

TERMINATION OF EMPLOYMENT

Introduction

Legal requirements to terminate an employment relationship as well as outcomes of termination vary due to a number of factors including, whether the employment contract is considered as fixed-term or open-ended, whether it is terminated by employer or employee, and whether it is terminated for good cause or without cause.

In this article, unless otherwise explicitly stated, the termination of employment will be discussed from the perspective of open-ended contracts since it is the predominant type of employment relationship in Türkiye.

Termination without Cause

Employers wishing to dismiss an employee without any reason or employees wishing to quit the job, are required to serve to the other a termination notice by observing the minimum periods prescribed in the law.

Notice periods change due to the length of service performed by the employee. The minimum notice periods shown below may be extended by agreement solely in favour of the employee.

LENGTH OF SERVICE	NOTICE PERIOD PRIOR TO TERMINATION
6 months or less	2 weeks
6-18 months	4 weeks
18-36 months	6 weeks
36 months or more	8 weeks

Over the course of the notice period, the employer is required to grant the employee a leave of absence within office hours

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for not less than 2 hours a day, so that the employee can search for a new job. The employee has the right to take the daily hours of leave of absence collectively at one time, provided that the employer is informed in advance and the accumulated time is taken on the days just before the day the employment ends.

On the other side, the employer has the right to terminate an employment contract with immediate effect, provided that the employee is compensated, in advance, with an amount equivalent to the wage that the employee would receive for the applicable notice period.

With regards to fixed-term contracts, however, there is no notice requirement since such contracts are automatically terminated at the end of the specified duration.

Termination for Good Cause

Upon the occurrence of specific circumstances described in the Law, the employment contract can be terminated by a party without being required to send a notice or observe notice periods. Needless to say, the terminating party having a good cause does not have to pay a notice pay.

2

“... the terminating party having a good cause does not have to pay a notice pay.”

A. Termination by Employee

The employee may terminate the contract, be it fixed-term or open-ended, immediately without notice, in the event of the following circumstances:

Health-Related Reasons

- a) Due to the nature of the work, the performance of contractual duties poses a danger to health or life of the employee, and
- b) The employer or a fellow employee, with whom the employee is regularly, closely and directly in contact, suffers from a serious contagious disease.

Unethical Behavior

- a) The employer misleads the employee at the time when the contract is made, by giving false information or making false statements with regards to essential terms and conditions of employment
- b) The employer commits an act or uses offensive words which injure the honour and dignity of the employee, or a member of the employee's family.
- c) The employer commits sexual harassment against the employee.
- d) The employer assaults or threatens the employee, or a member of the employee's family.
- e) The employer incites, induces or forces the employee, or a member of the employee's family, to commit an illegal act.
- f) The employer commits a criminal offence against the employee which is punishable by imprisonment.
- g) The employer makes groundless and severe allegations against the employee which injure the employer's honour or dignity.
- h) The employee gets sexually harassed by a fellow employee or third person and the employer fails to take the necessary measures despite having been informed by the employee.
- i) Employer does not calculate or pay the wage of the employee in accordance with the law and the terms of the contract.

3

Other

- ❖ Occurrence of a compelling event which causes suspension of work in the workplace for more than 1 week.

B. Termination by Employer

The employer may terminate the contract, be it fixed-term or open-ended, immediately without notice, in the event of the following circumstances:

Health-Related Reasons

- a) The employee is absent from work for 3 consecutive days or a total of more than 5 days in a month due to an illness or injury resulting from the employee's own intent, loose lifestyle, or alcohol addiction.
- b) Medical Board of a hospital determines that the employee's illness is incurable and his/her medical condition is not convenient for the workplace.

Unethical Behavior

- a) The employee misleads the employer at the time when the contract is made, by giving false information or making false statements for looking competent in the eyes of the employer in terms meeting the essential job qualifications.
- b) The employee commits an act or uses offensive words which injure the honour and dignity of the employer, or a member of the employer's family.
- c) The employee makes groundless allegations against the employer which injure the employer's honour or dignity.
- d) The employee commits sexual harassment against a fellow employee.
- e) The employee assaults or threatens the employer, a member of the employer's family, or a fellow employee.
- f) The employee comes to the workplace under influence of alcohol/drugs, or uses alcohol/drugs when present in the workplace.
- g) The employee commits a dishonest act against the employer, such as breach of trust, theft, or disclosure of trade secrets.
- h) The employee commits a criminal offence in the workplace which is punishable by seven days' imprisonment at minimum without probation.
- i) The employee is absent from work without permission of the employer or without justified ground for;
 - a. 2 consecutive office days, or
 - b. 3 office days in a month, or
 - c. Twice in a month on the first office day following a holiday.
- j) The employee refuses to perform his or her duties after being warned.

"The right of termination upon employee's unethical behavior cannot be used after 6 days from the day on which the employer comes to know such behavior."

- k) The employee, through his wilful or negligent acts or omissions, jeopardizes the job security or causes a damage or loss on the machinery, equipment or other goods or materials which cannot be recovered with an amount equivalent to the employee's 30 days' salary.

The right of termination upon employee's unethical behaviour cannot be used after 6 days from the day on which the employer comes to know such behaviour, and in any case after 1 year as of the occurrence of unethical conduct. Nevertheless, 1-year period does not apply in cases where the employee gets a pecuniary advantage.

Other

- a) The employee gets arrested and his/her absence exceeds the applicable notice period shown in the table above.
- b) Occurrence of a compelling event which prevent the employee from working in the workplace for more than 1 week.

Termination for Valid Cause

5

Apart from termination for good cause, employers over a certain threshold, i.e. employing not less than 30 employees, have an exclusive right to terminate an employment based on a valid cause, provided that the contract is open-ended and the employer completed a minimum of 6 months of service. A valid cause may take its source either from the employee or the employer.

On the employee's part, valid cause stems from inadequacy or attitude of the employee, such as underperformance, inefficiency, negligent behaviour, aggression, lack of harmony etc.

On the employer's part, valid cause arises due to the necessities of the workplace or the business. Economic hardship, technological changes, organizational restructures, shutdown of workplace or a portion of operations can be good examples for valid cause.

As it is the case for termination without cause, employer must notify the employee in writing and observe the notice periods

shown in the table above. The termination notice should clearly and exactly state the cause of termination.

In cases where the employment is desired to be terminated for the reasons related to the employee's inadequacy or attitude, the employer must give a written warning and opportunity to correct his/her performance or attitude. In addition, the employer must take a written defence from the employee before initiating the termination process.

Mutual Termination

Employers and employees are free to terminate the job relationship at any time by mutual understanding. In practice, parties often conclude a written rescission protocol in which they may specify the employee's time of departure from the job, confidentiality and non-competition obligations, contractual compensation, and other benefits.

Statutory Compensations

The law defines two types of compensations, i.e. notice pay and severance pay, with a view to protect the employees who have served for a certain period of time.

Notice Pay

The terminating party failing to comply with the notification periods as shown in the table above is required to compensate the other party with notice pay, unless the departure of the employee is happened within the trial period prescribed in the contract.

The amount of notice pay depends on the employee's length of service in the workplace. Notice pay is calculated by multiplying the employee's weekly gross salary by the applicable notice period. The most recent salary of the employee is taken into account when calculating the notice pay.

The terminating party failing to observe the notification periods is required to pay to the other a notice pay in the following occasions;

"... Turkish law puts a severance pay cap which is announced semi-annually by the government."

- a) Termination without cause by the employee,
- b) Termination without cause by the employer, and
- c) Termination for valid reason by the employer.

Severance Pay

In certain circumstances where the employee departs from the job, the employer must compensate the employee with severance pay, provided that the period of employment continued not less than 1 year.

The amount of severance pay depends on the employee's length of service in the workplace. The calculation is made on the basis of the employee's 30 days' gross salary for each year completed since the commencement of employment. For any incomplete year of service, the severance pay for that period will be prorated based on the number of days the employee actually remains employed. The most recent salary of the employee is taken into account when calculating his severance pay.

However, Turkish law puts a severance pay cap which is announced semi-annually by the government.

7

The employee is typically entitled to receive severance pay on the following occasions;

- a) Departure of male employees due to compulsory military service,
- b) Resignation of female employees within 1 year following the date of their marriage,
- c) Retirement of the employee (to receive old age, retirement pension, or disability allowance from the Social Security Institution),
- d) Death of the employee (payable to the employee's successors),
- e) Termination for good cause by the employee,
- f) Termination for good cause by the employer (except for reasons related to unethical behaviour of the employee),
- g) Termination for valid cause by the employer, and
- h) Termination without cause by the employer.

TERMINATION OF EMPLOYMENT AT A GLANCE

(Open-Ended Contracts)

	PARTY	NOTICE REQUIREMENT	EMPLOYEE GETS ENTITLED TO NOTICE PAY		EMPLOYEE GETS ENTITLED TO SEVERANCE PAY ¹
TERMINATION WITHOUT CAUSE	by Employer	Yes	Yes ²	No ³	Yes
	by Employee	Yes	No		No
TERMINATION FOR GOOD CAUSE	by Employer	No	No		Yes ⁴ No ⁵
	by Employee	No	Yes		Yes
TERMINATION FOR VALID CAUSE ⁶	by Employer having 30 or more employees	Yes	Yes ⁷	No ⁸	Yes

¹ As a precondition, the employee must complete one year of service.

² In case the employer fails to observe the applicable notice period or wishes the termination to be immediately in effect.

³ In case the employer duly observes the applicable notice period.

⁴ In case the termination is due to a reason other than unethical behaviour of the employee. (e.g. health-related reasons, compelling reasons)

⁵ In case the termination is due to a reason related to unethical behavior of the employee.

⁶ As a pre-condition, the employee is required to have been employed for six months.

⁷ In case the employer fails to observe the applicable notice period or wishes the termination to be immediately in effect.

⁸ In case the employer duly observes the applicable notice period.

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