

COVID-19: Impact Of Coronavirus On Working Life

After Covid-19 Coronavirus (**Covid-19**) was detected in Turkey, the number of people infected is increasing day by day. Within this scope, various measures are being taken both individually and socially in order to prevent the spread of the virus.

Currently we are experiencing that the Covid-19 outbreak is affecting social and commercial life as well as education and working life in many ways. Without a doubt, the impact of Covid-19 on working life will manifest itself in relations between employers and employees. Because, it has been suggested that social gatherings to be ceased, and as a precaution, it has been decided that places that can cause these gatherings will be temporarily closed. These precautionary decisions bring some changes and difficulties to working life as well. This information note has been prepared with the purpose of evaluating the employee-employer relations only in the private sector. Below you can find the evaluation of the relationship between the employees and employers in private sector, for this period.

A glance at the employer's liabilities

In the process, the limits of the liabilities of the employer in terms of material and moral aspects of ensuring the safety of the employees cannot be clearly determinable. While there is no harm in maintaining the work that can be carried out by remote work, considering the nature of the work done, there is no consensus yet on how the employer should follow the way in which the work that cannot be carried out by remote work.

The overall assessment about legal regulations in regards of precautions needs to be taken and the way to be followed by the employer

To evaluate the main legal regulations that may be interpreted in connection with the current process;

- According to Law on Work Health and Safety, the employer has the obligation to ensure work-related health and safety of the employees, in addition to its obligation to pay wages. In this context, the employer is obliged to make necessary adjustments, to improve health and safety measures, and ensure these measures are suitable for the changing conditions. Additionally, it is stipulated by law that the employer cannot reflect the cost of health and safety measures to employees. As it can be seen, although it is the responsibility of the employer to take the necessary health and safety measures, limits of this responsibility are not drawn by the law. However, it can be interpreted that measures such as providing remote working conditions and sterilizing the working environment should be imposed by the employer. In the same way, it is possible to say that decisions that may have consequences against workers should be avoided at the time of taking measures.
- Article 409 of Turkish Code of Obligations states that; if the worker is unable to perform his/her employment for a short period of time compared to the time he/she is employed without any defect due to illness, military service or work or similar reasons arising from the law, the employer is obliged to pay the employee an equitable wage for that period. As it can be seen, the relevant article stipulates that the employer should bear the

damage in such cases and that the financial distress to be experienced should not be reflected to the worker. In this case, it may be seen as another solution for the employer to give paid vacation to the employees. As it can be seen, in parallel with the labor law legislation, the Turkish Code of Obligations also includes regulations that the worker has the right to get paid even when he/she is not working in such cases where there is no fault of the employee, and that the employer must pay the worker at least an equitable wage.

- Due to the Covid-19 outbreak, in workplaces where the work cannot be continued with remote work due to the nature of the work, the issues of giving the worker paid or unpaid vacation are on the agenda. Although it is not clear how the threat of Covid-19 will be assessed in terms of labor law legislation, it can be mentioned that the situation will be assessed as “compelling reason” especially at the point where the epidemic continues to spread, serious financial losses of the employer begin to occur and one or more of the workers are infected with the epidemic. According to Article 40 of the Labor Law, if the employee cannot be employed due to compelling reasons, the employment agreement shall be suspended. During the suspension, the employer is required to pay half the wage to the employee for up to a week. After a week, the employer has no obligation to pay the employee any wage. However, it is worth reminding that the employer cannot unilaterally grant unpaid vacation to the workers by law. Therefore, giving the worker unpaid leave can be considered as a fundamental change in working conditions. For this reason, if the worker is to be granted unpaid leave, a written notification must be made and it has to be accepted in writing by the employee. Otherwise, in the event of a future dispute, the employer may issue a breach of employment agreement. In particular, according to the principle of interpretation in favor of the worker, the employer and the employee must begin to experience concrete impossibilities at the performance of the work, in order to include the epidemic situation in the “compelling reasons”.
- Another solution that may be considered for the employer in this process is to allow workers to take annual paid vacation. According to Article 10 of Annual Paid Vacation Regulation, the employer can also decide on collective paid vacation for employees. In this case, the employer’s obligation to pay wage, shall continue as agreed in the agreement. In this way, the workplace environment can be made more risk-free by giving annual leave to some or all of the workers by the employer. As a matter of fact, even if annual paid leave is a right granted to the employee by the Turkish Labor Law, the employer has the right of discretion in terms of the operation of the work. However, it should be noted that since the usage of annual paid leave is a temporary solution and there is a possibility that it can be assessed as a security measure against the employee’s favor, disputes between the employee and the employer may arise in the future about this matter.

A glance at organizing the work-related vacations

Besides the questions about how business life will continue after the Covid-19 outbreak, the fate of the foreign vacations planned within the scope of the work is also wondered. It should be stated that business vacations to the countries that are not prohibited by the authorized institutions can be delayed by the employer as a precaution.

Likewise, the infection of an employee during a business vacation assigned by the employer was deemed an occupational accident in accordance with the Social Insurance and General Health Insurance Law, by the Supreme Court's 21th Civil Chamber.

If there is no mutual vacation agreement between the worker and the employer, the worker who goes abroad during this period is expected to apply 14 days of isolation when he/she returns to Turkey. These workers are required to consult a doctor who has an agreement with the Socail Security Institution (**SSI**) to receive a medical report and to be absent by submitting this report to the employer.

What will happen in the upcoming days in employment law?

Although the measures to be taken by employers in the face of the increasing threat of Covid-19 may vary according to the nature of the work done, they appear in the ways that are mentioned above. There is no precedent for decisions by judicial authorities after the end of the danger. For this reason, necessary measures must be taken by employers, taking into account the continuation of work and the obligations stipulated by the legislation since it is still unclear what kind of case law will be formed in the face of possible disputes.

It is not possible to predict the extent of the impact of Covid-19 on working life, as it is not yet foreseeable how long the communal measures taken in the face of Covid-19 will last. Therefore, decisions by trade unions, companies and, more importantly, judicial authorities will be clarifying the impact of the process on employment agreements in the coming days. There is no doubt that in these days when the requirements of the employment agreement are difficult to meet, both for the employer and the worker, balanced protection of mutual interests is of utmost importance for the individual and society.

As part of the current developments, by the "Economic Stability Shield" package that was announced on 18 March 2020 that includes the precautions to be taken about the economy to reduce the effects of the Covid-19 epidemic, the government has demonstrated its position on this issue with the decisions taken in the form of "expanding the legislation on flexible and remote working" and "postponing SSI payments". As it can be seen from the measures taken and planned to be taken, the basic logic and objective is based on the protection of employment by supporting the employer and the protection of employees from harm. It is expected that the situation will be clarified by the decisions to be taken by the competent authorities. In our opinion, the attitude that will be displayed in this process should be towards the protection of employment.

King regards,

Gokce Attorney Partnership

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