

## COVID-19: Recent Amendments Introduced in Working Life by the Omnibus Law dated 17 April 2020

The measures taken to prevent and control the spread of the novel Coronavirus Covid-19 (**Covid-19**) outbreak are increasing day by day. In this scope, amendments on working life has been introduced with "The Law Amending Certain Laws and Reducing the Effects of the Novel Coronavirus (Covid-19) Outbreak on Economic and Social Life numbered 7244" (**Omnibus Law**) adopted by the Grand National Assembly of Turkey on 16.04.2020. The Omnibus Law has been published in the Official Gazette on 17.04.2020 and entered into force on the same date.

It has been recognized that the primary objective sought by the Omnibus Law is to ensure the continuity of employment and businesses. In order to truly understand the scope of such amendments, it will be useful to examine the measures taken and situated practice together.

### The Prohibition of Termination of Employment and Service Agreements for 3 Months

The measures taken to combat Covid-19 have made it difficult for employers and employees to fulfill their obligations arising from the employment agreement. This situation not only affects various businesses operating in different sectors negatively, but also causes financial difficulties for the employees. The businesses, whose activities have come to a standstill, have difficulty paying salaries to their employees and this situation damages the economy of the country in a broad sense. On the employee's side, unfair or non-employee induced terminations arise and this circumstance cause serious financial and moral harm to employees on individual and social scale.

In order to minimize the effects of the aforesaid difficulties, in accordance with the Omnibus Law, which introduced regulations on the employment relations; for a 3 month period starting from 17.04.2020, regardless of whether or not it is covered by the Labor Law, any kind of employment or service agreement cannot be terminated by the employer. The only exception to this regulation is the situations and similar reasons that do not comply with the moral and good faith rules regulated in subparagraph (II) of the first paragraph of Article 25 of the Labor Law and the relevant provisions of other laws. Therefore, in the presence of such exceptional situations and reasons, the employer may terminate the employment or service agreement. As it is seen, the only exception of this prohibition is stipulated as non-compliance with the moral and good faith rules, and according to the Labor Law these situations are as follows:

- If, at the time of execution of the employment agreement, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential point of the agreement although he/she does not meet them, or by giving false information or making false statements,
- If the employee is guilty of any speech or action constituting an offence against the honor or dignity of the employer or a member of his/her family, or levels groundless accusations against the employer in matters affecting the honor or dignity,
- If the employee sexually harasses another employee of the employer,
- If the employee assaults or threatens the employer, a member of his/her family or another employee of the employer, or if the employee comes to work under the influence of alcohol or narcotic drugs if the employee uses such at work,

- If the employee commits a dishonest or disloyal act against the employer, such as misuse of the trust of the employer, theft or disclosure of the professional secrets of the employer,
- If the employee commits an offence at the work place, which leads to imprisonment for more than seven days without probation,
- If, without the employer's permission or any justified 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,
- If the employee refuses, after being warned, to perform his/her duties,
- If either willfully or through gross negligence the employee imperils safety or damages machinery, equipment or other properties or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' wage.

As it can be understood from this regulation, the Omnibus Law primarily aims to protect the employment. Based upon this provision, it can be stated that the principle of interpretation in favor of employee will be adopted for the disputes arising the terminations of the employment agreement due to Covid-19. If the employment agreement is terminated despite the prohibition of termination, the validity of such termination and reemployment lawsuit could become an issue.

## **Employer's Right to Apply Unpaid Leave**

As one of the other amendments brought by the Omnibus Law; from 17.04.2020, the employer may unilaterally give partially or wholly unpaid leave to the employee for up to 3 months. The fact that the employer gives an unpaid leave, will not entitle the employee with the right to terminate his/her agreement based on valid reason. There is no clear provision under the Omnibus Law determining whether the employee's approval is required for unpaid leave or not. However, since this situation is not entitling the employee with the right to terminate the agreement based on valid reason, it can be interpreted as that the employer may give unpaid leave to the employee unilaterally and without awaiting an approval. In such cases, the employee who terminated the employment agreement due to unpaid leave may not claim severance and notice payment. As it is seen, during period of battling against Covid-19, it became a necessity to make a legal regulation regarding the application of "unpaid leave" which is a solution adopted by the employers frequently. In this respect even though the regulation introduced by the Omnibus Law is not explicit, it can be interpreted that the employer may apply an unpaid leave without getting the approval of the employee. Even if this provision is introduced in order to protect both employment and the economies of businesses, it is likely to be the subject to many disputes in the future. This is because there is no restriction or limitation on operation or economic situation for the businesses that can apply unpaid leave. Therefore, it can be said that there is a risk that this provision can be abused by the employer.

Administrative fine equal to the monthly gross minimum wage on the date of the action, for each employee whose agreement is terminated, shall be imposed on the employer or employer representative who acts contrary to the prohibition of termination for a 3 month period. The President is authorized to extend the prohibition of termination and the maximum period of unpaid leave up to 6 months.

Another important point should be emphasized is that the prohibition of termination and application of unpaid leave has taken effect from the date of 17.04.2020. Considering that the effect of Covid-19 outbreak on employment agreements is being seen for almost one month, the question arises as to what will be the legal consequences of the actions taken before the Omnibus Law was introduced. Although there is no explanation or regulation on this issue yet, it is possible to interpret that in the event of a future conflict, there will be a balanced attitude towards the protection of employment and the economy of the employer.

## **Short-time Working, Short-time Working Allowance Applications and Financial Support to Employees**

According to the Unemployment Insurance Law, due to general economic, sectoral or regional crisis or compelling reasons, the businesses that temporarily brought their operations to standstill partly or wholly or the businesses that decimate their weekly working hours or the businesses which their working hours got decimated, may implement short-time working without exceeding 3 months. Upon the employer's application getting approved by competent authorities, it is stipulated that the employees will be paid short-time working allowance from the Unemployment Insurance Fund. In this way, it is aimed to alleviate the burden of compelling reasons by supporting employers and therefore employees with insurance funds in the face of the disruption of commercial life due to such coercive reasons.

In the situated practice, upon application of the employer to benefit from short-time working allowance, the eligibility assessment must be carried out by the labor inspectors. The scope of the assessment includes the determination of employees who have short-time working conditions and whether the current situation provides short-time working conditions. As a result of the assessment, final decision will be given regarding the eligibility of the short-time working application.

According to the amendments introduced by "the Law Amending Certain Laws No. 7226" (**Omnibus Law No. 7226**) adopted by the Turkish Parliament on 25.03.2020; it is stipulated that the short-time working applications to be completed in 60 days. With the amendment introduced by Article 6 of the Omnibus Law, in addition to this provision, the phrase "with the exception of eligibility assessment" has been added. In this way, a regulation has been made that conclusion of the application may take more than 60 days, excluding the 60-day period that has passed during the examination regarding the eligibility assessment of the application.

On the other hand, in accordance with the Article 8 of the Omnibus Law, for the short-time working applications made by the employers due to compelling reasons based on Covid-19, without waiting for completion of the eligibility assessment, short-time working allowance shall start to be paid upon the declarations of the employer. In this context, at the first stage, it will be accepted that there are short-time working conditions and that the reported employees have short-time working conditions, in line with the statements of employers. With this way, it is aimed to protect the employees against any malfunction that may occur during the application process.

In this situation without waiting the eligibility assessment, based upon the applications made by employers;

- the operation performed at the workplace stops by at least 1/3 of,
- the pause is based on a reason arising from Covid-19,
- the determined employees meet the requirements for benefiting from the short-time working allowance

will be accepted in line with the declarations of employers. However, besides easing the access to the support provided to employers, an attitude that imposes responsibility to the employers is maintained with the Article 8 of the Omnibus Law. Because, in the continuation of the Law, excessive and unjustified payment is made in accordance with the declaration of the employer shall be recovered from the employer with the legal interest. In this case, the application must be completed after the necessary research has been carried out by the employer regarding the short-time working conditions of the workplace and which employees can benefit from the short-time working allowance. The amendments brought to the short-time working applications will be effective retrospectively from the date of 29.02.2020.

## **The Amendments Introduced to the Requirements to Benefit from Short-time Working Allowance**

At this point, it is worth mentioning the amendments introduced to the requirements to benefit from short-time working allowance by Omnibus Law No. 7226. For the short-time working applications based on the grounds of compelling reasons arising from Covid-19, the requirements for the employee to benefit from short-time working allowance have been amended. Prior to this amendment, in order to qualify for the short work allowance, the employees are required to be subject to a service agreement for 120 days prior to the commencement date of short-time working and the employees must have been working insured for 600 days in the last 3 years and their unemployment premiums must have been paid. In accordance with the amendment introduced by the Omnibus Law No. 7226, in order to benefit from the short-time working allowance, the employees are required to be subject to a service agreement for the last 60 days prior to the commencement date of short-time working, and the employees must have been working insured for 450 days in the last three years and their unemployment premiums must have been paid. The amendment aims to limit the aggrievement experienced by flexing the requirement to benefit from the short-time working allowance in short-time working applications arising from Covid-19. In accordance with the amendment, without exceeding the short-time working period, short-time working allowance shall be available for the remaining entitlement period.

## **Status of Employees who cannot benefit from Short-Time Working and Unemployment Allowances**

In line with the measures taken under Covid-19, it is stipulated that employees who are on unpaid leave and cannot benefit from short-time working allowance will be given daily cash wage support by the Omnibus Law. According to the Article 7 of the Omnibus Law, it is regulated that TL 39.24 of daily cash wage support will be provided from the fund (without any deduction except stamp duty) during the period in which they are on unpaid leave or remain unemployed, without exceeding the 3 month period, to the following;

- The employees who cannot benefit from the short-time working allowance and sent on unpaid leave in accordance with the Article 10 of the Law No. 4857, provided that they have an employment agreement on the date of entry into force of the relevant article (17.04.2020) and
- The employees whose agreements are terminated after 15.03.2020 and cannot benefit from the unemployment allowance under Article 51 of the Unemployment Insurance Law.

In accordance with the Omnibus Law, the Ministry of Labor and Social Security (**Ministry**) is authorized to determine the payment procedures and principles related to cash wage support and to resolve any doubts that may arise regarding the implementation of this article. In this

regard, with the procedures and principles to be determined by the Ministry, the practice regarding the cash wage support will become clear.

The amendment is intended to support people who have lost their jobs or income during the current period. For this reason, cash wage support is provided to employees who cannot benefit from any allowances or wages. It should be noted that; the period of the payments made within this context cannot exceed the prohibition of termination period. Therefore, unless a contrariwise amendment is made, the extension of the period for the prohibition of the termination by the President shall mean the extension of the period in which daily cash wage support can be provided.

## Conclusion

In order to summarize, with the Omnibus Laws No. 7244 and 7226, it is intended to limit the effects of the measures taken due to Covid-19 on business life. As we stated in our article titled "Covid-19: Effects of the Coronavirus on Working Life" dated 24.03.2020, when the measures taken regarding working life are examined as a whole, it can be repeated that the attitude of the government is to protect the employment and prevent the harm that can occur on behalf of the employees. In this context, regulations regarding the prohibition of termination and support plans for employees arising from deprivation of wage, stand out as measures to protect employment and minimize damages of the employees during the process. It is also aimed to limit the damages of employers and businesses with the regulations that employers can implement unpaid leave for 3 months and that such unpaid leave will not entitle the employee with the right to terminate her/his agreement on the basis of valid reason.

With these amendments, it is aimed to almost suspend the obligations arising from employment agreements during the process due to compelling reasons and to realize them with the support of the government and to provide continuation to business life by preserving employment at the end of the process.

While the measures to be taken in the future and the end date of the process cannot be envisaged, it is expected that the government will continue its stance towards minimizing the damage to the actors of the business life. In this context, it will be important to follow closely the steps that the regulatory authorities will take in the upcoming days.

**Kind regards,  
Gokce Attorney Partnership**

*This note is prepared on the date of 24 April 2020 within the developments till this day, solely for the purpose of presenting general information and does not provide any case-related assessment. This note does not include any taxation advisory. The information given in this note may differ for each particular situation. Thus, Gokce Attorney Partnership would not be held liable for these situations.*