,20 TL over 96 days. Permissions not being used for many years is against the usual flow of life. As per the Article 31 of the Civil Procedure Law numbered 6100, judge has obligation to illuminate the case. Within this scope, the plaintiff should have been made to explain whether he used annual leave in 7 years period or not and should be decided by considering all the evidences together with the plaintiff's declaration, while the decision to be made in written form with incomplete examination required to be inaccurate*."

Therefore, even if the employer will not be fully relieved from annual leave payment, the employer will be entitled for a deduction of the payment.

10. What is "Burden of Proof" of the Employer?

There is rule of employer's right to terminate should be justified. (Article 20 of Labor Law)

In case the employment contract is being terminated due to behavior of the employee or performance, the right of defense must be given to the employee.

Additionally, the employer is under obligation to prove that the salaries of the employees are paid, the annual leave right of the employees are being used, the overtime work wages and working at general and national holidays are paid with **WRITTEN EVIDENCES.**

In many lawsuits against the employers are finalized in favor of the employees since the employers are not able to submit written and full proofs against the statements of the employees. Therefore it is important to have a complete records of all the documents which can be deemed as evidence before courts.

11. What are simple steps to be followed and documentation for termination with valid reasons?

1. As per the Article 20 of the Labor Law, the employer is under obligation to prove that the behavior of the employee has negative effect on employment relationship. In this regard, it should be determined that which obligation is breached by the employee with which behavior of the employee. In this regard a written statement should be taken indicating the employee's wrong behaviors clearly and comprehensible. The statement should include all details such as the behavior of the employee against the rules of workplace, place, and date of the behavior. As per the Supreme Court Decision (22rd Civil Chamber, 2012/28605 E. and 2013/25587 K. dated 19.11.2013) even if the person who takes the statement changes his testimony before the court, the court will not consider his witness statement taken before the court since he explained all the details in his written statement.

The statements should be signed by the people who personally witnessed the employee's behavior.

2. A written warning including all the details of the employee's behavior should be given to the employee. The warning should include the behavior, date, time and place of the behavior. The warning should include that if the employee does not fulfill his/her obligation, his/her contract will be terminated. Additionally the employee will be invited for defense in the warning.

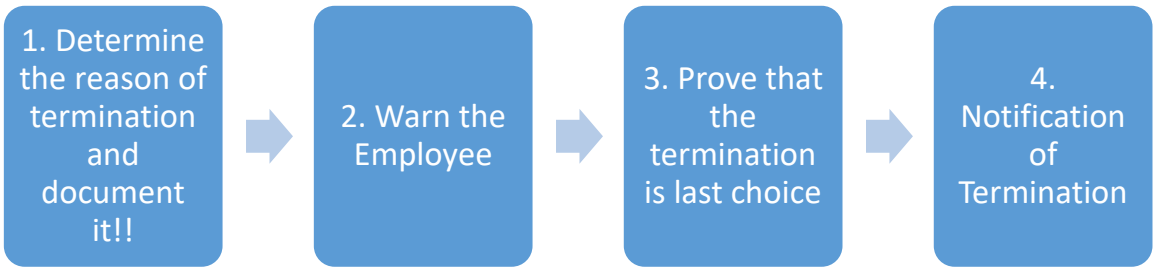
3. Granting Right of Defense to the employee: In the termination due to employee's behavior and performance, defense of the employee must be taken. The invitation to defense must be clear and it should include that within a reasonable time the employee expected to make his/her defense at a certain place, time and date. If he/she is not ready at the given time then he/she can give a written defense as well. It is beneficial to take the defense in written. Additionally, it will be beneficial to have the defense in hand writing of the employee. In case the employee is refrained from giving defense, a statement stating that the employee is refrained from defense should be taken.

4. Prove that termination is last choice. The employee's same or similar behaviors should be documented in order to prove that the termination was the last choice. Therefore, there must be more than one statements and defenses.

5. Send a written termination notification. The termination notification must include the reason of termination explicitly and clearly. In the notification the will of ending the contract must be explicitly indicated and the time of termination must also be included. The notification should bear the signature of the employer. It is suggested the notification to be sent via notary.

12. What is right of immediate termination and the steps to be followed for termination?

The employer has right to immediately terminate the contract in case of one of the reasons stipulated in Article 25/II is realized. This right must be used within 6 days as of learning this behavior and within 1 year as of the realization of the behavior.



1. It should be determined that which behavior of the employee is within scope of Article 25 of Labor Law. In this regard a written statement should be taken indicating the employee's wrong behaviors clearly and comprehensible. The statements should be signed by the people who personally witnessed the employee's behavior.

2. A written warning including all the details of the employee's behavior should be given to the employee. The warning should include the behavior, date, time and place of the behavior. The warning should include that if the employee does not fulfill his/her obligation, his/her contract will be terminated. As per the Supreme Court precedents oral warning is possible for the behaviors within scope of Article 25. However, it is not suggested since it will be hard to prove before court.

In case it impossible to continue the employment relationship then the warning is not obligatory and the contract can be terminated. For instance, in case the usage of internet for personal use

is forbidden and it was written in employment contract or rules of the workplace, and the employee uses the internet for personal use then there is no obligation of warning.

3. The behaviors of the employee within scope of Article 25 should be documented and it should be proved that the employee make a habit of this behavior and the employment relationship is effected badly.

4. The termination notification within scope of Article 25 can be made orally. However, it is not suggested. The termination notification must include the reason of termination explicitly and clearly. In the notification the will of ending the contract must be explicitly indicated and the time of termination must also be included. The notification should bear the signature of the employer. It is suggested the notification to be sent via notary.

13. Regulations of Retirement Age as per Turkish Law

In 1987, Law No.3395 has been entered into force and mentioned law regulated the retirement conditions which includes payment of pension liability, having retirement annuity for a certain period of time and most importantly being at certain age for the first time. Due to this regulation, for being retired and receiving a pension, it is not enough to satisfy other conditions (such as retirement annuity or pension liability etc) but also a certain age must be fulfilled. Even though, the condition concerning the age had been abolished by the Law No. 3774 in 1992, Law No.4447 which was published in Official Gazette on 08.09.1999, has envisaged a gradual retirement system by making significant changes in the conditions of eligibility for old age and pension, such as age condition and monthly account method. However, Articles 17, 22, 26, 39 and 44 of the Law No.4447 which regulate the gradual transition, were annulled by the Constitutional Court on the grounds that they were not fair, reasonable, and measured. That is why, Law No. 4759 which was entered into force on 23.05.2002, modified the gradual transition and ultimately Law no. 5510 on Social Insurance and General Health Insurance which forms another conditions regarding the age and degrees, came into force. As a result of these complicated legal regulations and legislations, there are three groups in current situation;

1) Workers, civil servants, traders etc. whose insurance premium payment started before 08.09.1999
2) Workers, civil servants, traders etc. whose insurance premium payment started between 08.09.1999 and 30.04.2008
3) Every person (workers, civil servants, traders etc.) whose insurance premium payment started after 01.05.2008

Individuals deemed to be insurance holders

ARTICLE 4 - (Amended: 17/4/2008 - 5754/2nd Art.) For the purposes of implementing short and long term insurance branches of this Law;

a) Who are employed by one or more employer through a service contract,
b) Among the village and quarter headmen and individuals working on his/her own name and account without being bound by a service contract;
1) Who are income tax payers in real or ordinary procedure due to commercial earnings or self - employment income,

2) Who are exempt from income tax and are registered to the registry of traders and artisans, 3) Associates of joint - stock companies who members to board of directors, active partners of commandite companies of which capitals are divided into shares, all partners of other company and maritime joint - adventures, 4) Who are active in agricultural activities, c) In the public administrations;
1) among the ones who are not subject to item (a) of first paragraph of this Article, who are not foreseen to be insurance holders, such as ones who work permanently in permanent staff positions and are covered by item (a) in their concerned laws,
2) among the ones who are not subject to item (a) and (b) of first paragraph of this Article, who are not foreseen to be insurance holders such as ones who work on contract and are covered by item (a) in their concerned laws, and who are assigned indirectly as proxy in accordance with Article 86 of Public Servants Law number 657, shall be deemed insurance holders.

Provisions regarding the individuals deemed to be insurance holders as per item (a) of the first

paragraph shall also be applicable to;

a) individuals who are elected to the presidencies and board of directors of labour unions and confederations and union branches,
b) cinema, theatre, stage, show, voice and musical instrument artists and individuals active in entire fine arts including music, painting, sculpture, decorative and similar occupations, intellectuals and authors, who are employed by one or more employer,
c) foreigners who work on service contract, excluding the citizens of countries with which international social security contract is entered based on reciprocity principle,
(…)

Provisions regarding the individuals deemed to be insurance holders as per item (c) of the first paragraph shall also be applicable to;

a) for the individuals who are elected or assigned to duty in public administrations pursuant to establishment or personnel laws or other laws, the ones who are not working on service contract among ones, such as Public servants, to whom retirement right is granted under the concerned laws due to their such duties,

According to this law, employees subject to the rule of 4/A would retire after 7,200 days of insurance premium. Employees subject to the rule of 4/B and public employees subject to the 4/C can retire over 9,000 days of insurance premium. After fulfilling the premium days, they are subjected to, employees will receive the right to retirement at the age stipulated by the law in force on the date of filling the required premium days. Article 27 of the Law No. 5110 regulates the the day limits that are paid for insurance Premium.

Regulations for the Old Age Pension of the Employees within the Scope of Article 4/A

Firstly, which provisions of the law will be valid for the old age pension of the employees with the service contract varies according to the date of insured. Employees who are entitled to be retired before the day that Law No.5510 has been entered into force, Law No.506 will be applied thus, their acquired right concerning the old age pension will be protected.

For the employees who are deemed to be insurance holders through starting to work under the service contract between the dates of 08.09.1999 and 30.04.2008, they can be entitled to the old-age pension provided that one of the conditions is fulfilled;

-Turning 58 years of age for women and 60 years of age for men and paying 7000 days of disability, old age and death insurance premiums,

- To be 58 years old for women and 60 years old for men and to be insured for 25 years and paid at least 4500 days of disability, old age and death insurance premiums.

However, according to the Law No.5510 people who satisfy the conditions bellow are qualified for a pension;

- On condition that by the date of 01.01.2036, 58 years of age for women and 60 years of age for men, and 7200 days of disability, old age and death insurance premium is paid,

- In case of fulfillment of the number of days of disability, old age and death insurance premium payment days for 7200 days after 01.01.2036, based on the age terms in the date range in which the day condition is fulfilled.

Related Law	The date in which the condition regarding the insurance premium paid for 7200 days has been satisfied for 4/A Employees	Minimum Conditions for Pension		
		AGE		The Days
		Woman	Man	
5510	01.05.2008-31.12.2035	58	60	7200
	01.01.2036-31.12.2037	59	61	7200
	01.01.2038-31.12.2039	60	62	7200
	01.01.2048	65	65	7200

With this regulation, the age of qualifying to an old-age pension will be equal to 65 for both men and women starting from 2048.

As of January 1, 2036, retirement age will increase by a year in every 2 years until 2048. The retirement age of 58 for women and 60 for men will be determined depending on the age requirement on the date they fill the premium day needed to fill for retirement in the working status.

Moreover, there are some exceptions regarding the old age pension;

The old age pension will be entitled in case of 58 years for women, 60 years for men and after 2036, the addition of 3 years over gradual transition age limit conditions *(kademeli geçiş yaş hadleri)*, not exceeding the age of 65 years, 5400 invalidities over the number of premium payment days 5400 determined according to the date on which the premium payment day condition is fulfilled.

Related Law	The date in which the condition regarding the insurance premium paid for 5400 days has been satisfied for 4/A Employees	Minimum Conditions for Pension		
		AGE		The Days
		Woman	Man	
5510	01.05.2008-31.12.2035	61	63	5400
	01.01.2036-31.12.2037	62	64	5400
	01.01.2038-31.12.2039	63	65	5400
	01.01.2048	65	65	5400

However, in this case, the number of 5400 premium payment days that has been started for the first time between 30/4/2008 and 31/12/2008 for those who are insured by starting to work with service contract for 4600 days , and shall not exceed 5400 days, for the first time. It is envisaged to apply gradually by adding 100 days each year for those who are insured by starting to work with service contract.

	The date of first insured	Minimum Conditions for Pension		
Related Law		AGE		The Days
		Woman	Man	
5510	01.05.2008-31.12.2008	61	63	4600
	01.01.2009-31.12.2009	61	63	4700
	01.01.2010-31.12.2011	61	63	4800
	01.01.2016-	61	63	5400

Regulations for the Old Age Pension within the Scope of Article 4/B

Similarly, which provisions of the law will be valid for the old age pension of the employees who are among the village and quarter headmen and individuals working on his/her own name. Employees who are entitled to be retired before the day that Law No.5510 has been entered into force, Law No.1479 will be applied thus, their acquired right concerning the old age pension will be protected. However, according to the Law No.5510 people who satisfy the conditions bellow are qualified for a pension;

- On condition that, by the end of the 2036, 58 years of age for women, 60 years of age for men and 9000 days of disability, old age and death insurance premium is paid

-If the 9000 days of disability, old age and death insurance premium payment are fulfilled after 2036, based on the age limits in the date range in which the day condition is fulfilled.

Related Law	The date in which the condition regarding the insurance premium paid for 9000 days for 4/B Employees	Minimum Conditions for Pension		
		AGE		The Days
		Woman	Man	
5510	01.05.2008-31.12.2035	58	60	9000
	01.01.2036-31.12.2037	59	61	9000
	01.01.2038-31.12.2039	60	62	9000
	01.01.2048-	65	65	9000

With this regulation, the age of qualifying to an old-age pension will be equal to 65 for both men and women starting from 2048.

Moreover, there are some exceptions regarding the old age pension;

In case of 58 years for women and 60 years for men and adding 3 years, not exceeding 65 years of age after the age limits which will be effected after 2036, the old age pension will be paid over 5400 premium payment days.

Related Law	The date in which the condition regarding the insurance premium paid for 5400 days has been satisfied for 4/B Employees	Minimum Conditions for Pension		
		AGE		The Days
		Woman	Man	
5510	01.05.2008-31.12.2035	61	63	5400
	01.01.2036-31.12.2037	62	64	5400
	01.01.2038-31.12.2039	63	65	5400
	01.01.2048	65	65	5400

Consequently, the calculations for the conditions such as age and days of insurance premium paid is far more than complicated, therefore preparing a contract without technic analysis of the system may not be possible. That is why, a contract which includes age limits in itself may cause conflicts since the Social Security System has different calculations and exceptions that differs from person to person.